



April 18, 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 18, 2023. For all timely requests received, staff will call the submitted phone numbers directly during the meeting when the corresponding item comes up for comment. NOTE: The incoming phone call from City staff will be an unfamiliar number.

**PLEASE LIMIT PRESENTATIONS TO THREE MINUTES
(UNLESS PRIOR APPROVAL IS OBTAINED)**

1. CALL TO ORDER.
2. PLEDGE OF ALLEGIANCE.
3. OPEN FORUM. Open Forum is an opportunity for citizens to speak about items not listed on the agenda. In order to address City Council please complete the Open Forum Form and submit it to the City Secretary prior to the start of the meeting. In accordance with the Texas Open Meetings Act, City Council shall not discuss, deliberate, or make any decisions on items discussed during Open Forum. Comments are limited to 3 minutes per person. Open Forum is limited to the first 5 citizens who submit an Open Forum Form.
4. ITEMS TO BE REMOVED FROM CONSENT AGENDA.
5. CONSENT AGENDA: Items included under Consent Agenda require little or no deliberation by Council. Approval of Consent Agenda authorizes the City Manager or his designee to proceed with conclusion of each in accordance with staff recommendations as reflected in the minutes of this meeting.
 - A. Consider approval of minutes from April 4, 2023 regular meeting. (City Secretary)
 - B. Consider approval to purchase a John Deere 320 Backhoe from Dogget Equipment. (Utility Construction Manager)
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 a report, hold a discussion and give staff direction regarding AMI Meter

Replacement Program. (Director of Finance)

- B. **Public Hearing:** Consider an ordinance amending Chapter 118 "Zoning," Article I. "In General," Section 118-1 "Definitions," and Article III. "District Regulations," Section 118-273 "Land Use Schedule" and Article VI. "Development Standards," Section 118-466 "Off-Street Parking Requirements" of the Code of Ordinances to allow for the development of 'Distillation of Liquors, Spirits, etc. - Craft'. (City Planner)
 - C. Consider approval of an Indefinite Deliverables Indefinite Quantities contract by and between the City of Nacogdoches and Duplichain Contractors, LLC for Utility Installation and Repair Services in a not-to-exceed amount of \$200,000 (Assistant Director of Public Works).
 - D. Consider approval of a contract between White Electric and the City of Nacogdoches for Festival Park Utility Upgrades in the amount of \$106,350.00. (Community Services Director)
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.
 - B. Deliberation Regarding Real Property - Pursuant to Texas Government Code 551.072, Council will receive and discuss information on the value of real property and bids for properties struck off at tax foreclosure sales.
 - C. Personnel Matters – Pursuant to Texas Government Code Section 551.074, deliberations regarding the appointment or employment of a public officer or employee. The subject of this executive session is to discuss the annual evaluation and extension of the City Attorney's contract.
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 April 13, 2023 at 11 a.m. and remained posted until meeting convened.

Jan Vinson, City Secretary



City Council Meeting

Date: April 18, 2023

Agenda Item: 5.A.

PRESENTER: Jan Vinson, City Secretary

ITEM/SUBJECT: Consider approval of minutes from April 4, 2023 regular meeting. (City Secretary)

SUMMARY/BACKGROUND:

FINANCIAL:

No financial impact associated with this item

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

Not Applicable

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

ATTACHMENTS: 1. Minutes



Regular Session
Nacogdoches City Council
April 4, 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.

City Attorney Steven Kirkland attended virtually.

1. Called to order at 5:30 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 21, 2023 regular meeting.
 - 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.
 - 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).

Council Member Chad Huckaby removed items 5.B. and 5.C. from the Consent Agenda for further discussion.

Council Member Chad Huckaby moved approval of Item 5.A.; motion duly seconded by Council Member Amelia Fischer and carried by unanimous vote.

5.B. Case Opperman, Assistant Director of Public Works, stated that clarifier #4 was scheduled for rehabilitation in 2024 but it has failed and is out of service. He also stated that clarifier #3 is showing signs of impending issues and will need rehabilitation in the near future as well. This request is to approve a company to complete design on both clarifiers #3 and #4.

Council Member Chad Huckaby moved approval of Item 5.B.; motion duly seconded by Council Member Amelia Fischer and carried by unanimous vote.

Council Member Chad Huckaby moved approval of Item 5.C.; motion duly seconded by Council Member Amelia Fischer and carried by unanimous vote.

6. **REGULAR AGENDA:**

- F. Hold a discussion and give staff direction regarding the fair housing analysis required for application to the 2023/2024 Community Development Block Grant.

Alaina Helton, City Planner, introduced Parker Harrison with GrantWorks. She also stated that the housing analysis referred to in this item is not the same housing study being conducted as part of the Comprehensive Plan.

Parker Harrison, GrantWorks, stated that the housing analysis is part of a scoring element of the Texas Department of Agriculture Texas Community Development Block Grant (TxCDBG) program. Mr. Harrison explained that the City is applying for a TxCDBG grant for Water Line Improvements on Martin Luther King Jr. Boulevard and this step is part of the grant application process.

Minutes unofficial until approved by City Council

City Council discussed where the data originated from, whether or not there is more current data and the application process.

City Council directed Mr. Harrison to verify data with the Nacogdoches Housing Authority then move forward with the application process.

- A. Receive annual report from the Nacogdoches County Exposition and Civic Center.

Anita Scott, Nacogdoches County Exposition and Civic Center Director, reviewed the event impact summary for 2021-2022 which included total number of overnight stays, attendees, jobs supported and events held at the Expo/Civic Center. Mrs. Scott also discussed direct business sales and money spent locally.

- 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.

Pam Curbow, Finance Director, gave a brief history of the current Automated Meter Infrastructure (AMI) System which was funded by a revenue bond in 2008. Information gathered from the previous rate study indicated that money should be set aside each year to fund the replacement of the AMI system when the time came which the City has done. Ms. Curbow stated that the contract covers the replacement and installation of 12,664 meters/transmitters which includes only meters that have been in the ground longer than twelve months. Ms. Curbow reviewed two add on options to this contract which are a Line Material Identification inventory as required by new TCEQ rulings, and replacing and installing 347 meters/transmitters in the area of Central Heights that will be funded by Angelina Neches River Authority (ANRA).

Dr. Sammy Smith spoke during public comment regarding inter-fund transfers, franchise fees, water/sewer rates, and a water and sewer rate study. Dr. Smith asked if the money to fund this project was budgeted, what is wrong with the old system, and can the City hire meter readers again.

Ms. Curbow confirmed most of the money to fund this project is budgeted in the capital improvement section of the 22/23 budget.

City Council discussed transmitter and meter warranty, equipment failures, total cost of the project, TML utility rate study, tax rate increase to cover inter-fund transfers and waiting to replace meters and transmitters.

Council Member Belanger asked for more information regarding cost savings for replacing all meters and transmitters versus replacing them over a period of time. Council Member Belanger stated that she would like to see data on replacing the meters that are between two years old and ten years old.

Council Member Kathleen Belanger moved to delay approval of this contract pending further information; motion duly seconded by Council Member Chad Huckaby 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 additional funds needed for the Automated Meter Infrastructure water meter and transmitter replacement program.

Not action taken due to City Council delaying Item 6.B. regarding the 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.

- 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.

Jason Smith, Utility Construction Manager, stated that staff is receiving 420 utility line locate requests per month due to fiber optic cable being installed in the City. Staff is proposing to outsource utility location work to USIC Locating Service LLC which is part of the approved buying cooperative.

City Council discussed the number of accidental line strikes which cause citizens to be without water and length of time to make repairs to damaged lines.

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

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

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

City Council convened into Executive Session at 7:18 p.m.

7. EXECUTIVE SESSION:

A. Deliberation regarding Economic Development negotiations under Government Code Section 551.087 as follows:

1. Discuss or deliberate regarding commercial or financial information the City has received from business projects the City body seeks to have locate in the City of Nacogdoches and with which the City is conducting economic development negotiations; and
2. Deliberate offer of financial or other incentive to business prospects described by Subdivision 1 above.

8. City Council reconvened in regular session at 7:30 p.m. taking no action.

9. Adjourned 7:30 p.m.

Mayor Jimmy Mize
City Council
City of Nacogdoches

ATTEST:

Jan Vinson, City Secretary



City Council Meeting

Date: April 18, 2023

Agenda Item: 5.B.

PRESENTER: Jason Smith, Utility Construction Manager

ITEM/SUBJECT: Consider approval to purchase a John Deere 320 Backhoe from Dogget Equipment. (Utility Construction Manager)

SUMMARY/BACKGROUND: This is a budgeted item for the replacement of an existing 2014 backhoe in the Utility Construction Department with over 4,000 hours that is seeing higher maintenance costs and less reliability. This purchase is through Sourcewell Collective, an approved buying cooperative, which allows us to obtain the best prices from a pre-bid contract. The total purchase price is \$138,316.64 and the budgeted amount is \$140,000.

FINANCIAL:

Item is budgeted:

Account No.: 30.37.680.25

Account Name: *Equipment and Machinery Capital*

Amount: \$140,000

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

Not Applicable

CITY CONTACT: Jason Smith, Utility Construction Manager
smithje@nactx.us
936-564-7980

ATTACHMENTS:

1. Sales Quote
2. Bid Summary
3. Purchase Requisition

SALES QUOTATION

DOGGETT

Salesperson: Shane Toner
 Cell: 936-675-2904
 E-mail: shane.toner@doggett.com

4006 Ellen Trout Drive
 Lufkin, Texas 75904
 Main Line: (936) 634-8801
 Fax Line: (936) 639-2960

Customer: City Of Nacogdoches

Manufacturer: John Deere

Contact: Jason Smith

Model: 320P Backhoe Loader

Phone:

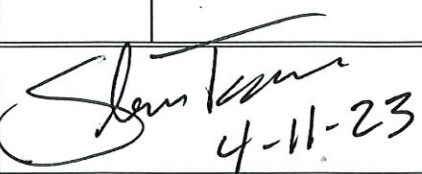
Stock #: ??????

Fax:

Serial #: ??????

Date: 04/11/23

Expires: 05/11/23

Order Code	Description	Sales Price	
17C0T	2023 John Deere 320P Backhoe Loader	\$165,753.00	
259	English Operators Manual	Base	
1003	Cab w/ A/C & Heat	\$13,905.00	
8183	Premium Radio AM/FM/WB/BT	\$1,424.00	
8207	Premium Cloth Seat w/ Air Suspension	\$528.00	
183E	JDLINK	Base	
3009	Autoshift w/ Mechanical Front Wheel Drive	base	
4006	John Deere PowerTech 4.5L FT4 Engine (Net 113 HP)	Base	
5250	Galaxy 21L-24 12PR Rear & 12.5/80-18 10PR Front Tires	\$1,458.00	
6152	Single HD Battery w/ Disconnect & Jump Post	Base	
6754	Heavy Lift Extendible Dipperstick	\$12,542.00	
6576	1000 Lb. Front Counterweight	\$1,443.00	
7002	Aux. Hydraulics w/ One & Two Way Flow	\$5,185.00	
7028	Pilot Controls	\$2,724.00	
7037	Two Function Loader Hydraulics	Base	
8165	Auto Ride Control	\$2,452.00	
7806	24" HD Backhoe Bucket	\$2,286.00	
7703	Deere Standard Quick Coupler-Thumb Ready	\$1,615.00	
7859	92" Wide, 1.31 Cu. Yd. Front Bucket	\$5,484.00	
8062	Backhoe Boom Protection Plate	\$632.00	
8115	MFWD Shaft Guard	\$449.00	
8126	HD Grille Frame	\$583.00	
AT434236	Rubber Bumper for Grille Frame	\$225.00	
AT448428	Hand Held Hydraulics	\$464.00	
	Base Machine Total List Price	\$219,152.00	
	Sourcewell Discount (Contract # 032119-JDC) 43% Off List	(\$94,235.36)	
	Total BuyBoard Base Machine Price	\$124,916.64	
	Additional Non Base Options & Attachments:		
	Factory Freight & Delivery	\$4,500.00	
	Pre Delivery Inspection & Attachment Labor (Hooks, etc.)	\$4,000.00	
	Total Non Base Options, Attachments, & Labor	\$8,500.00	
	Warranty:		
	60 Months/3000 Hours Comprehensive Warranty	\$4,900.00	
	Customer is responsible for travel time & mileage		
	 4-11-23	Machine Sale Price	\$138,316.00
		Rental To Apply	\$0.00
Down Payment		\$0.00	
Trade-In Amount		\$0.00	
Documentation Fees		\$0.00	
	State & Local Sales Tax (If Applicable)	\$0.00	
	Advalorem Tax	\$0.00	
	Total Delivered Machine Price	\$138,316.64	



City of Nacogdoches, Texas Bid Tabulation Sheet

DATE: 4/12/2023

REQUISITION NUMBER: _____

DEPARTMENT Water Dist. Collection 3037

Item No.	Qty.	UOM	Description	BIDDER A		BIDDER B		BIDDER C	
				Unit Cost	Extension	Unit Cost	Extension	Unit Cost	Extension
1	1		John Deere Backhoe 320P Sourcewell Contract # 032119-JDC	\$138,316.64	\$138,316.64				
2									
3									
4									
5									
TOTAL:				\$138,316.64		TOTAL:		TOTAL:	

BIDDER A:

Company Name Doggett Equipment
Contact: Shane Toner
Phone: (936) 634-8801
Address: 4006 Ellen Trout Drive, Lufkin, TX 75904

BIDDER B:

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

BIDDER C:

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

TABULATED BY: Jason Smith

DATED: 04/12/2023



City of Nacogdoches, Texas

Purchase Requisition

Department Water Utilities Dist. Collection 3037

Requisition #: _____

Date 4/12/2023

(Purchasing Department Use only)

Purchase Order #: _____

Ship to Address PO Box 635030

Item #	Description & Specifications	Fund # Dept. # Acct. #	Qty.	Unit of Measure	Budget Amount	
					Each	Extension
1	John Deere Backhoe 320P	30.37.680.25	1		\$138,316.64	\$138,316.64
2	Sourcewell Contract # 032119-JDC		0		\$0.00	\$0.00
3			0		\$0.00	\$0.00
4			0		\$0.00	\$0.00
5			0		\$0.00	\$0.00
6			0		\$0.00	\$0.00
7			0		\$0.00	\$0.00
8			0		\$0.00	\$0.00
9			0		\$0.00	\$0.00
10			0		\$0.00	\$0.00
					TOTAL:	\$138,316.64

Intended Use

Replace current 2014 backhoe with over 4000 operation hours.

Jason Smith 4/12/2023
Requested By Date

Dept. Head
Approval Date

Administration Approval Date



City Council Meeting

Date: April 18, 2023

Agenda Item: 6.A.

PRESENTER: Pam Curbow, Finance Director

ITEM/SUBJECT: Receive a report, hold a discussion and give staff direction regarding AMI Meter Replacement Program. (Director of Finance)

SUMMARY/BACKGROUND: At the April 4, 2023 City Council meeting, staff was given direction to come back and present more information on the age of water meter system components in order to determine replacement scenario of upcoming system replacement contract.

FINANCIAL:

No financial impact associated with this item

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

Infrastructure

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

ATTACHMENTS:

PRESENTER: Alaina Helton, City Planner

ITEM/SUBJECT: Public Hearing: Consider an ordinance amending Chapter 118 “Zoning,” Article I. “In General,” Section 118-1 “Definitions,” and Article III. “District Regulations,” Section 118-273 “Land Use Schedule” and Article VI. “Development Standards,” Section 118-466 “Off-Street Parking Requirements” of the Code of Ordinances to allow for the development of 'Distillation of Liquors, Spirits, etc. - Craft'. (City Planner)

SUMMARY/BACKGROUND: Planning staff have received inquiries regarding the potential location of craft distilleries in Nacogdoches. A craft distillery is a small, specialized distillery with limited production. There are several successful craft distilleries in Texas. Most craft distilleries offer tours to demonstrate the distilling practice, and are strong tourist attractions. The change of the zoning ordinance to allow the location of a craft distillery is an economic development tool that may encourage an entrepreneur to locate a business that will provide both jobs and a tourist draw.

The zoning ordinance currently does not define, nor regulate the operation of craft distilleries. However, there is an allowance for large-scale beverage manufacturing and canning in the I-2, Heavy Industrial zoning district. A craft distillery is a much smaller operation than a large-scale beverage manufacturer, producing a fraction of the product. The smaller operation means lighter traffic and fewer deliveries from heavy trucks and equipment. Additionally, craft distilleries typically encourage tours of the facility, encouraging tourists to visit, and large beverage manufacturers do not. The I-2, Heavy Industrial zoning district is not an appropriate district for land uses that attract visitors other than employees.

The proposed ordinance amendments would allow craft distilleries with a Specific Use Permit (SUP) in a B-2, General Business, and a B-3 Central Business zoning district, and by right in I-1, Light Industrial, and I-2, Heavy Industrial zoning districts. This will encourage the location of craft distilleries in appropriate areas where tourism and entertainment are encouraged. Certain B-2 and B-3 zoning district areas which might not be suitable for this type of use will be protected by the SUP requirement.

