



**February 23, 2021**

Notice is hereby given of a Special Meeting of Nacogdoches City Council to be held on the above date via videoconference, with the opportunity to appear in person in the City Council Chambers of City Hall, 202 East Pilar Street, Nacogdoches, Texas, with Executive Session beginning at 4:00 p.m. and Regular Session beginning at 5:30 p.m. for the purpose of considering the following agenda items.

In accordance with Orders of the Governor due to the COVID-19 pandemic, the City of Nacogdoches City Council meeting will be deemed as being conducted via teleconference or videoconference. However, some City Council Members may attend virtually, while others may be present in the above stated physical location. Regardless, 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. For those attending in person, strict adherence to COVID-19 related CDC guidelines will be enforced at all times.

Members of the public who wish to submit comments by telephone on a listed agenda item must contact the City Secretary's office by email at [vinsonj@nactx.us](mailto:vinsonj@nactx.us) or by calling 936-559-2506 and providing their name, telephone number and relevant agenda item upon which they wish to speak. All requests to make comments by telephone must be received by 12:00 p.m. on February 23, 2021. 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.

**Council may conduct Executive Session deliberation, reconvening open session for action, if any, on Executive Session items. Regular Session agenda items appropriate for Executive Session consideration may be moved into Executive Session for deliberation, but not action, upon proper announcement at the meeting by presiding officer.**

**3. EXECUTIVE SESSION:**

A.

1. Consultation with City Attorney – Pursuant to Texas Government Code Section 551.071, deliberation regarding attorney's advice concerning pending or contemplated litigation or a settlement offer, or on a matter in which the duty of the attorney to the governmental body under Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with this chapter. The subject of this Executive Session relates to zoning matters in the vicinity of Logansport Street.

4. Open Forum.
5. Items to be removed from Consent Agenda.

6. **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 February 2, 2021 regular session. (City Secretary)
- B. Consider approval of donation of \$1,000 from Estate of Rachel Anderson to City of Nacogdoches, to benefit Animal Services Department. (Community Services Director)

7. **REGULAR AGENDA:**

- A. Consider approval of a contract by and between the City of Nacogdoches and Leland Bradlee Construction, Inc. for the Pioneer Drive Relocation and Drainage Improvements Project in a not-to-exceed amount of \$334,135.00. (Assistant Director of Public Works)
- B. Discuss and consider donation from Pilgrim's Pride, agree upon acceptance of \$478,500 and agree to name the Sportsplex, "Pilgrim's Sportsplex", and authorize City Manager to execute agreement. (Community Services Director)
- C. Receive presentation on upcoming events and activities for 2021 and provide staff guidance on future events. (Community Services Director)
- D. Consider authorizing staff to submit a preliminary application for a sidewalk project inside the City limits, partially funded through the TxDOT 2021 Transportation Alternatives Set-Aside (TA) program. (Public Works Director)
- E. Receive a report from Fire Chief Keith Kiplinger and hold a discussion with City Council regarding an update on the damage and recovery efforts of the February 2021 Winter Storms that affected Nacogdoches, Texas. (Fire Chief)
- F. Consider adoption of a resolution of the City Council of the City of Nacogdoches, Texas authorized by Section 418.108 of the Texas Government Code, declaring, continuing and extending a local state of disaster in the City of Nacogdoches, Texas due to the public health and safety emergency created by the February 2021 winter storms that affected the entire State of Texas; and providing an effective date. (Fire Chief)

8. **EXECUTIVE SESSION:**

- A. 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 appointment or

employment related matters concerning City Attorney search.

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

#### **CERTIFICATION**

I certify the notice of meeting was posted in the directory outside of City Hall, 202 E. Pilar Street, Nacogdoches, Texas on February 19, 2021 at 7 p.m. and remained posted until meeting convened.

---

Jan Vinson, City Secretary



## City Council Meeting

Date: February 23, 2021

Agenda Item: 3.A.

---

**PRESENTER:** Mario Canizares, City Manager

**ITEM/SUBJECT:**

1. Consultation with City Attorney – Pursuant to Texas Government Code Section 551.071, deliberation regarding attorney's advice concerning pending or contemplated litigation or a settlement offer, or on a matter in which the duty of the attorney to the governmental body under Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with this chapter. The subject of this Executive Session relates to zoning matters in the vicinity of Logansport Street.

**SUMMARY/BACKGROUND:**

**FINANCIAL:**

No financial impact associated with this item.

**CITY CONTACT:** Mario Canizares, City Manager  
[canizaresm@nactx.us](mailto:canizaresm@nactx.us)  
36-559-2501

**ATTACHMENTS:**



## City Council Meeting

Date: February 23, 2021

Agenda Item: 6.A.

---

**PRESENTER:** Jan Vinson, City Secretary

**ITEM/SUBJECT:** Consider approval of minutes from February 2, 2021 regular session. (City Secretary)

**SUMMARY/BACKGROUND:**

**FINANCIAL:**

No financial impact associated with this item

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

**ATTACHMENTS:** 1. Minutes



**Regular Session  
Nacogdoches City Council  
February 2, 2021 – 5:30 p.m.  
Videoconference**

**DRAFT**

**City Council present in person:** Mayor Shelley Brophy, Council Members Roy Boldon, Garth Hinze and Jay Anderson.

**City Council present via videoconference:** Council Members Amelia Fischer.

1. Called to order at 5:31 p.m.
2. Pledge of Allegiance.
3. No one spoke during Open Forum.
4. No items 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. Minutes from January 19, 2021 regular session.
  - B. Consider approval of Memorandum of Understanding between the City of Nacogdoches and the American National Red Cross for office space located at City Hall.
  - C. 4<sup>th</sup> Quarter 2020 Investment Report.

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

**6. REGULAR AGENDA:**

- A. Receive Bond Market Update.

John Martin, Hilltop Securities Regional Managing Director presented Bond Market Update for January 2021 showing current interest rates and representation of recent Texas bond sales. Mr. Martin stated interest rates are at a historic low.

- B. Consider resolution calling the Regular Election of City Council Members for Northeast Ward, Northwest Ward and At-Large Mayor in and for the City of Nacogdoches, Texas.

City Secretary Jan Vinson presented the resolution calling the Regular Election for May 1, 2021. Nacogdoches County Elections Office will administer the election.

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

- C. Consider Request for Proposal (RFP) award and contract to Conterra Ultra Broadband, LLC for fiber optic internet and data circuits in the amount of \$76,260.

Information Technology Manager Michael Donnell stated the installation of fiber optic internet and data circuits will be at City Hall, the Recreation Center and Library, Waste Water Treatment Plant, Animal Services and Public Works facilities. Of the six responses received, Conterra Ultra Broadband scored the highest and was the lowest bid per year with a five year commitment.

City Council discussed contract length and renewals options, bandwidth and build out costs. Council Member Boldon asked if the staff could consider possibility adding cameras in city parks.

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

Minutes unofficial until approved by City Council

7. Meeting adjourned at 6:04 p.m.

ATTEST:

\_\_\_\_\_  
Mayor Shelley Brophy  
City Council  
City of Nacogdoches

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



## City Council Meeting

Date: February 23, 2021

Agenda Item: 6.B.

---

**PRESENTER:** Brian Bray, Community Services Director

**ITEM/SUBJECT:** Consider approval of donation of \$1,000 from Estate of Rachel Anderson to City of Nacogdoches, to benefit Animal Services Department. (Community Services Director)

**SUMMARY/BACKGROUND:** Ms. Rachel Anderson bequeathed a gift of \$1,000 to benefit the Nacogdoches Animal Shelter. If City Council accepts the donation, the Animal Services Department plans to purchase dog kennels for the Animal Control vehicles.

**FINANCIAL:**

Item is not budgeted

Revenue:

Account No.: 01.559.72

Account Name: *General Fund Contributions Revenue*

Amount: \$1000

Expenditure:

Account No.: 01.19.610.90

Account Name: *Animal Services*

Amount: \$1000

**CITY CONTACT:** Brian W. Bray, Community Service Director  
[brayb@nactx.us](mailto:brayb@nactx.us)  
936-559-2960

**ATTACHMENTS:**

1. Rachel Anderson Will
2. Budget Amendment Animal Services Donation

LAW OFFICES  
**BENCHOFF & BENCHOFF**  
316 UNIVERSITY DRIVE  
POST OFFICE BOX 631063  
NACOGDOCHES, TEXAS 75963-1063

EDMUND F. BENCHOFF (1929-1989)  
E. MCALISTER BENCHOFF

TELEPHONE  
(936) 564-0278

January 28, 2021

Nacogdoches Animal Shelter  
3211 S.W. Stallings Drive  
Nacogdoches, Texas 75964

Re: Estate of Rachel Naomi  
Anderson, Deceased

Dear Ladies and Gentlemen:

We enclose copies of Ms. Rachel Anderson's will of September 1, 2014, and the Court's January 25, 2021, order admitting the will to probate.

Texas Estates Code §308.007 provides that the executor send each beneficiary under a will a copy of the will or a summary of gifts to the beneficiary and a copy of the order admitting the will to probate by certified mail, return receipt requested or by registered mail.

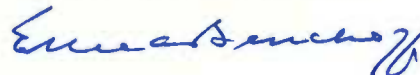
So that you will not need to visit the post office to collect a certified letter, we have prepared a waiver of the formal notice for you, and the original and a copy of the waiver are enclosed.

Please sign the waiver, and return the signed original to us in the enclosed envelope.

If you have questions, please call us. Thank you for your help.

Yours very truly,

BENCHOFF & BENCHOFF



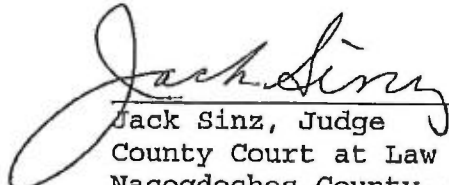
McAB/mls  
Enclosures  
cc: Garland D. Simmons



will is admitted to probate as the will of Rachel Naomi Anderson, Deceased, and the Clerk of this Court is ORDERED to record the will, together with the application, in the minutes of this Court.

It is further ORDERED, ADJUDGED, and DECREED that no bond or other security is required; that upon the taking and filing of the Oath required by law, letters testamentary shall issue to Garland Demarcus Simmons who is appointed as Independent Executor of Decedent's will and estate; and that no other action shall be had in this Court other than the return by the independent executor of an inventory, appraisement, and list of claims as required by law, the appointment and requirement of appraisers being hereby waived.

SIGNED, DONE, and ORDERED ENTERED this the 25<sup>th</sup> day of January, 2021.

  
\_\_\_\_\_  
Jack Sinz, Judge  
County Court at Law of  
Nacogdoches County, Texas,  
Sitting in Matters of Probate

FILED  
NACOGDOCHES COUNTY,  
TEXAS  
2021 JAN 25 AM 10:47  
  
COUNTY CLERK

NO: PB2113414

LETTERS TESTAMENTARY

STATE OF TEXAS  
COUNTY OF NACOGDOCHES

IN THE COUNTY COURT  
NACOGDOCHES COUNTY, TEXAS

I, the Undersigned Clerk of the County Court of Nacogdoches County, Texas,  
do hereby certify

that on the 25th day of January, A.D., 2021

**GARLAND DEMARCUS SIMMONS**

was duly granted by said Court Letters Testamentary of the Estate of

RACHEL NAOMI ANDERSON, Deceased,

that he qualified as INDEPENDENT EXECUTOR of said estate on the  
25th day of January, A.D. 2021

as the law requires and that said appointment is still  
in full force and effect.

GIVEN UNDER MY HAND AND SEAL of office at Nacogdoches, Texas, this  
the 26th day of January, A.D. 2021.

JUNE CLIFTON, CLERK  
COUNTY COURT,  
NACOGDOCHES COUNTY, TEXAS

BY: Dona Bass  
Deputy

# Last Will and Testament

of

## RACHEL NAOMI ANDERSON

THE STATE OF TEXAS

§

§

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF NACOGDOCHES

§

I, **RACHEL NAOMI ANDERSON**, of the County of Nacogdoches and the State of Texas, being in fair health, of sound and disposing mind and memory, do make and declare this instrument to be my Last Will and Testament, hereby expressly revoking all former Wills and Codicils made by me at any time heretofore, and intending hereby to dispose of all the property of whatever kind and wherever situated which I own, or in which I have any kind of interest at the time of my death.

### I.

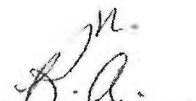
#### IDENTITY OF THE FAMILY

I am a single lady. At the time of the execution of this Will, I have one child, a son, namely, **MARK RONALD ANDERSON**.

### II.

#### PAYMENT OF EXPENSES

I direct that all the expenses of my last illness, my funeral expenses, and my just personal debts, including any inheritance taxes, transfer taxes, and estate taxes which may be levied by the United States Government or by any state by reason of my death, shall be paid by my Independent Executor out of the residue of my estate as soon as conveniently may be done; provided that my Independent Executor, in such Executor's sole discretion, may distribute from time to time any real or personal property in my estate which at my death is subject to a lien securing an indebtedness upon it without discharging said indebtedness, if in my Independent Executor's judgment, the condition of my estate so requires. The distributee shall then be considered as having received my estate's equity in the property.