Current Texas law allows for alcohol sales for on-premise consumption at a distillery with restrictions. The proposed land use definition (shown in red below) for craft distilleries is based upon TABC definitions as well as regulations utilized by other Texas cities.

Section 118-1 (Definitions)

Distillation of Liquors, Spirits, etc. - Craft shall mean a business which:

- 1. Is permitted to manufacture distilled spirits and rectify, purify, and refine distilled spirits, mix liquor, bottle and package finished products and sell to wholesalers and qualified individuals outside this state and import from nonresident seller distilled spirits for manufacturing and rectifying purposed in compliance with state and federal law.*

2. The operation is authorized to sell distilled spirits to the ultimate consumer for consumption on the licensed premises (up to 3,000 gallons annually) and for consumption off the premises (up to 3,500 gallons annually, no more than two 750 ml bottles to a person in a 30-day period) in compliance with state and federal law.
3. Does not produce or generate any generally obnoxious odors.

Section 118-273 “Land Use Schedule”

Permitted Use	Commercial				Industrial	
P=Permitted, A=Accessory Use, S= SUP	B-1	B-2	B-3	MD	I-1	I-2
Distillation of Liquors, Spirits, etc. - Craft		S	S		P	P

Section 118-466 “Off-Street Parking Requirements”

Permitted Use	Parking Requirement
Distillation of Liquors, Spirits, etc. - Craft	1 for each 1,000 sf (no consumption), 1 for each 100 sf (with consumption)

RECOMMENDATION:

The P&Z Commission heard this item on April 10, 2023 and voted unanimously (4-0) to approve the changes to the Zoning Ordinance.

FINANCIAL:

No financial impact associated with this item

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

Downtown Entertainment and Destination District and Economic Development.

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

ATTACHMENTS:

1. Ordinance Amendment Summary
2. Ordinance Redlines
3. Ordinance
4. PowerPoint Presentation

Zoning Ordinance Amendment Summary – Craft Distillery
(Additions in Red)

Section 118-1 (Definitions)

Distillation of Liquors, Spirits, etc. - Craft shall mean a business which:

- (1) Is permitted to manufacture distilled spirits and rectify, purify, and refine distilled spirits, mix liquor, bottle and package finished products and sell to wholesalers and qualified individuals outside this state and import from nonresident seller distilled spirits for manufacturing and rectifying purposed in compliance with state and federal law.
- (2) The operation is authorized to sell distilled spirits to the ultimate consumer for consumption on the licensed premises (up to 3,000 gallons annually) and for consumption off the premises (up to 3,500 gallons annually, no more than two 750 ml bottles to a person in a 30-day period) in compliance with state and federal law.
- (3) Does not produce or generate any generally obnoxious odors.

Section 118-273 “Land Use Schedule”

Permitted Use	Commercial				Industrial	
P=Permitted, A=Accessory Use, S= SUP	B-1	B-2	B-3	MD	I-1	I-2
Distillation of Liquors, Spirits, etc. - Craft		S	S		P	P

Section 118-466 “Off-Street Parking Requirements”

Permitted Use	Parking Requirement
Craft Distillery	1 for each 1,000 sf (no consumption), 1 for each 100 sf (with consumption)

Sec. 118-1. Definitions.

- (a) *Word interpretations.* Interpretations of certain words used in this chapter shall be as follows:
- (1) All words used in the present tense shall include the future.
 - (2) All words in the singular number include the plural number, and all words in the plural number include the singular number.
 - (3) The term "structure" includes the word "building," and the term "dwelling" includes the terms "residence" and "place of habitation."
 - (4) The term "person" includes corporation, copartnership, association, and individual.
 - (5) The term "shall" is mandatory and not discretionary.
- (b) *Undefined terms.* Terms not defined in this section shall have the meanings assigned to them in the city building codes. Terms not defined in this section or in the building codes shall have the customary meaning assigned to them.
- (c) *Words and terms defined.* The definitions in this subsection supplement, restrict, and define the meaning and intent of the use regulations as set forth in this chapter. The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Accessory apartment means an accessory dwelling for the use and occupancy by any person employed on the premises on a full-time basis for domestic or medical help or family members to the second degree of consanguinity and affinity. Such dwelling shall not have separate utility services or meters. This may also include an accessory dwelling located in a commercial or industrial district for the use of any person employed by the business or property owner to provide management, maintenance or security for the property.

Accessory use means a structure or use that:

- (1) Is clearly incidental to and customarily found in connection with a principal building or use.
- (2) Is subordinate to and serves a principal building or a principal use; is subordinate in area, extent, or purpose to the principal building or principal use served.
- (3) Is located on the same lot as the principal building or use served.

Accessory use (residential) means a subordinate use which is detached from the main building and used for purposes customarily incidental to the residential occupancy of the main building and not involving the conduct of a business or the sale of a service. Accessory buildings include but are not limited to an automobile storage garage, laundry room, garden shelter, hobby room and mechanical room.

Airport or landing field means a landing facility for fixed wing aircraft containing a minimum of 60 acres.

All-weather surface means a hard smooth paved surface of either hot-mixed asphaltic concrete (HMAC) or Portland cement concrete (PCC) and the appropriate base material, meeting the following minimum specifications:

- (1) Hot-mixed asphaltic concrete:
 - a. Surface: 1.5 inches of type D or type C material.
 - b. Base: six inches of compacted iron ore gravel or the equivalent flexible base, or four inches of compacted hot sand asphaltic base.
- (2) Portland cement concrete:
 - a. Surface: five inches of class A, 3,000 psi concrete, reinforced with WWF 6 × 6, W 2.9 - 2.9.

-
- b. Base: four inches of compacted granular material.

Material shall conform to city and state department of transportation specifications. Other possible types of paved surfaces will be considered on a case-by-case basis by the city's planning and engineering departments.

Amusement, commercial (indoor) means an amusement enterprise wholly enclosed in a building, including but not limited to a bowling alley, bingo parlor or amusement arcade, but not including a billiard parlor or pool hall.

Amusement, commercial (outdoor) means any amusement enterprise offering entertainment or games of skill to the general public for a fee or charge wherein any portion of the activity takes place in the open, including but not limited to a golf driving range, archery range, and miniature golf course.

Animal hospital or clinic means a facility for the treatment or care of domestic animals, which includes a veterinarian's office, and may include overnight stays, but does not include outside pens.

Animal pound. See *Animal hospital or clinic* with outside pens.

Antique shop means an establishment offering for sale articles such as glass, china, furniture or similar furnishing and decorations which have value and significance as result of age, design or sentiment; and when all such items displayed or offered for sale are housed within a building and there is no exterior display except the usual sign or advertising.

Apartment means a dwelling unit in a multiple-family dwelling or apartment house arranged, designed or occupied as a place of residence by a single family. See *Multifamily; (apartments)*.

Area of lot means the square-foot area of a lot within the bounding property lines and exclusive of dedicated streets or alleys.

Artificial lot means an area within a platted lot, for the purpose of satisfying the requirements of this chapter, that is delineated on the building site plan and the landscape plan and approved by the city planner.

Arts school or studio means a school for instruction and practice of the performing, visual or martial arts.

Banks and financial institutions means activities and institutions for the extension of credit and the custody, loan or exchange of money.

Bed and breakfast establishment means a private single-family residence in which lodging for one or more nights and breakfast is provided by the resident owner for compensation.

Billiard parlor or pool hall means a facility for the playing of billiards and pool. Food service may be allowed as an ancillary use.

Block means an area enclosed by streets, or if such word is used as a term of measurement, it shall mean the distance along a side of a street between two intersecting streets, or if the street is of a dead-end type, a block shall be considered to be measured between the nearest street and the end of such dead-end street.

Board means the board of adjustment as provided for in division 3 of article II of this chapter.

Boardinghouse or roominghouse means a building, other than a hotel or multiple-family dwelling, where lodging is provided for five or more persons for compensation, where meals may or may not be served and where facilities for food preparation are not provided in the individual rooms. Where meals are served, they shall be served only to the residents of the boardinghouse.

Building means any structure designed, built or intended for the shelter or enclosure of persons, animals, chattels or movable property of any kind or for an accessory use. When separated by an absolute fire separation, each portion of such structure so separated shall be deemed a separate building. This definition includes structures wholly or partly enclosed with an exterior wall.

Building line means a line established, in general, parallel to the front property line, over which no part of a building shall project, except as otherwise provided in this chapter.

Building and landscape materials and lumber sales (outside sales) means a facility for the sale of home, lawn and garden supplies and construction materials such as brick, lumber and other similar materials. The facility may include outside sales.

Cabinet and woodwork shop (custom) means a shop for the repair or creation of individual items of furniture and wooden home furnishings on a custom basis, not a factory, planing mill or similar woodworking plant.

Carnival or circus (temporary) means a temporary traveling show or exhibition usually housed in tents, and which has no permanent structure or installation.

Carwash means a facility or area for the cleaning or steam cleaning, washing, polishing or waxing of passenger vehicles by machine or hand-operated facilities. A carwash may be a single unit, multiple single washing units, or a tunnel type which can wash several vehicles in tandem.

Cemetery means a land use intended to be used for the burial of the dead and dedicated for cemetery purposes, including columbariums, crematories, mausoleums, and mortuaries when operated in conjunction with and within the boundaries of such cemetery.

Chemical and allied products includes the manufacturing of industrial inorganic and organic chemicals, plastics materials, and synthetic resins, synthetic rubber, synthetic and other manmade fibers; drugs; soap, detergents, cleaning preparations, perfumes, and other toilet preparations; paints, varnishes, lacquers, enamels, and allied products; gum and wood products; agricultural chemicals; and other chemical and allied products.

Church or place of worship means a facility or area for people to gather together for public worship, religious training, or other religious activities including a temple, mosque, synagogue or other structure, together with its customary accessory structures and uses, including a parsonage or rectory. This does not include home meetings or other religious activities conducted in a privately occupied residence.

City council means the official governing body of the City of Nacogdoches.

Club, private means a clubroom or suite of rooms or a building available to restricted membership for meetings, dining and entertainment. Such facilities may include a private tennis court, swimming pool or similar recreation facilities, none of which are available to the general public.

College or university means an institution of higher learning beyond the level of a secondary school.

Community center (private) means:

- (1) A building or group of rooms designed and used as an integral part of a residential or apartment project by the tenants of such a project for a place of meeting, recreation or social activity and under the management and unified control of the operators of the project.
- (2) A private nonprofit community center operated as a boys' or girls' club or similar use. A private community center shall not be operated as a place of public meetings, or as a business.

Community center (public) means a building and grounds owned and operated by a governmental body for the social, recreational, health or welfare of the surrounding community.

Convenience store means any retail establishment offering for sale prepackaged food products, household items, and other goods commonly associated with such and having a gross floor area of less than 7,500 square feet.

Convent or monastery means the living quarters or dwelling units for a religious order or for the congregation of persons under religious vows.

Contractor or maintenance yard means an open storage yard for supplies and operational equipment, including buildings, but not constituting a junkyard, wrecking yard or salvage yard.

Country club (private membership) means an area of 20 acres or more containing a golf course and a clubhouse and available only to a private specific membership. Such a club may contain as adjunct facilities a private club and dining room, swimming pool, tennis courts and similar recreation facilities.

Coverage means the percent of a lot area which is covered by a roof, floor or other structure and is not open to the sky. Roof eaves to the extent of two feet, and ordinary projections from the building not exceeding 12 inches, shall not be counted in computing coverage.

Custom sewing and millinery means custom making of items of apparel and millinery, by a seamstress, but not involving a factory.

Day care means a facility or area used regularly to provide daytime care, training, education, custody, treatment or supervision to more than four children, adults or elderly in other than a family setting for less than 24 hours a day, whether for compensation or not. This definition includes preschools, private kindergartens, nurseries and other similar uses not listed elsewhere in this chapter.

Density means as follows:

- (1) *Residential density* means the relationship of dwelling units or rooms to the area of the lot or tract upon which a residential structure is located or erected, and is expressed in "units per acre."
- (2) *Nonresidential density* means the ratio of the area of the building to the area of the site. See *Floor area ratio (FAR)*.

Distillation of Liquors, Spirits, etc. - Craft shall mean a business which:

- (1) Is permitted to manufacture distilled spirits and rectify, purify, and refine distilled spirits, mix liquor, bottle and package finished products and sell to wholesalers and qualified individuals outside this state and import from nonresident seller distilled spirits for manufacturing and rectifying purposed in compliance with state and federal law.
- (2) The operation is authorized to sell distilled spirits to the ultimate consumer for consumption on the licensed premises (up to 3,000 gallons annually) and for consumption off the premises (up to 3,500 gallons annually, no more than two 750 ml bottles to a person in a 30-day period) in compliance with state and federal law.
- (3) Does not produce or generate any generally obnoxious odors.

Dwelling unit means a building or portion of a building which is arranged, occupied or intended to be occupied as a single living quarters and includes facilities for food preparation and sleeping.

Eating place with drive-in or curb service means an establishment offering food for sale to customers in automobiles and wherein the food for sale is to customers in automobiles and wherein the food service is to the automobile.

Eating place without drive-in or curb service means any eating establishment, cafeteria, restaurant or inn where food service is offered to the customers not in automobiles.

Emergency ambulance service means a facility for the operation and dispatch of emergency medical vehicles. Typically this operation is ancillary to a hospital or a fire station, but it may also be a primary use on a property.

Escort agency means a person or business association that furnishes, offers to furnish or advertises to furnish escorts as one of its primary business purposes for fee, tip or other consideration.

Fabricated metal products includes the manufacturing of ordnance and accessories; machinery, equipment and supplies; transportation equipment; and other fabricated metal products.

Fairground means a specific facility that hosts special indoor and outdoor events including exhibits or competitions of agricultural products, livestock, machinery, etc.; a large exhibition or show of products from various countries; an exhibition or sale of fancywork or other items for the benefit of some cause; or a gathering of buyers or sellers of some product or service.

Family means any number of individuals living together as a single housekeeping unit, in which not more than two individuals are unrelated by blood, marriage or adoption.

Family home and family group home means a community-based residential home licensed by the state department of mental health and mental retardation providing food and shelter, personal guidance, care, rehabilitation services, or supervision. Family homes shall have a maximum of six clients plus two staff members residing in a house. Family group homes shall have a minimum of seven and a maximum of 15 clients plus staff residing in a house.

Farm, ranch, garden or orchard means an area of three acres or more which is used for growing of usual farm products, vegetables, fruits, trees and grain for the raising thereon of the usual farm poultry and farm animals such as horses, cattle and sheep, including a private stable and also including the necessary accessory uses for raising, treating, and storing products raised on the premises, but not including the commercial feeding of offal or garbage to swine or other animals and not including any type of agriculture or husbandry specifically prohibited by city ordinance or law.

Farmers' market means the retail sale of farm products by individual vendors either within a building or outside. Items sold may include fruits, vegetables, herbs, spices, edible seeds, nuts, live plants, flowers and honey. The sale of new and used household goods, personal effects, tools, artwork, small household appliances and similar merchandise are not included.

Feed store, retail (livestock, no mill) means an establishment for the sale of grain, prepared feed and forage for pets, livestock and fowl, but not involving the grinding, mixing or commercial compounding of such items.

Flea market means a building or open area in which stalls or sales areas are set aside and rented, or otherwise provided, and which are intended for the sale of articles that are either homemade, homegrown, hand-crafted, old, obsolete, or antique and may include the retail selling of goods by businesses or individuals who are generally engaged in retail trade. This does not include garage sales.

Floor area means the total square-foot area of all floors in the building measured to the outside faces of exterior walls or to the line of an omitted wall, whichever includes the largest area.

Floor area ratio (FAR) means the ratio between the total square feet of floor area in the building to the total square feet of land in the lot or tract; e.g., "2:1" means that the building contains twice the amount of area as there is in the lot.

Foster home means a facility or area providing full-time parental care for six or more unrelated minor children for which compensation or fee is received in return for such services. This must comply with statutory licensing requirements.

Fraternity/sorority house means any building occupied and maintained by a social association of college students, or where organization-sponsored functions are regularly held.

Garage or estate sale: means a sale for the purpose of offering clothing, household furniture or appliances belonging to the residents may be conducted as home occupation provided that no such sale may be held on any lot or premise more often than twice in each calendar year, and not to exceed three days during each sale.

Garden shop and plant sales (display or greenhouse) means an enclosed or open area for the retail sale of plants and gardening products, including fertilizers, soil and gardening implements.

Golf course (public or private) means a golf course owned or controlled publicly or privately. This includes such uses as a clubhouse, food service, retail, and other customary accessory uses.

Golf driving range means a facility for the organized practice of golf techniques. It may include a practice green for putting, a clubhouse and other minor ancillary uses.

Government facility means a facility for public purposes, owned or operated by the city, county, state or federal government. These typically include city hall, courthouse, police and fire stations, public library or museum.

Grain mill products includes the manufacturing of flour and other grain mill products, feeds for animals and fowl, cereal preparations, rice milling, blending and preparing flour, and wet corn milling.

Guesthouse (detached) means a secondary structure on a lot or tract containing dwelling accommodations but excluding kitchen facilities and separate utility services or meters and intended for the temporary occupancy by guests and not rented or used for permanent occupancy.

Halfway house (criminal) means a facility for the housing, rehabilitation, and training of persons on probation or parole from correctional institutions, or other persons found guilty of criminal offenses.

Health club or studio means a wholly enclosed facility for fitness training and practice.

Height means the vertical distance from the average grade of the finish ground level at the center of all walls to the highest finished roof surface for flat roofs; to the deck line of mansard roofs; and to the average height between eaves and the ridge for gable, hip and gambrel roofs. In measuring the height of a building, the following structures shall be excluded: chimneys, cooling towers, elevator penthouses, tanks, water towers, radio and television towers, ornamental cupolas, domes or spires, and parapet walls not exceeding four feet in height.

Home occupation means an occupation carried on in the home by a member of the occupant's family, being incidental to the primary occupancy of the home as a dwelling; without the display or advertising of any commodity or service for sale on the premises; without the employment of any persons other than members of the immediate family; without the use of any sign, lighting or display; without the use of other than domestic or household equipment or appliances; and the conduct of which does not generate noise, odor, fumes, vibration, additional vehicle traffic or any other condition visible, obnoxious or detrimental to abutting or adjacent properties.

Hospice means a facility for the terminally ill, where patients are under the supervision of a doctor, but undergo limited curative treatment, and which is licensed by the state.

Hospital (chronic care) means an institution where those persons suffering from generally permanent types of illnesses, injury, deformity, deficiency or age are given care and treatment on a prolonged or permanent basis and which is licensed by the state.

Hospital (general acute care) means an institution where sick or injured patients are given medical or surgical treatment intended to restore them to health and an active life, and which is licensed by the state.

Hotel or motel means a building or group of buildings designed and occupied as a temporary abiding place of individuals. To be classified as a hotel or motel, an establishment shall contain a minimum of 20 individual guestrooms or units and shall furnish the customary hotel services such as linen, maid service, telephone, use and upkeep of furniture, and the accommodations shall not be designed as permanent dwelling units.

Household appliance and equipment repair means a shop for the repair of household and home equipment, such as electrical appliances, lawn mowers, tools, and similar items, where all such items are stored within a building or a storage area surrounded by a solid fence, wall or screen.

Ice or roller skating rink means a facility for the practice of ice or roller skating. Accessory uses may include food service and other indoor amusements, contained entirely within the primary structure.

Industrialized housing means a residential structure that is designed for the use and occupancy of one or more families, that is constructed according to the rules of the state department of labor and standards in one or more modules, or constructed using one or more modular components built at a location other than the permanent residential site, and that is designed to be used as a permanent residential structure when the modules

or modular components are transported to the permanent residential site and are erected or installed on a permanent foundation. The term includes the plumbing, heating, air conditioning, and electrical systems.

Laundry or dry cleaning, self-service, means an establishment providing facilities for washing or dry cleaning garments and similar items and where the customer may personally supervise and handle the cleaning operation.

Legal height means the maximum height of a building imposed by the Federal Aviation Administration for the airport, this chapter, the building code, or any other legal ordinance or code.

Library, art gallery or museum (public) means any institution for the loan or display of books, objects of art or science which is sponsored by a public or responsible quasipublic agency and which institution is open and available to the general public.

Livestock auction pens or sheds means a facility or area for the auction of livestock. Accessory uses may include but are not limited to feed pens, stalls, and outside pens or runs.

Lot means a platted parcel of land intended to be separately owned, developed, and otherwise used as a unit.

Lot, corner, means a lot situated at the intersection of two dedicated streets and having frontage along both streets extending from the intersection.

Lot, double frontage, means a lot having frontage on two or more dedicated streets other than a corner lot.

Lot lines means the property or lease lines bounding a lot or tract.

Lot line, interior, means a lot line delineating the division between two contiguous lots on the interior of a block and not adjacent to a street.

Lot of record means a lot which is part of a subdivision plat which has been recorded in the office of the county clerk or a tract of land described by metes and bounds, the description of which is recorded in the office of the county clerk.

Lot width means the width of a lot at the required front yard line or at the building line if such is established at a greater distance from the street than the required front yard line.

Lumber and wood products manufacturing includes logging camps and contractors; sawmills and planing mills; and the manufacturing of millwork, veneer, plywood, prefabricated structural wood products, wood furniture; and other lumber and wood products.

Main building means the building on a lot which is occupied by the primary use.

Manufactured home means a structure, constructed on or after June 15, 1976, according to the rules of the United States Department of Housing and Urban Development, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems.

Manufactured home park means a unified development of manufactured home sites, plots, or stands as arranged on a large tract under single ownership, meeting the area and setback requirements of this chapter, and designed to accommodate manufactured homes for permanent duration.

Meat products processing or manufacturing includes meat, poultry, and small game packing and the manufacturing of sausages and other prepared meat products, but not including the slaughtering of animals or poultry.

Microbrewery means a business which:

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- (1) Operates under a manufacturer's license, as described in V.T.C.A., Alcoholic Beverage Code, ch. 62, issued by the Texas Alcoholic Beverage Commission ("T.A.B.C.");
 - (2) May operate, but is not required to operate under a brewer's permit as described in V.T.C.A., Alcoholic Beverage Code, ch. 12, issued by T.A.B.C.;
 - (3) Has a total maximum production per year of beer, malt liquor and ale of not more than 15,000 barrels (or 465,000 standard gallons); and
 - (4) Does not produce or generate any generally obnoxious odors.

Mobile home means a structure that was constructed before June 15, 1976, or one constructed after this date that does not meet the rules of the United States Department of Housing and Urban Development, transportable in one or more sections which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning and electrical systems.

Mobile home park means a unified development of mobile home sites, plots or stands as arranged on a large tract under single ownership, meeting the area and setback requirements of this chapter, and designed to accommodate mobile homes for a permanent duration.

Multifamily (apartments) means any building or portion thereof which is designed, built, rented, leased or let to be occupied as three or more dwelling units or apartments or which is occupied as a home or residence of three or more families.

Nightclub or dancehall means an establishment operated as a place of entertainment, characterized by any of the following as a principal use of the establishment:

- (1) Live, recorded or televised entertainment, including but not limited to performances by magicians, musicians or comedians;
- (2) Dancing; or
- (3) Any combination of subsections (1) and (2) of this definition.

This does not include theaters, auditoriums and stadiums with fixed row seating; private clubs; bars; teen clubs; or any establishment defined elsewhere in this chapter as an adult entertainment establishment.

Nursing and convalescent homes means an establishment which furnishes, in single or multiple facilities, food and shelter to five or more persons who are not related by blood, marriage, or adoption to the owner or proprietor of the establishment and, in addition, provides minor treatment under the direction and supervision of a physician, or services which meet some need beyond the basic provision of food, shelter and laundry.

Office (general and professional) means a facility for the regular transaction of business, wherein services are performed involving predominantly administrative, professional or clerical operations not specifically listed elsewhere in this chapter.

Open space means an area on a lot that is open and unobstructed to the sky except for the ordinary projections of cornices and eaves, and is exclusive of driveways or parking areas.

Open storage (no enclosure) means storage in the open of vehicles, machinery or any equipment or commodity where permitted as a primary use of land and accessory storage in the open of commercial and industrial products where such storage is not enclosed by a fence, wall or building.

Open storage with visual screen means the permitted storage of any equipment or commodity in an open area which is enclosed by a fence or wall, as defined in this chapter, or surrounded by a building so as to create an effective visual screening of the storage from the adjacent property.

Orphanage means an institution for the care of orphans or other abandoned children.

Paper and allied products manufacturing includes the manufacture of pulp, paper, paperboard, converted paper and paperboard products, paperboard containers and boxes, building paper and building board.

Pawnshop means a building or premises, other than a bank, savings and loan or mortgage banking company, used for the business of lending money on the security of pledged goods, or for the business of the purchase of tangible personal property on condition that it may be redeemed or repurchased by the seller for a certain price within a certain period of time, and licensed by the state to conduct such a business.

Pet shop means a place for the display and sale of small animals and birds as pets, such as dogs, cats, parakeets or canaries, but not involving the boarding or treating of dogs or similar pets.

Petroleum refining and related industries includes the refining of petroleum and the manufacturing of paving and roofing materials; lubricating oils and greases and other petroleum and coal products.

Piercing studio means any establishment that performs any type of body piercing.

Pool house (detached) means a secondary structure on a lot with a swimming pool, excluding separate utility services or meters, and intended for temporary recreation use and not used as a permanent occupancy.

Poultry hatchery means a commercial facility for the hatching and raising of domestic fowl, including a research facility for such activity.

Primary metal products manufacturing includes blast furnaces, steel works and the rolling and finishing of ferrous metals; iron and steel foundries; primary smelting and refining of nonferrous metals and alloys, rolling, drawing and extruding of nonferrous metals; and nonferrous foundries.

Professional, scientific and controlling instruments; photographic and optical goods; watches and clocks manufacturing includes the manufacturing of engineering, laboratory and scientific and research instruments and associated equipment; instruments for measuring, controlling, and indicating physical characteristics; optical instruments and lenses; surgical, medical, and dental instruments and supplies; ophthalmic goods; photographic equipment and supplies; and watches, clocks, clockwork-operated devices and parts.

Psychiatric hospital or institution means a facility or area for providing health services primarily for inpatient medical care for alcoholic, narcotic, or psychopathic patients, and which may include related facilities such as laboratories, outpatient departments, training facilities, central service facilities, and staff offices that are an integral part of the facilities. This includes a substance abuse and rehabilitation facility.

Racetrack means an indoor or outdoor facility for the recreational or competitive racing of horses, canines, or motor vehicles, including the necessary accessory uses such as retail sales, automobile maintenance, veterinarian supplies and shops, exercise areas and stables.

Radio or television transmission station (commercial) means a facility used for the production and transmission of programming by radio or television to the general public. Included are commercial, religious, educational and other stations.

Radio, television, microwave or cellular communication tower (commercial) means structures supporting antennae for transmitting or receiving any portion of the radio spectrum, but excluding noncommercial antennae installations for home use of radio or television.

Radio tower (noncommercial) means a radio tower located on a residential property which is for home use, only, and which is not taller than 15 feet above the maximum building height allowed in the district.

Recreation club or area (private) means a building, park or recreation area, the use of which is restricted to private membership such as by a church, neighborhood association, fraternal or social organization, and which may contain the normal active and passive facilities as provided in a park or playground, or public recreation facility.

Recreation facility (public) means a facility or area sponsored by a public entity and devoted to sports, entertainment, games of skill or recreations to the general public. This may include swimming pools, tennis courts, playgrounds, community clubhouses, park facilities and other similar uses.

Retirement home means a residential facility principally designed for persons 55 years of age or older. Dwelling units may include full kitchen facilities, and recreational, social, nursing or other services may be available. This does not include a nursing or convalescent home.

Rubber and miscellaneous plastics manufacturing includes the reclaiming of rubber and the manufacture of tires and innertubes; rubber footwear; plastic products; and other fabricated rubber products.

Satellite dish means the dish and its structural elements that is commonly used in the reception of television signals from orbiting satellites.

School, K—12, public or private, means a school and customary accessory uses under the sponsorship of a public or religious agency having a curriculum generally equivalent to public, elementary or secondary schools, but not including private, trade or commercial schools.

School, vocational means a business operating for profit and offering instruction and training in a service or art, such as a secretarial school, barber college, commercial art school; or offering instruction and training in a trade such as welding, bricklaying, machinery operation and other similar manual trades. This does not include truck or heavy equipment driving schools.

Service station means any facility where gasoline and other petroleum products are sold and/or light maintenance activities such as engine tuneups, lubrication, minor repairs, and carburetor cleaning are conducted. Service stations shall not include facilities where heavy automobile maintenance activities such as engine overhauls, automobile painting, and body or fender work are conducted.

Single-family dwelling (attached) means a dwelling unit on a separately owned lot which is joined to another dwelling unit on one or more sides by a party wall or abutting separate walls and occupied by not more than one family.

Single-family dwelling (detached) means a detached building having a single dwelling unit and occupied by not more than one family.

Single-family dwelling (zero lot line) means a dwelling unit on a separately owned lot on which one wall of the principal dwelling is located within one foot of the side property line of an adjacent residential lot, and the other side yard meets or exceeds the minimum required side yard for the district.

Stable, commercial, means a facility housing horses or mules which are boarded or rented to the public or any stable other than a private stable; but not including a sales barn, auction, or similar trading activity.

Stable, private, means a facility or area for keeping horses, mules or other domestic animals for the private use of the property owner.

Stone, clay, glass and concrete products manufacturing includes the manufacturing of glass; flat glass and glassware; cement; structural clay products; pottery and related products; concrete, gypsum and plaster products; cut stone and stone products; and abrasive, asbestos and other nonmetallic mineral products.

Studio (art, drama, speech, or dance) means a building or rooms in a building used for the instructing, coaching or counseling in drama, speech, dance or similar personal skills or arts.

Tattoo salon means an establishment or facility in which tattooing is performed.

Teen club means a nightclub that caters to teenage patrons.

Tennis court (lighted) means an outside tennis court with elevated lighting for nighttime play.

Tennis court (no lights) means an outside tennis court without elevated lighting for nighttime play.

Textile mill products manufacturing includes the manufacturing of woven fabrics, knit goods, rugs, carpets, yarns, and threads, and other textile goods; and the dyeing and finishing of textiles.

Theater, movie or live (enclosed) means a facility with fixed seats for the viewing of movies or live presentations of musicians or other performing artists.

Tobacco products manufacturing includes the manufacturing of cigarettes, cigars, chewing and smoking tobacco, snuff; tobacco stemming and redrying.

Travel trailer/RV park means any lot upon which two or more travel trailer or other recreational vehicle sites are located, established or maintained for occupancy by recreational vehicles of the general public as temporary living quarters for recreation or vacation purposes. The area is intended for use on a shortterm basis by campers, vacationers, and travelers.

Truck or heavy equipment driving school means a type of vocational school where education is provided behind the wheel of trucks or heavy equipment.

Two-family dwelling means a detached building having two dwelling units and occupied by not more than two families.

Use, nonresidential, means any use other than a one- or two-family residence, or a roominghouse or boardinghouse, and their bona fide accessory uses.

Use, residential, means a one- or two-family residence, or a roominghouse or boardinghouse, together with bona fide accessory uses.

Utility facilities (major) includes such uses as electrical substations, wastewater treatment plants, elevated water storage and water treatment plants.

Utility lines and transmission includes local utilities such as electric power, telephone, gas, water, sewer, and air monitoring stations. It also includes inline facilities such as gas regulating stations and water wells or pumping stations; sewage pumping stations; telephone exchange, switching and transmitting equipment; and electrical transmission lines operated by a municipality or a franchised utility company. It does not include major utility facilities.

Veterinary office (no hospital or clinic) means a facility for the diagnosis and treatment of animals, without an overnight stay.

Warehouse/storage (inside) means a building or group of buildings providing enclosed shelter and protection for commodities stored therein. No open or unenclosed storage shall be classified as a warehouse.

Wrecking yard, junkyard, salvage yard or reclamation yard means a yard or building where automobiles, machinery, appliances or other used commodities and equipment are stored, dismantled, and/or offered for sale as whole units or as salvaged parts.

Yard means an open space on the lot on which a building is situated and which is open and unobstructed to the sky.

Yard, front, required, means a yard facing and abutting a street and extending across the front of the lot between the side lot lines and having a minimum horizontal depth measured from the street equal to the depth of the minimum front yard specified for the district in which the lot is located. The required front yard line represents the line in front of which no building or structure may be erected.

Yard, rear, required, means a yard extending across the rear of the lot between side lot lines and having a minimum depth measured from the rear lot line as specified for the district in which the lot is located.

Yard, side, required, means a yard located on a lot and extending from the required front yard to the required rear yard and having a minimum width measured from the side lot line as specified for the district in which the lot is located. Any lot line which is not a rear or front line shall be deemed a side lot line.

Zoning district map means the official, certified map upon which the boundaries of the various zoning districts are shown and which are an integral part of this chapter and, together with the zoning text in this chapter, make up the zoning ordinance for the city.

Zoo, zoological park, animal park, or aviary means an institution which owns and maintains captive wild animals and under the direction of a professional staff, provides its collection with appropriate care and exhibits them in an aesthetic manner to the public on a regularly scheduled basis for the purposes of education, conservation, scientific study and recreation.

(Ord. No. 1130, art. III, 11-3-1998; Ord. No. 1185-12-99, 12-7-1999; Ord. No. 1350-2-04, 2-3-2004; Ord. No. 1351-2-04, 2-3-2004; Ord. No. 1439-10-06, 10-3-2006; Ord. No. 1516-5-09, 5-5-2009; Ord. No. 1535-11-09, § 3, 11-17-2009; Ord. No. 1626-5-13, 5-7-2013; Ord. No. 1708-6-16, § 2, 6-21-2016)

Cross reference(s)—Definitions generally, § 1-2.

Sec. 118-273. Land use schedule.