  
LAST WILL AND TESTAMENT OF  
RACHEL NAOMI ANDERSON;  
33.14M; 8-28-14

Page | 1

**III.**  
**DISPOSITION OF ESTATE**

A. I give, devise, and bequeath these specific gifts:

- (1) My home located at 1711 Queens Row, Nacogdoches, Texas, to my son,  
**MARK RONALD ANDERSON.**
- (1) \$ 25,000.00 to my nephew, **TALDON MARK ALLEN ANDERSON**
- (2) \$ 25,000.00 to my nephew, **TREVON DEAN VAN DYKE ANDERSON**
- (3) \$ 2,500.00 to **GARLAND D. "MARK" SIMMONS**
- (4) \$ 1,000.00 to **WOMEN'S JOB CORP, NACOGDOCHES, TEXAS**
- (5) \$ 1,000.00 to **SOLID FOUNDATION**
- (6) \$ 1,000.00 to **BOYS AND GIRLS CLUB OF NACOGDOCHES, TEXAS**
- (7) \$ 1,000.00 to **THE ANIMAL SHELTER OF NACOGDOCHES, TEXAS**

B. I give, devise, and bequeath all the rest, residue, and remainder of my estate to my son, **MARK RONALD ANDERSON**, if he survives me. If **MARK RONALD ANDERSON** does not survive me, then all the rest, residue and remainder of my estate shall go equally to my nephews, **TALDON MARK ALLEN ANDERSON** and **TREVON DEAN VAN DYKE ANDERSON**, however, if my nephews shall not then survive me, but should leave issue then surviving me, such surviving issue shall receive, per stirpes, the share that such deceased nephew would have taken by surviving me.

C. Any other property of mine that has not been disposed of under any other provision of this Will shall go and be distributed to my heirs-at-law. Their identity and respective shares shall be determined in all respects as if my death had occurred immediately following the happening of the event requiring such distribution, and according to the laws of Texas then in force governing the distribution of the estate of an intestate.

**IV.**  
**DEFINITION OF SURVIVAL**

Any legatee, devisee, donee, person or beneficiary with respect to all or any part of my estate who shall not survive until ninety (90) days after the date of my death, or until this Will is probated, whichever occurs earlier, shall be deemed to have predeceased me, and shall be treated for all purposes herein as though such person had predeceased me. Any person who is prohibited by law from inheriting property from my estate shall be treated as having failed to survive me.

  
LAST WILL AND TESTAMENT OF  
RACHEL NAOMI ANDERSON;  
33.14M; 8-28-14

Page | 2

V.

APPOINTMENT OF EXECUTOR

A. I hereby nominate, constitute and appoint GARLAND D. "MARK" SIMMONS, as Independent Executor of my estate. In the event that GARLAND D. "MARK" SIMMONS, shall predecease me or fail or refuse to qualify, or die, resign, or become unable to serve during the administration of my estate, I hereby nominate, constitute and appoint my son, MARK RONALD ANDERSON, as Independent Executor, and all the powers, duties and responsibilities granted and imposed upon GARLAND D. "MARK" SIMMONS shall devolve upon and be exercised by MARK RONALD ANDERSON.

B. If any individual Independent Executor or Executrix becomes unable to discharge his or her duties under this Will because of accident, physical or mental illness or deterioration, or other cause and does not resign, then upon certification in a form sufficient for the recording of a deed in the State of Texas by two medical doctors (neither of whom is a beneficiary under this Will) affirming that each has examined the Independent Executor or Executrix and that each has concluded, based on such examination, that the Independent Executor or Executrix is unable to discharge his or her duties under this Will, the Independent Executor or Executrix shall cease to serve, as if he or she had resigned, effective the date of the certification.

C. It is my will and desire and I hereby direct that in the administration of my estate, my Independent Executor or any successor shall not be required to furnish any bond of any kind and that no action shall be had in any court in the administration of my estate other than the probating of this, my Last Will and Testament, and the filing of any Inventory, Appraisalment and List of Claims of my estate that may be required.

VI.

POWERS OF EXECUTOR

The estate created or arising by virtue of my death and this instrument, my Last Will and Testament, shall be governed by and administered in accordance with the following provisions:

A. I hereby grant unto my Independent Executor or any successor named above, full power and authority over any and all of my estate and they are hereby authorized to sell, manage, and dispose of the same or any part thereof, and in connection with any such sale or transaction, make, execute and deliver proper deeds, assignments and other written instruments and to do any and all things proper or necessary in the orderly handling and management of my estate.



LAST WILL AND TESTAMENT OF  
RACHEL NAOMI ANDERSON;  
33.14M; 8-28-14

Page | 3

B. My Independent Executor or any successor named above, shall have full power and authority to compromise, settle and adjust any and all debts, claims and taxes which may be due from or owing by my estate.

C. My Independent Executor or any successor named above, shall have full power and authority to deal with any person, firm, or corporation.

D. My Independent Executor or any successor named above, shall have full power to borrow money at any time and in any amount from time to time for the benefit of my estate, from any person, firm, or corporation or from any bank or trust company and to secure the loan or loans by pledge, deed of trust, mortgage or other encumbrances on the assets of the estate and from time to time to renew such loans and give additional security.

E. My Independent Executor, GARLAND D. "MARK" SIMMONS, shall be allowed a reasonable fee up to 2 ½ % of my gross estate for his services.

#### **VII.** **FUNERAL ARRANGEMENTS**

I hereby direct that Cason Monk-Metcalf Funeral Directors of Nacogdoches, Texas, be the designated funeral home to handle my services with the internment to be in the Sunset Memorial Cemetery of Nacogdoches, Texas. I further make it known that I have designated with Cason Monk-Metcalf my entire funeral arrangements, and I direct that those funeral arrangements be followed by my surviving heirs or Executor, which ever case may arise.

#### **VIII.** **SPENDTHRIFT PROVISION**

No interest of any beneficiary in the corpus or income of my estate shall be subject to assignment, alienation, pledge, attachment, or claims of creditors of such beneficiary and may not otherwise be alienated or encumbered by such beneficiary, except as may be otherwise expressly provided herein.

#### **IX.** **IN TERROREM CLAUSE**

If any beneficiary under this Will shall in any manner contest or attack this Will or any of its provisions, any share or interest in my estate given to such contesting beneficiary under this Will is hereby revoked and shall be disposed of as part of the residue of my estate.

R.N.A.  
LAST WILL AND TESTAMENT OF  
RACHEL NAOMI ANDERSON;  
33.14M; 8-28-14

Page | 4

**X.**  
**REVOCATION OF PRIOR DOCUMENTS**

I hereby revoke all prior wills and trusts of any type, especially a revocable living trust.

**XI.**  
**DEFINITIONS AND INTERPRETATIONS**

For purposes of interpretation of this, my Last Will and Testament, and the administration of the estate established herein, the following provisions shall apply:

A. The words "child, children, descendants, issue," and similar terms shall be deemed only to include children born to, or adopted (on or before eighteen years of age) by me or my descendants.

B. When a distribution is directed to be made to any person's descendants "per stirpes," the division into stirpes shall begin at the generation nearest to such person that has a living member.

C. The use of the masculine, feminine or neuter genders shall be interpreted to include the other genders, and the use of either the singular or the plural number shall be interpreted to include the other number, unless such an interpretation in a particular case is inconsistent with the general tenor of this instrument. Any references herein relating to my Independent Executor shall include his successors regardless of the gender of the successors.

D. This Will shall be probated in accordance with the laws of Texas, and should any provisions of the same be held unenforceable or invalid for any reason, the unenforceability or invalidity of said provision shall not affect the enforceability or validity of any other part of this Will.

IN WITNESS WHEREOF, I, RACHEL NAOMI ANDERSON, hereby sign my name to this, my last Will, on each page of which I have placed my initials, on this 1<sup>st</sup> day of September, 2014, at Nacogdoches, Texas.

  
RACHEL NAOMI ANDERSON, Testatrix

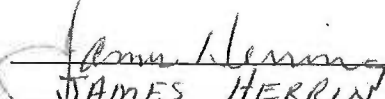
*Signatures on next page.*

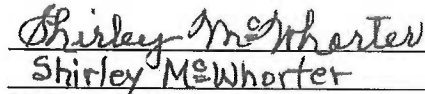
R.N.A.  
LAST WILL AND TESTAMENT OF  
RACHEL NAOMI ANDERSON;  
33.14M; 8-28-14

Page | 5

ATTESTATION

The foregoing instrument was signed in our presence by **RACHEL NAOMI ANDERSON** and declared by her to be her last Will. We, at the request and in the presence of **RACHEL NAOMI ANDERSON** and in the presence of each other, have subscribed our names below as witnesses on this 1<sup>st</sup> day of September, 2014.

  
\_\_\_\_\_  
**JAMES HERRING**, Witness  
119 North Street, Suite A  
Nacogdoches, Texas

  
\_\_\_\_\_  
**Shirley McWhorter**, Witness  
119 North Street, Suite A  
Nacogdoches, Texas

SELF-PROVING AFFIDAVIT

STATE OF TEXAS

§

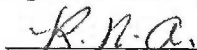
§

COUNTY OF NACOGDOCHES

§

BEFORE ME, the undersigned authority, on this day personally appeared **RACHEL NAOMI ANDERSON**, **JAMES HERRING** and **SHIRLEY McWHORTER**, known to me to be the Testatrix and the witnesses, respectively, whose names are subscribed to the annexed or foregoing instrument in their respective capacities, and all of said persons being by me duly sworn, the said **RACHEL NAOMI ANDERSON**, Testatrix, declared to me and to the said witnesses in my presence that said instrument is her Last Will and Testament and that she had willingly made and executed it as her free act and deed; and the said witnesses, each on their oath stated to me, in the presence and hearing of the said Testatrix, that the said Testatrix had declared to them that said instrument is her Last Will and Testament, and that she executed same as such and wanted each of them to sign it as a witness; and upon their oaths each witness stated further that they did sign the same as witnesses in the presence of the said Testatrix and at her request; that said Testatrix was at that time eighteen years of age or over (or being under such age, was or had been lawfully married, or was then a member of the armed forces of the United States or of an auxiliary thereof or of the Maritime Service) and was of sound mind; and that each of said witnesses was then at least fourteen years of age.

*Signatures on next page.*

  
\_\_\_\_\_  
LAST WILL AND TESTAMENT OF  
**RACHEL NAOMI ANDERSON**;  
33.14M; 8-28-14

Page | 6

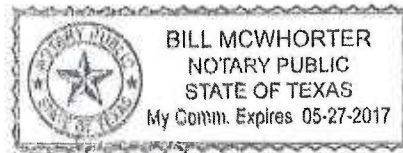
Rachel Naomi Anderson  
RACHEL NAOMI ANDERSON, Testatrix

James Herring  
JAMES HERRING, Witness

Shirley McWhorter  
Shirley McWhorter, Witness

SUBSCRIBED AND SWORN TO BEFORE ME by the said RACHEL NAOMI ANDERSON, Testatrix, and by the said James Herring and Shirley McWhorter, Witnesses, this 1st day of September, 2014.

Bill McWhorter  
Notary Public, State of Texas



PREPARED IN THE OFFICE OF:

BILL MCWHORTER & ASSOCIATES, P.C.  
119 North Street, Suite A  
Nacogdoches, Texas 75961  
Phone No.: (936) 564-2676  
Fax No. (936) 564-6455

AFTER RECORDING, RETURN TO:

BILL MCWHORTER & ASSOCIATES, P.C.  
119 North Street, Suite A  
Nacogdoches, Texas 75961  
Phone No.: (936) 564-2676  
Fax No. (936) 564-6455

R.N.A.  
LAST WILL AND TESTAMENT OF  
RACHEL NAOMI ANDERSON;  
33.14M; 8-28-14

Page | 7

AN ORDINANCE AMENDING ORDINANCE NO. 1835-09-20 APPROPRIATING VARIOUS AMOUNTS IN ACCORDANCE WITH BUDGET ADOPTED FOR THE ENSUING FISCAL YEAR BEGINNING OCTOBER 1, 2020 AND ENDING SEPTEMBER 30, 2021.

WHEREAS, the City Council of the City of Nacogdoches, Texas has approved and adopted the budget for said city for the ensuing fiscal year beginning October 1, 2020 and ending September 30, 2021.

WHEREAS, the Estate of Rachel Anderson wishes to donate \$1,000 to the Animal Services Department; and

WHEREAS, with the adoption of this ordinance, the Animal Services Department is authorized to accept and expend monies as presented.

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

| <b>Fund</b> | <b>Dept.</b> | <b>Acct.</b> | <b>Department</b>                  | <b>Description</b>                           | <b>Amt.</b> |
|-------------|--------------|--------------|------------------------------------|----------------------------------------------|-------------|
| 01          |              | 559.72       | General Fund Contributions Revenue | Donation for Animal Services                 | \$1,000     |
| 01          | 19           | 610.90       | Animal Services                    | Other Materials & Supplies – Animal Services | \$1,000     |
|             |              |              |                                    |                                              |             |

PASSED AND APPROVED this the 16<sup>th</sup> day of February, 2021.

\_\_\_\_\_  
Shelley Brophy, Mayor  
City of Nacogdoches

ATTEST:

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

Approved as to form: \_\_\_\_\_  
Robert Davis, Interim City Attorney

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

---

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

**ITEM/SUBJECT:** Consider approval of a contract by and between the City of Nacogdoches and Leland Bradlee Construction, Inc. for the Pioneer Drive Relocation and Drainage Improvements Project in a not-to-exceed amount of \$334,135.00. (Assistant Director of Public Works)

**SUMMARY/BACKGROUND:** On January 26, 2021, the City received bids for the Pioneer Drive Relocation and Drainage Improvements Project. Six (6) contractors submitted base bids as follows:

|                                           |                             |
|-------------------------------------------|-----------------------------|
| <b><i>Leland Bradlee Construction</i></b> | <b><i>\$ 334,135.00</i></b> |
| T-5 Construction                          | \$ 389,400.00               |
| Drewery Construction                      | \$ 394,239.00               |
| Crockett Construction                     | \$ 399,994.50               |
| Cox Contractors                           | \$ 448,948.96               |
| L.S. Equipment                            | \$ 454,696.00               |

Leland Bradlee Construction was the lowest responsible bidder. Leland Bradlee is a Longview-based contractor and has not previously worked on a City project. Staff has contacted and reviewed several references for Leland Bradlee and has found them to be capable of performing this work.

An existing bridge on Pioneer Drive inside Pioneer Park is failing and in need of replacement. In order to maintain a crossing for pedestrian access between the north and south sides of the park, staff and the Parks and Recreation Advisory Board determined that leaving the existing bridge in place until construction of the new crossing is complete, would be the most advantageous approach. This project will relocate Pioneer Drive to align with Lydia Street on the north side of Lenwood Drive and will include three (3) 6'x5' concrete box culverts with sidewalks and decorative railing at the creek crossing. This new location will provide a gentler road grade than the existing Pioneer Drive, as well as a channel breach overflow area which will allow for better protection of the creek bank from erosion during flooding events.

While the existing Pioneer Drive and bridge will be left open to pedestrians during construction, access to vehicular traffic will be restricted. Once the new road and channel crossing has been completed, the existing drive and bridge will be removed and the area regraded with new grass.

It is recommended that the base bid for this project be awarded to Leland Bradlee Construction in the amount of \$334,135.00 for this work.

**FINANCIAL:**

Item is budgeted:

Account No.: 30 179.03

Account Name: *CIP Storm Sewer Replacements*  
Amount: \$ 451,717

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

**ATTACHMENTS:** 1. Pioneer Drive Bid Tab  
2. Pioneer Drive Contract

**City of Nacogdoches  
Pioneer Drive Relocation and Drainage**

|                                      |      |      |                                                                           | Leland Bradlee Const. |                      | Drewery Construction Co. |                      | T-5 Construction |                      | L.S Equipment Co. |                      | Crockett Construction |                      | Cox Contractors |                      |
|--------------------------------------|------|------|---------------------------------------------------------------------------|-----------------------|----------------------|--------------------------|----------------------|------------------|----------------------|-------------------|----------------------|-----------------------|----------------------|-----------------|----------------------|
| Item                                 | Quan | Unit | Description                                                               | Unit Price            | TOTAL                | Unit Price               | TOTAL                | Unit Price       | TOTAL                | Unit Price        | TOTAL                | Unit Price            | TOTAL                | Unit Price      | TOTAL                |
| 1.                                   | 1    | LS   | Site clearing, grubbing, abandonments and demolition....                  | \$30,000.00           | \$30,000.00          | \$49,000.00              | \$49,000.00          | \$45,065.00      | \$45,065.00          | \$25,000.00       | \$25,000.00          | \$69,000.00           | \$69,000.00          | \$37,569.00     | \$37,569.00          |
| 2.                                   | 1    | LS   | Temporary erosion controls, including sediment fencing....                | \$5,000.00            | \$5,000.00           | \$6,800.00               | \$6,800.00           | \$13,670.00      | \$13,670.00          | \$15,000.00       | \$15,000.00          | \$7,000.00            | \$7,000.00           | \$15,119.00     | \$15,119.00          |
| 3.                                   | 1565 | SY   | Permanent erosion control turf/slope stabilization mats....               | \$6.00                | \$9,390.00           | \$6.20                   | \$9,703.00           | \$4.00           | \$6,260.00           | \$7.00            | \$10,955.00          | \$6.50                | \$10,172.50          | \$8.85          | \$13,850.25          |
| 4.                                   | 240  | SY   | Permanent erosion control 24" deep stone rip-rap....                      | \$65.00               | \$15,600.00          | \$145.00                 | \$34,800.00          | \$166.00         | \$39,840.00          | \$250.00          | \$60,000.00          | \$160.00              | \$38,400.00          | \$132.14        | \$31,713.60          |
| 5.                                   | 75   | SY   | Permanent erosion control 12" deep stone rip-rap....                      | \$75.00               | \$5,625.00           | \$49.00                  | \$3,675.00           | \$79.00          | \$5,925.00           | \$197.00          | \$14,775.00          | \$100.00              | \$7,500.00           | \$59.00         | \$4,425.00           |
| 6.                                   | 1    | LS   | Traffic controls....                                                      | \$5,000.00            | \$5,000.00           | \$14,500.00              | \$14,500.00          | \$3,000.00       | \$3,000.00           | \$10,000.00       | \$10,000.00          | \$5,000.00            | \$5,000.00           | \$2,399.00      | \$2,399.00           |
| 7.                                   | 1    | LS   | Site excavation and earthwork, including all on-site cut and fill....     | \$12,000.00           | \$12,000.00          | \$60,000.00              | \$60,000.00          | \$48,679.95      | \$48,679.95          | \$43,000.00       | \$43,000.00          | \$26,000.00           | \$26,000.00          | \$69,133.00     | \$69,133.00          |
| 8.                                   | 1    | LS   | Concrete wingwall with flared wings, including associated concrete rip-   | \$20,000.00           | \$20,000.00          | \$17,000.00              | \$17,000.00          | \$19,704.00      | \$19,704.00          | \$35,000.00       | \$35,000.00          | \$25,000.00           | \$25,000.00          | \$40,920.00     | \$40,920.00          |
| 9.                                   | 1    | LS   | Concrete wingwall with parallel wings, including associated concrete      | \$15,000.00           | \$15,000.00          | \$18,000.00              | \$18,000.00          | \$14,028.00      | \$14,028.00          | \$41,000.00       | \$41,000.00          | \$25,000.00           | \$25,000.00          | \$41,142.00     | \$41,142.00          |
| 10.                                  | 78   | LF   | Extended concrete curb (per TxDOT detail ECD)....                         | \$50.00               | \$3,900.00           | \$57.00                  | \$4,446.00           | \$50.20          | \$3,915.60           | \$50.00           | \$3,900.00           | \$160.00              | \$12,480.00          | \$42.10         | \$3,283.80           |
| 11.                                  | 96   | LF   | Concrete box culvert (precast ASTM C1433), including stone foundation.... | \$1,050.00            | \$100,800.00         | \$537.00                 | \$51,552.00          | \$631.00         | \$60,576.00          | \$785.00          | \$75,360.00          | \$650.00              | \$62,400.00          | \$876.70        | \$84,163.20          |
| 12.                                  | 106  | LF   | Deorative pedestrian guardrail on top of curb....                         | \$100.00              | \$10,600.00          | \$382.00                 | \$40,492.00          | \$285.00         | \$30,210.00          | \$35.00           | \$3,710.00           | \$200.00              | \$21,200.00          | \$322.01        | \$34,133.06          |
| 13.                                  | 226  | SF   | 5" thick reinforced concrete riprap (apron) above flared wingwalls....    | \$15.00               | \$3,390.00           | \$17.00                  | \$3,842.00           | \$12.00          | \$2,712.00           | \$15.00           | \$3,390.00           | \$12.00               | \$2,712.00           | \$13.20         | \$2,983.20           |
| 14.                                  | 453  | SF   | Reinforced concrete sidewalk....                                          | \$10.00               | \$4,530.00           | \$13.00                  | \$5,889.00           | \$8.25           | \$3,737.25           | \$12.00           | \$5,436.00           | \$10.00               | \$4,530.00           | \$10.85         | \$4,915.05           |
| 15.                                  | 30   | LF   | Concrete curb on sidewalk....                                             | \$50.00               | \$1,500.00           | \$52.00                  | \$1,560.00           | \$118.40         | \$3,552.00           | \$35.00           | \$1,050.00           | \$160.00              | \$4,800.00           | \$58.60         | \$1,758.00           |
| 16.                                  | 1200 | SY   | 4" Thick (compacted) Type B hot mix asphalt concrete....                  | \$42.00               | \$50,400.00          | \$28.00                  | \$33,600.00          | \$50.00          | \$60,000.00          | \$50.00           | \$60,000.00          | \$36.00               | \$43,200.00          | \$29.58         | \$35,496.00          |
| 17.                                  | 1260 | SY   | 6" cement stabilized subgrade soil (5% by dry weight of soil)....         | \$15.00               | \$18,900.00          | \$18.00                  | \$22,680.00          | \$8.75           | \$11,025.00          | \$12.00           | \$15,120.00          | \$10.00               | \$12,600.00          | \$8.38          | \$10,558.80          |
| 18.                                  | 1    | LS   | Water pipe replacement/lowering, including pipe, thrust blocks....        | \$7,500.00            | \$7,500.00           | \$5,000.00               | \$5,000.00           | \$5,970.00       | \$5,970.00           | \$15,000.00       | \$15,000.00          | \$10,000.00           | \$10,000.00          | \$5,450.00      | \$5,450.00           |
| 19.                                  | 1    | LS   | Trench AND Excavation Safety Plan and Implimentation....                  | \$5,000.00            | \$5,000.00           | \$2,900.00               | \$2,900.00           | \$100.00         | \$100.00             | \$5,000.00        | \$5,000.00           | \$1,000.00            | \$1,000.00           | \$1,150.00      | \$1,150.00           |
| 20.                                  | 1    | LS   | Site restoration and clean-up, including hydromulch seed....              | \$10,000.00           | \$10,000.00          | \$8,800.00               | \$8,800.00           | \$11,430.20      | \$11,430.20          | \$12,000.00       | \$12,000.00          | \$12,000.00           | \$12,000.00          | \$8,787.00      | \$8,787.00           |
| <b>TOTAL BASE BID (Items 1 - 20)</b> |      |      |                                                                           |                       | <b>\$ 334,135.00</b> |                          | <b>\$ 394,239.00</b> |                  | <b>\$ 389,400.00</b> |                   | <b>\$ 454,696.00</b> |                       | <b>\$ 399,994.50</b> |                 | <b>\$ 448,948.96</b> |

## 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 **Leland Bradlee Construction, Inc.**, a limited liability corporation (the "Contractor"), for **Construction Services for Pioneer Drive Relocation and Drainage Improvements Project** located in Nacogdoches, Texas (the "Project").

### 1. DEFINITIONS

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

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

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

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

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

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

## 2. CONTRACT DOCUMENTS

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

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

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

2.03. The Contractor shall distribute copies of the plans and specifications to suppliers and subcontractors as necessary. The Contractor shall keep one (1) copy of the plans and specifications accessible at the work site with the latest revisions noted thereon. For proper execution of the work contemplated by this Agreement, additional sets of drawings, plans and specifications may be purchased by the Contractor.

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

of this Clause 2.04, however, shall not relieve the Contractor of any of the obligations set forth in Paragraphs 8.01. and 8.02.

### **3. AWARD OF CONTRACT**

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

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

3.03. **Contract Amount.** Except in the event of a duly authorized change order approved by the City as provided in this Contract, and in consideration of the Contractor's final completion of all work in conformity with this Contract, the City shall pay the Contractor an amount not to exceed **Three Hundred Thirty-Four Thousand One Hundred Thirty-Five and 00/100 Dollars (\$334,135.00).**

### **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 City's Representative. Before the first

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

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

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

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

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

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

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

**16.09.** Unless otherwise provided in the Contract Documents:  
(a) allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

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

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

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

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

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

## **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 damages 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 may be given orally 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 **120 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 damages 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 thereof, 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 subcontractors 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.

### **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 FROM ANY AND ALL CLAIMS, DEMANDS, EXPENSES, LIABILITY OR CAUSES OF ACTION FOR INJURY TO ANY PERSON, INCLUDING DEATH, AND FOR DAMAGE TO ANY PROPERTY, TANGIBLE OR INTANGIBLE, OR FOR ANY BREACH OF CONTRACT ARISING OUT OF OR IN ANY MANNER CONNECTED WITH THE WORK DONE BY ANY PERSON UNDER THIS CONTRACT. IT IS THE INTENT OF THE PARTIES THAT THIS PROVISION SHALL EXTEND TO, AND INCLUDE, ANY AND ALL CLAIMS, CAUSES OF ACTION OR LIABILITY CAUSED BY THE CONCURRENT, JOINT AND/OR CONTRIBUTORY NEGLIGENCE OF THE CITY, AN ALLEGED BREACH OF AN EXPRESS OR IMPLIED WARRANTY BY THE CITY OR WHICH ARISES OUT OF ANY THEORY OF STRICT OR PRODUCTS LIABILITY.**

**33.02. The 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.

33.03. 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.

33.04. 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; and/or

#### **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 Owner may elect to refer the matter to the Architect, Owner'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 Owner 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 Owner at the completion of the Work. At any stage, the Owner, 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 Owner'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 **Boycott.** To the extent this Agreement is considered an Agreement 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 Agreement.

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.