- (a) *Use of land and buildings.* Buildings, structures and land shall be used only in accordance with the uses permitted in the following land use schedule, subject to all other applicable requirements of this chapter. The following symbols are used in the land use schedule:
- (1) The symbol "P" shall mean that the use is permitted as a principal use in that zoning district by right.
 - (2) The symbol "S" shall mean that the principal use is permitted in that zoning district only after first obtaining a specific use permit.
 - (3) The symbol "A" shall mean that this use is specifically permitted as an accessory use to a principal use in the district. This does not exclude other land uses which are generally considered ancillary to the primary use.
 - (4) An asterisk (*) indicates that the use has special standards or requirements listed in this section, which it must meet in order to be allowed.
 - (5) A blank square shall mean that the use is not allowed in that zoning district.
 - (6) Italicized words are defined in article IV of this chapter or under section 118-1 containing definitions.
- (b) *Organization of land use schedule; category grouping.* Uses are grouped into general categories such as "agriculture" and "residential," and then further organized into subcategories. This organization of land uses is for ease of reference only.

LAND USE SCHEDULE										
(*) Signifies Uses with Special Guidelines (Italic) Signifies a Defined Term										
Residential					Permitted Use P=Permitted, A=Accessory Use, S=SUP	Commercial				Industrial
AG	R-1	R-2	R-3	R-4		B-1	B-2	B-3	MD	I-1 I-2
AGRICULTURAL USES										
P	P	P	P	P	Farm, Ranch, Garden or Orchard		S			P P
P	P	P	P	P	Farm or Ranch for live stock and Animal Specialties		S			P P
P					Feed Store and Tack for live Stock - No Mill		P			P P

S					Livestock Auction Pens or Sheds						P
S					Poultry Hatchery						P
S					Stables (Commercial)						P
					RESIDENTIAL USES						
					Household Units						
P	P	P	P	P	Home Occupation	P	P	P	P		
				P	Multifamily - Apartments	S	P	P	P		
			P	P	Single Family Attached						
P	P	P	P	P	Single Family Detached						
			P	P	Single Family Zero Lot Line						
			P	P	Two Family Dwelling						
A	A	A	P	P	Pool House (Detached)*	P	P	P	P		
					Special Unit Types						
P	P	P	P	P	Industrialized Housing*						
					Manufactured Home						
				S	Manufactured Home Park		S				
					Mobile Home (House Trailer, Camp)						
				S	Mobile Home Park		S				
				S	Travel Trailer/ RV Park	S	S			S	
					Lodging/Group Quarters						
S	S	S	S	P	Bed and Breakfast* - 4 or Less Patrons	P	P	P	P		
				P	Bed and Breakfast* - 5-8 Patrons	S	P	P	P		
				P	Boarding or Rooming House	S	P	P	S		
S	S	S	S	P	Accessory Apartment*	P	P	P	P		
S	S	S	S	P	Convent or Monastery	S	P	P	S		
S				P	Family Group Home	S	P	P	P		
P	P	P	P	P	Family Home	P	P	P	P		
P	P	P	P	P	Foster Home	P	P	P	P		
P	A	A	P	P	Guest House (Detached)	P	P	P	P		
S			S	S	Half-way House - Criminal	S	P	P	S		
					Hotel or Motel	S	P	P	P	P	
S				P	Orphanage	S	P	P	S		
				P	Retirement Home	P	P	P	P		
					AMUSEMENT /RECREATION USES						
					General Recreation						
					Amusement, Commercial - Indoors*		P	P		P	
					Amusement, Commercial - Outdoors		S	S			
					Billiard Parlor or Pool Hall*		P	P		P	
S					Carnival or Circus (Temporary)		S	S		S	S

S	S	S	S	S	Country Club (Private Membership)	S	P	P		P	S
S					Fairground*		P			P	P
P	S	S	S	S	Golf Course (Public or Private)	P	P			P	P
P	S	S	S	P	Golf Driving Range	P	P			P	P
				A	Health Club or Studio	P	P	P	P	P	A
					Ice or Roller Skating Rink*	S	P	P		P	P
					Night Club or Dance Hall*		P	P		P	
S					Race Track		S			P	
S	S	S	S	A	Recreation Club or Area (Private)*		P	P		P	
S	S	S	S	A	Recreation Facility (Public)	P	P	P	P	P	
					Teen Club*	S	P	P			
				A	Tennis Court (Lighted)	S	P	P		P	
A	A	A	A	P	Tennis Court (No Lights)	P	P	P		P	
					Theater - Movie or Live (Enclosed)	S	P	P		P	
S					Zoo, Zoological Park, Animal Park, or Aviary		S				
					Adult Recreation						
					Adult Arcade*						P
					Adult Book Store or Video Store*						P
					Adult Cabaret*						P
					Adult Motel*						P
					Adult Motion Picture Theater*						P
					Adult Theater*						P
					Escort Agency*						P
					Nude Model Studio*						P
					Sexual Encounter Center*						P
					INTITUTIONAL, UTILITY and GOVERNMENTAL USES						
					Government / Utility						
P	P	P	P	P	Government Facility	P	P	P	P	P	P
P				P	Library, Art Gallery or Museum (Public)	P	P	P	P	P	
					Post Office	S	P	P	P	P	
					Postal Distribution Facility		P			P	P
S					Radio or TV Trans. Station (Commercial)	S	P	P	P	P	P
S	S	S	S	S	Radio Tower (Non-Commercial)*	P	P	P	P	P	P
S	S	S	S	S	Radio, TV, Microwave, or Cellular Transmission Tower (Comm.)*	P	P	P	P	P	P
A	A	A	A	A	Satellite Dish*	P	P	P	P	P	P
P	S	S	S	S	Utility Facilities (Major)	S	P	P	P	P	P
P	P	P	P	P	Utility Lines and Transmission	P	P	P	P	P	P

					Schools / Organizations						
P	S	S	S	S	College or University	S	P	P	P	S	S
P	P	P	P	P	Daycare - 3 or less Attendees	P	P	P	P	P	
S	S	S	P	P	Daycare - 4-6 Attendees	P	P	P	P	P	
S			S	S	Daycare Center - 7 or more Attendees	S	P	P	P	P	
S					School - Vocational	S	P	P	P		
P	P	P	P	P	School, K-12 (Public or Private)	P	P	P	P	S	
P	P	P	P	P	Church or Place of Worship	P	P	P	P	P	
S					Club, Private	P	P	P	P	P	S
	S	S	S	P	Community Center - Private	P	P	P	P	P	
P	S	S	P	P	Community Center - Public	P	P	P	P	P	
				S	Fraternity / Sorority House	S	S				
					Lodge or Fraternal Organization	S	P	P	S	P	P
					OFFICE AND PROFESSIONAL						
					Office - General						
					Advertising Agency		P	P	P		
					Architectural / Engineering Services	P	P	P	P	P	
					Banks and Financial Institutions	P	P	P	P	P	
					Banks with Drive In Facilities	S	P	P	P	P	
					Legal Services	P	P	P	P		
					Offices - General or Professional	P	P	P	P	P	P
					Medical/Healthcare						
S					Animal Hospital or Clinic		P	P		P	P
S					Animal Hospital or Clinic w/Outside Pens					S	P
					Animal Pound (Public or Private)					S	P
					Emergency Ambulance Service		P	P	P	P	
				S	Hospice	P	P	P	P	S	
					Hospital - Acute Care	S	P	P	P	P	
					Hospital - Chronic Care	S	P	P	P		
					Medical or Dental Office or Clinic	P	P	P	P	P	
				P	Nursing/Convalescent Home	S	P	P	P		
					Psychiatric Hospital or Institution		S		P		
S					Veterinary Office (No Hosp. or Clinic)	P	P	P	P	P	P
					Business or Personal Services						
S					Auction - Goods & Equipment (Indoors)		P	P		P	P
					Beauty Parlor/Barbershop	P	P	P	P	P	
					Cabinet and Woodwork Shop (Custom)	S	P	P		P	

P				P	Caretaker/Security Quarters	P	P	P	P	A	A
S	S	S	S	S	Cemetery or Mausoleum	P	P	P	P	P	P
					Communications/Electronics Equipment - Installation and Repair	S	P	P		P	
					Conventions, Trade Shows or Exhibits	S	P	P	S	S	
					Exterminator Service	S	P			P	P
					Exterminator Service Storage					P	P
					Household Appliance and Equipment Repair	S	P	P		P	P
					Information Processing		P	P	P	P	
					Laundry/Dry Cleaning - <3,000 s.f. w/ Customer Service		P	P	P	P	
					Laundry/Dry Cleaning - >3,000 s.f.				A	P	P
					Laundry/Dry Cleaning - Drop Off/Pick Up	P	P	P	P	P	
				A	Laundry/Dry Cleaning -Self Service	P	P	P	P	P	
					Locksmith	P	P	P		P	P
					Mailing Service (Private)	P	P	P	P	P	
					Mortuary or Funeral Home		P	P	P	P	P
					Photocopying or Duplicating Services	S	P	P	P	P	P
					Photographic Studio	P	P	P		P	
					Sewing and Millinery (Custom)	P	P	P		P	
					Shoe Repair	P	P	P		P	
					Studio - Art, Drama, Dance, Music - Performing Arts	P	P	P		P	
					Tailor Shop	P	P	P	S	P	
					Tattoo Salon/Piercing Studio	S	S	S	S	P	
					Taxidermist		S	S		P	P
P	P	P	P	P	Temporary Field or Construction Office	P	P	P	P	P	P
					Temporary Retail Use	S	S	S	S	S	
					Travel Agency	P	P	P	P		
					Upholstery Shop or Furniture Repair (non-Auto)		P	P		P	P
					Food and Beverage Services						
					Club (Private)*	S	P	P	S	S	P
					Catering Service	S	P	P	P	P	P
					Eating Place w/ Drive-thru	S	P	S		P	P
					Eating Place w/o Drive-thru	P	P	P	P	P	P
					Food Preparation or Food Service	P	P	P	P	P	P
					Liquor By the Drink*	S	P	P	S	S	P
					Retail						
					Alcohol Sales - Off Premise Consumption	P	P	P		P	P

				Antique Shop	P	P	P		P	
				Art Dealer	P	P	P			
				Art Gallery	P	P	P			
				Bait or Tackle Shop	S	P	P		P	
				Bakery Shop	P	P	P	P	P	
				Bicycle Sales or Repair	P	P	P		P	
				Book or Stationery Shop	P	P	P	P		
				Building Material Sales (Outside Storage)		P			P	P
				Camera or Photographic Supply Shop	P	P	P	P	P	
				Cloth or Fabric Store	S	P	P			
				Clothing Store	P	P	P	P		
				Confectionery Shop	P	P	P	P		
				Consignment Shop	P	P	P		P	
				Convenience Store	P	P	P			
				Department Store		P	P			
				Drapery Shop	S	P	P			
				Drug Store or Pharmacy	P	P	P	P		
				Farmers Market - Outdoor	S	P	P		P	P
				Flea Market - Outdoor	S	P	P		P	P
				Florist Shop	P	P	P	P		
				Furniture Sales - New (Indoor Only)	S	P	P		P	
P				Garden Shop & Plant Sales - Display or Greenhouse	S	P	P		P	P
				Grocery	P	P	P			
				Hardware Store	S	P	P		P	
				Hobby, Handicraft or Art Supplies	P	P	P	P		
				Lawnmower Sales or Repair	S	P	P		P	
				Major Appliance Sales (Indoor)	S	P	P		P	
				Mobile/Manufactured Home Dealer (Sales Only)		S			P	P
				Monument Sales Yard		P	P		P	P
				Optical Shop	P	P	P	P		
				Paint and Wallpaper Store	P	P	P	S	P	
				Pawn Shop*		P			P	
				Pet Shop	S	P	P		P	
				Plumbing Shop (Retail & Wholesale)		P	P		P	P
				Retail or Convenience Store with	P	P	P	P	P	P

					Gasoline						
					Sporting Goods		P	P			
					Swimming Pool Sales & Supply		P	P		P	P
					Used Merchandise - Furniture, Rummage, Second Hand Store (Inside)	S	P	P		P	
					TRANSPORTATION, AUTOMOBILE and MARINE USES & SERVICES						
					Automobile Related						
					Auto Brake, Muffler, Glass, Seat Covers or Tire Sales & Service		P			P	P
					Auto Dealer - Primarily New/Used Autos		P			P	
					Auto Dealer - Primarily Used Autos		P			P	
					Auto Interior Shop		P			P	
					Auto Paint/Body Repair		S			P	P
					Auto Rental		P	P		P	
					Auto Repair - General		P			P	P
					Auto Storage or Auction					P	P
					Auto Supply - Used Parts Store with no On-Site Salvage		P	S		P	P
					Auto Supply Store for New and Rebuilt Parts		P	P		P	
					Auto Wrecker Service		A	A		P	
					Auto/Truck Parts and Accessories		P	P		P	
					Car Wash		P			P	P
					Drag Strip or Commercial Racing						P
					Parking - Accessory to Another Use		A	A	A	A	A
					Parking - Commercial Lot or Garage		P	P	P	P	
					Lube/Oil Change		P			P	P
					Service Station	S	P		P	P	P
					State Vehicle Inspection		P			P	P
					Bus or Truck Related						
					Bus or Truck Parking or Storage		S	S		P	P
					Bus Station and Terminal		S	S		S	
					Truck Stop, Including Gas Sales		P			P	P
					Truck/Heavy Equipment Driving School		S			P	P
					Truck/Recreational Vehicle Sales		S			P	P
					Truck/Trailer Rental		P			P	P
					Trucking Company		S			P	P

					Railroad or Airport Related						
					Airport or Landing Field		S			S	S
					Railroad Freight Depot		S			P	P
					Railroad Passenger Station		P			P	
					Railroad Yard & Shops					P	P
					Vehicle - General						
					Boat Dealer - Sales Only		P			P	
					Boat Repair or Storage		P			P	
					Go Cart Track					S	P
					Motorcycle Sales or Service		P			P	
					Transfer/Storage Terminal		S			P	P
					Vehicle Maintenance - Private		A	A		P	P
					Vehicle Wash - Private		A	A		P	P
					WHOLESALE TRADE and STORAGE USES						
					Wholesale Trade						
					Apparel, Piece Goods, Notions - Wholesale		P	P		P	
					Groceries/Related Products - Wholesale		P	P		P	
					Heavy Machinery Sales					P	P
					Lumber Sales - Wholesale					P	P
					Paper or Paper Products - Wholesale		P	P		P	P
					Petroleum Products Storage & Wholesale					P	P
					Tool or Equipment Rental - Indoor		P	P		P	P
					Tool or Equipment Rental - Outdoor		P	S		P	P
					Storage						
					Contractor or Maintenance Yard		P			P	P
					Hazardous Gases/Chemicals Storage					S	P
					Mini Warehouse	S	S			P	P
					Open Storage (No Enclosure)					P	P
					Open Storage (Screened)		P	S		P	P
					Warehouse/Storage (Inside)		P	P	P	P	P
					Wrecking, Junk, Salvage or Reclamation Yard					S	S
					MANUFACTURING and MINING USES						
					Food-Related Products						

					Animal or Poultry Slaughtering						P
					Bakery Products; Manufacturing					P	P
					Beverage Manufacturing						P
					Bottling or Canning of Soft Drinks & Carbonated Water					P	P
					Bottling Works					P	P
					Canned, Frozen, and Preserved Fruits, Vegetables and Other Foods						P
					Dairy Products - Processing or Manufacturing					P	P
					Fats and Oils Manufacturing or Processing					S	P
					Grain Mill Products; Processing and Manufacturing						P
					Ice Manufacturing					P	P
					Meat Products; Processing or Manufacturing - Not Including Slaughtering					P	P
					Microbrewery		S	S		P	P
					<u>Distillation of Liquors, Spirits, etc. - Craft</u>		<u>S</u>	<u>S</u>		<u>P</u>	<u>P</u>
					Sugar and Confectionery Products, Manufacturing					P	P
					Sugar Manufacturing						P
					Articles and Equipment						
					Apparel Manufacturing					P	P
					Broom & Brush Manufacturing					P	P
					Cabinet & Woodworking Manufacturing		P			P	P
					Chemical and Allied Products Manuf.						P
S					Concrete or Asphalt Batch Plant - Temp.	S	S			S	P
					Costume Jewelry, Novelties, Buttons & Misc. Notions Mfg.					P	P
					Fabricated Metal Products Manufacturing					S	P
					Fur Dressing & Dying						P
					Jewelry, Silverware & Plateware Mfg.					P	P
					Laboratory - Medical or Dental		P	P	P	P	P
					Laboratory - Scientific Testing		P	P	P	P	P

S					Land Fill (Private or Municipal)						S
					Light Manufacturing/Assembly		S	S		P	P
					Linoleum, Asphalt - Felt Base & Other Hard Surfaced Floor Covering Mfg.						P
					Machine Shop					P	P
					Match Manufacturing						P
					Musical Instruments & Parts Mfg.					P	P
					Paper and Allied Products Manufacturing						P
					Pens, Pencils & Other Office & Artists' Materials Mfg.					P	P
					Printing Publishing and Allied Industries		P	P		P	P
					Professional, Scientific & Controlling Instruments; Photographic & Optical Goods; Watches & Clocks Mfg.					P	P
					Rubber and Misc. Plastics Manufacturing						P
					Salvage and Reclamation (Enclosed)					P	P
					Sign & Advertising Display Manufacturing					P	P
					Textile Mill Product Manufacturing						P
					Tobacco Products Mfg.						P
					Toys, Amusement, Sporting & Athletic Goods Mfg.						P
					Welding Shop					P	P
					Natural Resources						
					Lumber and Wood Products Manufacturing						P
S	S	S	S	S	Oil & Gas Extraction	S	S		S	S	P
S	S	S	S	S	Oil & Gas Field Services	S	S		S	S	P
					Petroleum Refining and Related Industries						P
					Primary Metal Products Manufacturing						P
					Stone, Clay, Glass & Concrete Products Manufacturing						P
S	S	S	S	S	Stone, Sand, Gravel & Mineral Extraction	S	S		S	S	S
					Stone, Sand, Gravel or Earth Sales and Storage					S	P

(Ord. No. 1130, art. III, § 1, 11-3-1998; Ord. No. 1184-12-99, 12-7-1999; Ord. No. 1185-12-99, 12-7-1999; Ord. No. 1204-5-00, 5-16-2000; Ord. No. 1329-9-03, 9-16-2003; Ord. No. 1350-2-04, 2-3-2004; Ord. No. 1431-8-06, 8-1-2006; Ord. No. 1439-10-06, 10-3-2006; Ord. No. 1516-5-09, 5-5-2009; Ord. No. 1560-10-10, 10-19-2010; Ord. No. 1626-5-13, 5-7-2013; Ord. No. 1676-7-14, 7-15-2014; Ord. No. 1721-10-16, § 2, 10-18-2016)

Sec. 118-466. Off-street parking requirements.