**LELAND BRADLEE CONSTRUCTION, INC.    CITY OF NACOGDOCHES**

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

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

APPROVED AS TO FORM:

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

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

"General Decision Number: TX20210028 01/01/2021

Superseded General Decision Number: TX20200028

State: Texas

Construction Type: Highway

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

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

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.95 for calendar year 2021 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.95 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2021. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 CFR 5.5(a)(1)(ii) (or the EO minimum wage rate, if it is higher than the conformed wage rate). The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

Modification Number      Publication Date  
0                              01/01/2021

\* SUTX2011-009 08/08/2011

|                                                       | Rates    | Fringes |
|-------------------------------------------------------|----------|---------|
| CONCRETE FINISHER (Paving and Structures).....        | \$ 13.38 |         |
| ELECTRICIAN.....                                      | \$ 20.92 |         |
| FORM BUILDER/FORM SETTER                              |          |         |
| Paving & Curb.....                                    | \$ 11.33 |         |
| Structures.....                                       | \$ 13.07 |         |
| LABORER                                               |          |         |
| Asphalt Raker.....                                    | \$ 11.34 |         |
| Flagger.....                                          | \$ 9.03  |         |
| Laborer, Common.....                                  | \$ 10.30 |         |
| Laborer, Utility.....                                 | \$ 11.53 |         |
| Pipelayer.....                                        | \$ 13.24 |         |
| Work Zone Barricade Servicer.....                     | \$ 11.22 |         |
| POWER EQUIPMENT OPERATOR:                             |          |         |
| Agricultural Tractor.....                             | \$ 12.35 |         |
| Asphalt Distributor.....                              | \$ 14.36 |         |
| Asphalt Paving Machine.....                           | \$ 12.92 |         |
| Broom or Sweeper.....                                 | \$ 10.30 |         |
| Concrete Pavement Finishing Machine.....              | \$ 19.31 |         |
| Concrete Paving, Curing, Float, Texturing Machine.... | \$ 16.34 |         |
| Crane, Hydraulic 80 Tons or Less.....                 | \$ 20.21 |         |
| Crane, Lattice boom 80 Tons or less.....              | \$ 14.67 |         |
| Crane, Lattice boom over 80 Tons.....                 | \$ 17.49 |         |
| Crawler Tractor.....                                  | \$ 13.38 |         |
| Excavator 50,000 pounds or less.....                  | \$ 13.88 |         |
| Excavator, Over 50,000 pounds.....                    | \$ 16.22 |         |
| Foundation Drill, Truck Mounted.....                  | \$ 20.76 |         |
| Front End Loader 3 cu yd or Less.....                 | \$ 12.89 |         |
| Front End Loader, over 3 cu yd.....                   | \$ 12.32 |         |
| Loader/Backhoe.....                                   | \$ 12.87 |         |
| Mechanic.....                                         | \$ 18.58 |         |
| Milling Machine.....                                  | \$ 12.86 |         |

|                              |          |
|------------------------------|----------|
| Motor Grader, Fine Grade.... | \$ 17.07 |
| Motor Grader, Rough.....     | \$ 15.12 |
| Pavement Marking Machine.... | \$ 13.17 |
| Reclaimer/Pulverizer.....    | \$ 10.46 |
| Roller, Asphalt.....         | \$ 11.68 |
| Roller, other.....           | \$ 10.30 |
| Scraper.....                 | \$ 12.43 |
| Spreader Box.....            | \$ 13.68 |

Servicer.....\$ 13.83

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

TRUCK DRIVER

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

-----

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

=====

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

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

-----

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage

determination. The classifications are listed in alphabetical order of ""identifiers"" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

#### Union Rate Identifiers

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

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

#### Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

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

#### Union Average Rate Identifiers

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

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

---

WAGE DETERMINATION APPEALS PROCESS

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

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

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

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

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

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

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

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

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

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

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

=====

END OF GENERAL DECISION

"

**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 **Three Hundred Thirty-Four Thousand One Hundred Thirty-Five and 00/100 Dollars (\$334,135.00)** for the payment of which sum, well and truly to be made to the City of Nacogdoches and its successors, the said Contractor and Surety do bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ATTEST/WITNESS (SEAL)

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

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

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

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

REVIEWED:

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

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

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

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

TEXAS STATUTORY PAYMENT BOND

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

THE STATE OF TEXAS

§  
§

KNOW ALL MEN BY THESE PRESENTS:

THE COUNTY OF NACOGDOCHES

§

**THAT WE,** \_\_\_\_\_, as Principal, hereinafter called "Principal" and the other subscriber hereto \_\_\_\_\_, a corporation organized and existing under the laws of the State of \_\_\_\_\_, licensed to business in the State of Texas and admitted to write bonds, as Surety, herein after called "Surety", do hereby acknowledge ourselves to be held and firmly bound to the City of Nacogdoches, a municipal corporation, in the sum of **Three Hundred Thirty-Four Thousand One Hundred Thirty-Five and 00/100 Dollars (\$334,135.00)** for payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns jointly and severally.

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

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

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

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

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

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

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

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

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

ATTEST/WITNESS (SEAL)

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

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

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

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

REVIEWED:

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

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

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

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

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



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



**PRESENTER:** Brian Bray, Community Services Director

**ITEM/SUBJECT:** Discuss and consider donation from Pilgrim's Pride, agree upon acceptance of \$478,500 and agree to name the Sportsplex, "Pilgrim's Sportsplex", and authorize City Manager to execute agreement. (Community Services Director)

**SUMMARY/BACKGROUND:** During an August 2020 Council meeting, Fire Chief Keith Kiplinger made a presentation regarding Pilgrim's Pride Hometown Strong Grant Program and presented several potential projects to City Council. Staff had chosen two projects on which to focus, to complete the emergency operations center (EOC) and to construct a new fire training building adjacent to the EOC. The initial feedback from Pilgrim's Corporate office was supportive of the EOC build-out but not the fire training building.

After meeting with the local Pilgrim's leadership team, a revised proposal was presented that included funding of the EOC along with construction of four restrooms in various city parks. The revised proposal was again reviewed by Pilgrim's Corporate and the feedback given was to consider a different project. After further conversations with the local Pilgrim's team city staff put together a third proposal.

This third proposal included a repeat of the first request (EOC and Fire Training) along with a "menu list" of items that could be completed at the EOC/Sportsplex site. City staff received final approval from the Pilgrim's team to fund all of the items associated with the Sportsplex (see attached list and map), and not the EOC.

As part of the agreement, Pilgrim's has asked the city to rename the complex, Pilgrim's Sportsplex. If City Council accepts the donation and agrees to the renaming, staff will start soliciting bids to complete each of these items by the end of February while keeping the facility open for our Adult Soccer program. Once we receive the bids, we will be able to provide City Council with an expected completion date for all the projects.

**FINANCIAL:**

Item is not budgeted

Revenue:

Account No.: 24.560.00

Account Name: *Special Grant Fund Revenue*

Amount: \$478,500

Expenditure:

Account No.: 24.23.680.40

Account Name: *Special Grant Fund Parks Capital*

Amount: \$478,500

**CITY CONTACT:** Brian W. Bray, Community Service Director  
[brayb@nactx.us](mailto:brayb@nactx.us)  
936-559-2960

**ATTACHMENTS:**

1. Pilgrims Sportsplex Improvements (2)
2. Pilgrim's-Donation Agreement\_Nac Sportsplex (1) (1)
3. Budget Amendment Pilgrims Grant
4. Pilgrim's Sportsplex Improvements PPT



## PILGRIM'S PRIDE GRANT PROJECTS

### NACOGDOCHES SPORTSPLEX IMPROVEMENTS (noted in map below as "Recreation Area")

---

**Restroom Facility****\$165,000**

Construct a new restroom facility for use at the Sportsplex adjacent to the soccer fields.

**Fence and Entrance Gate Along FM 3314****\$25,000**

Construct a six foot high chain link fence along Lone Star Road (FM 3314) to increase security and limit loose soccer balls from entering traffic.

**Parking/Security Lighting****\$75,000**

Add LED lighting for driveways and parking areas in both Recreation and Public Safety Areas.

**Soccer Netting****\$75,000**

Install field netting along the southern end of the soccer fields to catch errant balls and keep them from entering a marshy, undeveloped area.

**Scoreboard****\$10,000**

Install a new electronic scoreboard for the soccer field area; this would better facilitate tournaments at this site.

**Paving/Parking Striping/Signage****\$128,500**

Repair existing paving, install striping to better utilize the parking space and install a new entrance sign.

PILGRIM'S PRIDE GRANT PROJECTS



## **DONATION AGREEMENT**

**1. PARTIES.** This Donation Agreement (the "Agreement") is made and entered into this [REDACTED] day of January, 2021, by and between City of Nacogdoches, Texas, located at 202 East Pilar Street, Nacogdoches, Texas ("Donee") and Pilgrim's Pride Corporation, a Delaware corporation located at 1770 Promontory Circle, Greeley, Colorado ("Donor") (each a "Party," collectively, the "Parties").

### **2. RECITALS AND PURPOSE.**

- 2.1.** The Donor commits to provide the Donee with the Donation Funds set forth in **Exhibit A** for sole purpose set forth in **Exhibit A**; and
- 2.2.** The Donee, in recognition of Donor's commitment, wishes to provide Donor with the Benefits set for in **Exhibit B**.

Accordingly, in consideration of the mutual promises set forth in this Agreement, the parties covenant and agree to the terms and conditions set forth in the following paragraphs.

- 3. FUNDS.** The Donor agrees to disburse to the Donee those funds indicated on the attached **Exhibit A** ("Donation Funds" or "Gift") in accordance with the Fund Disbursement Schedule set forth therein. The Donation Funds shall be used for the sole purpose(s) set forth in **Exhibit A**.
- 4. RECOGNITION.** In recognition of the Donor's commitment set forth in Section 3 of this Agreement, Donee shall provide Donor's with the Benefits ("Benefits") set forth in **Exhibit B**.
- 5. RECEIPT.** Within five (5) business days of receiving the Donation Funds or Gift (of the first installment thereof) listed in **Exhibit A** the Donee shall provide the Donor with a receipt. The receipt must be written on the official letterhead of the Donee and contain the following information: a) the name of the Donee as listed in Section 1 of this Agreement, b) the date the Donation Funds or Gift (of the first installment thereof) was given, c) the amount of the Donation Funds as set forth in **Exhibit A**, d) a description of any non-monetary Gift set forth in **Exhibit A**, and e) either a statement that no goods or services were provided by the Donee in exchange for the Donation Funds or the Gift, or description and good faith estimate (no estimate is need for naming rights) of the value of goods or services set forth in **Exhibit B**.
- 6. DONEE TAX STATUS.** The Donee is either a) state, a possession of the United States, or any of their political subdivisions, the United States, or the District of Columbia, or b) a corporation, trust, fund, or foundation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes. The Parties desire that the Gift made by this Agreement to be made in compliance with all of the applicable provisions of the Internal Revenue Code of 1986, as amended (the "Code"), the accompanying Treasury Regulations governing charitable organizations formed in accordance with the Code, and any other applicable laws governing charitable donations.
- 7. LICENSE.** The Donor grants to the Donee a nonexclusive, non-transferable, non-sublicensable license to use certain "Donor Trademarks" owned by the Donor solely in connection with this Agreement. "Donor Trademarks" shall mean solely the Donor trade names, marks and logos specified in **Exhibit C** hereto; provided, however, that the Donor in its sole discretion from time to time, may change the appearance and/or style of the Donor Trademarks or add or subtract from the list in **Exhibit C**, provided that, unless required earlier by a court order or to avoid potential infringement liability, Donee shall have 30 days' notice to implement any such changes. Donee

hereby acknowledges and agrees that, (i) the Donor has represented to Donee that the Donor Trademarks are owned solely and exclusively by the Donor, (ii) except as set forth herein, the Donee has no rights, title or interest in or to the Donor Trademarks and (iii) all use of the Donor Trademarks by the Donee shall inure to the benefit of the Donor. Donee agrees not to apply for registration of the Donor Trademarks (or any mark confusingly similar thereto) anywhere in the world. Notwithstanding the foregoing, any use of the Donor Trademarks pursuant to this license shall require the prior consent of the Donor.

**7.1. Ownership.** Donee acknowledges and agrees that the presentation and image of the Donor Trademarks should be uniform and consistent with respect to all services, activities and products associated with the Donor Trademarks. Accordingly, Donee agrees to use the Donor Trademarks solely in the manner that the Donor shall specify from time to time in the Donor's sole discretion. All usage by Donee of the Donor Trademarks shall include the appropriate trademark symbol. No use of the Donor Trademarks shall be permitted without the prior consent of the Donor.

**8. TERMINATION.** Donor may immediately terminate this Agreement with no further liability to Donee if Donee at any time breaches its obligations under this Agreement, and Donee does not cure such failure within thirty (30) days after receipt of written notice from the Donor.

**9. RELATIONSHIP.** Notwithstanding any provision to the contrary in this Donation Agreement, the Parties agree that their relationship with respect to the Gift contemplated herein is one of donor and donee only, and no provision of this Donation Agreement shall be construed to create any other type of status or relationship between the Parties with respect to such Gift. Neither Party nor its agents or employees are the representatives of the other Party for any purpose and neither Party has the power or authority as agent, employee or any other capacity to represent, act for, bind or otherwise create or assume any obligation on behalf of the other Party for any purpose whatsoever.

**10. LIMITATION OF LIABILITY.** Neither Party shall be liable to the other or any third party for any consequential, indirect, incidental, special, or punitive damages. The aggregate liability of each Party under this agreement shall be one-thousand dollars (\$1,000).

**11. FORCE MAJEURE.** Neither Party shall be deemed to have defaulted or failed to perform under this Agreement if that Party's ability to perform or default shall have been caused by an event or events beyond the control and without the fault of that Party, including fire, flood, explosion, act of God or a public enemy, strike, labor dispute, civil riot, pandemic, or the ability of Donor to provide the Gift is impacted by any of the foregoing ("Force Majeure Event"). Upon the occurrence of the Force Majeure Event, the Party claiming the Force Majeure Event shall promptly notify the other Party in writing of such event. Notwithstanding the foregoing, in the event of a Force Majeure Event, each Party agrees to make a good faith effort to perform its obligations hereunder.

**12. ASSIGNMENT.** The provisions of this Agreement will be binding on the Parties' successors and assigns. Upon notice to the other party, either party may assign this Agreement in whole or in part to any affiliate or subsidiary, or any party acquiring substantially all of the stock or assets of that party. Any other assignment shall require the prior written consent of the other party. Such consent not to be unreasonably withheld.

**13. NOTICES.** Any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified or registered mail, postage and fees prepaid, addressed to the party to whom such notice is intended to be given at

the address set forth in Section 1 of this Agreement. Such notice shall be deemed to have been given when deposited in the U.S. Mail.

- 14. EXHIBITS.** All exhibits referred to in this Agreement are, by reference, incorporated in this Agreement for all purposes.
- 15. PARAGRAPH CAPTIONS.** The captions of the paragraphs are set forth only for convenience and reference, and are not intended in any way to define, limit, or describe the scope or intent of this Agreement.
- 16. ADDITIONAL DOCUMENTS OR ACTION.** The parties agree to execute any additional documents and to take any additional action necessary to carry out this Agreement.
- 17. INTEGRATION AND AMENDMENT.** This Agreement represents the entire agreement between the parties and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the parties.
- 18. WAIVER OF BREACH.** The waiver by any party to this Agreement of a breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by any party.
- 19. GOVERNING LAW.** The construction and interpretation of this Agreement and any disputes arising hereunder (whether for breach of contract, tortious conduct or otherwise) shall be governed by and construed in accordance with the internal laws of the State of Colorado without giving reference to its conflict of laws principles. In the event any suit, action or proceeding is brought by either party with respect to this Agreement or the matters contemplated herein, such action, suit or proceeding shall be brought in the state courts located in Weld County, Colorado and both Parties hereby accept, consent and submit to the exclusive jurisdiction of such court for the purpose of any such action, suit or proceeding.
- 20. SEVERABILITY.** If any provision of this Agreement is declared to be invalid, void or unenforceable by a court of competent jurisdiction, such provision shall be deemed to be severable, and all other provisions of this Agreement shall remain fully enforceable, and this Agreement shall be interpreted in all respects as if such provision were omitted.
- 21. AUTHORITY.** The Donee represents that it has full power and authority to execute this Agreement and to carry out the transactions contemplated hereby, and that all corporate action on the part of the Donee, its officers, directors and shareholders and all consents, approvals, orders, authorizations or filings with any federal or state governmental agency necessary for the authorization, execution, delivery and performance of this Agreement by the Donee and the consummation of the transactions contemplated herein by the Donee has been taken or obtained, and that this Agreement constitutes the legal, valid and binding obligation of such entity.
- 22. ELECTRONIC SIGNATURE & COPIES.** electronic signatures shall constitute original signatures for all purposes of this Agreement. Any and all electronic copies of the Agreement shall be treated as an original version.
- 23. PUBLICITY.** Neither party shall publish any press release, make any other public announcement, communicate with any third party, or otherwise publish any statement(s) (each a "Disclosure") concerning this Agreement or the transactions contemplated hereby without the prior written consent of the other Party. If any Party wishes to make a Disclosure with respect to this Agreement or the contemplated transactions, such Party will provide the other with a draft

of the Disclosure for review at least ten (10) business days prior to the time that such Disclosure is to be made. The Parties will attempt in good faith to expeditiously reach agreement on such Disclosure and the contents thereof. All draft Disclosures requiring written consent by Donor shall be sent solely to [Nikki.Richardson@jbssa.com](mailto:Nikki.Richardson@jbssa.com).

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year written above.

Donor:

**Pilgrim's Pride Corporation**

Donee:

**City of Nacogdoches, Texas**

By: \_\_\_\_\_

Name: \_\_\_\_\_ Chris Gaddis \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_ Mario Canizares \_\_\_\_\_

Title: \_\_\_\_\_ City Manager, City of Nacogdoches \_\_\_\_\_

## **EXHIBIT A**

**Donation Fund Amount:** \$478,500

**Fund Disbursement Schedule:** Payment upon receipt of donation agreement completed by both parties and Pilgrim's press release distributed for announcement.

**Sole Purpose of the Funds:** Partner with the City and County of Nacogdoches to fund development of the current sports plex area. This would include adding a restroom facility, a six foot fence along the road to increase security and limit loose soccer balls entering traffic, LED lighting for driveways and parking areas, field netting along the southern end of the soccer fields to catch errant balls and keep them from entering marshy undeveloped land, install an electronic scoreboard for the soccer fields, paving and painting the parking lot

**Non-monetary Gift (if applicable):** N/A

## **EXHIBIT B**

**Benefits:** Donee shall grant Donor life-long naming rights of the sportsplex as “Pilgrim’s Sportsplex”. If, at any time, Donor requests an update to the name(s) or logo(s) set forth in Exhibit C and subsequently used in or on the sportsplex, Donee shall work with Donor, at Donor’s cost, to effectuate such change.

## EXHIBIT C

### Donor Trademarks:



**Pilgrim's Pride Corporation**

**Pilgrim's**

AN ORDINANCE AMENDING ORDINANCE NO. 1835-09-20 APPROPRIATING VARIOUS AMOUNTS IN ACCORDANCE WITH BUDGET ADOPTED FOR THE ENSUING FISCAL YEAR BEGINNING OCTOBER 1, 2020 AND ENDING SEPTEMBER 30, 2021.

WHEREAS, the City Council of the City of Nacogdoches, Texas has approved and adopted the budget for said city for the ensuing fiscal year beginning October 1, 2020 and ending September 30, 2021.

WHEREAS, the City of Nacogdoches applied for the Pilgrim's Pride Hometown Strong Grant; and

WHEREAS, these funds would be used to improve the Nacogdoches Sportsplex through construction of a restroom, improvements to the entrance, fencing, lighting, installing of soccer netting and the installation of a scoreboard; and

WHEREAS, with the adoption of this ordinance, the City is authorized to accept funding from Pilgrim's Pride Hometown Strong Grant for facility improvements to the Nacogdoches Sportsplex in the amount of \$478,500; and

WHEREAS, with the adoption of this ordinance, the Community Services Division is authorized to expend a total of \$478,500 for facility improvements to the Nacogdoches Sportsplex.

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

| <b>Fund</b> | <b>Dept.</b> | <b>Acct.</b> | <b>Department</b>                      | <b>Description</b>                     | <b>Amt.</b> |
|-------------|--------------|--------------|----------------------------------------|----------------------------------------|-------------|
| 24          |              | 560.00       | Special Grant<br>Fund Revenue          | Pilgrims Hometown Strong Grant Revenue | \$478,500   |
| 24          | 23           | 680.40       | Special Grant<br>Fund Parks<br>Capital | Sportplex Facility Improvements        | \$478,500   |
|             |              |              |                                        |                                        |             |

PASSED AND APPROVED this the 16<sup>th</sup> day February, 2021.

\_\_\_\_\_  
Shelley Brophy, Mayor  
City of Nacogdoches

ATTEST:

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

Approved as to form: \_\_\_\_\_  
Robert Davis, Interim City Attorney

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

# Pilgram's Sportsplex Improvements

Parking/Security Lights

Entrance Improvements

Restroom

New Fence

Stripe Parking Lot

Soccer Nets

Scoreboard

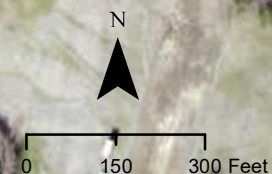
Emergency Operations Center

Recreation Area

Public Safety Area

K9 Training

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



Sources: ArcGIS 10.8.1  
Date Created: February 2, 2021

**PRESENTER:** Brian Bray, Community Services Director

**ITEM/SUBJECT:** Receive presentation on upcoming events and activities for 2021 and provide staff guidance on future events. (Community Services Director)

**SUMMARY/BACKGROUND:**

2020 was a year where most events were cancelled or postponed due to Covid-19 concerns. In 2021, we hope to reopen Nacogdoches and work with our partners in the community to plan new events and bring back community favorites. We know the health and safety of our community are of the utmost importance and we are thoroughly vetting (cost, location, budget, fees, etc) each event before approval. We will be flexible to the ever changing circumstances caused by COVID-19 but endeavor to bring fun and excitement to our community.

We have a slate of new events for 2021 and are planning a large signature event in late summer or early fall. Events are being planned collaboratively between the City of Nacogdoches and the Convention & Visitors Bureau (CVB) as well as our partners such as SFASU and NISD. Our new events aim to attract demographics that may have been missed in the past as well as bring people back to Nacogdoches on a recurring basis. Also included in these recurring events are opportunities to create weekend packages that will encourage visitors to stay the weekend in Nacogdoches and participate in several events while in town. Further, we are encouraging local businesses to plan events with participation from the City and CVB as needed.

We are seeking direction from council as to both timeliness and thoughts on the reintroduction of large events with enforced safety protocols as well as direction of the types of events council would like to see pursued. We are attempting to balance the cost to the city, return on investment and benefit to the community.

A move in this direction would be a shift in the mission and purpose for the CVB with a renewed emphasis on event planning/hosting. If approved by City Council, the CVB would broaden their scope of work and be responsible for planning, coordinating and implementing city and community events in the downtown area. Furthermore, facilitate initiatives to foster the connection between Nacogdoches business owners, non-profit groups and the city.

**FINANCIAL:**

None

**CITY CONTACT:** Brian W. Bray, Community Service Director  
[brayb@nactx.us](mailto:brayb@nactx.us)  
936-559-2960

- ATTACHMENTS:**
1. 2021 Event List
  2. 2021 Event Summary
  3. 2021 Event PPT

| Event Date        | Event Name                              | Hosting Group                | Contact Person          |
|-------------------|-----------------------------------------|------------------------------|-------------------------|
| January           |                                         |                              |                         |
| 1/8/2021          | Nac @ Night Movie                       | CVB                          | Joanna Temple           |
| 1/23/2021         | Brick Street Blues                      | Banita Creek                 | Kevin White             |
| 1/23/2021         | Jon Wolfe Concert                       | Banita Creek                 | Kevin White             |
| 1/30/2021         | Pecos and the Rooftops                  | Banita Creek                 | Kevin White             |
| 1/30/2021         | Women's Basketball Purple Out           | SFA Athletics                |                         |
| 1/31/2021         | Men's Basketball Purple Out             | SFA Athletics                |                         |
| February          |                                         |                              |                         |
| 2/6/2021          | Barsby Battle - Disc Golf               | Casey Jillson and Greg Barst | Hanna Andersen          |
| 2/6/2021          | Kolby Cooper                            | Banita Creek                 | Kevin White             |
| 2/11/2021         | Romance Package                         | Fredonia Hotel               | Ryan Russell            |
| 2/12/2021         | Nac @ Night Movie                       | CVB                          | Joanna Temple           |
| 2/13/2021         | Beads & Beer Event                      | Fredonia Brewery             | Jack Sullivan           |
| 2/13/2021         | Bugs & Zydeco, A Mardi Gras Celebration |                              |                         |
| 2/20/2021         | Jason Boland & The Stragglers           | Banita Creek Hall            | Kevin White             |
| 2/23 -2/27        | The Maids                               | SFA Theatre                  |                         |
| 2/26/2021         | 4th Friday Food Trucks                  | Main Street                  | Jessica Sowell          |
| 2/26/2021         | Back Porch Concert                      | CVB                          | Joanna Temple           |
| 2/27/2021         | Shop Nac First Day                      | Shop Nac First Committee     | Barbara Holl/Tyrone Cur |
| 2/27/2021         | Chris Colston                           | Banita Creek Hall            | Kevin White             |
| March             |                                         |                              |                         |
| 3/18/2021         | Women's Volleyball Purple Out           | SFA Athletics                |                         |
| 3/20/2021         | Historic Walking Tour                   | CVB and FoHNI                | Joanna Temple           |
| 3/22/2021         | Charles Bright Birthday Celebration     | CVB                          | Joanna Temple           |
| 3/26/2021         | Back Porch Concert                      | CVB                          | Joanna Temple           |
| 3/26/2021         | 4th Friday Food Trucks                  | Main Street                  | Jessica Sowell          |
| 3/27/2021         | Sip and Stroll                          | CVB                          | Joanna Temple           |
| 3/27/2021         | Lug and Chug                            | CVB                          | Jack Sullivan           |
| 3/27/2021         | Bloomin' VW Show                        | ETX VEE-DUB                  | Sammie Smith            |
| March/early April | Azalea Trail Season                     | CVB                          | Joanna Temple           |
| April             |                                         |                              |                         |
| Month Long        | Corporate Challenge                     | NPL                          | Brian Bray              |
| 4/1 - 4/3         | Devised Theatre Project                 | SFA Theatre Dept             |                         |
| 4/9/2021          | Women's soccer Purple Out               | SFA Athletics                |                         |
| 4/10/2021         | Wine Swirl                              | Main Street                  | Jessica Sowell          |
| 4/10/2021         | Randall King                            | Banita Creek                 | Kevin White             |
| 4/17/2021         | Historic Walking Tour                   | CVB and FoHNI                | Joanna Temple           |
| 4/20 - 4/24       | Talking With                            | SFA Theatre Dept             |                         |
| 4/23/2021         | 4th Friday Food Trucks                  | Main Street                  | Jessica Sowell          |
| 4/23/2021         | Backporch Concert/packet pick up        | CVB                          | Joanna Temple           |
| 4/24/2021         | Do Dat BBQ                              | United Way                   | Gary Ashcraft           |

|           |                             |                   |                 |
|-----------|-----------------------------|-------------------|-----------------|
| 4/24/2021 | Old Stone Fort Bicycle Ride | Rotary            | Ray Mitchum     |
| 4/24/21   | Read South Hall Band        | Banita Creek      | Kevin White     |
| 4/30/21   | Mens Baseball Purple OUT    | SFA Athletics     |                 |
|           | Kite Festival               | Helping House     | Amanda Johnson  |
|           | CWJC Annual Festival        | CWJC              | Helen Stevenson |
|           | Disability Pride Parade     | Mayor's Committee | Alan Larson     |