- (a) *Schedule of off-street parking.* The schedule of off-street parking requirements in this section establishes parking requirements for all zoning districts except the B-3 central business district.
- (b) *CBD parking requirements.* In the B-3 central business district, off-street parking space for all buildings shall be provided at the ratio of one space for each 2,000 square feet of floor area; provided, however, if the computed number of required off-street parking spaces is less than ten spaces, no off-street parking spaces need be provided.
- (c) *Urban core parking requirements.* In the urban core overlay, off street parking requirements as described in section 118-467 shall be decreased by ten percent in total.

FIGURE 3 SCHEDULE OF OFF-STREET PARKING REQUIREMENTS

Permitted Use	Parking Requirement
AGRICULTURAL USES	
Farm, Ranch, Garden or Orchard	No Requirement
Farm or Ranch for live stock and Animal Specialties	No Requirement
Feed Store and Tack for live Stock - No Mill	1 for each 1,000 sf
Livestock Auction Pens or Sheds	1 for each 1,000 sf of auction area
Poultry Hatchery	1 for each 300 sf of office space
Stables (Commercial)	1 per each 2 stalls
RESIDENTIAL USES	
Household Units	
Home Occupation	N/A
Multifamily - Apartments	1 for each bedroom + 5% additional for visitors
Single Family Attached	2 for each dwelling unit
Single Family Detached	2 for each dwelling unit
Single Family Zero Lot Line	2 for each dwelling unit
Two Family Dwelling	2 for each dwelling unit
Special Unit Types	
Industrialized Housing*	2 for each dwelling unit
Manufactured Home	2 for each dwelling unit
Mobile Home (House Trailer, Camp)	N/A
Manufactured Home Park	2 for each lot, plot, or stand
Mobile Home Park	N/A
Travel Trailer/RV Park	1 for each lot, plot, or stand
Lodging/Group Quarters	
Bed and Breakfast* - 4 or Less Patrons	1 for each guest room or residence unit
Bed and Breakfast* - 5—8 Patrons	1 for each guest room or residence unit
Boarding or Rooming House	1 for each guest room or residence unit
Accessory Apartment*	1 for each bedroom
Convent or Monastery	1 for each 3 residents, minimum 2
Family Group Home	2 spaces, and 0.3 for each client

Family Home	2 for each dwelling unit
Foster Home	2 for each dwelling unit
Guest House (Detached)	1 for each bedroom
Half-way House - Criminal	1 for each bedroom
Hotel or Motel	1 for each guest room + 5% additional for visitors
Orphanage	1 for each employee on largest shift
Retirement Home	1 for each bedroom
Pool House	N/A
AMUSEMENT/RECREATION USES	
General Recreation	
Amusement, Commercial - Indoors*	1 for each 100 sf
Amusement, Commercial - Outdoors	1 for each 1,000 sf of site area
Billiard Parlor or Pool Hall*	1 for each 100 sf
Carnival or Circus (Temporary)	1 for each 1,000 sf of site area
Country Club (Private Membership)	3 for each game court, 5 for each golf green, and 1 for each 250 sf of assembly area, 25% of required parking may be on a pervious surface
Fairground*	1 for each 1,000 sf of site area, parking surface may be pervious
Golf Course (Public or Private)	5 for each golf green
Golf Driving Range	1 for each tee box + 1 for each employee on largest shift
Health Club or Studio	3 for each Game Court, and 1 for each 200 sf of remaining area
Ice or Roller Skating Rink*	1 for each 100 sf of skating area
Night Club or Dance Hall*	1 for each 100 sf
Race Track	1 for each 4 seats and 1 for each employee on largest shift
Recreation Club or Area (Private)*	3 for each game court and 1 for each 200 sf of remaining area
Recreation Facility (Public)	3 for each game court and 1 for each 200 sf of remaining area
Teen Club*	1 for each 100 sf
Tennis Court (Lighted)	4 per court and 1 for each 4 fixed seats
Tennis Court (No Lights)	4 per court and 1 for each 4 fixed seats
Theater - Movie or Live (Enclosed)	1 for each 2 fixed seats
Zoo, Zoological Park, Animal Park, or Aviary	1 for each 1,000 square feet of site area
Adult Recreation	
Adult Arcade*	1 for each 100 sf
Adult Book Store or Video Store*	1 for each 250 sf
Adult Cabaret*	1 for each 100 sf
Adult Motel*	2 for each guest room
Adult Motion Picture Theater*	1 for each 2 fixed seats
Adult Theater*	1 for each 2 fixed seats
Escort Agency*	1 for each 300 sf
Nude Model Studio*	1 for each 300 sf
Sexual Encounter Center*	1 for each 100 sf
INSTITUTIONAL, UTILITY and GOVERNMENT USES	
Government/Utility	
Government Facility	As determined by the city planner
Library, Art Gallery or Museum (Public)	1 for each 500 sf, 5 minimum
Post Office	1 for each 300 sf of office and customer service area, 5 minimum

Postal Distribution Facility	1 for each 1,000 sf
Radio or TV Trans. Station (Commercial)	1 for each 1,000 sf
Radio Tower (Non-Commercial)*	No requirement
Radio, TV, Microwave, or Cellular Transmission Tower (Comm.)*	No requirement
Satellite Dish*	No requirement
Utility Facilities (Major)	As determined by the city planner
Utility Lines and Transmission	As determined by the city planner
Schools/Organizations	
College or University	1 for each 2 students and staff
Daycare - 3 or less Attendees	As determined by the city planner
Daycare - 4—6 Attendees	1 for each 10 pupils
Daycare Center - 7 or more Attendees	1 for each 10 pupils
School - Vocational	1 for each student + 1 for each staff
School, K-12 (Public or Private)	1/25 elementary students, 1/18 junior high students, 1/5 high school students
Church or Place of Worship	1 for each 2.5 seats in sanctuary
Club, Private	1 for each 200 sf
Community Center - Private	1 for each 250 sf of assembly area
Community Center - Public	1 for each 250 sf of assembly area
Fraternity/Sorority House	1 for each resident, and 6 for each 100 sf of assembly area
Lodge or Fraternal Organization	1 for each 100 sf
OFFICE AND PROFESSIONAL	
Office - General	
Advertising Agency	1 for each 300 sf
Architectural/Engineering Services	1 for each 300 sf
Banks and Financial Institutions	1 for each 300 sf
Banks with Drive In Facilities	1 for each 300 sf
Legal Services	1 for each 300 sf
Offices - General or Professional	1 for each 300 sf
Medical/Healthcare	
Animal Hospital or Clinic	1 for each 300 sf
Animal Hospital or Clinic w/Outside Pens	1 for each 300 sf
Animal Pound (Public or Private)	1 for each 300 sf
Emergency Ambulance Service	2 for each ambulance
Hospice	1 for each 6 beds and 1 for each employee on the largest shift
Hospital - Acute Care	In accordance with statutory regulations of Texas Department of Health
Hospital - Chronic Care	In accordance with statutory regulations of Texas Department of Health
Medical or Dental Office or Clinic	1 for each 200 sf
Medical or Dental Office or Clinic with In-House Lab	1 for each 150 sf
Nursing/Convalescent Home	1 for each 6 beds and 1 for each employee on largest shift
Psychiatric Hospital or Institution	1 for each 6 beds and 1 for each employee on largest shift
Veterinary Office (No Hosp. or Clinic)	1 for each 300 sf
Business or Personal Services	
Auction - Goods & Equipment (Indoors)	1 for each 250 sf

Beauty Parlor/Barbershop	1 for each 250 sf
Cabinet and Woodwork Shop (Custom)	1 for each 300 sf
Caretaker/Security Quarters	1 per bedroom
Cemetery or Mausoleum	2 spaces
Communications/Electronics Equipment - Installation and Repair	1 for each 250 sf
Conventions, Trade Shows or Exhibits	1 for each 1,000 sf of public area
Exterminator Service	1 for each 300 sf
Exterminator Service Storage	1 for each 1,000 sf
Household Appliance and Equipment Repair	1 for each 250 sf
Information Processing	1 for each 300 sf
Laundry/Dry Cleaning - <4,000 s.f. w/Customer Service	1 for each 300 sf
Laundry/Dry Cleaning - >4,000 s.f.	1 for each 300 sf
Laundry/Dry Cleaning - Drop Off/Pick Up	1 for each 250 sf
Laundry/Dry Cleaning -Self Service	1 for each 250 sf
Locksmith	1 for each 300 sf
Mailing Service (Private)	1 for each 300 sf
Mortuary or Funeral Home	1 for each 100 sf of assembly area
Photocopying or Duplicating Services	1 for each 250 sf
Photographic Studio	1 for each 300 sf
Sewing and Millinery (Custom)	1 for each 250 sf
Shoe Repair	1 for each 250 sf
Studio - Art, Drama, Dance, Music - Performing Arts	1 for each 200 sf
Tailor Shop	1 for each 250 sf
Tattoo Salon/Piercing Studio	1 for each 250 sf
Taxidermist	1 for each 250 sf
Temporary Field or Construction Office	N/A
Temporary Retail Use	1 for each 250 sf of site area
Travel Agency	1 for each 300 sf
Upholstery Shop or Furniture Repair (non-auto)	1 for each 250 sf
Food and Beverage Services	
Club (Private)	1 for each 100 sf
Catering Service	1 for each 300 sf
Eating Place	1 for each 100 sf
Eating Place - Drive-thru only	1 for each employee on largest shift (min. 4 spaces)
Food Preparation or Food Service	1 for each 100 sf
Liquor By the Drink*	1 for each 100 sf
Retail	
Alcohol Sales - Off Premise Consumption	1 for each 250 sf
Antique Shop	1 for each 250 sf
Art Dealer	1 for each 250 sf
Art Gallery	1 for each 500 sf
Bait or Tackle Shop	1 for each 250 sf
Bakery Shop	1 for each 250 sf
Bicycle Sales or Repair	1 for each 250 sf

Book or Stationery Shop	1 for each 250 sf
Building Material Sales (Outside Storage)	1 for each 250 sf
Camera or Photographic Supply Shop	1 for each 250 sf
Cloth or Fabric Store	1 for each 250 sf
Clothing Store	1 for each 250 sf
Confectionery Shop	1 for each 250 sf
Consignment Shop	1 for each 250 sf
Convenience Store	1 for each 250 sf
Department Store	1 for each 250 sf
Drapery Shop	1 for each 250 sf
Drug Store or Pharmacy	1 for each 250 sf
Farmers Market - Outdoor	2 for each vendor stall
Flea Market - Outdoor	1 for each 1,000 sf of site area
Florist Shop	1 for each 250 sf
Furniture Sales - New (Indoor Only)	1 for each 1,000 sf
Garden Shop and Plant Sales - Display or Greenhouse	1 for each 1,000 sf of site area
Grocery	1 for each 250 sf
Hardware Store	1 for each 250 sf
Hobby, Handicraft or Art Supplies	1 for each 250 sf
Lawnmower Sales or Repair	1 for each 250 sf
Major Appliance Sales (Indoor)	1 for each 1,000 sf
Mobile/Manufactured Home Dealer (Sales Only)	1 space for each 5,000 sf of site area
Monument Sales Yard	1 for each 250 sf
Optical Shop	1 for each 250 sf
Paint and Wallpaper Store	1 for each 250 sf
Pawn Shop*	1 for each 250 sf
Pet Shop	1 for each 250 sf
Plumbing Shop (Retail and Wholesale)	1 for each 250 sf
Retail or Convenience Store with Gasoline	1 for each 250 sf
Sporting Goods	1 for each 250 sf
Swimming Pool Sales and Supply	1 for each 250 sf
Used Merchandise - Furniture, Rummage, Secondhand Store (Inside)	1 for each 250 sf
TRANSPORTATION	
Automobile Related	
Auto Brake, Muffler, Glass, Seat Covers or Tire Sales and Service	1 for each 200 sf of retail area plus 1 for each bay
Auto Dealer - Primarily New/Used Autos	1 for each 200 sf of retail area plus 1 for each bay
Auto Dealer - Primarily Used Autos	1 for each 250 sf
Auto Interior Shop	1 for each 250 sf of retail area plus 1 for each bay
Auto Paint/Body Repair	1 for each 250 sf of retail area plus 1 for each bay
Auto Rental	1 for each 250 sf
Auto Repair - General	1 for each 250 sf of retail area plus 1 for each bay
Auto Storage or Auction	Auction - 1 for each 5,000 sf of site area storage - N/A
Auto Supply - Used Parts Store with No On-Site Salvage	1 for each 250 sf

Auto Supply Store for New and Rebuilt Parts	1 for each 250 sf
Auto Wrecker Service	1 for each 250 sf office area
Auto/Truck Parts and Accessories	1 for each 250 sf
Car Wash	Self-service - 1 per wash bay
Drag Strip or Commercial Racing	1 for each 4 fixed seats
Parking - Accessory to Another Use	N/A
Parking - Commercial Lot or Garage	N/A
Lube/Oil Change	2 for each oil change bay, and 1 for each employee on largest shift
Service Station	2 for each repair bay, and 1 for each employee on largest shift
State Vehicle Inspection	1 for each 300 sf of office and customer service area
Bus or Truck Related	
Bus or Truck Parking or Storage	N/A
Bus Station and Terminal	As determined by the city planner
Truck Stop, Including Gas Sales	1 for each 250 sf
Truck/Heavy Equipment Driving School	2 for each student during peak hour
Truck/Recreation Vehicle Sales	1 for each 300 sf
Truck/Trailer Rental	1 for each 300 sf
Trucking Company	1 for each 300 sf
Railroad or Airport Related	
Airport or Landing Field	As determined by the city planner
Railroad Freight Depot	1 for each 1,000 sf
Railroad Passenger Station	As determined by the city planner
Railroad Yard and Shops	1 for each 1,000 sf or 1 for each employee, whichever is greater
Vehicle - General	
Boat Dealer - Sales Only	1 for each 300 sf
Boat Repair or Storage	1 for each 250 sf customer service area plus 1 per bay
Go Cart Track	1 for each 2,000 sf site area
Motorcycle Sales or Service	1 for each 250 sf office area plus 1 per each 1,000 sf service area
Transfer/Storage Terminal	1 for each 1,000 sf
Vehicle Maintenance - Private	N/A
Vehicle Wash - Private	N/A
WHOLESALE TRADE and STORAGE	
Wholesale Trade	
Apparel, Piece Goods, Notions - Wholesale	1 for each 1,000 sf
Groceries/Related Products - Wholesale	1 for each 1,000 sf
Heavy Machinery Sales	1 for each 1,000 sf
Lumber Sales - Wholesale	1 for each 1,000 sf
Paper or Paper Products - Wholesale	1 for each 1,000 sf
Petroleum Products Storage and Wholesale	1 for each 1,000 sf
Tool or Equipment Rental - Indoor	1 for each 300 sf
Tool or Equipment Rental - Outdoor	1 for each 5,000 sf of site area
Storage	
Contractor or Maintenance Yard	As determined by the city planner
Hazardous Gases/Chemicals Storage	As determined by the city planner
Mini Warehouse	1 for each 300 sf of office area. Units must have ample space for temporary parking in drive area
Open Storage (No Enclosure)	As determined by the city planner

Open Storage (Screened)	As determined by the city planner
Warehouse/Storage (Inside)	1 for each 1,000 sf
Wrecking, Junk, Salvage or Reclamation Yard	1 for each 300 sf office area
MANUFACTURING and MINING USES	
Food-Related Products	
Animal or Poultry Slaughtering	1 for each 1,000 sf
Bakery Products; Manufacturing	1 for each 1,000 sf
Beverage Manufacturing	1 for each 1,000 sf
<u>Distillation of Liquors, Spirits, etc. - Craft</u>	<u>1 for each 1,000 sf (no consumption), 1 for each 100 sf (with consumption)</u>
Bottling or Canning of Soft Drinks and Carbonated Water	1 for each 1,000 sf
Bottling Works	1 for each 1,000 sf
Canned, Frozen, and Preserved Fruits, Vegetables and Other Foods	1 for each 1,000 sf
Dairy Products - Processing or Manufacturing	1 for each 1,000 sf
Fats and Oils Manufacturing or Processing	1 for each 1,000 sf
Grain Mill Products; Processing and Manufacturing	1 for each 1,000 sf
Ice Manufacturing	1 for each 1,000 sf
Meat Products; Processing or Manufacturing - Not Including Slaughtering	1 for each 1,000 sf
Sugar and Confectionery Products, Manufacturing	1 for each 1,000 sf
Sugar Manufacturing	1 for each 1,000 sf
Articles and Equipment	
Apparel Manufacturing	1 for each 1,000 sf
Broom and Brush Manufacturing	1 for each 1,000 sf
Cabinet and Woodworking Manufacturing	1 for each 1,000 sf
Chemical and Allied Products Manuf.	1 for each 1,000 sf
Concrete or Asphalt Batch Plant - Temp.	N/A
Costume Jewelry, Novelties, Buttons and Misc. Notions Mfg.	1 for each 1,000 sf
Fabricated Metal Products Manufacturing	1 for each 1,000 sf
Fur Dressing and Dying	1 for each 1,000 sf
Jewelry, Silverware and Plateware Mfg.	1 for each 1,000 sf
Laboratory - Medical or Dental	1 for each 200 sf
Laboratory - Scientific Testing	1 for each 300 sf
Land Fill (Private or Municipal)	1 for each 200 sf of building area
Light Manufacturing/Assembly	1 for each 1,000 sf
Linoleum, Asphalt - Felt Base and Other Hard Surfaced Floor Covering Mfg.	1 for each 1,000 sf
Machine Shop	1 for each 1,000 sf
Match Manufacturing	1 for each 1,000 sf
Musical Instruments and Parts Mfg.	1 for each 1,000 sf
Paper and Allied Products Manufacturing	1 for each 1,000 sf
Pens, Pencils and Other Office and Artists' Materials Mfg.	1 for each 1,000 sf

Printing Publishing and Allied Industries	1 for each 1,000 sf
Professional, Scientific and Controlling Instruments; Photographic and Optical Goods; Watches and Clocks Mfg.	1 for each 1,000 sf
Rubber and Misc. Plastics Manufacturing	1 for each 1,000 sf
Salvage and Reclamation (Enclosed)	1 for each 1,000 sf
Sign and Advertising Display Manufacturing	1 for each 1,000 sf
Textile Mill Product Manufacturing	1 for each 1,000 sf
Tobacco Products Mfg.	1 for each 1,000 sf
Toys, Amusement, Sporting and Athletic Goods Mfg.	1 for each 1,000 sf
Welding Shop	1 for each 1,000 sf
Natural Resources	
Lumber and Wood Products Manufacturing	1 for each 1,000 sf
Oil and Gas Extraction	N/A
Oil and Gas Field Services	1 for each 200 sf of building
Petroleum Refining and Related Industries	1 for each 1,000 sf
Primary Metal Products Manufacturing	1 for each 1,000 sf
Petroleum Products Storage and Warehouse	1 for each 1,000 sf
Stone, Clay, Glass and Concrete Products Manufacturing	1 for each 1,000 sf
Stone, Sand, Gravel and Mineral Extraction	N/A
Stone, Sand, Gravel or Earth Sales and Storage	1 for each 5,000 sf of site area

ORDINANCE NO. 1966-04-23

AN ORDINANCE OF THE CITY OF NACOGDOCHES, TEXAS, AMENDING CHAPTER 118 “ZONING,” ARTICLE I. “IN GENERAL,” SECTION 118-1 “DEFINITIONS,” AND ARTICLE III. “DISTRICT REGULATIONS,” SECTION 118-273 “LAND USE SCHEDULE” AND ARTICLE VI. “DEVELOPMENT STANDARDS,” SECTION 118-466 “OFF-STREET PARKING REQUIREMENTS” OF THE CODE OF ORDINANCES, CITY OF NACOGDOCHES, TEXAS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A REPEAL CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Planning and Zoning Commission recommends that Chapter 118 “Zoning” of the Nacogdoches Code of Ordinances should to be amended; and,

WHEREAS, the said Planning and Zoning Commission proceeded to hold a public hearing in accordance with the requirements of the Zoning Ordinance to consider amending Chapter 118 “Zoning”, Article I. “In General,” Section 118-1 “Definitions,” and Article III. “District Regulations,” Section 118-273 “Land Use Schedule” and Article VI. “Development Standards,” Section 118-466 “Off-Street Parking Requirements” of the Code of Ordinances of the City of Nacogdoches, Texas and,

WHEREAS, the City Council of the City of Nacogdoches did give notice as required by said Zoning Ordinance for a public hearing to be held on same in accordance with the said Zoning Ordinance, which hearing was set for Tuesday, April 18, 2023 at 5:30 p.m.; and,

WHEREAS, after deliberation on the facts involved, the City Council of the City of Nacogdoches finds that Chapter 118 “Zoning,” Article I. “In General,” Section 118-1 “Definitions,” and Article III. “District Regulations,” Section 118-273 “Land Use Schedule” and Article VI. “Development Standards,” Section 118-466 “Off-Street Parking Requirements” of the Code of Ordinances of the City of Nacogdoches, Texas, should be amended as set forth hereinafter.

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

SECTION I
Findings.

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

SECTION II
Amendment

Chapter 118 “Zoning,” Article I. “In General,” Section 118-1 “Definitions,” and Article III. “District Regulations,” Section 118-273 “Land Use Schedule” and Article VI. “Development

Standards,” Section 118-466 “Off-Street Parking Requirements” of the Code of Ordinances of the City of Nacogdoches, Texas is amended so that henceforth same shall read as follows:

Chapter 118 “Zoning”

Article I. “In General”

Sec. 118-1. Definitions

Add:

Distillation of Liquors, Spirits, etc. - Craft shall mean a business which:

- (1) Is permitted to manufacture distilled spirits and rectify, purify, and refine distilled spirits, mix liquor, bottle and package finished products and sell to wholesalers and qualified individuals outside this state and import from nonresident seller distilled spirits for manufacturing and rectifying purposed in compliance with state and federal law.
- (2) The operation is authorized to sell distilled spirits to the ultimate consumer for consumption on the licensed premises (up to 3,000 gallons annually) and for consumption off the premises (up to 3,500 gallons annually, no more than two 750 ml bottles to a person in a 30-day period) in compliance with state and federal law.
- (3) Does not produce or generate any generally obnoxious odors.

Article III. “District Regulations”

Section 118-273 “Land Use Schedule”

Add:

	Residential				Permitted Use	Commercial				Industrial	
AG	R-1	R-2	R-3	R-4	P=Permitted, A=Accessory Use, S= SUP	B-1	B-2	B-3	MD	I-1	I-2
					Distillation of Liquors, Spirits, etc. - Craft		S	S		P	P

Article III. “District Regulations”

Section 118-273 “Land Use Schedule”

Add:

Permitted Use	Parking Requirement
Distillation of Liquors, Spirits, etc. - Craft	1 for each 1,000 sf (no consumption), 1 for each 100 sf (with consumption)

SECTION III

Repeal

All provisions of Chapter 118 of the Code of Ordinances not specifically herein repealed remain in full force and effect. Moreover, this ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Nacogdoches, and this ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this Ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

SECTION IV
Effective Date

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

SECTION V
Severability

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

SECTION VI
Proper Notice and Open Meetings

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

SECTION VII
Filing

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

PASSED AND APPROVED, this the ____ day of _____, 2023, by a vote of ____ (ayes) to ____ (nays) of the City Council of the City of Nacogdoches, Texas.

CITY OF NACOGDOCHES

By: _____
JIMMY MIZE, Mayor

ATTEST:

APPROVED AS TO FORM:

JAN VINSON, City Secretary

STEVEN KIRKLAND, City Attorney

APPROVED AS TO CONTENT:

ALAINA HELTON, City Planner

City Council Meeting

April 18, 2023

Agenda Item #6.B

Zoning Ordinance Amendment for Craft Distilleries

SUMMARY

- TABC Distiller's license (Permit D)
- Max production of hard liquor ("distilled spirits")
- May not produce or generate any obnoxious odors
- I-1, I-2 by right. B-2, B-3 with SUP
- Tours and tastings
- Direct sales to customers

Amend Sect. 118-1 “Definitions”

Distillation of Liquors, Spirits, etc. - Craft shall mean a business which:

- (1) Is permitted to manufacture distilled spirits and rectify, purify, and refine distilled spirits, mix liquor, bottle and package finished products and sell to wholesalers and qualified individuals outside this state and import from nonresident seller distilled spirits for manufacturing and rectifying purposed in compliance with state and federal law.
- (2) The operation is authorized to sell distilled spirits to the ultimate consumer for consumption on the licensed premises (up to 3,000 gallons annually) and for consumption off the premises (up to 3,500 gallons annually, no more than two 750 ml bottles to a person in a 30-day period) in compliance with state and federal law.
- (3) Does not produce or generate any generally obnoxious odors.

Amend Sect. 118-273

“Land Use Schedule”

Permitted Use	Commercial				Industrial	
P = Permitted, A = Accessory, S = SUP	B-1	B-2	B-3	MD	I-1	I-2
Distillation of Liquors, Spirits, etc. - Craft		S	S		P	P

- Currently craft distilleries may operate as “beverage manufacturers” in I-2, Heavy Industrial Districts
- Craft distilleries are smaller than a typical beverage manufacturer
- Typical craft distillery allows tours and tastings
- Locally oriented, lower impact, entrepreneurial industry
- SUP requirement in B-2 & B-3 Districts

Amend Sect. 118-466

“Off-Street Parking”

Permitted Use	Parking Requirement
Distillation of Liquors, Spirits, etc. - Craft	1 for each 1,000 sf (no consumption), 1 for each 100 sf (with consumption)

- Parking for “manufacturing” portion of business =
1 space per 1,000 square feet of building area
- Parking for “tasting rooms” or areas for on-premise consumption =
1 space per 100 square feet

City Comparison

City	Lufkin	Huntsville	Tyler	San Marcos
Definition	Distillery-Craft	Light Manufacturing	Light Manufacturing	Light Manufacturing
Allowed in Industrial	X	X	X	X
Allowed in Commercial/ Downtown	SUP	Business/ Mixed-Use District	Downtown District	Downtown/ Mixed-Use District
Additional Requirements				

PRESENTER: Case Opperman, Public Works Asst Director

ITEM/SUBJECT: Consider approval of an Indefinite Deliverables Indefinite Quantities contract by and between the City of Nacogdoches and Duplichain Contractors, LLC for Utility Installation and Repair Services in a not-to-exceed amount of \$200,000 (Assistant Director of Public Works).

SUMMARY/BACKGROUND: The City Utility Construction Department employs several in-house crews which install and repair water distribution and sewer collection lines in the City's utility network. Staffing challenges and increasing workload demands have necessitated the City soliciting the assistance of an on-call contractor to assist with these installations and repairs. This contract will supplement the efforts of the City crews to keep up with water and sewer line breaks which occur, as well as provide the ability to respond quickly in the case of large line break emergencies. Implementation of this annual indefinite deliverables indefinite quantities (IDIQ) contract will help the City avoid any issues with procurement requirements when dealing with time-sensitive repairs.

On March 30, 2023, the City received proposals for an IDIQ contract for Utility Installation and Repair Services. One proposal was received and three City staff members reviewed and independently scored the proposal using a standardized grading form. The proposal was scored on several criteria including work history and cost, for example, work order scenario. The contractor also provided hourly rate schedules as part of their proposal. These rates will be held for a one-year duration. There is an optional renewal of this contract for up to two (2) additional one (1) year extensions [three (3) years total].

Duplichain Contractors, LLC was the only proposer for this contract with a cumulative score of 294 out of 300 possible points.

Duplichain Contractors, LLC is an Alto-based contractor who has successfully completed many projects for the City, as well as responding to many emergency line breaks for the City in the past. This contract is estimated at \$200,000.00 per year. This item is budgeted in the FY2022-2023 budget and the cost will be split between the water and wastewater CIP accounts for Line Additions and Replacements.

FINANCIAL:

Item is budgeted:

Account No.: 30 179.02

Account Name: *Utility Fund CIP - Water*

Amount: \$100,000

Item is budgeted:

Account No.: 30 179.03

Account Name: *Utility Fund CIP - Wastewater*

Amount: \$100,000

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. Proposal Scoring
2. PowerPoint Presentation

City of Nacogdoches 2022 Utility Installation and Repair Services

Duplichain Contractors		
30	Firm Background Brief Introduction, including years in business Summary of staffing Staffing of Associate Firms or Subconsultants	30
45	Project Experience and Qualifications Projects experience similar in nature to this project Experience in the last 36 months; professional designations, certifications, licences References, preferably from governmental agencies	45
75	Experience with the City of Nacogdoches Prior experience with the City including familiarity with City's facilities	75
150	Cost Proposal Hourly rate proposal Cost for Sample Work Order Scenario	144
300	TOTAL POINTS	294

2023 Utility Installation and Repair IDIQ

- Staffing issues and increasing workload in Utility Construction Department
- Need for on-call contractor for water and sewer line installations and repairs
- \$200,000 one-year contract; option for two additional one-year extensions
- One response to RFP
- Staff independently evaluated and scored proposal



Photo: westfortworthplumbing.com

Score (out of 300 points):

Duplichain Contractors **294**

PRESENTER: Brian Bray, Community Services Director

ITEM/SUBJECT: Consider approval of a contract between White Electric and the City of Nacogdoches for Festival Park Utility Upgrades in the amount of \$106,350.00. (Community Services Director)

SUMMARY/BACKGROUND: The Downtown - Festival Park Utility Upgrades project is budgeted at \$350,000 in the current FY 22-23 budget. City staff decided to break the project into two phases, with the upgrades in Festival Park as phase one. Upon completion of this phase, staff will develop plans to upgrade the electrical service running along Main Street as phase two.

The existing layout of electrical and water service in Festival Park makes it difficult to fully utilize the park for large events, since service drops are not in convenient locations and there are not enough to fully service the events. There has been an increase in festivals and events wanting to utilize downtown and Festival Park as event venues, but the park alone is not able to accommodate them without also utilizing Main Street. The goal is to better utilize the space in Festival Park to accommodate larger events, without needing to close down Main Street. The proposed improvements will allow us to maximize the use of Festival Park, while creating a pleasant event venue for the patrons.

The bid packet was released on Wednesday, March 8, 2023 and advertised in accordance with our Purchasing Policy. We received two bids and opened those bids on March 23, 2023. The bidders were Ludco, Inc. and White Electric, with White Electric being the low bidder. After reviewing the bids, Army Curtis and Staff recommend awarding the bid to the low bidder, White Electric in the amount of \$106,350.

FINANCIAL:

Item is budgeted:

Account No.: 01.86.680.00

Account Name: *Capital Improvement*

Amount: 106,350.00

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

Infrastructure, *Downtown Entertainment and Destination District*

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

ATTACHMENTS: 1. Bid Recommendation Letter
2. Agreement

3. Map
4. PowerPoint Presentation

March 31, 2023

Brian Bray
Community Services Director
City of Nacogdoches
Nacogdoches, TX 75961

Re: Festival Park Utility Upgrades

Dear Mr. Bray,

On March 23, 2023, the City accepted bid proposals for the Festival Park Utility Upgrades project. The results of these bids are attached for your reference.

Based on my review of the bids, and with discussion with City staff, the project is recommended to proceed as follows. The project costs are summarized below:

- The project received two bids, with White Electric of Nacogdoches TX the low responsive base bid of \$106,350.00, and a total construction time of 90 days. We have reviewed their qualifications and take no exception to their ability to perform the work.
- Total project cost include the following items:

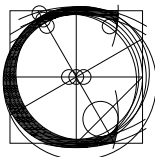
-	<u>White Electric Proposed Contract Amount</u>	<u>\$106,350.00</u>
	Total Project Cost:	\$106,350.00

It is our recommendation to award the project to White Electric as outlined above. If you have any questions regarding this memo, please feel free to contact me.

Sincerely,



Army Curtis, AIA
Curtis Architecture



CURTIS ARCHITECTURE
acurtis@curtisarchitecture.net

412 North St.
Nacogdoches, TX 75961

936-559-9233
936-569-9465 F

TABULATION OF BIDS

City of Nacogdoches

Project Name:

Festival Park Electrical Upgrades

Bid Date:

3/23/2023

GENERAL CONTRACTOR (BIDDER)	BID BOND	ADDENDA					SUB LIST	Statement of Qualifications	Base Bid	A L T E R N A T E S				TOTAL BID
White Electric	✓								\$106,350.00					\$106,350.00
Ludco Electric	✓								\$205,000.00					\$205,000.00
														\$0.00
														\$0.00
														\$0.00
														\$0.00
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														\$0.00
														\$0.00
														\$0.00
														\$0.00
														\$0.00

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 White Electric, Inc., (the "Contractor"), for **Construction Services for** Festival Park Electrical and Plumbing Upgrades located in Nacogdoches, Texas (the "Project").