## May

|                |                          |                   |                |
|----------------|--------------------------|-------------------|----------------|
| 5/1/2021       | Historic Walking Tour    | CVB and FoHNI     | Joanna Temple  |
| 5/1/2021       | Brewfest                 | Nac Brew Club     | Jack Sullivan  |
| 5/1/2021       | Josh Ward                | Banita Creek      | Kevin White    |
| 5/1 - 5/8/2021 | Tourism Week             | CVB               | Joanna Temple  |
| 5/7 - 5/9/2021 | Sale on the Trail        | CVB               | Joanna Temple  |
| 5/7/2021       | SFA Graduation           | SFA               |                |
| 5/22/2021      | Cody Johnson Concert     | Banita Creek Hall | Kevin White    |
| 5/26/2021      | Full Moon Concert Series | CVB               | Joanna Temple  |
| 5/28/2021      | 4th Friday Food Trucks   | Main Street       | Jessica Sowell |

## June

|           |                               |                              |                    |
|-----------|-------------------------------|------------------------------|--------------------|
| 6/5/2021  | Disc Golf Tournament          |                              | Mark Sowell        |
| 6/11/2021 | Blueberry Bluegrass Concert   | Chamber subcommittee         | Angela Widerholder |
| 6/12/2021 | Running of the Blueberries 5K | NPR                          | Hanna Andersen     |
| 6/12/2021 | Texas Blueberry Festival      | Nac Chamber of Commerce      | Wayne Mitchell     |
| 6/19/2021 | Juneteenth                    | Progressive Leadership Group | Queen Handy        |
| 6/26/2021 | Full Moon Concert Series      | CVB                          | Joanna Temple      |
| 6/25/2021 | 4th Friday Food Trucks        | Main Street                  | Jessica Sowell     |

## July

|                  |                          |                   |                                 |
|------------------|--------------------------|-------------------|---------------------------------|
|                  | Freedom Fest Food Trucks | Jaycees & CVB     | Joanna Temple                   |
| 7/3/2021         | Freedom Fest             | Jaycees           | Joseph Darden                   |
| 7/23/2021        | Full Moon Concert Series | CVB               | Joanna Temple                   |
| 7/23/2021        | 4th Friday Food Trucks   | Main Street       | Jessica Sowell                  |
| 7/23/2021        | Backporch Concert        | CVB               | Joanna Temple                   |
| 7/23 - 7/25/2021 | Christmas in July        | CVB & Main Street | Joanna Temple or Jessica Sowell |

## August

|           |                        |                 |                |
|-----------|------------------------|-----------------|----------------|
| 8/24/2021 | Red Dirt Concert       | Main Street/CVB |                |
| 8/27/2021 | 4th Friday Food Trucks | Main Street     | Jessica Sowell |

## September

|                |                                |             |                      |
|----------------|--------------------------------|-------------|----------------------|
| 9/3 - 9/5/2021 | SFA HS Lumberjack Invitational | SFA         | Cody & Brionne Clark |
| 9/18/2021      | Full Moon Concert Series       | CVB         | Joanna Temple        |
| week of 9/19   | Hog and Log Week               | CVB         | Joanna Temple        |
| 9/23/2021      | Connonball Motorcycle Rally    | CVB         | Joanna Temple        |
| 9/24/2021      | 4th Friday Food Trucks         | Main Street | Jessica Sowell       |

|                   |                                        |                       |                        |
|-------------------|----------------------------------------|-----------------------|------------------------|
| 9/25/2021         | Nacogdoches Beefsteak                  | NCHF & Historic Sites | Jessica Sowell         |
| October           |                                        |                       |                        |
|                   | SFA Homecoming Parade                  | SFA                   | Downtown               |
|                   | SFA Homecoming Bonfire                 | SFA                   | Intermural Fields      |
|                   | Walk to End Alzheimers                 | Alzheimers Assocation | Crstal Capps           |
| 10/16/2021        | Nac at Night Movies                    | CVB                   | Joanna Temple          |
| 10/22/2021        | 4th Friday Food Trucks                 | Main Street           | Jessica Sowell         |
| 10/25/2021        | (Beginning) 9 Week of 9 Flags          | CVB                   | Joanna Temple          |
| November          |                                        |                       |                        |
| 11/1/2021         | Dia de los Muertos                     | NPL                   | Crystal Hicks          |
| 11/6/2021         | Veteran's Parade                       | Nac County LEO        | Erika Race             |
| 1/12 - 11/13/2021 | Merry Christmas Market                 | Main Street           | Jessica Sowell         |
| 11/14/2021        | Bert Rees Contest Kick Off             | CVB/Rees Jewlery      | Joanna Temple/Chay Ru  |
| 11/18 - 11/20     | Holiday in the Pines                   | NCJF                  |                        |
| 11/20/2021        | Nac at Night Movie                     | CVB                   | Joanna Temple          |
|                   | 4th Friday Food Truck                  | Main Street           | Jessica Sowell         |
| 11/25/2021        | Turkey Trot                            | United Way            | Gary Lee Ashcraft      |
| 11/27/2021        | Wassail Fest                           | Main Street           | Jessica Sowell         |
| December          |                                        |                       |                        |
|                   | Month Long Bert Rees Lighting Contest  | CVB                   | Joanna Temple          |
|                   | Month Long Downtown Decorating Contest | Main Street           | Jessica Sowell         |
| 12/4/2021         | Jingle Bell Run                        | Red House Winery      | Rikki Leigh Willoughby |
| 12/4/2021         | Christmas Parade                       | United Way            | Maury/Gary Lee         |
| 12/11/2021        | Nac at Night Movie                     | CVB                   | Joanna Temple          |
| 12/18/2021        | Nac at Night Movie                     | CVB                   | Joanna Temple          |
|                   | 4th Friday Food Truck                  | Main Street           | Jessica Sowell         |

| Location             | Description                                | Notes     | Cost |
|----------------------|--------------------------------------------|-----------|------|
| A.L. Mangham Airport | large screen                               |           |      |
| Mill Room            | Yummy venue for live blues music           |           |      |
| Banita Creek Hall    | Live music venue                           |           |      |
| Banita Creek Hall    | Live music venue                           |           |      |
| SfA Coliseum         |                                            |           |      |
| SFA Coliseum         |                                            |           |      |
| Pioneer Park         | Disc Golf tournament                       |           |      |
| Banita Creek Hall    | Live music venue                           |           |      |
| Hotel                | Thursday-Sunday package                    |           |      |
| A.L. Mangham Airport | large screen                               |           |      |
| Fredonia Brewery     | Celebration of Mardi Gras                  |           |      |
| Banita Creek hall    | Live Music Venue                           |           |      |
| Kennedy Auditorium   | 7:30 pm                                    |           |      |
| Downtown "U"         | food truck event to downtown. Ideally, we  |           |      |
| CVB Stage            | 7pm                                        | Friendly  |      |
| locations            | trucks and back porch concert              |           |      |
| Banita Creek hall    | Live Music Venue                           |           |      |
| Downtown             | FoHNI member                               |           |      |
| CVB Building         |                                            |           |      |
| CVB Stage            | 7pm                                        | Friendly  |      |
| Downtown "U"         |                                            |           |      |
| Downtown             | wine bars                                  |           |      |
| Fredonia Brewery     | offering for those who don't drink wine or |           |      |
| Festival Park        |                                            |           |      |
| Multiple Locations   |                                            |           |      |
| Multiple Locations   |                                            |           |      |
| TBD                  |                                            |           |      |
| Street               |                                            |           |      |
| Banita Creek Hall    | Live Music Venue                           |           |      |
| Downtown             | FoHNI member                               |           |      |
| Kennedy Auditorium   |                                            |           |      |
| Downtown "U"         |                                            |           |      |
| CVB Stage            | ride                                       |           |      |
| Expo Center          |                                            | confirmed |      |

|                   |                  |           |
|-------------------|------------------|-----------|
| Expo Center       |                  | confirmed |
| Banita Creek Hall | Live Music Venue |           |

A.L. Mangham Airport  
Festival Park

|          |              |
|----------|--------------|
| Downtown | FoHNI member |
|----------|--------------|

Expo Center

|                   |                  |
|-------------------|------------------|
| Banita Creek Hall | Live Music Venue |
|-------------------|------------------|

events and locations

Multiple Locations

|             |            |
|-------------|------------|
| Expo Center | Live Music |
|-------------|------------|

Airport/Festival Park

confirmed

Downtown "U"

Festival Park

Weekend

Park

Weekend

Downtown

Weekend

Festival Park

Downtown "U"

Festival Park

Festival Park

Weekend

Downtown "U"

CVB Stage

Downtown

businesses a summer boost

Festival Park

confirmed

Downtown "U"

Pecan Park

confirmed

Multiple Locations

Harley Davidson - competitions

Downtown

converge on the CVB square; followed

Downtown "U"

|                      |                         |
|----------------------|-------------------------|
| Mast Hall            | confirmed               |
|                      |                         |
|                      | Date not decided        |
|                      | Date not decided        |
| Festival Park        | Date not decided        |
| A.L. Mangham Airport |                         |
| Downtown "U"         |                         |
| Multiple Locations   | leading up to Christmas |
|                      |                         |
| Downtown             |                         |
| Downtown             | Weekend                 |
| Downtown             |                         |
| unnels               | Weekend                 |
|                      |                         |
| A.L. Mangham Airport |                         |
| Downtown "U"         | accommodate holiday     |
| Pecan Park           |                         |
| Downtown             |                         |
|                      |                         |
| Multiple Locations   |                         |
| Downtown             |                         |
| Downtown             |                         |
| Downtown             |                         |
| A.L. Mangham Airport |                         |
| A.L. Mangham Airport |                         |
| Downtown "U"         | accommodate holiday     |

| First Quarter     |                                     |                       |                          |                      |                                         |
|-------------------|-------------------------------------|-----------------------|--------------------------|----------------------|-----------------------------------------|
| Event Date        | Event Name                          | Hosting Group         | Contact Person           | Location             | Description                             |
| January           |                                     |                       |                          |                      |                                         |
| 1/8/2021          | Nac @ Night Movie                   | CVB                   | Joanna Temple            | A.L. Mangham Airport | the large screen                        |
| February          |                                     |                       |                          |                      |                                         |
| 2/11/2021         | Romance Package                     | Fredonia Hotel        | Ryan Russell             |                      |                                         |
| 2/12/2021         | Nac @ Night Movie                   | CVB                   | Joanna Temple            | A.L. Mangham Airport | the large screen                        |
| 2/13/2021         | Beads & Beer Event                  | Fredonia Brewery      | Jack Sullivan            | Fredonia Brewery     | Celebration of Mardi Gras               |
| 2/26/2021         | 4th Friday Food Trucks              | Main Street           | Jessica Sowell           | Downtown "U"         | monthly food truck event to downtown.   |
| 2/27/2021         | Shop Nac First Day                  | Shop Nac First Commit | Barbara Holl/Tyrone Curl | locations            | trucks and back porch concert           |
| March             |                                     |                       |                          |                      |                                         |
| 3/20/2021         | Historic Walking Tour               | CVB and FoHNI         | Joanna Temple            | Downtown             | FoHNI member                            |
| 3/22/2021         | Charles Bright Birthday Celebration | CVB                   | Joanna Temple            | CVB Building         |                                         |
| 3/26/2021         | Back Porch Concert                  | CVB                   | Joanna Temple            | CVB Stage            |                                         |
| 3/26/2021         | 4th Friday Food Trucks              | Main Street           | Jessica Sowell           | Downtown "U"         |                                         |
| 3/27/2021         | Sip and Stroll                      | CVB                   | Joanna Temple            | Downtown             | wine bars                               |
| 3/27/2021         | Lug and Chug                        | CVB                   | Jack Sullivan            | Fredonia Brewery     | offering for those who don't drink wine |
| 3/27/2021         | Bloomin' VW Show                    | ETX VEE-DUB           | Sammie Smith             | Festival Park        |                                         |
| March/early April | Azalea Trail Season                 | CVB                   | Joanna Temple            | Multiple Locations   |                                         |

**Second**

| Event Date | Event Name | Hosting Group |
|------------|------------|---------------|
|------------|------------|---------------|

**April**

|                        |                                  |               |
|------------------------|----------------------------------|---------------|
| late March/early April | Azalea Trail Season              | CVB           |
| Month Long             | Corporate Challenge              | NPL           |
| 4/10/2021              | Wine Swirl                       | Main Street   |
| 4/17/2021              | Historic Walking Tour            | CVB and FoHNI |
| 4/23/2021              | 4th Friday Food Trucks           | Main Street   |
| 4/23/2021              | Backporch Concert/packet pick up | CVB           |
| 4/24/2021              | Do Dat BBQ                       | United Way    |
| 4/24/2021              | Old Stone Fort Bicycle Ride      | Rotary        |
|                        | Kite Festival                    | Helping House |
|                        | CWJC Annual Festival             | CWJC          |
|                        | Disability Pride Parade          | CWJC          |

**May**

|                |                          |               |
|----------------|--------------------------|---------------|
| 5/1/2021       | Historic Walking Tour    | CVB and FoHNI |
| 5/1/2021       | Brewfest                 | Nac Brew Club |
| 5/1 - 5/8/2021 | Tourism Week             | CVB           |
| 5/7 - 5/9/2021 | Sale on the Trail        | CVB           |
| 5/7/2021       | SFA Graduation           | SFA           |
| 5/26/2021      | Full Moon Concert Series | CVB           |
| 5/28/2021      | 4th Friday Food Trucks   | Main Street   |

**June**

|           |                               |                              |
|-----------|-------------------------------|------------------------------|
| 6/5/2021  | Disc Golf Tournament          |                              |
| 6/11/2021 | Blueberry Bluegrass Concert   | Chamber subcommittee         |
| 6/12/2021 | Running of the Blueberries 5K | NPR                          |
| 6/12/2021 | Texas Blueberry Festival      | Nac Chamber of Commerce      |
| 6/19/2021 | Juneteenth                    | Progressive Leadership Group |
| 6/26/2021 | Full Moon Concert Series      | CVB                          |
| 6/25/2021 | 4th Friday Food Trucks        | Main Street                  |

| Quarter            |                       |                                         |
|--------------------|-----------------------|-----------------------------------------|
| Contact Person     | Location              | Description                             |
| Joanna Temple      | Multiple Locations    |                                         |
| Brian Bray         | Multiple Locations    |                                         |
| Jessica Sowell     | Street                |                                         |
| Joanna Temple      | Downtown              | member                                  |
| Jessica Sowell     | Downtown "U"          |                                         |
| Joanna Temple      | CVB Stage             | Packet pick up for STONE FORT bike ride |
| Gary Ashcraft      | Expo Center           |                                         |
| Ray Mitchum        | Expo Center           |                                         |
| Amanda Johnson     | A.L. Mangham Airport  |                                         |
| Helen Stevenson    | Festival Park         |                                         |
| Alan Larson        |                       |                                         |
| Joanna Temple      | Downtown              | member                                  |
| Jack Sullivan      | Expo Center           |                                         |
| Joanna Temple      | events and locations  |                                         |
| Joanna Temple      | Multiple Locations    |                                         |
| Joanna Temple      | Airport/Festival Park |                                         |
| Jessica Sowell     | Downtown "U"          |                                         |
| Mark Sowell        |                       |                                         |
| Angela Widerholder | Festival Park         |                                         |
| Hanna Andersen     | Park                  |                                         |
| Wayne Mitchell     | Downtown              |                                         |
| Queen Handy        | Festival Park         |                                         |
| Joanna Temple      |                       |                                         |
| Jessica Sowell     | Downtown "U"          |                                         |

| Third            |                                |                       |
|------------------|--------------------------------|-----------------------|
| Event Date       | Event Name                     | Hosting Group         |
| July             |                                |                       |
|                  | Freedom Fest Food Trucks       | Jaycees & CVB         |
| 7/3/2021         | Freedom Fest                   | Jaycees               |
| 7/23/2021        | Full Moon Concert Series       | CVB                   |
| 7/23/2021        | 4th Friday Food Trucks         | Main Street           |
| 7/23/2021        | Backporch Concert              | CVB                   |
| 7/23 - 7/25/2021 | Christmas in July              | CVB & Main Street     |
| August           |                                |                       |
| 8/24/2021        | Red Dirt Concert               | Main Street/CVB       |
| 8/27/2021        | 4th Friday Food Trucks         | Main Street           |
| September        |                                |                       |
| 9/3 - 9/5/2021   | SFA HS Lumberjack Invitational | SFA                   |
| 9/18/2021        | Full Moon Concert Series       | CVB                   |
| week of 9/19     | Hog and Log Week               | CVB                   |
| 9/23/2021        | Connonball Motorcycle Rally    | CVB                   |
| 9/24/2021        | 4th Friday Food Trucks         | Main Street           |
| 9/25/2021        | Nacogdoches Beefsteak          | NCHF & Historic Sites |

| Quarter                         |                    |                                  |
|---------------------------------|--------------------|----------------------------------|
| Contact Person                  | Location           | Description                      |
| Joanna Temple                   | Festival Park      |                                  |
| Joseph Darden                   | Festival Park      |                                  |
| Joanna Temple                   |                    |                                  |
| Jessica Sowell                  | Downtown "U"       |                                  |
| Joanna Temple                   | CVB Stage          |                                  |
| Joanna Temple or Jessica Sowell | Downtown           | businesses a summer boost        |
|                                 |                    |                                  |
|                                 | Festival Park      |                                  |
| Jessica Sowell                  | Downtown "U"       |                                  |
|                                 |                    |                                  |
| Cody & Brionne Clark            | Pecan Park         |                                  |
| Joanna Temple                   |                    |                                  |
| Joanna Temple                   | Multiple Locations | Lumberjack Harley Davidson -     |
| Joanna Temple                   | Downtown           | will converge on the CVB square; |
| Jessica Sowell                  | Downtown "U"       |                                  |
| Jessica Sowell                  | Mast Hall          |                                  |

| Fol                |                               |                       |
|--------------------|-------------------------------|-----------------------|
| Event Date         | Event Name                    | Hosting Group         |
| October            |                               |                       |
|                    | SFA Homecoming Parade         | SFA                   |
|                    | SFA Homecoming Bonfire        | SFA                   |
|                    | Walk to End Alzheimers        | Alzheimers Assocation |
| 10/16/2021         | Nac at Night Movies           | CVB                   |
| 10/22/2021         | 4th Friday Food Trucks        | Main Street           |
| 10/25/2021         | (Beginning) 9 Week of 9 Flags | CVB                   |
| November           |                               |                       |
| 11/1/2021          | Dia de los Muertos            | NPL                   |
| 11/6/2021          | Veteran's Parade              | Nac County LEO        |
| 11/12 - 11/13/2021 | Merry Christmas Market        | Main Street           |
| 11/14/2021         | Bert Rees Contest Kick Off    | CVB/Rees Jewlery      |
| 11/18 - 11/20      | Holiday in the Pines          | NCJF                  |
| 11/20/2021         | Nac at Night Movie            | CVB                   |
|                    | 4th Friday Food Truck         | Main Street           |
| 11/25/2021         | Turkey Trot                   | United Way            |
| 11/27/2021         | Wassail Fest                  | Main Street           |
| December           |                               |                       |
| Month Long         | Bert Rees Lighting Contest    | CVB                   |
| Month Long         | Downtown Decorating Contest   | Main Street           |
| 12/4/2021          | Jingle Bell Run               | Red House Winery      |
| 12/4/2021          | Christmas Parade              | United Way            |
| 12/11/2021         | Nac at Night Movie            | CVB                   |
| 12/18/2021         | Nac at Night Movie            | CVB                   |
|                    | 4th Friday Food Truck         | Main Street           |

## Fourth Quarter

| Contact Person             | Location             | Description             |
|----------------------------|----------------------|-------------------------|
| Downtown                   |                      |                         |
| Intermural Fields          |                      |                         |
| Crystal Capps              | Festival Park        |                         |
| Joanna Temple              | A.L. Mangham Airport |                         |
| Jessica Sowell             | Downtown "U"         |                         |
| Joanna Temple              | Multiple Locations   | leading up to Christmas |
| Crystal Hicks              | Downtown             |                         |
| Erika Race                 | Downtown             |                         |
| Jessica Sowell             | Downtown             |                         |
| Joanna Temple/Chay Runnels |                      |                         |
| Joanna Temple              | A.L. Mangham Airport |                         |
| Jessica Sowell             | Downtown "U"         | accommodate holiday     |
| Gary Lee Ashcraft          | Pecan Park           |                         |
| Jessica Sowell             | Downtown             |                         |
| Joanna Temple              | Multiple Locations   |                         |
| Jessica Sowell             | Downtown             |                         |
| Rikki Leigh Willoughby     | Downtown             |                         |
| Maury/Gary Lee             | Downtown             |                         |
| Joanna Temple              | A.L. Mangham Airport |                         |
| Joanna Temple              | A.L. Mangham Airport |                         |
| Jessica Sowell             | Downtown "U"         | accommodate holiday     |

## 2021 New Events

- Nac Snack Fridays
- Historic Walking Tours (Spring)
- Back Porch Concerts
- Full Moon Summer Concert Series
- Sip and Stroll
- Lug and Chug
- Brewfest
- Christmas in July Shopping Event
- Cannonball Motorcycle Rally
- City Hosted Summer Event

### Paired Events/Weekend Packages

*\*These events paired naturally together and give us the opportunity to get lodging packages and sell the weekend as a whole.*

#### **February 12 & 13 - “For the Love of Mardi Gras” weekend**

*Nac at Night Movie, Beer & Beads Event, Backstage Concert*

#### **February 26 & 27**

*Nac Snack Food Truck Friday, Shop Nac First Day, Who Dat? Gumbo Cook Off*

#### **March 26 & 27**

*Nac Snack Food Truck Friday, Sip and Stroll, Lug and Chug, Bloomin VW Show*

#### **April 23 & 24**

*Nac Snack Food Truck Friday, Backporch Concert, Do Dat BBQ, Stone Fort Bicycle Ride*

#### **June 11 & 12 - Blueberry Weekend**

*Blueberry Bluegrass Concert, Running of the Blueberries 5K, Texas Blueberry Festival*

#### **June 25 & 26**

*Full Moon Concert Series and Nac Snack Food Truck Friday*

#### **July 23 - 25 - Christmas in July Weekend**

*Nac Snack Food Truck Friday, Full Moon Concert Series, Backporch Concert, Christmas in July Shopping Event*

#### **August 27 & 28**

*Nac Snack Food Truck Friday and Summer Concert*

#### **September 23 - 25**

*Cannonball Motorcycle Rally, Snack Nac Food Truck Friday, Nacogdoches Beefsteak Dinner*

## Events with City Cost Associated

Not every event can be approved. Permitting events allows us to vet events that we can support and those we can't. A benefit vs. cost/use of resources needs to be conducted to determine the impact on the City staff and the City budget.

### **Large Event**

#### **Texas Blueberry Festival**

City Share: \$16,000.00

Services Used: Public Works, Parks and Police

Net Direct ROI: \$18,615

Business sales total - \$973,382, local total tax receipts - \$20,336

#### **Freedom Fest**

City Share: \$19,000.00

Services Used: Public Works, Police and Parks

Net Direct ROI: \$576

Business sales total - \$29,609, local total tax receipts - \$628

### **Medium Event**

#### **Wine Swirl**

City Share: \$5,000.00

Services Used: Public Works, Police and Parks

Net Direct ROI: \$1,283

Business sales total - \$45,101, local total tax receipts - \$1,362

### **Small Event**

#### **Nacogdoches Open**

City Share: \$2,500.00

Services used: Parks

Net Direct ROI: \$2,305

Business sales total - \$93,434, local total tax receipts - \$2,470

#### **Dia de los Muertos**

City Share: \$2,866.00

Services used: Public Works, Parks and Library

Net Direct ROI: \$791

Business sales total - \$27,538, local total tax receipts - \$840

# 2021 Nacogdoches Event

## Line Up

# New Year, New Direction

We believe the community is ready to open back up with the safe reinstitution of public programs and events.

## New 2021 Events

Nac Snack Fridays (Food Trucks)

Historic Walking Tours

Back Porch Concerts

Full Moon Summer Concert Series

Sip and Stroll

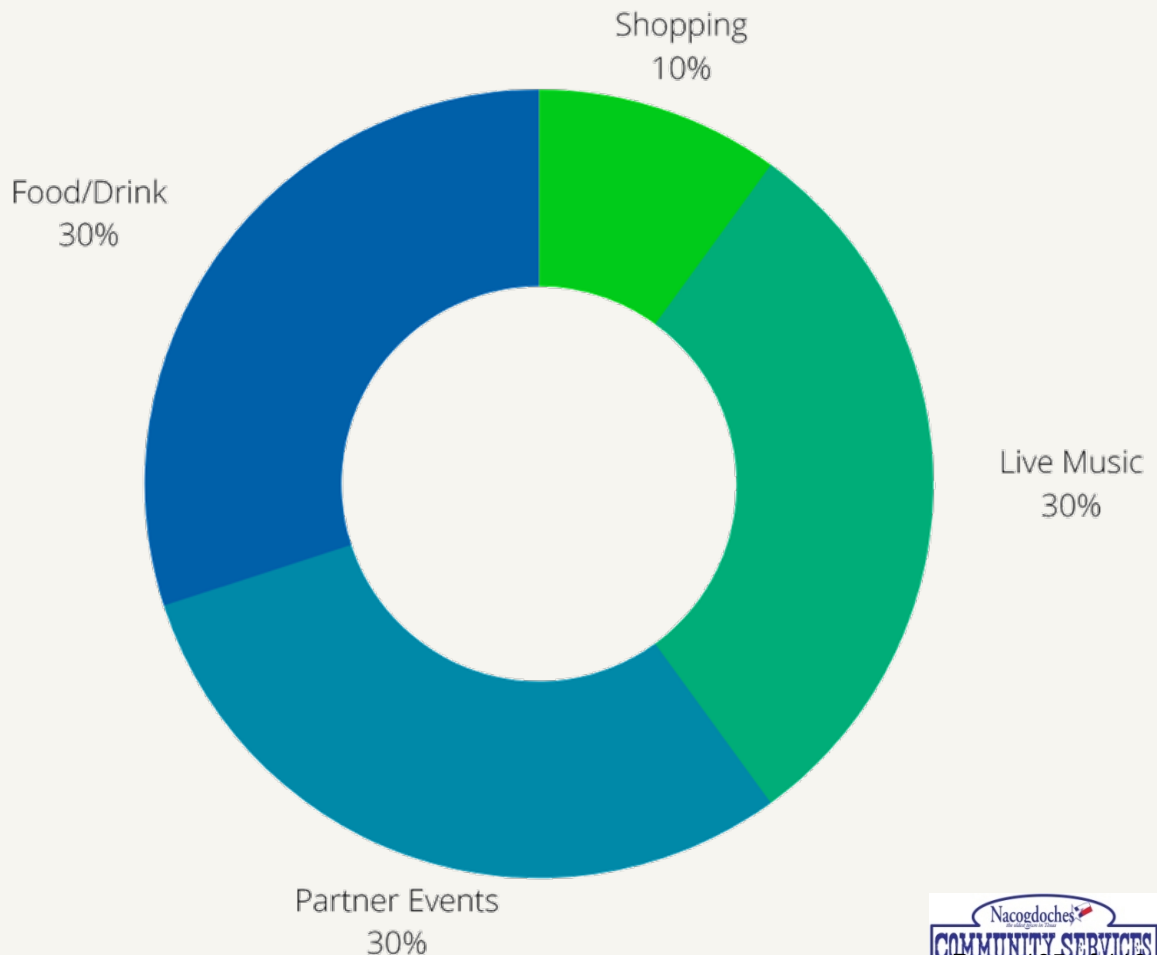
Lug and Chug

Brewfest

Christmas in July Shopping Event

Cannonball Motorcycle Rally

City Hosted Summer Event



# Planning as a Community



This year we are looking at event planning as a community project.

Events are sponsored and planned by not just one organization, but many.

Events are planned in groups in order to offer multiple options for visitors and encourage overnight stays.

## Proposed Categories

# Nacogdoches Events

Not every event can be approved.

Permitting events allows the City to vet events that we can support and those we can't. A benefit vs. cost/use of resources needs to be conducted to determine the impact on City staff and budgets.

**Category A**

attendance  
> 1000

10-12 month lead time

**Category B**

attendance  
500-1000

6-8 month lead time

**Category C**

attendance  
200-500

3 month  
lead time

**Category D**

attendance  
<200  
2 week  
lead time

# Event Coordination and Process

- Utilize CVB staff as Event Coordinator
  - Implement application form, fee & process
  - Facilitate coordination and review with City departments
  - Issue approval or denial to applicant
- Would require change in direction for CVB
  - Add special event planning to scope of work

# Guidance:

Are we missing any types of events?  
What size events would you like to see?

Seeking direction from Council on proceeding with events for 2021

If direction is to proceed, then:

- Modify scope of work for CVB staff
- Create a budget for event implementation
- Proceed with scheduling and coordination

---

# Questions?

**PRESENTER:** Steve Bartlett, Public Works Director

**ITEM/SUBJECT:** Consider authorizing staff to submit a preliminary application for a sidewalk project inside the City limits, partially funded through the TxDOT 2021 Transportation Alternatives Set-Aside (TA) program. (Public Works Director)

**SUMMARY/BACKGROUND:** Texas Department of Transportation (TxDOT) Public Transportation Division administers federal funding programs, including Federal Highway Administration (FHWA) funds relating to TxDOT's Bicycle and Pedestrian Program and Federal Transit Administration (FTA) funds for transit in Texas. These funds are for specific purposes and have separate eligibility and funding requirements. The Public Transportation Division is currently seeking grant applications for locally sponsored bicycle and pedestrian infrastructure projects in communities less than 200,000.

TxDOT's 2021 TA Call for Projects features a two-step application process. Staff is recommending that we submit a Preliminary Application for the construction of a new sidewalk along portions of South Street. The City previously submitted a shorter version of this project in 2019 under the Safe Routes to Schools program but was not chosen for an award. The project would entail approximately 7,500 linear feet of new walkways to complete a single contiguous sidewalk along portions of South Street where sidewalks are currently missing. This project will allow pedestrian and bicycle connectivity to and from downtown, fostering connections to much of our other sidewalk system. Nacogdoches has approximately 26 miles of sidewalks with several new sidewalk projects currently under construction.

The project is estimated to cost approximately \$1,500,000. Transportation Set-Aside Projects typically require a 20% funding match, however, Nacogdoches is eligible for Transportation Development Credits which may allow up to 100% of the federal TA funds to be applied to the project in lieu of a local match.

The Preliminary Applications are due March 1, 2021. The top projects will be selected by April 12th for further consideration with a final Detailed Application due by June 14th. Projects will be selected for award by October 2021.

**FINANCIAL:**

No financial impact associated with this item at this time.

**CITY CONTACT:** Steve Bartlett, PE - Director of Public Works, City Engineer  
[bartletts@nactx.us](mailto:bartletts@nactx.us)  
936-559-2522

**ATTACHMENTS:** 1. TxDOT 2021 TA Sidewalks Grant



# **TxDOT 2021 Transportation Alternatives Set-Aside South Street Sidewalk Project**

- FHWA funded projects to include pedestrian and bicycle improvements
- Competitive grant funds for up to 100% of project cost
- Proposed 7500 LF of new sidewalk along South Street (bridge to S Loop)
- Estimated cost \$1,500,000
- Preliminary Applications due March 1<sup>st</sup>.  
Detailed Applications due June 14<sup>th</sup>.





## City Council Meeting

Date: February 23, 2021

Agenda Item: 7.E.

---

**PRESENTER:** Keith Kiplinger, Fire Chief

**ITEM/SUBJECT:** Receive a report from Fire Chief Keith Kiplinger and hold a discussion with City Council regarding an update on the damage and recovery efforts of the February 2021 Winter Storms that affected Nacogdoches, Texas. (Fire Chief)

**SUMMARY/BACKGROUND:** This report will be a high level overview of damage and recovery efforts of the winter storm that affected Nacogdoches the week of February 15-19, 2021.

**FINANCIAL:**

No financial impact associated with this item

**CITY CONTACT:** Keith Kiplinger, Fire Chief  
[kiplingerk@nactx.us](mailto:kiplingerk@nactx.us)  
936-559-2540

**ATTACHMENTS:**

**PRESENTER:** Keith Kiplinger, Fire Chief

**ITEM/SUBJECT:** Consider adoption of a resolution of the City Council of the City of Nacogdoches, Texas authorized by Section 418.108 of the Texas Government Code, declaring, continuing and extending a local state of disaster in the City of Nacogdoches, Texas due to the public health and safety emergency created by the February 2021 winter storms that affected the entire State of Texas; and providing an effective date. (Fire Chief)

**SUMMARY/BACKGROUND:** On February 13, 2021, Mayor Brophy issued a Mayoral Declaration of Local State of Disaster Due to Public Health and Safety Emergency due to the February 2021 severe winter storms. On February 19, 2021, Mayor Brophy issued a second Mayoral Declaration of Local State of Disaster Due to Public Health and Safety Emergency due to the February 2021 severe winter storms and the storm recovery efforts. Per Chapter 418 of the Texas Government Code, this Declaration can only be effective for seven (7) days without a vote of the governing body to extend the Disaster Declaration beyond seven (7) days (in this case February 26, 2021, being the last day).

Affirmative action by the City Council will allow the Mayor's Declaration for Local State of Disaster Due to Public Health Emergency to remain in effect beyond the initial 7-day statutory period referenced above. To assist residents and businesses expedite recovery efforts, the City is recommending that inspection fees related to damages caused by the February 2021 winter storms (plumbing, electrical, roofing, fence) be waived.

The resolution does not have an expiration date for the Declaration but rather allows the City Council to revoke the Declaration when the time is appropriate.

**FINANCIAL:**

No financial impact associated with this item

**CITY CONTACT:** Keith Kiplinger, Fire Chief  
kiplingerk@nactx.us  
936-559-2540

**ATTACHMENTS:** 1. Disaster Declaration  
2. Resolution-Extending Disaster Declaration

DECLARATION OF A LOCAL STATE OF DISASTER  
FOR THE CITY OF NACOGDOCHES, TEXAS

---

WHEREAS, the City of Nacogdoches, Texas, on this the 19th day of February, 2021, is suffering widespread or severe damage, injury and loss of life and property due to the effects of a severe winter storm; and

WHEREAS, the aforementioned situation has included conditions consisting of heavy freezing rainfall, snow, and extremely low and freezing temperatures; all of which create a public safety hazard including property damage, utility outages, and inflow of evacuees seeking shelter in the City of Nacogdoches; and

WHEREAS, the public water supply system has failed due to freezing temperatures and power outages, no water is available for fire protection, critical facilities are operating on generator power or have no power and over 5,000 residents are currently without power, and;

WHEREAS, Chapter 418 of the Texas Government Code authorizes the presiding officer of a political subdivision to declare a local state of disaster; and

WHEREAS, the MAYOR of the City of Nacogdoches, Texas has determined that extraordinary measures to protect life, alleviate the suffering of people, and to protect or rehabilitate property are necessary and hereby ordered.

NOW, THEREFORE, BE IT PROCLAIMED BY THE MAYOR OF THE CITY OF NACOGDOCHES, TEXAS:

- I. That a local state of disaster is hereby declared for the City of Nacogdoches pursuant to §418.108(a) of the Texas Government Code.
- II. Pursuant to §418.108(b) of the Texas Government Code, the state of disaster shall continue for a period of not more than seven days from the date of this declaration unless continued or renewed by the City Council of the City of Nacogdoches.
- III. Pursuant to §418.108(c) of the Texas Government Code, this declaration of a local state of disaster shall be given prompt and general publicity and shall be filed promptly with the City Secretary.
- IV. Pursuant to §418.108(d) of the Texas Government Code, this declaration of a local state of disaster activates the City of Nacogdoches Emergency Management Plan.
- V. Pursuant to Section 5(G) of the City of Nacogdoches Emergency Management Plan all required permit and inspection fees related to repairs necessitated by storm damage are hereby waived.
- VI. That this declaration shall take effect immediately from and after its issuance.

ORDERED this the 19th day of February, 2021.

---

Shelley Brophy, Mayor

City of Nacogdoches, Texas  
ATTEST:

---

Jan Vinson, City Secretary

## **RESOLUTION NO. 1268-02-21**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NACOGDOCHES, TEXAS AUTHORIZED BY SECTION 418.108 OF THE TEXAS GOVERNMENT CODE, DECLARING, CONTINUATING AND EXTENDING A LOCAL STATE OF DISASTER IN THE CITY OF NACOGDOCHES, TEXAS DUE TO THE PUBLIC HEALTH EMERGENCY CREATED BY WINTER STORM VIOLA; AND PROVIDING AN EFFECTIVE DATE.**

### **RECITALS**

**WHEREAS**, the Texas Disaster Act, Chapter 418 of the Texas Government Code, allows the City of Nacogdoches to seek State aid in the case of a disaster defined as the imminent threat of epidemic; and

**WHEREAS**, on February 19, 2021, the Mayor issued a declaration of local disaster for the City of Nacogdoches due to the emergency situation posed by Winter Storm Viola and disaster mitigation and recovery measures be taken; and

**WHEREAS**, a declaration of local disaster activates the appropriate recovery and rehabilitation aspects of all applicable local or interjurisdictional emergency management plans and authorizes the furnishing of aid and assistance under the declaration; and

**WHEREAS**, Section 418.108(b) of the Texas Government Code provides that a local state of disaster may not be continued for a period in excess of seven (7) days without the consent of the governing body of the political subdivision; and authorizes the furnishing of aid and assistance under the declaration; and

**WHEREAS**, section 418(b) of the Texas Government Code provides that a local state of disaster may not be continued for a period in excess of seven (7) days without the consent of the governing body of the political subdivision; and authorizes this Resolution declaring and extending a local state of disaster.

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

**SECTION 1.** The continuation and extension of a declaration of a local state of disaster is made by the Nacogdoches City Council on this the 23<sup>rd</sup> day of February, 2021.

**SECTION 2.** The continuation and extension of the aforementioned declaration shall be given prompt and general publicity and shall be promptly filed with the City Secretary as required by Section 418.108(c) of the Texas Government Code.

**SECTION 3.** Pursuant to Section 5(G) of the City of Nacogdoches Emergency Management Plan all required permit and inspection fees related to repairs necessitated by storm damage are hereby waived.

**SECTION 4.** This declaration will remain in effect until terminated by further action of the Nacogdoches City Council.

**SECTION 5.** That this declaration shall take effect immediately from and after its issuance.

**APPROVED AND ADOPTED** at a special meeting of the Nacogdoches City Council on this 23<sup>rd</sup> day of February, 2021.

**ATTEST:**

**CITY OF NACOGDOCHES**

---

Jan Vinson, City Secretary

---

Shelley Brophy, Mayor

**APPROVED AS TO FORM**

---

Robert Davis, City Attorney



## City Council Meeting

Date: February 23, 2021

Agenda Item: 8.A.

---

**PRESENTER:** Mario Canizares, City Manager

**ITEM/SUBJECT:** Personnel Matters – Pursuant to Texas Government Code Section 551-074, deliberations regarding the appointment or employment of a public officer or employee. The subject of this Executive Session is to discuss appointment or employment related matters concerning City Attorney search.

**SUMMARY/BACKGROUND:**

**FINANCIAL:**

No financial impact associated with this item

**CITY CONTACT:** Mario Canizares, City Manager  
[canizaresm@nactx.us](mailto:canizaresm@nactx.us)  
936-559-2501

**ATTACHMENTS:**