1. DEFINITIONS

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

- 1.11. Parties. The "parties" are the City and the Contractor.
- 1.12. Project. The term "Project" shall mean and include all that is required to obtain a final product that is acceptable to the City. The term "work" shall have like meaning.
- 1.13. Subcontractor. The term "subcontractor" shall mean and include only those hired by and having a direct contact with Contractor for performance of work on the Project. The City shall have no responsibility to any subcontractor employed by a Contractor for performance of work on the Project, and all subcontractors shall look exclusively to the Contractor for any payments due.
- 1.14. Substantially Completed. The term "Substantially Completed" means that in the opinion of the City's Representative the Project, including all systems and improvements, is in a condition to serve its intended purpose but still may require minor miscellaneous work and adjustment. Final payment of the Agreement Price, including retainage, however, shall be withheld until Final Completion and acceptance of the work by the City. Acceptance by the City shall not impair or waive any warranty obligation of Contractor.
- 1.15. Work. The term "work" as used in this Agreement shall mean and include all that is required herein to obtain a final product that is acceptable to the City. The term "Project" shall have like meaning. This Project includes the following: **Construction Services for _ Festival Park Electrical and Plumbing Upgrades _** located in Nacogdoches, Texas.
- 1.16. Working Day. A "working day" means any day not including Saturdays, Sundays, or legal holidays.

2. CONTRACT DOCUMENTS

- 2.01. The Contract Documents and their priority shall be as follows:
- 2.01.01. This signed Agreement
 - 2.01.02. Addendum to this Agreement
 - 2.01.03. General Conditions
 - 2.01.04. Special Conditions
 - 2.01.05. Technical specifications
 - 2.01.06. Drawings
 - 2.01.07. Instructions to Bidders and any other notices to Bidders or Contractor
 - 2.01.08. Performance bond, Payment bonds, Bid bonds and Special bonds
 - 2.01.09. Contractor's Proposal
- 2.02. Where applicable, the Contractor will be furnished three (3) sets of plans, drawings, specifications, and related Contract Documents for its use during construction. Plans and specifications provided for use during construction shall be furnished directly to the Contractor only.
- 2.03. The Contractor shall distribute copies of the plans and specifications to suppliers and subcontractors as necessary. The Contractor shall keep one (1) copy of the plans and specifications accessible at the work site with the latest revisions noted thereon. For proper execution of the work contemplated by this Agreement, additional sets of drawings, plans and specifications may be purchased by the Contractor.

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

3. AWARD OF CONTRACT

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

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

3.03. **Contract Amount.** Except in the event of a duly authorized change order approved by the City as provided in this Contract, and in consideration of the Contractor's final completion of all work in conformity with this Contract, the City shall pay the Contractor an amount not to exceed One Hundred Six Thousand Three Hundred Fifty and 00/100 Dollars (\$106,350.00).

4. CITY'S REPRESENTATIVE

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

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

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

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

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

5. INDEPENDENT CONTRACTOR

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

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

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

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

6. DISORDERLY EMPLOYEES

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

7. HOURS OF WORK

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

8. NATURE OF THE WORK

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

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

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

9. POST-AGREEMENT AWARD MEETINGS

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

- (a) Schedules of work contemplated, including the starting and ending date, as well as an indication of the completion of stages of work hereunder.
- (b) The names and addresses of all proposed subcontractors in writing.
- (c) Schedules of the starting and ending dates of subcontractors and the scope of work contemplated for subcontractors.
- (d) Name, local office, phone number and addresses and, home phone numbers for the Contractor and its Project Superintendent/Manager.

- (e) For construction projects, four (4) copies of all shop and/or setting drawings or schedules for the submission thereof.
- (f) Where applicable, materials procurement schedules and material supplier names, addresses and phone numbers.

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

10. PROGRESS OF WORK

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

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

- (a) The Contractor shall submit a progress schedule and payment schedule of the work contemplated by this Agreement at the initial post-agreement award meeting and subsequent meetings.
- (b) City's Representative shall be entitled to make objections to the Contractor's schedule submitted herein. The Contractor shall promptly resubmit a revised schedule to City's Representative.
- (c) The Project Superintendent/Manager shall coordinate its activities with City's Representative. If required by the City, the Contractor shall provide a weekly schedule of planned activities, which may be reviewed on a daily basis.
- (d) The Contractor shall submit, at such time as may reasonably be requested by City's Representative, additional schedules that shall list the order in which the Contractor proposes to carry on the work with dates at which the Contractor will start the several parts of the work and the estimated dates of completion of the several parts.
- (e) The Contractor shall attend additional meetings called by City's Representative upon twenty-four (24) hours written notice unless otherwise agreed in writing by the parties.
- (f) When the City is having other work done, either by agreement or by its own force, City's Representative may direct the time and manner of work done under this Agreement so that conflicts will be avoided and the various work being done by and for the City shall be coordinated.
- (g) In the event that it is determined by the City that the progress of the work is not in accordance with the approved progress and payment schedule, the City may so inform the

Contractor and require the Contractor to take such action as is necessary to insure completion of the Project within the time specified.

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

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

11. SITE CONDITIONS AND MANAGEMENT

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

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

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

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

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

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

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

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

11.09. When two or more contractors, including Contractor, are employed on related or adjacent work or obtain materials from the same material source, or when work must be completed by one contractor before another can begin, each shall conduct his operations in such a manner as not to cause any unnecessary delay or hindrance to the other. Each contractor, including Contractor if applicable, shall be responsible to the other for all damage to work, to persons, or to property caused to the other by his operations, and for loss caused the other due to unreasonable or unjustified delays or failure to finish the work or portions thereof, or furnish materials within the time requested. Should Contractor cause damage to the work or property of any separate contractor at the Project site, or should any claim arising out of Contractor's separate contractor at the Project site, or should any claim arising out of Contractor's performance of the Work at the Project site be made by any separate contractor against Contractor, City or other consultants, or any other person, Contractor shall promptly attempt to settle with such other contractor by agreement, or to otherwise resolve the dispute. **Contractor shall, to the fullest extent permitted by applicable laws, indemnify and hold City harmless from and against all claims, damages, losses and expenses (including, but not limited to, fees of architects, attorneys and other professionals and court costs) arising directly, indirectly or consequentially out of any action, legal or equitable, brought by any separate contractor against City to the extent based on a claim arising out of Contractor's negligence.**

12. MATERIALS

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

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

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

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

(b) Further, the Contractor shall repair, repaint or replace any and all materials or any part thereof damaged or stolen while in its possession. Such materials are considered to be in the Contractor's possession from the moment the Contractor either accepts delivery of the materials or signs a receipt accepting delivery of said materials until the Project is accepted by the City's Representative.

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

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

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

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

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

13. ENTRY, OBSERVATION, TESTING & POSSESSION

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

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

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

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

14. REJECTED WORK

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

perform the work in accordance with the requirements of this Agreement and the other Contract Documents.

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

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

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

15. SUBCONTRACTING & SUBCONTRACTORS

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

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

16. PAYMENT

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

16.02. Progress Payment Applications. The Contractor shall submit applications for payment as provided for herein. Applications for payment will be processed by the City's Representative. Before the first Application for Payment, the Contractor shall submit to the City a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the City may require. This schedule, unless objected to by the City, shall be used as a basis for reviewing the Contractor's Applications for Payment. On or before the 15th day of each month, the Contractor shall submit to City's Representative, for approval or modification, a statement showing as completely as practicable the total value of the actual work performed by the Contractor and accepted by the City up to

and including the last day of the ***preceding*** month. The statement shall also include the value of all materials not previously submitted for payment which have been delivered to the site but have not yet been incorporated into the work.

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

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

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

16.06. Reduction in the scope or quantity of work on unit price items shall merely reduce the number of units. In the event that materials have been delivered prior to notice of such reduction, the City will have the option either to pay freight & transportation costs and any re-stocking charges actually incurred by the Contractor or to purchase the materials. The Contractor shall never be entitled to anticipated or lost profits on the deleted or reduced portion of a job, whether bid on a unit price or lump sum basis.

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

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

16.09. Unless otherwise provided in the Contract Documents:

- (a) allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

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

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

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

- (a) Defective work.
- (b) Claims made or reasonable evidence indicating probable filing of claims by unpaid vendors or other third parties.
- (c) Failure of the Contractor to make prompt payments to subcontractors for labor or material or materialmen.
- (d) Claims made or reasonable evidence indicating claims will be made for damage to another by the Contractor.
- (e) Claims made or reasonable evidence indicating claims will be made for damage to third parties, including adjacent property owners.
- (f) Claims made or reasonable evidence indicating claims will be made for unremedied damage to property owned by the City.
- (g) City's determination of an amount of liquidated damages.
- (h) Charges made for repairs to the Contractor's defective work or repairs made by the City to correct damage to other property.
- (i) Other amounts authorized under this Agreement or under any other agreement made between City and Contractor.

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

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

17. EXTRA WORK CHARGES

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

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

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

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

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

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

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

Method A - By agreed unit prices, or

Method B - By agreed lump sum, or

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

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

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

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

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

(g) **Method C - Actual Field Costs.** The actual field cost is hereby defined to include the cost of all applicable workmen and laborers, as well as materials, supplies, teams, trucks, rentals on machinery and equipment, for the time actually employed or used for such Extra Work, plus actual transportation charges necessarily incurred, together with other costs reasonably incurred directly on account of such Extra Work, including social security, old age benefits, maintenance bonds, public liability, property damage, worker's compensation, and all other insurance as may be required by law or ordinances or required and agreed to by the City or City's Representative. City's Representative may direct the form in which accounts of the actual field costs shall be kept and records of these accounts shall be made available to City's Representative. Unless otherwise agreed upon, the prices for the use of machinery and equipment shall be determined by using one hundred percent (100%), unless otherwise specified, of the latest schedule of equipment and ownership expenses adopted by the Associated General Contractors of America. Where practical, the terms and prices for the use of machinery and equipment shall be incorporated in the written Extra Work order. Actual field costs shall not exceed the prevailing market price therefor within reasonable tolerances as determined by City's Representative. The amount due to Contractor for costs other than actual field costs shall be calculated in accordance with the following standards:

(1) No indirect or consequential damages will be allowed.

(2) All costs must be directly and specifically shown to be caused by a proven wrong. No recovery shall be based on a comparison by planned expenditures to total actual expenditures or on estimated losses of labor efficiency, or on a comparison of planned manloading to actual manloading, or any other analysis that is used to show damages indirectly.

(3) Damages are limited to extra costs specifically shown to have been directly caused by a proven wrong.

(4) The maximum daily limit on any recovery for delay shall be the amount established by the Contractor for job overhead costs, defined in the pay applications, divided by the

total number of days specified for completion called for in the original Contract. Absent an overhead amount in the Schedule of Values, the amount estimated by Contractor for job overhead cost shall be used.

18. TIME OF COMPLETION

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

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

18.03. The work shall be Substantially Completed within the time bid, which shall run from the date when the notice to proceed is given by City's Representative. The Contractor has bid **_90_ calendar days** for the time within which it shall reach Substantial Completion of the Project.

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

19. SUBSTANTIAL COMPLETION

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

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

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

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

20. FINAL COMPLETION

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

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

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

21. DELAYS

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

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

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

22. EXTENSIONS OF TIME

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

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

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

extension of time by the City be valid and binding unless it is in writing and in conformity with the other terms of this Agreement.

23. LIQUIDATED DAMAGES

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

23.02. As a result of the difficulty in estimation, calculation and ascertainment of City's damages due to a failure of Contractor to achieve timely completion of the Work, if the Contractor should neglect, fail, or refuse to either Substantially Complete or Finally Complete the work within the time herein specified, or any proper extension thereof granted by the City's Representative pursuant to the terms of Paragraph 22 of this Agreement, then the Contractor does hereby agree as part of the consideration for the awarding of this Agreement that the City may permanently withhold from the Contractor's total compensation the sum of **Five Hundred and no/100 DOLLARS (\$500.00)** for each and every calendar day that the Contractor shall be in default after the time stipulated for Substantial Completion and/or Final Completion, not as a penalty, but as liquidated damages for the breach of this Agreement. It being specifically understood that the assessment of liquidated damages may be made for any failure to meet either or both of the deadlines specified for Substantial Completion and/or Final Completion.

24. CHARGES FOR INJURY OR REPAIR

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

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

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

25. WARRANTY

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

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

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

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

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

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

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

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

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

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

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

26. PAYMENT OF EMPLOYEES, SUBCONTRACTORS & SUPPLIERS

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

26.02. **Statutory Penalty.** Pursuant to Section 2258.023(b) of the Texas Government Code, if the Contractor or any subcontractor violates the requirements of Paragraph 26.01, the Contractor or

subcontractor as the case may be shall pay the City **Sixty Dollars (\$60.00)** for each worker employed for each calendar day or part of the day that the worker is paid less than the stipulated wage rates.

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

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

26.05. **Payment of Subcontractors.** The Contractor shall be solely and exclusively responsible for compensating any of the Contractor's employees, subcontractors, materialmen and/or suppliers of any type or nature whatsoever and for insuring that no claims or liens of any type arising out of or incidental to the performance of any services performed pursuant to this Agreement are filed against any property owned by the City. In the event a statutory lien notice is sent to the City, the Contractor shall, where no payment bond covers the work, upon written notice from the City, immediately obtain a bond at its expense and hold the City harmless from any losses that may result from the filing or enforcement of any said lien notice. In the event that the Contractor defaults in the provision of the bond, the City may withhold such funds as are necessary to assure the payment of such claim until litigation determines to whom payment shall be made.

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

27. **INSURANCE**

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

28. **BOND PROVISIONS**

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

- (a) The Contractor shall execute performance and payment bonds for the full Contract Amount.

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

28.02. The Contractor may make such changes and alterations as the City may require in the work or any part thereof without affecting the validity of this Agreement and any accompanying bond. If such changes or alterations diminish the quantity of the work to be done, they shall not constitute the basis for any claim for damages or anticipated profits. If the City makes changes or alterations that render useless any work already done or material already used in said work, then the City shall compensate the Contractor for any material or labor so used, and for any actual loss occasioned by such change due to actual expenses incurred in preparation for the work as originally planned, in accordance with the provisions of Article 17.

29. SURETY

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

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

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

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

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

30. COMPLIANCE WITH LAW

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

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

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

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

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

31. SAFETY PRECAUTIONS

31.01. All safety measures, policies and precautions at the site are a part of the construction techniques and processes for which the Contractor shall be solely responsible. The Contractor is solely responsible for handling and use of hazardous materials or waste, and informing employees of any such hazardous materials

or waste. The Contractor shall provide copies of all hazardous materials and waste data sheets to the Nacogdoches Fire Department marked "Attn.: Assistant Chief".

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

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

31.04. Contractor agrees that it shall not transport to, use, generate, dispose of, or install at the Project site any Hazardous Substance (as defined in Paragraph 31.07, except in accordance with applicable Environmental Laws. Further, in performing the Work, Contractor shall not cause any release of Hazardous Substances into, or contamination of, the environment, including the soil, the atmosphere, any water course or ground water, except in accordance with applicable Environmental Laws (as hereafter defined at Paragraph 31.07). **In the event Contractor engages in any of the activities prohibited in this Paragraph 31.04 to the fullest extent permitted by law, Contractor hereby indemnifies and holds City and all of its respective officials, agents and employees harmless from and against any and all claims, damages, losses, causes of action, suits and liabilities of every kind, including, but not limited to, expenses of litigation, court costs, punitive damages and attorneys' fees, arising out of, incidental to or resulting from the activities prohibited in this Paragraph 31.04.**

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

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

31.07. For purposes of this Agreement, the term "Hazardous Substance" shall mean and include any element, constituent, chemical, substance, compound, or mixture, which are defined as a hazardous substance by any local, state or federal law, rule, ordinance, by-law, or regulation pertaining to environmental regulation, contamination, clean-up or disclosure, including, without limitation, The Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), The

Resource Conservation and Recovery Act ("RCRA"), The Toxic Substances Control Act ("TSCA"), The Clean Water Act ("CWA"), The Clean Air Act ("CAA"), and the Marine Protection Research and Sanctuaries Act ("MPRSA"), The Occupational Safety and Health Act ("OSHA"), The Superfund Amendments and Reauthorization Act of 1986 ("SARA"), or other state superlien or environmental clean-up or disclosure statutes including all state and local counterparts of such laws (all such laws, rules and regulations being referred to collectively as "Environmental Laws"). It is the Contractor's responsibility to comply with this Paragraph 31.07 based on the law in effect at the time its services are rendered and to comply with any amendments to those laws for all services rendered after the effective date of any such amendments.

32. TRENCH SAFETY

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

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

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

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

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

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

33. INDEMNITY

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

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~~SHALL EXTEND TO, AND INCLUDE, ANY AND ALL CLAIMS, CAUSES OF ACTION OR LIABILITY CAUSED BY THE CONCURRENT, JOINT AND/OR CONTRIBUTORY NEGLIGENCE OF THE CITY, AN ALLEGED BREACH OF AN EXPRESS OR IMPLIED WARRANTY BY THE CITY OR WHICH ARISES OUT OF ANY THEORY OF STRICT OR PRODUCTS LIABILITY.~~

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

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

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

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

33.05. It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification obligation under Paragraph 33.01, such legal

limitations are made a part of the indemnification obligation and shall operate to amend the indemnification obligation to the minimum extent necessary to bring the provision into conformity with the requirements of such limitations, and as so modified, the indemnification obligation shall continue in full force and effect.

34. RELEASE

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

35. PERMITS AND LICENSES

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

36. ROYALTIES AND LICENSING FEES

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

37. BREACH OF CONTRACT & DAMAGES

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

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

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

38. TERMINATION FOR CAUSE

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

- 38.01. If the Contractor becomes insolvent, commits any act of bankruptcy, makes a general assignment for the benefit of creditors, or becomes the subject of any proceeding commenced under any statute or law for the relief of debtors and, after notice, fails to provide adequate assurance that it can remedy all of its defaults; or
- 38.02. If a receiver, trustee, or liquidator of any of the property or income of the Contractor shall be appointed; or
- 38.03. If the Contractor shall fail to prosecute the work or any part thereof with diligence necessary to insure its progress and completion as prescribed by the time schedules; or
- 38.04. If the Contractor shall fail to remedy any default within ten (10) calendar days after written notice thereof from City's Representative, as City's Representative shall direct; or
- 38.05. If the Contractor shall fail for any reason other than the failure by City's Representative to make payments called upon when due; or
- 38.06. If the Contractor abandons the Work.
- 38.07. If the Contractor commits a substantial default under any of the terms, provisions, conditions, or covenants contained in this Agreement.

39. TERMINATION FOR CONVENIENCE

- 39.01. The performance of the work may be terminated at any time in whole or, from time to time, in part, by the City for its convenience. Any such termination shall be effected by delivery to the Contractor of a written notice (notice of termination) specifying the extent to which performance of the work is terminated, and the date upon which termination becomes effective.
- 39.02. In the event of termination for convenience, the Contractor shall only be paid the reasonable value of the Work performed prior to the effective date of the termination notice and shall be further subject to any claim the City may have against the Contractor under other provisions of this Agreement or as a matter of law. In the event of termination for convenience, Contractor Waives and Releases any claim for lost profit, other than profit on Work performed prior to the effective date of such termination.

40. RIGHT TO COMPLETE

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

41. CLOSE OUT

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

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

42. TERMINATION CONVERSION

Upon determination of Court of competent jurisdiction that termination of the Contractor pursuant to Paragraph 38 was wrongful and/or otherwise improper, such termination will be deemed converted to a termination for convenience pursuant to Paragraph 39 and Contractor's remedy for such termination shall

be limited to the recovery of the payments permitted for termination for convenience as set forth in Paragraph 39.

43. **HIRING**

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

44. **ASSIGNMENT**

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

45. **EFFECTIVE DATE**

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

46. **OTHER TERMS**

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

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

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

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

46.05. **Mediation.** After receipt of a Notice of Claim, the City may elect to refer the matter to the Architect, City's Representative or another party for review. Contractor will attend meetings called to review and discuss the Claims and mitigation of the problem, and shall furnish any reasonable factual backup for the Claim requested. The City may also elect to defer consideration of the Claim until the Work is completed, in which case the same review options shall be available to the City at the completion of the

Work. At any stage, the City, at its sole discretion, is entitled to refer a Claim to mediation under the Construction Industry Mediation Rules of the American Arbitration Association, and, if this referral is made, Contractor will take part in the mediation process. The filing, mediation or rejection of a Claim does not entitle Contractor to stop performance of the Work. The Contractor shall proceed diligently with performance of the Contract during the pendency of any claim, excepting termination or under City's direction to stop the Work. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. The parties shall share the Mediator's fee and any filing fees equally and the Mediation shall be held in Nacogdoches, Texas.

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

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

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

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

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

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

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

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

contract (*See Texas Government Code 2274.002, et seq.*); and (ii) does not and will not discriminate against a firearm entity or firearm trade association (*See Texas Government Code 2274.002, et seq.*).

46.11. **Waiver.** Failure of any party, at any time, to enforce a provision of this Agreement shall in no way constitute a waiver of that provision nor in any way affect the validity of this Agreement, any part hereof, or the right of the City thereafter to enforce each and every provision hereof. No term of this Agreement shall be deemed waived or breach excused unless the waiver shall be in writing and signed by the party claimed to have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver of or excuse of any other different or subsequent breach.

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

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

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

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

WHITE ELECTRIC, INC.

By: 
Printed Name: Dennis White
Title: President
Date: 4/10/23

CITY OF NACOGDOCHES

By: _____
City Manager
Date: _____

APPROVED AS TO FORM:

City Attorney
Date: _____

Exhibit A
DAVIS BACON WAGE RATES

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

Exhibit B
INSURANCE REQUIREMENTS

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

I. Standard Insurance Policies Required:

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

II. General Requirements Applicable to All Policies:

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

III. Commercial General Liability

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

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

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

IV. Business Automobile Liability

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

V. Excess Liability

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

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

Exhibit D, and approved by the City before work commences.

VII. Workers Compensation Insurance

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

"A. Definitions:

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

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

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

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

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

- (1) *provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, that meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;*
- (2) *provide to the Contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;*
- (3) *provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;*
- (4) *obtain from each other person with whom it contracts, and provide to the Contractor:*
 - (a) *A certificate of coverage, prior to the other person beginning work on the project; and*
 - (b) *A new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;*
- (5) *retain all required certificates of coverage on file for the duration of the project and for one year thereafter;*
- (6) *notify the governmental entity in writing by certified mail or personal delivery, within 10 calendar days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and*
- (7) *Contractually require each person with whom it contracts to perform as required by paragraphs (a) - (g), with the certificates of coverage to be provided to the person for whom they are providing services.*

J. By signing this contract, or providing, or causing to be provided a certificate of coverage, the Contractor is representing to the governmental entity that all employees of the Contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project; that the coverage will be based on proper reporting of classification codes and payroll amounts; and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the Commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

K. The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor that entitles the governmental entity to declare the contract void if the Contractor does not remedy the breach within ten calendar days after receipt of notice of breach from the governmental entity."

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

Exhibit C
PERFORMANCE AND PAYMENT BONDS

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 /100 (\$ _____, .) 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 Festival Park Electrical and Plumbing Upgrades** 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

§
§

THE COUNTY OF NACOGDOCHES

§

KNOW ALL MEN BY THESE PRESENTS:

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 /100 (\$ _____) 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 Festival Park Electrical and Plumbing Upgrades** 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

Drawing name: A:\Texas Projects\2013\City of Nacogdoches - 19-001\Festival Park Electrical Upgrades\SP01 Festival Park Plan.dwg
Plot Time: Apr 11, 2023 - 11:55am



1 SITE PLAN
SCALE: 1" = 40'-0"



REVISIONS

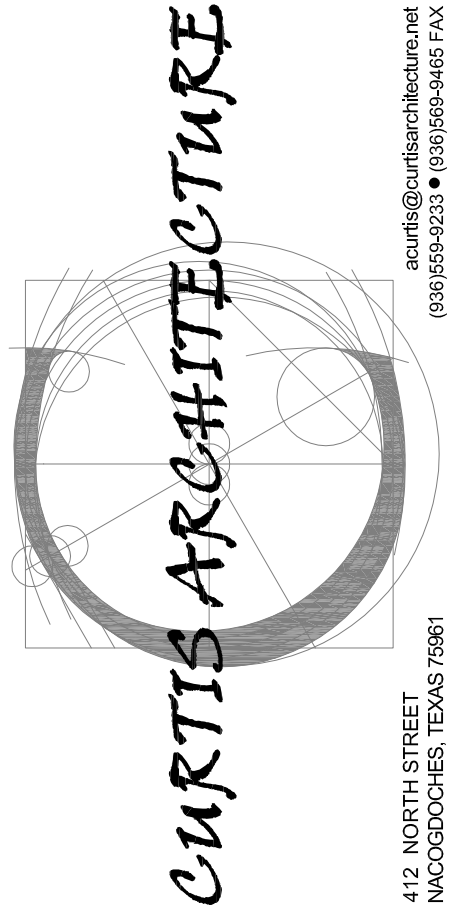
SHEET TITLE

DATE: APRIL 11, 2023

SHEET
OF

PROJECT NO. 19-001A

FESTIVAL PARK ELECTRICAL UPGRADES
FOR
CITY OF NACOGDOCHES
NACOGDOCHES, TEXAS



412 NORTH STREET
NACOGDOCHES, TEXAS 75861
(936) 559-4233 • (936) 559-8465 FAX
acurtis@curtisarchitects.com

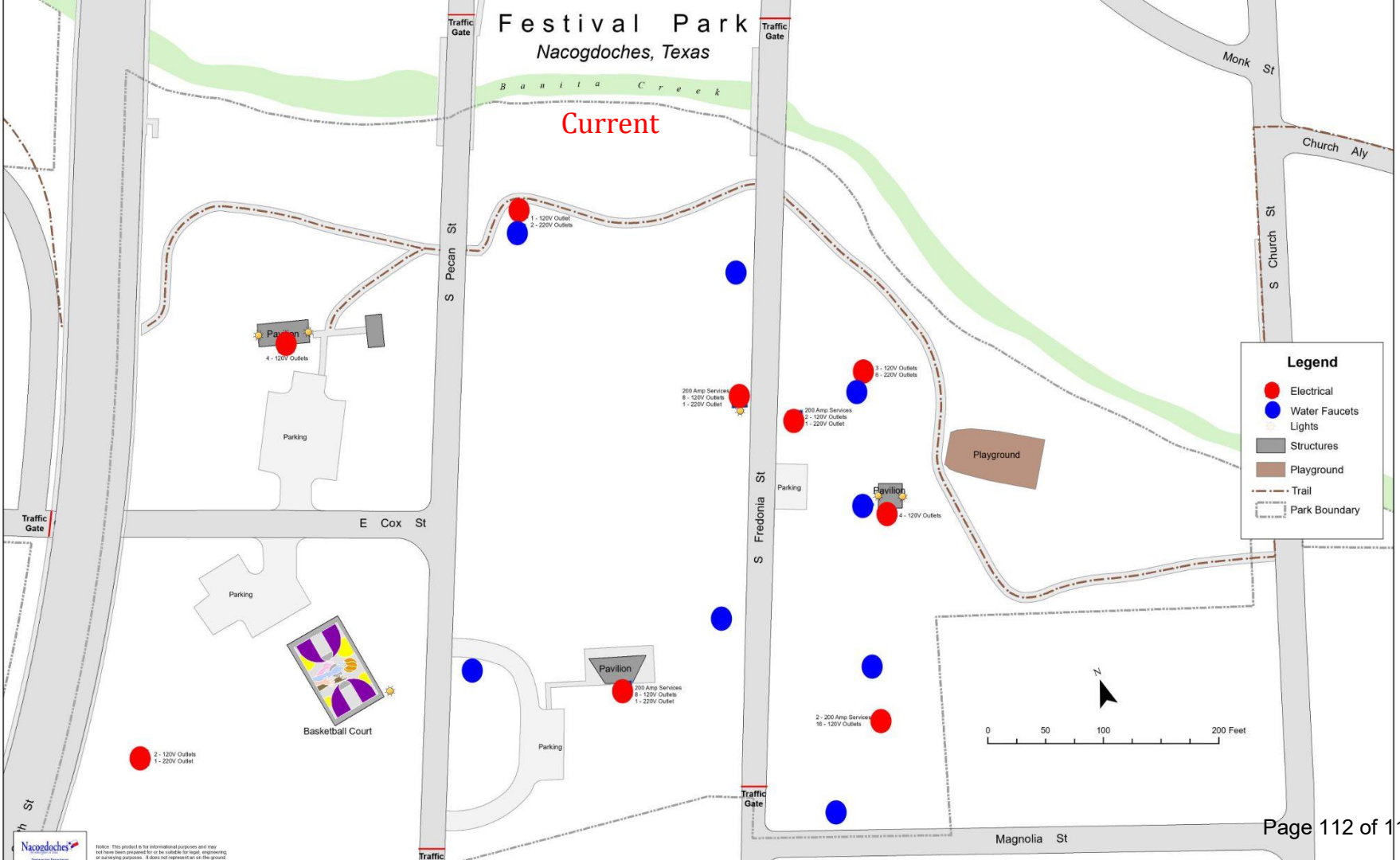
PRELIMINARY
04/11/23
CURTIS ARCHITECTURE

Consider Approval of Contract

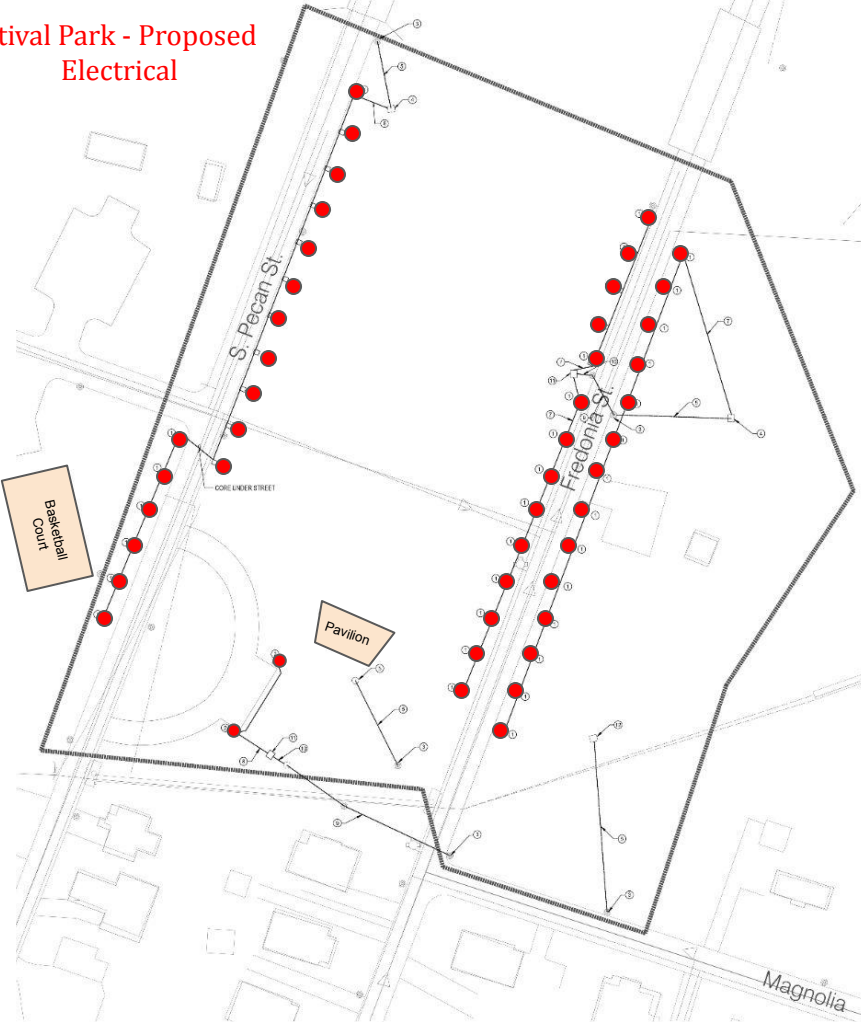
White Electric & City of Nacogdoches
Festival Park Utility Upgrades

Festival Park Nacogdoches, Texas

Current



Festival Park - Proposed
Electrical



Festival Park - Proposed
Plumbing



TABULATION OF BIDS

Project Name: City of Nacogdoches

Festival Park Electrical Upgrades

Bid Date: 3/23/2023

GENERAL CONTRACTOR (BIDDER)	BID BOND	ADDENDA				SUB LIST	Statement of Qualifications	Base Bid	ALTERNATES				TOTAL BID
White Electric	✓							\$106,350.00					\$106,350.00
Ludco Electric	✓							\$205,000.00					\$205,000.00
													\$0.00

Bid Timeline

Bid packet released - March 8, 2023

Pre-bid Meeting - March 14, 2023

Bids due - March 23, 2023

*Advertised according to City of Nacogdoches Purchasing Policy.

PRESENTER: Larissa Philpot-Brown

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

Not Applicable

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

ATTACHMENTS:



City Council Meeting

Date: April 18, 2023

Agenda Item: 7.B.

PRESENTER: Steven Kirkland, City Attorney

ITEM/SUBJECT: Deliberation Regarding Real Property - Pursuant to Texas Government Code 551.072, Council will receive and discuss information on the value of real property and bids for properties struck off at tax foreclosure sales.

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

ATTACHMENTS:



City Council Meeting

Date: April 18, 2023

Agenda Item: 7.C.

PRESENTER: Steven Kirkland, City Attorney

ITEM/SUBJECT: Personnel Matters – Pursuant to Texas Government Code Section 551.074, deliberations regarding the appointment or employment of a public officer or employee. The subject of this executive session is to discuss the annual evaluation and extension of the City Attorney's contract.

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

ATTACHMENTS: