



September 19, 2023

Notice is hereby given of a Regular Meeting of Nacogdoches City Council to be held on the above date in the City Council Chambers of City Hall, 202 E. Pilar Street, Nacogdoches, Texas, beginning at 5:30 p.m. for the purpose of considering the following agenda items.

Some City Council Members may attend via videoconference but a quorum of the City Council and the Presiding Officer will be present at the above-stated physical location. The meeting will be streamed live at <https://www.nactx.us/21>. There will be an opportunity for the public to comment on agenda items either by teleconference or in person in Council Chambers.

Members of the public who wish to submit comments on a listed agenda item by telephone must contact the City Secretary's office by email at lewisr@nactx.us or by calling 936-559-2506 and providing their name, telephone number and relevant agenda item upon which they wish to speak. All requests to make comments must be received by 12:00 p.m. on Tuesday, September 19, 2023. For all timely requests received, staff will call the submitted phone numbers directly during the meeting when the corresponding item comes up for comment. NOTE: The incoming phone call from City staff will be an unfamiliar number.

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

1. CALL TO ORDER.
2. PLEDGE OF ALLEGIANCE.
3. OPEN FORUM. Open Forum is an opportunity for citizens to speak about items not listed on the agenda. In order to address City Council please complete the Open Forum Form and submit it to the City Secretary prior to the start of the meeting. In accordance with the Texas Open Meetings Act, City Council shall not discuss, deliberate, or make any decisions on items discussed during Open Forum. Comments are limited to 3 minutes per person. Open Forum is limited to the first 5 citizens who submit an Open Forum Form.
4. ITEMS TO BE REMOVED FROM CONSENT AGENDA.
5. CONSENT AGENDA: Items included under Consent Agenda require little or no deliberation by Council. Approval of Consent Agenda authorizes the City Manager or his designee to proceed with conclusion of each in accordance with staff recommendations as reflected in the minutes of this meeting.
 - A. Consider approval regarding the police department's annual police car purchase. We are asking to buy our annual police cars, (four marked police cars and one civilian car) not to exceed the \$400,000 allotment. (Assistant Chief of Police)
 - B. Consider approval of a Ground Lease Agreement between the City of Nacogdoches and the Board of Regents of the Texas A&M University System, for the benefit of the Texas A&M Forest Service, to renew the lease of a certain tract of land owned by the City and located at 4126 Old Tyler Road. (City Attorney)

- C. Consider approval of minutes for the September 5, 2023 Regular Meeting. (Deputy City Secretary)
 - D. Consider approval of an agreement between the City of Nacogdoches and the Convention and Visitors Bureau for professional services. (Interim Director CVB)
6. REGULAR AGENDA: City Council will receive staff recommendations and public input on the following items, and may deliberate and take formal action on the item.
- A. Receive an annual report from the Boys and Girls Club of Deep East Texas. (Community Services Interim Director and Steve Davidson, President Boys and Girls Clubs of Deep East Texas)
 - B. Consider approval of an agreement between the City of Nacogdoches and the Boys and Girls Club of Deep East Texas for essential services in an amount not to exceed \$70,000. (Community Services Interim Director)
 - C. Receive annual report from Keep Nacogdoches Beautiful. (Community Services Interim Director and Ashley Villareal, KNB Director)
 - D. Consider approval of an agreement between the City of Nacogdoches and Keep Nacogdoches Beautiful for essential services. (Community Services Interim Director)
 - E. **Public Hearing:** Consider approval for a Specific Use Permit for Light Manufacturing/Assembly in a B-2, General Business district, on Lots 4 & 5 of the Reese No. 2 Subdivision located at 2524 South Street and Lot 77-B-1, City Block 56, located at 2516 South Street. This request has been submitted by Ceasar Escalante. (Planning Technician)
 - F. Consider approval of a contract by and between the City of Nacogdoches and Tiger Creek Enterprises for the FM 1878 Water Line Improvements Project in a not-to-exceed amount of \$119,047.50. (Assistant Director of Public Works)
 - G. Consider approval of an ordinance amending ARTICLE II, DIVISION 1, of the City of Nacogdoches Code of Ordinances to add Sections 98-30, 98-31, 98-32 and 98-33 to require any person excavating within the public right-of-way to obtain line location information; addressing construction around marked and unmarked utility lines within the public right-of-way; providing a penalty; providing an effective date; and providing for related matters. (Director of Public Works/City Engineer)
 - H. Consider approval of a contract between City of Nacogdoches and Craig's Dirt Work for the Lake Nacogdoches Accessible Walkway project in an amount not-to-exceed \$109,373.00. (Interim Community Services Director)
 - I. Consider approval of a resolution related to the use of a general obligation bond if approved by the voters of the City of Nacogdoches for improvements to the City's

airport. (City Attorney)

7. ADJOURN.



Rhonda Lewis,
Deputy City Secretary



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

CERTIFICATION

I certify the notice of meeting was posted in the directory outside of City Hall, 202 E. Pilar Street, Nacogdoches, Texas on September 14, 2023 at 5 p.m., and remained posted until the meeting convened.

Rhonda Lewis, Deputy City Secretary

PRESENTER: Dan Taravella, Assistant Police Chief

ITEM/SUBJECT: Consider approval regarding the police department's annual police car purchase. We are asking to buy our annual police cars, (four marked police cars and one civilian car) not to exceed the \$400,000 allotment. (Assistant Chief of Police)

SUMMARY/BACKGROUND: The Nacogdoches Police Department is requesting approval to purchase a total of five (5) new year 2024 model vehicles. Four to six vehicles have been the norm for the police department each year, depending on our needs and current pricing. The price increases on vehicles and equipment have made 6 vehicles unaffordable at this time. This year we are seeking to diversify our fleet with four (4) marked Ford F150 4WD trucks and one (1) civilian model Ford Explorer. The trucks will be assigned to patrol and function as routine patrol vehicles but with 4WD and will be a huge asset in unusual circumstances and weather-related events. We found ourselves at a disadvantage during the 2021 ice storm with no 4WD vehicles. The vehicles will come from Tipton Ford under the TIPS (The Interlocal Purchasing System) state contract #230204. The purchase will be for the four (4) F150 police trucks and the 1 Ford Explorer SUV for a total of \$232,762.10. The Explorer will be a civilian employee vehicle with no emergency equipment at all. NPD has about 28 civilian employees (about 1/3 of our employee staff), most of whom are required to have annual training for their licenses and some of whom drive daily for their job responsibilities. Currently, they use either a 2009 Dodge Charger or a 2005 Ford Crown Vic, both with high mileage and not suitable for long trips to out-of-town conferences, etc. The total cost for the vehicles, all equipment and installation is \$398,246.96.

The vehicles will be shipped to Defender Supply for all purchased equipment, such as lights, sirens, radios, cameras, flashlights and decals to be installed and outfitted for a total price of \$165,484.86. These trucks will fulfill our goal of being able to serve and access the community in different capacities, carry large items of evidence and operate during emergency management incidents.

This purchase will replace vehicles dating back to 2009 that are barely still in operation with high mileage, frequent repairs and out of factory warranties for power train issues (we've had to replace three costly patrol car transmissions this year).

This partnership with Tipton Ford comes at a good time for both parties. For approximately the last three years, the city has tried to shop locally for our police vehicles and Tipton has now made this possible by being a part of a state contract system at a time when we have a need for their product.

FINANCIAL:

Item is budgeted:

Account No.: 60.60.680.20

Account Name: *Vehicle Replacement Capital*

Amount: \$398,246.96

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

Not Applicable

CITY CONTACT: Dan Taravella, Assistant Chief of Police
taravellad@nactx.us
(936) 559-2610

ATTACHMENTS: 1. 23-24 Vehicle Purchase PP
2. 23~24 Police Veh Purchase

Purchase Request Summary

A total of five (5) vehicles.

Three (3) marked Ford Police F-150's

One (1) civilian Ford Explorer SUV

Total vehicle cost	\$232,762.10
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Total Equipment and Outfitting	\$165,484.86
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Grand Total	\$398,246.96
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City of Nacogdoches, Texas Bid Tabulation Sheet

DATE: 9/11/2023

REQUISITION NUMBER:

DEPARTMENT: Police

Item No.	Qty.	UOM	Description	BIDDER A		BIDDER B		
				Unit Cost	Extension	Unit Cost	Extension	
1	4	ea	Four (4) 2024 Ford F150 Police Responder 4WD patrol trucks through TIPS Contract 230204. To be delivered to Defender Supply for outfitting.	\$47,600.81	\$190,403.24	\$0.00	\$0.00	
2	1	ea	One (1) 2024 Ford Explorer 4WD under TIPS contract 230204.	\$42,008.86	\$42,008.86	\$0.00	\$0.00	
3	1	ea	TIPS contract 230204 fee.	\$350.00	\$350.00	\$0.00	\$0.00	
4	0			\$0.00	\$0.00	\$0.00	\$0.00	
5	0			\$0.00	\$0.00	\$0.00	\$0.00	
TOTAL:					\$232,762.10	TOTAL:	\$0.00	TOT

BIDDER A:

Company Name: Tipton Ford
Contact: Ray Mitchum
Phone: 936-553-3476
Address: 1115 North St, Nacogdoches, Tx 75961

BIDDER B:

Company Name:
Contact:
Phone:
Address:

BIDDER C:

Company Name:
Contact:
Phone:
Address:

TABULATED BY: Dan Taravella 



City of Nacogdoches, Texas Purchase Requisition

Department Police

Requisition #: _____

Date 9/11/2023

(Purchasing Department Use only)

Purchase Order #: _____

Ship to Address Tipton Ford 1115 North St Nac Tx

Item #	Description & Specifications	Fund # Dept. # Acct. #	Qty.	Unit of Measure	Budget Amount	
					Each	Extension
1	Four (4) 2024 Ford F150 Police Responder patrol trucks through TIPS contract 230204 to be delivered to Defender Supply for outfitting.	60.60.680.20	4		\$47,600.81	\$190,403.24
2	One (1) 2024 Ford Explorer 4WD through TIPS contract 230204.	60.60.680.20	1		\$42,008.86	\$42,008.86
3	TIPS contract fee	60.60.680.20	1		\$350.00	\$350.00
4						\$0.00
5						\$0.00
6						\$0.00
7			0			\$0.00
8			0		\$0.00	\$0.00
					TOTAL:	\$232,762.10

Intended Use

Annual police car purchase replacing patrol cars and poor condition unmarked civilian cars. TIPS contract 2030204 through Tipton Ford.

Dan Taravella 9/11/2023
Requested By _____ Date _____

Finance Approval _____ Date _____

Scott Weems 9/11/2023
Dept. Head _____ Date _____
Approval _____

Administration Approval _____ Date _____



City of Nacogdoches, Texas Bid Tabulation Sheet

DATE: 9/11/2023

REQUISITION NUMBER: _____

DEPARTMENT: Police

Item No.	Qty.	UOM	Description	BIDDER A		BIDDER B		
				Unit Cost	Extension	Unit Cost	Extension	
1	1	ea	Four (4) Harris XL 200M police car radios, four (4) Harris XL 200P portable police car radios, radio chargers, all coax, antenas, wiring and mounting hardware through Interlocal Agreement.	\$50,763.58	\$50,763.58	\$0.00	\$0.00	
2	0	ea			\$0.00	\$0.00	\$0.00	
3	0	ea			\$0.00	\$0.00	\$0.00	
4	0			\$0.00	\$0.00	\$0.00	\$0.00	
5	0			\$0.00	\$0.00	\$0.00	\$0.00	
TOTAL:					\$50,763.58	TOTAL:	\$0.00	TOT

BIDDER A:

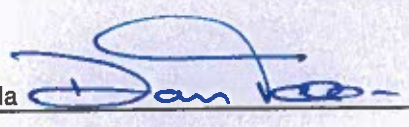
Company Name: LCRA
Contact: Blanca Garcia
Phone: 512-730-5617
Address: 6641 E. B en White Blvd, Austin Tx 78744

BIDDER B:

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

BIDDER C:

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

TABULATED BY: Dan Taravella 



City of Nacogdoches, Texas Purchase Requisition

Department Police

Requisition #: _____

Date 9/11/2023

(Purchasing Department Use only)

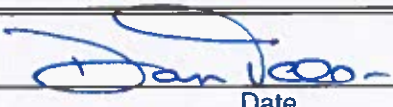
Purchase Order #: _____

Ship to Address LCRA, 6641 E. Ben White Blvd, Austin Tx
78744

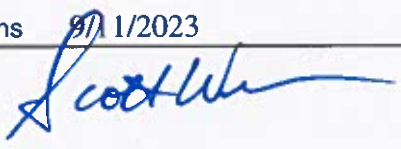
Item #	Description & Specifications	Fund # Dept. # Acct. #	Qty.	Unit of Measure	Budget Amount	
					Each	Extension
1	Four (4) Harris XL 200M police car radios, four (4) Harris XL 200P portable police car radios, radio chargers, all coax, antenas, wiring and mounting hardware through Interlocal Agreement.	60.60.680.20	1		\$50,763.58	\$50,763.58
2						\$0.00
3						\$0.00
4						\$0.00
5						\$0.00
6						\$0.00
7			0			\$0.00
8			0		\$0.00	\$0.00
					TOTAL:	\$50,763.58

Intended Use

Police car radios, chargers, antenas, coax, wiring, etc through Interlocal Agreement with LCRA.

Dan Taravella 9/11/2023 
Requested By _____ Date _____

Finance Approval _____ Date _____

Scott Weems 9/11/2023 
Dept. Head Approval _____ Date _____

Administration Approval _____ Date _____



City of Nacogdoches, Texas Bid Tabulation Sheet

DATE: 9/11/2023

REQUISITION NUMBER: _____

DEPARTMENT: Police

Item No.	Qty.	UOM	Description	BIDDER A		BIDDER B		
				Unit Cost	Extension	Unit Cost	Extension	
1	1	ea	Four (4) 4RE Vista in-car camera systems, wifi kit, bracket kit, ext warranty, subscription fee, mounting hardware under Contract Texas DIR-TSO-4101	\$27,661.00	\$27,661.00	\$0.00	\$0.00	
2	0	ea			\$0.00	\$0.00	\$0.00	
3	0	ea			\$0.00	\$0.00	\$0.00	
4	0			\$0.00	\$0.00	\$0.00	\$0.00	
5	0			\$0.00	\$0.00	\$0.00	\$0.00	
TOTAL:					\$27,661.00	TOTAL:	\$0.00	TOT

BIDDER A:

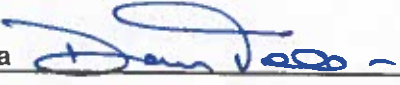
Company Name: Motorola Solutions
Contact: Blake Galloway
Phone: 214-551-2709
Address: 500 W. Monroe St, Chicago, IL 60661

BIDDER B:

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

BIDDER C:

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

TABULATED BY: Dan Taravella 



City of Nacogdoches, Texas

Purchase Requisition

Department Police

Requisition #: _____

Date 9/11/2023

(Purchasing Department Use only)

Purchase Order #: _____

Ship to Address Motorola Solutions, 500 W. Monroe St,
Chicago, IL 60661

Item #	Description & Specifications	Fund # Dept. # Acct. #	Qty.	Unit of Measure	Budget Amount	
					Each	Extension
1	Four (4) 4RE Vista in-car camera systems, wifi kit, bracket kit, ext warranty, subscription fee, mounting hardware under Contract Texas DIR-TSO-4101	60.60.680.20	1		\$27,661.00	\$27,661.00
2						\$0.00
3						\$0.00
4						\$0.00
5						\$0.00
6						\$0.00
7			0			\$0.00
8			0		\$0.00	\$0.00
					TOTAL:	\$27,661.00

Intended Use

Motorola 4RE Vista in car camera systems and all hardware and warranties under state contract Texas DIR-TSO-4101.

Dan Taravella 9/11/2023 
Requested By _____ Date _____

Finance Approval _____ Date _____

Scott Weems 9/11/2023 
Dept. Head Approval _____ Date _____

Administration Approval _____ Date _____



City of Nacogdoches, Texas Bid Tabulation Sheet

DATE: 9/11/2023

REQUISITION NUMBER: _____

DEPARTMENT: Police

Item No.	Qty.	UOM	Description	BIDDER A		BIDDER B		BIDDER C
				Unit Cost	Extension	Unit Cost	Extension	Unit Cost
1	4	ea	Outfitting of 2024 Ford F150 Police Responder trucks with lights, radios, camera systems, computer mounts, flashlights, consoles, control box, bed covers, push bumpers, sirens, backseat lockbox, graphics and delivery to NPD.	\$21,265.12	\$85,060.48	\$0.00	\$0.00	\$0.00
2	0	ea	Tarrant Co State Contract 2022-200		\$0.00	\$0.00	\$0.00	\$0.00
3	0	ea			\$0.00	\$0.00	\$0.00	\$0.00
4	0			\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
5	0			\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
TOTAL:					\$85,060.48	TOTAL:	\$0.00	TOTAL:

BIDDER A:

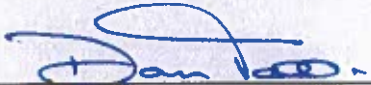
Company Name: Defender Supply
Contact: Jennifer Wilson
Phone: 940-488-4705
Address: 845 FM 407 W., Argyle, Tx 76226

BIDDER B:

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

BIDDER C:

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

TABULATED BY: Dan Taravella 



City of Nacogdoches, Texas Purchase Requisition

Department Police

Requisition #: _____

Date 9/11/2023

(Purchasing Department Use only)

Purchase Order #: _____

Ship to Address Defender Supply, Attn: Jennifer Wilson,
845 FM 407 W., Argyle, Tx 76226

Item #	Description & Specifications	Fund # Dept. # Acct. #	Qty.	Unit of Measure	Budget Amount	
					Each	Extension
1	Outfitting of 2024 Ford F150 Police Responder trucks with lights, radios, camera systems, computer mounts, flashlights, consoles, control box, bed covers, push bumpers, sirens, backseat lockbox, graphics and delivery to NPD.	60.60.680.20	4		\$21,265.12	\$85,060.48
2	Tarrant Co State Contract 2022-200					\$0.00
3						\$0.00
4						\$0.00
5						\$0.00
6						\$0.00
7			0			\$0.00
8			0		\$0.00	\$0.00
					TOTAL:	\$85,060.48

Intended Use

Outfitting and installing of all emergency equipment in four (4) police vehicles and delivery to NPD.

Dan Taravella 9/11/2023
Requested By _____ Date _____

Finance Approval _____ Date _____

Scott Weems 9/11/2023
Dept. Head Approval _____ Date _____

Administration Approval _____ Date _____

The Interlocal Purchasing System

Purchasing Made Personal



Printed 12 September 2023

www.tiptonford.net

Tipton Ford Lincoln

EMAIL PO & VENDOR QUOTE TO: TIPSPO@TIPS-USA.COM
PO MUST REFERENCE VENDOR'S TIPS CONTRACT NUMBER

	<u>PAYMENT TO</u>	<u>TIPS CONTACT</u>
ADDRESS	1115 North Street	NAME Charlie Martin
CITY	Nacogdoches	PHONE (866) 839-8477
STATE	TX	FAX (866) 839-8472
ZIP	75961	EMAIL tips@tips-usa.com

DISADVANTAGED/MINORITY/WOMAN BUSINESS ENTERPRISE: N

HUB: N

SERVING STATES

LA | TX

Overview

If your company or municipality is in need of new vehicles, Tipton Ford is here to help solve your transportation needs. We can help optimize your business with productivity and help you reach your driving and efficiency goals. We offer a range of vehicles to meet the demands your company, whether it is maximum towing capacity or trying to go green.

AWARDED CONTRACTS "View EDGAR Doc" on Website

Contract	Comodity	Exp Date	EDGAR
230204	Buses and other Transportation Vehicles	04/30/2026	See EDGAR Certification Doc.

CONTACTS BY CONTRACTS

230204			
Ray Mitchum	Commercial and	(936) 553-3476	raymitchum@tiptonford.com
Douglas Durbin	General Sales	(936) 553-3473	douglasdurbin@tiptonford.com

9-5-23

TIPTON FORD

1115 NORTH STREET, NACOGDOCHES, TX 75961

UNABLE TO ORDER AT THIS TIME. CONTINGENT ON GOVERNMENT 2024 MODEL YEAR ORDER BANK OPENING

End User: CITY OF NACOGDOCHES
 Contact: DAN TARAVELLA
 Phone/Email: TARAVELLAD@CI.NACOGDOCHES.TX.US
 Product Description: EXPLORER XLT 4WD

Tipton Rep: RAY MITCHUM
 Phone: 936.553.3476
 Date: 06/13/2023
 Email: raymitchum@tiptonford.com

A. T.I.P.S. Contract # 230204 Buses and Other Transportation Vehicles

A. MSRP Price

\$ 45,540.00

B. Published Options [Itemize each below]

Code	Options	MSRP Price	Code	Options	MSRP Price
K8D	2024 EXPLORER 4 DOOR 4WD XLT	INCL	UM	POWER WINDOWS/LOCKS	INCL
	119" WHEELBASE	INCL		AIR CONDITIONING	INCL
	FRONT LICENSE BRACKET	INCL		SYNC RADIO WITH BLUETOOTH	INCL
86	EBONY CLOTH INTERIOR	INCL		REVERSE CAMERA	INCL
200A	EQUIPMENT GROUP	INCL			
	18" PAINTED ALUMINUM WHEELS	INCL			
99H	2.3L ECOBOOST I4	INCL			
	P255/65R18 A/S TIRES	INCL			
	LESS WIFI HOT SPOT	INCL			
	REAR AUXILIARY CONTROL CREDIT	INCL			
C9	JEWEL RED EXTERIOR COLOR	\$495			

Total of B. Published Options:

\$ 46,035.00

C. Unpublished Options

Options	MSRP Price	Options	MSRP Price

Total of C. Unpublished Options

\$0.00

D. Registration, Inspection, Paperwork, Postage cost, Courthouse time, & Runner time:

\$ 7.00

E. UPFITTERS:

\$ -

F. Manufacturer Destination/Delivery:

\$ 1,895.00

G. Floor Plan Interest (for in-stock and/or equipped vehicles):

\$ -

H. Lot Insurance (for in-stock and/or equipped vehicles):

\$ -

I. Contract Price Adjustment:

\$ -

J. Additional Delivery Charges 0 miles

\$ -

K. Quantity Ordered 1

L. Subtotal:

\$ 46,042.00

M. Trade In:

\$ -

N. TIPS FEE PER PURCHASE ORDER (Contract # 230204)

\$ 350.00

O. TOTAL PURCHASE PRICE FOR CITY OF NACOGDOCHES

- 350

\$ 42,358.86

\$ 42,008.86

9-5-23

TIPTON FORD

1115 NORTH STREET, NACOGDOCHES, TX 75961

UNABLE TO ORDER AT THIS TIME. CONTINGENT ON GOVERNMENT 2024 MODEL YEAR ORDER BANK OPENING

End User: CITY OF NACOGDOCHESContact: DAN TARAVELLAPhone/Email: TARAVELLAD@CI.NACOGDOCHES.TX.USProduct Description: POLICE RESPONDER F150Tipton Rep: RAY MITCHUMPhone: 936.553.3476Date: 06/13/2023Email: raymitchum@tiptonford.com

A. T.I.P.S. Contract # 230204 Buses and Other Transportation Vehicles

A. MSRP Price

\$ 54,270.00

B. Published Options [Itemize each below]

Code	Options	MSRP Price	Code	Options	MSRP Price
W1P	2024 F150 POLICE RESPONDER	INCL	UM	AGATE BLACK EXTERIOR COLOR	INCL
	145" WHEELBASE	INCL		POWER WINDOWS/LOCKS	INCL
	FRONT LICENSE BRACKET	INCL		AIR CONDITIONING	INCL
PB	EBONY POLICE INTERIOR	INCL		SYNC RADIO WITH BLUETOOTH	INCL
150A	EQUIPMENT GROUP	INCL		REVERSE CAMERA	INCL
	XL SERIES	INCL			
	18" SILVER ALUMINUM WHEELS	INCL			
998	3.5L V6 GTDI ENGINE	INCL			
44G	10-SPEED TRANSMISSION	INCL			
	LT265/70R 18	INCL			
	3.31 ELECTRONIC LOCKING REAR DIFF	INCL			

Total of B. Published Options:

\$ 54,270.00

C. Unpublished Options

Options	MSRP Price	Options	MSRP Price

Total of C. Unpublished Options

\$0.00

D. Registration, Inspection, Paperwork, Postage cost, Courthouse time, & Runner time:

\$ 7.00

E. UPFITTERS:

\$ -

F. Manufacturer Destination/Delivery:

\$ 1,895.00

G. Floor Plan Interest (for in-stock and/or equipped vehicles):

\$ -

H. Lot Insurance (for in-stock and/or equipped vehicles):

\$ -

I. Contract Price Adjustment:

\$ -

J. Additional Delivery Charges 0 miles

\$ -

K. Quantity Ordered 1

L. Subtotal:

\$ 54,277.00

M. Trade In:

\$ -

N. TIPS FEE PER PURCHASE ORDER (Contract # 230204)

\$ 350.00

O. TOTAL PURCHASE PRICE FOR CITY OF NACOGDOCHES

\$ 47,950.81

- 350.
47,600.81



Proposal

Telecommunications Work Sheet

6641 E. Ben White Blvd., Austin TX 78744
 24 Hour Phone 1-877-527-2862 & Fax 1-512-356-6445
 Radio Shop Phone 1-512-730-6457 & Fax 1-512-482-6299
 Telecommunications

Customer: CITY OF NACOGDOCHES
Address: 312 W. Main Street
 Nacogdoches, Texas 75961

Work Order #: 000000006324990
***Date:** 9/8/23

Pricing is valid for 30 days from the date of this Proposal.

Statement of Work: Nac PD: XL200M and XL200P

Purchase Order #: PO:

Comments: Comments

Material

TASK ID	Item	Description	Qty	Unit Cost	Line Cost
91080		XL200M, 700/800/VHF, P25 Trunking, Single Key AES/DES, Encryp Lite, Phase 2 TDMA, OTAP, Mounting Kit, Control Unit, STD. Mic, External Spkr, Spkr Accy Cable.	4	\$7,134.92	\$28,539.69
91080		XL200P, VHF, 700/800, System, Blck, Antenna, p25 Trunking, Single Key AES/DES, Encryp Lite, Phase 2 TDMA, OTAP, 3100 MAH Battery, Charger, Belt Clip, Vehicle Charger.	4	\$5,453.05	\$21,812.19
92080	1601002300	COAX, NMO MOUNT, 3/4 IN, NO CONNECTOR	4	\$12.94	\$51.77
92080	1601002360	TNC MALE CRIMP CONNECTOR RG58,141	4	\$2.42	\$9.68
92080	1608007610	ANTENNA, PANORAMA CUSTOM KIT - LCRA-001	4	\$87.56	\$350.25
Material Sub Total:					\$50,763.58

Labor Total: \$0.00

Material Total: \$50,763.58

Job Total: \$50,763.58

This is not an invoice - Do not pay

If Proposal is accepted, work and equipment provided shall be subject to the Interlocal Cooperation Agreement for Mobile Radio Services and Equipment, or other applicable master agreement, between LCRA and Customer.



Billing Address:
NACOGDOCHES POLICE DEPT,
CITY OF
312 W MAIN ST
NACOGDOCHES, TX 75963
US

Quote Date: 08/25/2023
Expiration Date: 11/23/2023
Quote Created By:
Blake Galloway
Regional Sales Manager
Blake.Galloway@
motorolasolutions.com
214-551-2709

End Customer:
NACOGDOCHES POLICE DEPT, CITY
OF
Dan Tarvella
taravellad@nactx.us
(936) 559-2604

Contract: Texas DIR-TSO-4101
Payment Terms: 30 NET

Summary:

Any sales transaction resulting from Motorola's quote is based on and subject to the applicable Motorola Standard Terms and Conditions, notwithstanding terms and conditions on purchase orders or other Customer ordering documents. Motorola Standard Terms and Conditions are found at www.motorolasolutions.com/product-terms.

Line #	Item Number	APC	Description	Qty	Term	Sale Price	Ext. Sale Price
4RE In car Video System							
1	WGB-0146A	0851	MIKROTIK CONF WIFI KIT, DRILL MNT	4		\$200.00	\$800.00
2	LSV01S03365A	0854	4RE EXTENDED WARRANTY AND REPAIR	4	3 YEAR	\$625.00	\$2,500.00
3	WGP02225-230-KIT2	0851	BRKT KIT DISP/BWC/CAM TAHOE/SILV 2021	4		Included	Included
4	WGB-0136A	0851	4RE/VISTA WIFI BUNDLE, PANORAMIC	4		\$6,090.40	\$24,361.60

Grand Total

\$27,661.60(USD)



Any sales transaction following Motorola's quote is based on and subject to the terms and conditions of the valid and executed written contract between Customer and Motorola (the "Underlying Agreement") that authorizes Customer to purchase equipment and/or services or license software (collectively "Products"). If no Underlying Agreement exists between Motorola and Customer, then Motorola's Standard Terms of Use and Motorola's Standard Terms and Conditions of Sales and Supply shall govern the purchase of the Products.
Motorola Solutions, Inc.: 500 West Monroe, United States - 60661 - #: 36-1115800

**Pricing Summary**

	Sale Price	
Upfront Costs for Hardware, Accessories and Implementation (if applicable), plus Subscription Fee	\$25,994.94	\$0.00
Year 2 Subscription Fee	\$833.33	\$0.00
Year 3 Subscription Fee	\$833.33	\$0.00
Grand Total System Price	\$27,661.60	\$0.00



Any sales transaction following Motorola's quote is based on and subject to the terms and conditions of the valid and executed written contract between Customer and Motorola (the "Underlying Agreement") that authorizes Customer to purchase equipment and/or services or license software (collectively "Products"). If no Underlying Agreement exists between Motorola and Customer, then Motorola's Standard Terms of Use and Motorola's Standard Terms and Conditions of Sales and Supply shall govern the purchase of the Products.

Motorola Solutions, Inc.: 500 West Monroe, United States - 60661 - #: 36-1115800

UltraStinger Quote

2 messages

CSAT Tactical Shooting Supply <csattactical@gmail.com>
To: "taravellad@nactx.us" <taravellad@nactx.us>

Sat, Sep 9, 2023 at 11:37 AM

Quote for Nacogdoches Police Dept.

Four (4) Streamlight Ultrastinger L.E.D. Flashlights with 120V AC/12V DC charger @ \$179.95/each.....
.....\$719.80

--
CSAT Tactical Shooting Supply
3615 Press Rd.
Nacogdoches, TX 75964
csattactical@gmail.com
csattss.com



TACTICAL SHOOTING SUPPLY

Taravella, Dan <taravellad@nactx.us>

Sat, Sep 9, 2023 at 12:21 PM

To: CSAT Tactical Shooting Supply <csattactical@gmail.com>, Dan Taravella <taravellad@nactx.us>

Got it, thank you sir!

Dan

[Quoted text hidden]

--

Assistant Chief of Police Dan Taravella, Patrol Division
Nacogdoches Police Department
312 W. Main, Nacogdoches, TX 75961
Ph 936-559-2610
Fx 936-564-4622
taravellad@nactx.us
"Protecting the Oldest Town in Texas"
"Home of Stephen F. Austin State University" C/O 1991



Estimate

Date: 08/28/2023
Estimate #: 407

Rodzilla Graphics, Inc.
807 South Street
Nacogdoches, TX 75964
936 564-4445

Bill To:
Nacogdoches Police Department

Estimated Total: \$1,280.00

Sales Rep: Buddy Lieberman

Item Code	Description	Quantity	UnitPrice	Amount
Reflective	Reflective Printed Decal - Set of 2 "POLICE", "Nacogdoches" & Badges	4.00	240.00	960.00
Reflective	Reflective Cut Vinyl Decal - Back Decals ("Police & "Nacogdoches") and Sides (911 & Unit Numbers)	4.00	80.00	320.00
Sub Total:				1,280.00
Total				1,280.00

It has been a pleasure working with you. Have a great day, and thank you for your business!

Credit/Debit Card Payments Subject to 4% Processing Fee

Payment Due on Delivery

Estimates Valid for 30 Days



DEFENDER SUPPLY™

845 FM 407 W
Argyle, TX 76226

Date	8/16/2023
Estimate #	36873
Estimate By	Jennifer Wilson
	Jennifer@defendersupply....
	214-870-1879



Bill To
Nacogdoches Police Department Dan Taravella 312 West Main St. Nacogdoches, TX. 75961

Customer Contact	
Customer Phone	936-569-4538
Customer E-mail	taravellad@nactx.us

2024 F150 Responder

Thank you for you're continued business!

Description	Qty	Price	Total
2024 F150 Responder Tarrant County Contract 2022-200 Pricing			
Defender Supply F150 Marked Patrol Base Package	1	9,425.75	9,425.75
- Whelen 54' Legacy WeCanX DUO Lightbar with Integrated Traffic Advisor and Full Across Take Down/Alley Lighting, Progressing Flash Patterns with Slide Switch, Cruise, Photo Cell Daylight Sensing, Low Power (R/W, B/W Front And Side, R/A, B/A Rear) with Strap Kit. - Core Controller, SYNC Module, OBDII Canport Harness, Output Expansion Module, 100 Watt Speaker and Bracket. Wired and Programmed to Defender Supply Standard. - Aluminum Push Bumper with Textured Coating and 6 Tri Color Super LED Light Heads (R/B/W), 4 in the Top Channel Cutouts and 1 on Each Side with 45° Brackets. Take Down, Alley Lighting, Progressing Flash Patterns with Slide Switch, Cruise and Low Power Capabilities. - 2 Tri Color Super LED Light Heads (R/B/W) Mounted on Rear License Plate Bracket. Reverse / Brake Lighting, Progressing Flash Patterns with Slide Switch, Cruise and Low Power Capabilities. - Headlight Flasher Module. - 1 Front Cabin Dome Light. - Contoured Police Console With Dual Cup Holder, Arm Rest and 2 Magnetic Mic Clips. - Defender Supply Wiring Harnesses and Power Distribution Block. - Includes Installation.			

Final sale amount may be subject to state and local sales tax. PLEASE NOTE: Once this estimate has been approved, either by signature on this form, written approval referencing the estimate number or the issuance of purchase order, any changes or cancellations of parts made by the customer are subject to a 25% restocking fee. Any additional customer-requested parts/services will be added to the total amount of the sale.

** All customer supplied equipment is assumed to be either brand new in box or bench tested and fully functional with all necessary vehicle specific cables and brackets - troubleshooting and/or repairing inoperable or incomplete customer supplied equipment will be subject to our normal labor rate of \$125/hour **

Vehicle & Emergency Equipment Total

Signature



DEFENDER SUPPLY™

845 FM 407 W
Argyle, TX 76226

Date	8/16/2023
Estimate #	36873
Estimate By	Jennifer Wilson
	Jennifer@defendersupply....
	214-870-1879



Bill To
Nacogdoches Police Department Dan Taravella 312 West Main St. Nacogdoches, TX. 75961

Customer Contact	
Customer Phone	936-569-4538
Customer E-mail	taravellad@nactx.us

2024 F150 Responder

Thank you for your continued business!

Description	Qty	Price	Total
Defender Supply Low Frequency Siren Package for Core. Includes Amp, 2 Subwoofer Speakers, Brackets. Includes Installation.	1	973.75	973.75
Defender Supply Dual Tone Siren Package for Core. Includes Amp, 100 Watt Speaker, Brackets. Includes Installation.	1	717.50	717.50
Defender Supply F150 Traffic Advisor Package - 1 Eight Dual Color Module Super LED Full Function Light Stick (R/A, B/A) with Progressing Flash Patterns with Slide Switch, Cruise, Low Power Functions Mounted in the Rear Window with Vehicle Specific Shroud and Brackets.	1	1,175.00	1,175.00
Defender Supply Mirror Lighting Package 1 - Includes Two Tri-Color Super LED Light Heads Mounted Under Mirror (R/B/W) with 180° Light Spread and integrated Alley Function. Includes Installation.	1	1,281.00	1,281.00
Defender Supply Tail Light Hide-Away Lighting Package -Includes 2, Dual Color Super LED Light Heads (1x R/W, 1x B/W) Inserted in the Reverse Section of the Tail Lights. Cruise, Low Power and White in Reverse Function Available (Configuration 2 Core/Carbide Only). Includes Installation.	1	367.50	367.50
Defender Supply Running Board Lighting - Includes Four Dual Color Super LED Light Heads (4x R/W/B), 2 on Each Running Board. Progressing Flash Patterns with Slide Switch, Alley, Low Power and Cruise Functions Available (Core/Carbide Only). Includes Installation.	1	1,230.00	1,230.00
Defender Supply Computer Mount; Console. Includes Installation.	1	450.55	450.55
Installation of CSP computer dock and power supply.	1	125.00	125.00
Defender Supply F-150 Short Bed Retractable Cover. Includes Shipping and Installation.	1	1,790.50	1,790.50

Final sale amount may be subject to state and local sales tax. PLEASE NOTE: Once this estimate has been approved, either by signature on this form, written approval referencing the estimate number or the issuance of purchase order, any changes or cancellations of parts made by the customer are subject to a 25% restocking fee. Any additional customer-requested parts/services will be added to the total amount of the sale.

Vehicle & Emergency Equipment Total

** All customer supplied equipment is assumed to be either brand new in box or bench tested and fully functional with all necessary vehicle specific cables and brackets - troubleshooting and/or repairing inoperable or incomplete customer supplied equipment will be subject to our normal labor rate of \$125/hour **

Signature



845 FM 407 W
Argyle, TX 76226

Date	8/16/2023
Estimate #	36873
Estimate By	Jennifer Wilson Jennifer@defendersupply... 214-870-1879



Bill To
Nacogdoches Police Department
Dan Taravella
312 West Main St.
Nacogdoches, TX. 75961

Customer Contact	
Customer Phone	936-569-4538
Customer E-mail	taravellad@nactx.us

2024 F150 Responder Thank you for your continued business!

Description	Qty	Price	Total
Defender Supply Two-Way (800) Radio Antenna and Coaxial Cable. Includes Installation.	1	210.00	210.00
Installation of customer supplied Portable Radio Charger.	1	126.00	126.00
** All customer supplied equipment is assumed to be either brand new in box or bench tested and fully functional with all necessary vehicle specific cables and brackets – troubleshooting and/or repairing inoperable or incomplete customer supplied equipment will be subject to our normal labor rate of \$125/hour ** **** Sales information **** What brand? - How many antennas are we installing (includes used and new)? - 1 Sold on Order			
Installation of customer supplied camera system.	1	1,544.75	1,544.75
** All customer supplied equipment is assumed to be either brand new in box or bench tested and fully functional with all necessary vehicle specific cables and brackets – troubleshooting and/or repairing inoperable or incomplete customer supplied equipment will be subject to our normal labor rate of \$125/hour ** **** Sales information **** What brand? - WG 4RE - \$950 added in this group for new cables Is there wireless download? - Yes			

Final sale amount may be subject to state and local sales tax. PLEASE NOTE: Once this estimate has been approved, either by signature on this form, written approval referencing the estimate number or the issuance of purchase order, any changes or cancellations of parts made by the customer are subject to a 25% restocking fee. Any additional customer-requested parts/services will be added to the total amount of the sale.

**** All customer supplied equipment is assumed to be either brand new in box or bench tested and fully functional with all necessary vehicle specific cables and brackets – troubleshooting and/or repairing inoperable or incomplete customer supplied equipment will be subject to our normal labor rate of \$125/hour ****

Vehicle & Emergency Equipment Total

Signature



DEFENDER SUPPLY™

845 FM 407 W
Argyle, TX 76226

Date	8/16/2023
Estimate #	36873
Estimate By	Jennifer Wilson
	Jennifer@defendersupply....
	214-870-1879



Bill To
Nacogdoches Police Department Dan Taravella 312 West Main St. Nacogdoches, TX. 75961

Customer Contact	
Customer Phone	936-569-4538
Customer E-mail	taravellad@nactx.us

2024 F150 Responder

Thank you for your continued business!

Description	Qty	Price	Total
Installation of customer supplied flashlight.	1	188.50	188.50
** All customer supplied equipment is assumed to be either brand new in box or bench tested and fully functional with all necessary vehicle specific cables and brackets – troubleshooting and/or repairing inoperable or incomplete customer supplied equipment will be subject to our normal labor rate of \$125/hour **			
**** Sales information ****			
Mounting Location? - Passenger Side of Console			
2015+ Ford F-Series SuperCrew Under Rear Seat Lockbox-Black (https://www.tuffproducts.com)	1	504.32	504.32T
Professional Installation of Graphics by Defender Supply	1	210.00	210.00
Window Tint - For Two Front Windows	1	95.00	95.00T
Professional cleaning, detailing, make-ready and document preparation by Defender Supply.	1	200.00	200.00T
Delivery to Department	1	650.00	650.00T
Texas Government or Municipality - No Sales Tax		0.00%	0.00

Final sale amount may be subject to state and local sales tax. PLEASE NOTE: Once this estimate has been approved, either by signature on this form, written approval referencing the estimate number or the issuance of purchase order, any changes or cancellations of parts made by the customer are subject to a 25% restocking fee. Any additional customer-requested parts/services will be added to the total amount of the sale.

** All customer supplied equipment is assumed to be either brand new in box or bench tested and fully functional with all necessary vehicle specific cables and brackets – troubleshooting and/or repairing inoperable or incomplete customer supplied equipment will be subject to our normal labor rate of \$125/hour **

Vehicle & Emergency Equipment Total

\$21,265.12

Signature _____

COMPETITION EXEMPTION FORM

In accordance with the City of Nacogdoches' Procurement Policy, all expenditures exceeding **\$3,000 are subject to competition**. Consequently, every expenditure for which competition does not occur must have an explanation of the statutory exemption applicable, per state purchasing law (ref: TLGC 252.022). This exemption form must be signed by the department director and submitted along with the purchase order request documentation.

NOTE: Per City Procurement Policy, this exemption must be approved and a purchase order issued before the purchase may be made.

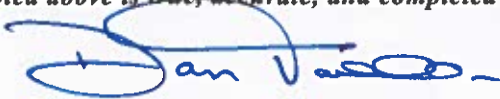
Vendor Name: Tipton Ford
Description of Goods/Services: Vehicles
Expenditure Amount: \$232,762.10
Explanation/Justification: Annual police car purchase

Check all applicable blocks.

- ☐ public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of the municipality;
- ☐ to preserve or protect the public health or safety of the municipality's residents;
- ☐ for unforeseen damage to public machinery, equipment, or other property;
- ☐ for personal, professional, or planning services;
- ☐ items that are available from only one source (sole). Please choose the type of sole source below:
 - ☐ patents, copyrights, secret processes, or natural monopolies;
 - ☐ films, manuscripts, or books;
 - ☐ gas, water, and other utility services;
 - ☐ captive replacement parts or components for equipment;
 - ☐ books, papers, and other library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials;
 - ☐ management services provided by a nonprofit organization to a municipal museum, park, zoo, or other facility to which the organization has provided significant financial or other benefits;
- ☐ purchase of rare books, papers, and other library materials for a public library;
- ☐ personal property sold by a political subdivision of this state, state agency or entity of the federal government;
- ☒ personal property sold under an interlocal contract for cooperative purchasing; Insert Contract # TIPS # 230204
- ☐ services performed by blind or severely disabled persons;
- ☐ goods purchased by a municipality for subsequent retail sale by the municipality;
- ☐ electricity;
- ☐ advertising, other than legal notices

By signing this Exemption Form, I hereby assume responsibility and legal implications for any inaccuracies and inconsistencies in the completion and submission of this form. My signature below indicates I have reviewed, interpreted, and understand the appropriate laws, policies and legal ramifications of signing such document and confirm that the exemption noted above is true, accurate, and completed to the best of my knowledge and ability.

Director Approval (Signature):



Department:

Police

Date:

9-12-23

COMPETITION EXEMPTION FORM

In accordance with the City of Nacogdoches' Procurement Policy, all expenditures exceeding **\$3,000 are subject to competition**. Consequently, every expenditure for which competition does not occur must have an explanation of the statutory exemption applicable, per state purchasing law (ref: TLGC 252.022). This exemption form must be signed by the department director and submitted along with the purchase order request documentation.

NOTE: Per City Procurement Policy, this exemption must be approved and a purchase order issued before the purchase may be made.

Vendor Name: LCRA

Description of Goods/Services: police radios

Expenditure Amount: \$ 60,763.58

Explanation/Justification: police radios for new police cars

Check all applicable blocks.

- ☐ public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of the municipality;
- ☐ to preserve or protect the public health or safety of the municipality's residents;
- ☐ for unforeseen damage to public machinery, equipment, or other property;
- ☐ for personal, professional, or planning services;
- ☐ items that are available from only one source (sole). **Please choose the type of sole source below:**

- ☐ patents, copyrights, secret processes, or natural monopolies;
- ☐ films, manuscripts, or books;
- ☐ gas, water, and other utility services;
- ☐ captive replacement parts or components for equipment;
- ☐ books, papers, and other library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials;
- ☐ management services provided by a nonprofit organization to a municipal museum, park, zoo, or other facility to which the organization has provided significant financial or other benefits;

- ☐ purchase of rare books, papers, and other library materials for a public library;
- ☐ personal property sold by a political subdivision of this state, state agency or entity of the federal government;
- ☒ personal property sold under an interlocal contract for cooperative purchasing; Insert Contract # Interlocal Agreement
- ☐ services performed by blind or severely disabled persons;
- ☐ goods purchased by a municipality for subsequent retail sale by the municipality;
- ☐ electricity;
- ☐ advertising, other than legal notices

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Director Approval (Signature): [Signature]

Department: Police

Date: 9-12-23

COMPETITION EXEMPTION FORM

In accordance with the City of Nacogdoches' Procurement Policy, all expenditures exceeding **\$3,000 are subject to competition**. Consequently, every expenditure for which competition does not occur must have an explanation of the statutory exemption applicable, per state purchasing law (ref: TLGC 252.022). This exemption form must be signed by the department director and submitted along with the purchase order request documentation.

NOTE: Per City Procurement Policy, this exemption must be approved and a purchase order issued before the purchase may be made.

Vendor Name: Motorola Solutions
Description of Goods/Services: police car dash cams
Expenditure Amount: \$ 27,661.00
Explanation/Justification: dash cams for new police cars

Check all applicable blocks.

- ☐ public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of the municipality;
- ☐ to preserve or protect the public health or safety of the municipality's residents;
- ☐ for unforeseen damage to public machinery, equipment, or other property;
- ☐ for personal, professional, or planning services;
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 - ☐ films, manuscripts, or books;
 - ☐ gas, water, and other utility services;
 - ☐ captive replacement parts or components for equipment;
 - ☐ books, papers, and other library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials;
 - ☐ management services provided by a nonprofit organization to a municipal museum, park, zoo, or other facility to which the organization has provided significant financial or other benefits;
- ☐ purchase of rare books, papers, and other library materials for a public library;
- ☒ personal property sold by a political subdivision of this state, state agency or entity of the federal government;
- ☐ personal property sold under an interlocal contract for cooperative purchasing; Insert Contract # TX DIR-750-4101
- ☐ services performed by blind or severely disabled persons;
- ☐ goods purchased by a municipality for subsequent retail sale by the municipality;
- ☐ electricity;
- ☐ advertising, other than legal notices

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Director Approval (Signature): 

Department: Police

Date: 9-12-23

COMPETITION EXEMPTION FORM

In accordance with the City of Nacogdoches' Procurement Policy, all expenditures exceeding **\$3,000 are subject to competition**. Consequently, every expenditure for which competition does not occur must have an explanation of the statutory exemption applicable, per state purchasing law (ref: TLGC 252.022). This exemption form must be signed by the department director and submitted along with the purchase order request documentation.

NOTE: Per City Procurement Policy, this exemption must be approved and a purchase order issued before the purchase may be made.

Vendor Name: Defender Supply

Description of Goods/Services: police lights & equipment & installation

Expenditure Amount: \$85,060.48

Explanation/Justification: outfitting new police cars

Check all applicable blocks.

- ☐ public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of the municipality;
- ☐ to preserve or protect the public health or safety of the municipality's residents;
- ☐ for unforeseen damage to public machinery, equipment, or other property;
- ☐ for personal, professional, or planning services;
- ☐ items that are available from only one source (sole). **Please choose the type of sole source below:**
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 - ☐ captive replacement parts or components for equipment;
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 - ☐ management services provided by a nonprofit organization to a municipal museum, park, zoo, or other facility to which the organization has provided significant financial or other benefits;
- ☐ purchase of rare books, papers, and other library materials for a public library;
- ☐ personal property sold by a political subdivision of this state, state agency or entity of the federal government;
- ☒ personal property sold under an interlocal contract for cooperative purchasing; Insert Contract # Tarrant Co 2022-200
- ☐ services performed by blind or severely disabled persons;
- ☐ goods purchased by a municipality for subsequent retail sale by the municipality;
- ☐ electricity;
- ☐ advertising, other than legal notices

By signing this Exemption Form, I hereby assume responsibility and legal implications for any inaccuracies and inconsistencies in the completion and submission of this form. My signature below indicates I have reviewed, interpreted, and understand the appropriate laws, policies and legal ramifications of signing such document and confirm that the exemption noted above is true, accurate, and completed to the best of my knowledge and ability.

Director Approval (Signature):

[Signature]

Department:

Police

Date:

9-12-23



City Council Meeting

Date: September 19, 2023

Agenda Item: 5.B.

PRESENTER: Jerry Baker, City Attorney

ITEM/SUBJECT: Consider approval of a Ground Lease Agreement between the City of Nacogdoches and the Board of Regents of the Texas A&M University System, for the benefit of the Texas A&M Forest Service, to renew the lease of a certain tract of land owned by the City and located at 4126 Old Tyler Road. (City Attorney)

SUMMARY/BACKGROUND: The Board of Regents of the Texas A&M University System is seeking to renew a Ground Lease Agreement for a certain tract of land owned by the City and located at 4126 Old Tyler Road. The property is currently being used as the district office for the Texas A&M Forest Service where it houses its operations and activities in Nacogdoches. The property has been leased to the Texas A&M University System since 1977.

The current agreement will expire on October 6, 2023. If renewed, the term of the agreement will be for an additional 12 months beginning October 7, 2023 and ending on October 6, 2024. As in the current lease, the proposed lease agreement would permit Texas A&M University to renew for up to four (4) additional periods of twelve (12) months each by providing written notice to the City at least thirty (30) days prior to the expiration of the current term.

FINANCIAL:

Item is budgeted:

Account No.: 01.525.08

Account Name: *General Fund Rental Receipts*

Amount: \$120.00

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

Not Applicable

CITY CONTACT: Jerry Baker, City Attorney
bakerj@nactx.us
936-559-2503

ATTACHMENTS: 1. TFS Nacogdoches Ground Lease

GROUND LEASE AGREEMENT
between
CITY OF NACOGDOCHES
and
BOARD OF REGENTS OF THE TEXAS A&M UNIVERSITY SYSTEM

This Ground Lease Agreement (“Lease”) is effective the 6th day of October 2023, by and between the **CITY OF NACOGDOCHES**, Nacogdoches County, Texas (“**CITY**”), a municipality of the State of Texas, and **THE BOARD OF REGENTS OF THE TEXAS A&M UNIVERSITY SYSTEM** (“**A&M SYSTEM**”), an agency of the State of Texas, for the benefit of the Texas A&M Forest Service (“**TFS**”).

A&M SYSTEM desires to lease from **CITY**, and **CITY** desires to lease to **A&M SYSTEM**, all of a certain tract of land consisting of approximately one acre situated in Nacogdoches County, Texas, being more particularly described in Exhibit “A”, attached and made a part of this Lease for all purposes (the “Leased Premises”). The parcel of land, which is wholly owned by **CITY**, leased to **A&M SYSTEM** is to be used for the purpose of **TFS**’ District Office and **TFS**’ continuing operations and activities in the area.

The Leased Premises has been leased to **A&M SYSTEM** since 1977.

DEFINITIONS

For purposes of this Lease, the following terms mean:

“District Office” means the building constructed by **A&M SYSTEM** on the Leased Premises which provides space for the operations and activities of **TFS**’ Nacogdoches District Office;

“Effective Date of this Lease” means the date of the execution of this Lease; and

“Leased Premises” means the tract of land consisting of approximately one acre in Nacogdoches County, Texas, being more particularly described on Exhibit “A”, attached to this Lease.

A. LEASE OF PREMISES:

CITY, in consideration of the covenants, agreements and conditions of this Lease which **A&M SYSTEM** agrees to keep and perform, leases, lets, and demises, exclusively unto **A&M SYSTEM**, and **A&M SYSTEM** leases from **CITY**, the Leased Premises, together with all and singular the rights, privileges and appurtenances thereunto attaching or in any wise belonging or hereafter provided for under the terms of this Lease.

B. TERM:

1. Lease Term.

This Lease is for a primary term of 12 months commencing on the 7th day October 2023 and terminating on the 6th day of October 2024, subject to **A&M SYSTEM**'s renewal option(s) set forth in Paragraph "B", Section 2 below (as renewed from time to time, "Lease Term").

2. Renegotiation/Renewal.

A&M SYSTEM and **CITY** agree this Lease may be renewed by **A&M SYSTEM** for up to four (4) additional periods of twelve (12) months each by **A&M SYSTEM** giving written notice to **CITY** at least 30 days prior to the expiration of the then current term. Each renewal term must be exercised in order and shall commence on the day after the expiration of the original term or the preceding term, as applicable. **A&M SYSTEM** and **CITY** contemplate that all terms of this Lease shall apply throughout any such renewal term.

3. Right to Terminate Lease.

A&M SYSTEM and **CITY** each have the right to terminate this Lease if at any time during the term of this Lease any improvements constructed by **TAMUS** on the Leased Premises (including **A&M SYSTEM**'s Property) are damaged or destroyed by fire or any other casualty to the extent it would not be in the best interest of **TAMUS** or **CITY** for **TAMUS** to repair such damage or replace such property. In the event **TAMUS** or **CITY** intends to terminate the Lease, then the terminating party shall give the other party 180 calendar days' advance written notice. In the event of such termination **A&M SYSTEM** shall within a reasonable period of time clean up and/or demolish such structure and return the Leased Premises to its natural state prior to construction.

4. Use of Leased Premises.

A&M SYSTEM will use the Leased Premises and the District Office to house its operations and activities and shall continue such use for the term of this Lease.

5. Compliance with Applicable Laws.

A&M SYSTEM will comply, at **A&M SYSTEM**'s sole cost and expense, with all federal and state laws applicable to the improvements and building equipment situated on the Leased Premises, the use or manner of use of the Leased Premises, or the carrying on of **A&M SYSTEM**'s business on the Leased Premises.

6. Cost and Expense of Improvements.

The entire cost and expense of constructing and maintaining any and all improvements on the Leased Premises will be borne and paid for by **A&M SYSTEM**.

7. Fixtures and Equipment.

Any and all fixtures and equipment located at the Leased Premises remains the property of **A&M SYSTEM** and may be removed from the Leased Premises by **A&M SYSTEM** at **A&M SYSTEM**'s cost at any time prior to or upon the termination of this Lease; provided, however, **A&M SYSTEM** will be liable to **CITY** for any material damage or injury to the Leased Premises occasioned by such removal.

8. Additional Structures and Alterations by A&M SYSTEM.

A&M SYSTEM has the right during the term of this Lease to construct additional structures on the Leased Premises after notice to the **CITY**. **A&M SYSTEM** has the right at any time and from time to time in its sole discretion and at its sole cost and expense, to make any and all necessary or desirable changes and alterations in or to the improvements constructed by **A&M SYSTEM** upon the Leased Premises. Such changes and alterations will immediately become a part of the District Office and the Leased Premises, and will be surrendered or retained, in accordance with the terms of Paragraph "D", Section 1, below, at the end of the term of this Lease or, if the Lease is renewed or terminated early, upon the termination of this Lease. **A&M SYSTEM** covenants and agrees all work done in connection with any alteration will be done in a good and workmanlike manner and in compliance with all federal and state rules and regulations.

C. **CONSIDERATION FOR GROUND LEASE:**

The consideration **A&M SYSTEM** shall pay during the original term and any renewal terms of this Lease is \$10.00 per month and other good and valuable consideration, receipt of which is acknowledged by **CITY**.

1. As further consideration, **A&M SYSTEM** agrees to:

- (a) Lease the Leased Premises for the entire term beginning on the commencement date and ending on the last day of the Lease Term as may be extended herein ("Termination Date").
- (b) Accept the Leased Premises in their present "AS IS", condition the Leased Premises being currently occupied by **A&M SYSTEM** and suitable for **A&M SYSTEM**'s intended use.

- (c) Pay monthly, in advance, on the first day of the month, the base rent to **CITY** at **CITY's** address.
- (d) Pay, as additional rent, all other sums due under this Lease.
- (e) Pay for all utility services used by **A&M SYSTEM**.
- (f) Allow **CITY** to enter the Leased Premises upon reasonable notice and during normal business hours to inspect the Leased Premises.
- (g) Repair any damage to the Leased Premises caused by **A&M SYSTEM**, **A&M SYSTEM's** guests, invitees or agents.
- (h) Confirm that **A&M SYSTEM** is self-insured when requested by **CITY**.
- (i) Maintain fire, perils and liability insurance sufficient to protect the **CITY's** residual interest in the Leased Premises, through self-insurance or traditional insurance methods as determined by **A&M SYSTEM**.
- (j) Maintain insurance on **A&M SYSTEM's** personal property if **A&M SYSTEM** so desires. **A&M SYSTEM** understands that **CITY** carries no such insurance.
- (k) Deliver a self-insurance letter to **CITY** when requested.
- (l) To the extent authorized by the Constitution and the laws of the State of Texas, indemnify, defend, and hold **CITY** harmless from any loss, attorney's fees, expenses, or claims arising out of use of the Leased Premises.
- (m) Vacate the Leased Premises on termination of this Lease.

2. **A&M SYSTEM** agrees not to:

- (a) Use the Leased Premises for any purpose other than those within the mission and scope of the Texas A&M Forest Service.
- (b) Create a nuisance; permit any waste; or use the Leased Premises in any way that is extra-hazardous.
- (c) Cause a lien to be placed on the Leased Premises.

- (d) Assign this Lease or sublease any portion of the Leased Premises without **CITY's** written consent.
- 3. **CITY** agrees to:
 - (a) Defend **A&M SYSTEM's** rights to use the Leased Premises pursuant to the terms of the Lease.
 - (b) Lease to **A&M SYSTEM** the Leased Premises for the entire term beginning on the commencement date and ending on the Termination Date.
 - (c) Obey all laws, ordinances, orders, and rules and regulations applicable to the use, condition, and occupancy of the Leased Premises.
- 4. **CITY** agrees not to:
 - (a) Interfere with **A&M SYSTEM's** possession of the Leased Premises as long as **A&M SYSTEM** is not in default.
 - (b) Unreasonably withhold consent to a proposed assignment or sublease.

D. MISCELLANEOUS:

1. Alterations.

Any physical additions or improvements to the Leased Premises made by **A&M SYSTEM** will remain the property of **A&M SYSTEM** and may be timely removed from the Leased Premises by **A&M SYSTEM** at **A&M SYSTEM's** cost upon the termination of this Lease. In addition, **CITY** may require upon at least 60 days prior written notice to **A&M SYSTEM**, that **A&M SYSTEM**, at termination of this Lease and at **A&M SYSTEM's** expense, will timely remove any structures, physical additions and improvements, repair any alterations, and restore the Leased Premises to the condition existing at the commencement date, normal wear and tear excepted, unless **A&M SYSTEM** and **CITY** mutually agree to the sale of such physical additions or improvements to the Leased Premises made by **A&M SYSTEM** to the **CITY** upon terms agreeable to the parties hereto.

2. Abatement.

A&M SYSTEM's covenant to pay rent and **CITY's** covenants are independent of each other. Except as otherwise provided, **A&M SYSTEM** shall not be entitled to abate rent for any reason.

3. Release of Claims/Subrogation.

To the extent authorized by the Constitution and the laws of the State of Texas, **CITY** and **A&M SYSTEM**, release each other from any claim, by subrogation or otherwise, for any damage to the Leased Premises, the building, or personal property within the building, by reason of fire or the elements, regardless of cause, including negligence of **CITY** or **A&M SYSTEM**.

This release applies only to the extent that it is permitted by law, the damage is covered by insurance proceeds, and the release does not adversely affect any insurance coverage.

4. Notice to Insurance Companies.

CITY and **A&M SYSTEM** will notify the issuing insurance companies of the release set forth in the preceding paragraph and will have the insurance policies endorsed, if necessary, to prevent invalidation of the insurance coverage.

5. Condemnation/Substantial or Partial Taking.

(a) If the Leased Premises cannot be used for the purposes contemplated by this Lease because of condemnation or purchase in lieu of condemnation, this Lease will terminate. (b) If there is a condemnation or purchase in lieu of condemnation and this Lease is not terminated, **CITY** will, at **CITY's** expense, restore the Leased Premises, and the rent payable during the unexpired portion of the term will be adjusted as may be fair and reasonable. (c) **A&M SYSTEM** will have no claim to the condemnation award or proceeds in lieu of as to the Leased Premises.

6. Default by CITY.

Default by **CITY** is failing to comply with any provision of this Lease within 30 days after written notice.

7. **A&M SYSTEM's Remedies for Default by CITY.**

A&M SYSTEM's remedies for **CITY's** default is to pursue any remedies available under Texas State Law.

8. Default by **A&M SYSTEM**.

Defaults by **A&M SYSTEM** are: (a) failing to pay timely rent; (b) abandoning or vacating a substantial portion of the Leased Premises; or (C) failing to comply within 30 days after written notice with any provision of this Lease other than the defaults set forth in (a) and (b) above.

9. **CITY's Remedies for Default by A&M SYSTEM.**

CITY's remedies for **A&M SYSTEM's** default are all remedies provided herein or available under applicable Federal and/or Texas State Law.

10. **Default/Waiver/Mitigation.**

It is not a waiver of default if the non-defaulting party fails to declare immediately a default or delays in taking any action. Pursuit of any remedies set forth in this Lease does not preclude pursuit of other remedies in this Lease or provided by law. **CITY** and **A&M SYSTEM** have a duty to mitigate damages.

11. **Compliance.**

A&M SYSTEM has solely constructed and operated the Leased Premises and assumes all duty, responsibility, and cost of compliance with applicable provisions of the Americans with Disabilities Act, Texas Architectural Barrier compliance and similar legislation and compliance.

12. **Holdover.**

If **A&M SYSTEM** does not vacate the Leased Premises following termination of this Lease, **A&M SYSTEM** shall be a tenant at will and shall vacate the Leased Premises on receipt of notice from **CITY**. No holding over by **A&M SYSTEM**, whether with or without the consent of **CITY**, will extend the term.

13. **Governing Law.**

The validity of this Lease and all matters pertaining to this Lease, including but not limited to, matters of performance, non-performance, breach, remedies, procedures, rights, duties, and interpretation or construction, shall be governed and determined by the Constitution and the laws of the State of Texas. Pursuant to Section 85.18, *Texas Education Code*, venue for any suit filed against **A&M SYSTEM** shall be in the county in which the primary office of the chief executive officer of **A&M SYSTEM** is located. Venue for any suit filed against **CITY** shall be in Nacogdoches County, Texas.

14. **Loss of Funding.**

The Lease may be contingent upon the continuation of state or federally funded programs, the appropriation of funds by the Texas Legislature and/or the availability of specific funds to cover the full term and cost of the Lease. In the event a curtailment of state or federally funded programs occurs, state appropriations are curtailed or withdrawn, or in the event specific funds are unavailable to **A&M SYSTEM**, **A&M SYSTEM** may terminate the Lease upon written notice to **CITY**, or may assign the Lease, or sublet the Premises, or any part of the Premises, to another

agency of the State of Texas, without further duty or obligation hereunder. **CITY** acknowledges that appropriation of funds is beyond the control of **A&M SYSTEM**.

15. Entire Lease.

This Lease, together with the attached exhibits and riders, is the entire agreement of the parties, and there are no oral representations, warranties, agreements, or promises pertaining to this Lease or to the expressly mentioned exhibits and riders not incorporated in writing in this Lease.

16. Amendment of Lease.

This Lease may be amended only by an instrument in writing signed by **CITY** and **A&M SYSTEM**.

17. Limitation of Warranties.

To the extent authorized by the Constitution and laws of the State of Texas, **A&M SYSTEM** agrees there are no implied warranties of merchantability, of fitness for a particular purpose, habitability, or of any other kind arising out of this Lease, and there are no warranties that extend beyond those expressly stated in this Lease. There are expressly no warranties regarding the building and improvements to the property which are expressly owned, operated and constructed by **A&M SYSTEM**.

18. Notices.

Any notices required or permitted under this Lease must be in writing and will be deemed given: (a) three (3) business days after it is deposited and post-marked with the United States Postal Service, postage prepaid, certified mail, return receipt requested, (b) the next business day after it is sent by overnight carrier, (c) on the date sent by email transmission with electronic confirmation of receipt by the party being notified, or (d) on the date of delivery if delivered personally. The parties may change their respective notice address by sending to the other party a notice of the new address. Notices should be addressed as follows:

CITY: City of Nacogdoches
Attn: Jerry Baker, City Attorney
202 East Pilar
Nacogdoches, Texas 75963
Phone: 936-559-2503
Email: bakerj@nactx.us
or
City of Nacogdoches
P.O. Drawer 635030
Nacogdoches, Texas 75963

A&M SYSTEM: Texas A&M Forest Service
Attn: Terry Smith, Purchasing Department Head
200 Technology Way, Suite 1120
College Station, Texas 77845-3424
Phone: 979-458-7381
Email: tsmith@tfs.tamu.edu

with copy to: The Texas A&M University System
Office of Business Affairs
Attn: System Real Estate Office
301 Tarrow Street, 5th Floor
College Station, Texas 77840-7896
Phone: 979-458-6350
Email: sreo@tamus.edu

with copy to: The Texas A&M University System
Office of General Counsel
Attn: Property & Construction
301 Tarrow Street, 6th Floor
College Station, Texas 77840-7896
Phone: 979-458-6120
Email: property@tamus.edu

19. Abandoned Property.

CITY may retain, destroy, or dispose of any property left on the Leased Premises at the end of the Lease Term.

20. Non-Waiver Provision.

A&M SYSTEM is an agency of the State of Texas and nothing in this Lease will be construed as a waiver or relinquishment by **A&M SYSTEM** of its right to claim such exemptions, privileges, and immunities as may be provided by law. Likewise, nothing in this Lease will be construed as a waiver or relinquishment by **CITY** of its right to claim such exemptions, privileges, and immunities as may be provided by law.

21. Force Majeure.

Neither party is required to perform any term, condition, or covenant of this Lease, if performance is prevented or delayed by a natural occurrence, a fire, an act of God, an act of terrorism, or other similar occurrence, the cause of which is not reasonably within the control of such party and which by due diligence it is unable to prevent or overcome.

EXECUTED on the _____ day of _____, 2023 by **CITY**.

CITY OF NACOGDOCHES, TEXAS, a
municipality of the State of Texas,

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:

JERRY BAKER
City Attorney

EXECUTED on the _____ day of _____, 2023 by **A&M SYSTEM**.

**BOARD OF REGENTS OF THE TEXAS A&M
UNIVERSITY SYSTEM**, an agency of the State of
Texas for the use and benefit of Texas A&M Forest
Service, a member of The Texas A&M University
System, an agency of the State of Texas

By: _____
A. G. DAVIS
Director
Texas A&M Forest Service

APPROVED AS TO FORM:



ASHLEA HEWLETT
Assistant General Counsel, Property & Construction
Office of General Counsel
The Texas A&M University System

EXHIBIT "A"

A tract or parcel of land containing 1.00 acres located in the M.G. Whitaker Survey, Abstract No. 591, Nacogdoches County, Texas, and being out of a 74.63 acre tract described in · Deed from Alton King and wife, Lois C. King, to the City of Nacogdoches, Texas, dated February 27, 1976, recorded in Volume 405, Page 20, of the Deed Records of Nacogdoches County, Texas, said 1.00 acre of land being fully described as follows:

BEGINNING at a fence corner post marking the intersection of the South line of said 74.63 acre tract with the East line of the Old Tyler Road (F.M. Road 1 638) based on a width of 80 feet, said point of beginning also being located S 31°50'26"E with said East line of the Old Tyler Road, a distance of 191.38 feet from a T. H. D. Conc. Mon. marking its intersection with the South line of Loop 224 Northwest;

THENCE N 31°50'26"W with said East line of Old Tyler Road, a distance of 21.47 feet to a point for corner;

THENCE N 37°59'36"E, a distance of 305.07 feet to a point for corner;

THENCE S 31°50'26"E, a distance of 282.75 feet to a point for corner in the South line of said 74.63 acre tract;

THENCE S 86°45'20"W with a fence along the South line of said 74.63 acre tract, a distance of 326.16 feet to the point of BEGINNING, CONTAINING 1.00 acre of land, more or less.



City Council Meeting

Date: September 19, 2023

Agenda Item: 5.C.

PRESENTER:

ITEM/SUBJECT: Consider approval of minutes for the September 5, 2023 Regular Meeting.
(Deputy City Secretary)

SUMMARY/BACKGROUND:

FINANCIAL:

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

CITY CONTACT: Rhonda Lewis, Deputy City Secretary
lewisr@nactx.us
(936) 559-2506

ATTACHMENTS: 1. City Council Meeting Minutes - 09.05.23



Regular Session
Nacogdoches City Council
September 5, 2023 – 5:30 p.m.
City Council Chambers – City Hall
202 East Pilar Street

DRAFT

City Council present in person: Mayor Randy Johnson, Council Members Kathleen Belanger, Roy Boldon, Chad Huckaby and Brad Maule.

1. Called to order at 5:30 p.m.
2. Pledge of Allegiance.
3. Open Forum – Mike Molling addressed the Council regarding assessments that he feels are needed of the parks within the City of Nacogdoches. He stated that the City should assess the areas before new projects are started. Mr. Molling mentioned the issues in the bathrooms at the parks, including vandalism, trash, graffiti, and the need for locks on the bathrooms to prevent individuals for using them as sleeping areas. Mr. Molling asked the Council to consider a full assessment of projects that will require funding. Lastly, he asked that the lights at Maroney Park being left on overnight be addressed and anywhere else this may be occurring.
4. ITEMS TO BE REMOVED FROM CONSENT AGENDA.
5. **CONSENT AGENDA:** Items included under Consent Agenda require little or no deliberation by Council. Approval of Consent Agenda authorizes the City Manager or his designee to proceed with conclusion of each in accordance with staff recommendations as reflected in the minutes of this meeting.
 - A. Adoption of ARPA Federal Procurement Policies and Procedures Addendum. (Director of Finance)
 - B. Consider approval of minutes for August 2, 2023, Special Meeting; August 3, 2023, Special Meeting; August 8, 2023 Special Meeting; August 15, 2023, Regular Meeting; and August 18, 2023, Special Meetings. (Deputy City Secretary)

Council Member Huckaby made a motion to approve; Council Member Maule duly seconded, and the motion carried by unanimous vote.

6. **REGULAR AGENDA:**
 - A. **Public Hearing:** Consider a Zone Change from R-1, Single Family to B-1, Local Business for approximately 1.32 acres, being of Lot(s) 1 of Block 8, 10-A, 10-B, & 11 of Block 1, of the Colonial Hills Subdivision, Section 1, generally located on the west side of Appleby Sand Road, 440 feet north of the intersection at East Austin Street and Appleby Sand Road. This request has been submitted by Courtney & Stephen Martin. Case Number ZON2023-05. (Planning Technician)

This item was withdrawn by the applicant.
 - B. **Public Hearing:** Consider a Specific Use Permit to operate a Tattoo Salon/Piercing Studio in a B-2, General Business District, on Lot 6-B, City Block 6, located at 507 East Main Street. This request has been submitted by Krysta Robertson. Case Number SUP2023-05. (Planning Technician)

Steve Bartlett, Director of Public Works, presented this item to Council stating the applicant is requesting to open a tattoo salon and piercing studio at 507 E. Main Street with conditions hours of operation, appointments for customers, preservation to the existing building, and signage. Mr. Bartlett showed concept and site photos of the location. Planning and Zoning believed that the request meets most of the eight (8) Conditions for Approval, with the exception of number 1, being Compatibility. He then introduced Krysta Robertson to address City Council.

Krysta Robertson, owner of Golden Cicada Tattoo, presented her request to City Council stating that she has made strong connections in the community and is an artist and business owner attempting to expand. She stated the goals and mission statement of her business and discussed the adherence to

Minutes unofficial until approved by City Council

safety and that she works closely with the State Health Department. Ms Robertson explained that she conducts her business as a General Business, as it is zoned. She stated that she does not wish to change the historical charm of the building. She stated that she gathered information from the Appraisal District and inquired about property values, and the effect this type of business would have in the area.

Mayor Johnson called for public comment.

- Alex Rantz approached and read a statement of support for the business from Jeffrey Murray.
- Dr. Victoria Wagner Green, shared information regarding historic downtown areas in other cities in Texas. She is in support of the request.
- Ricky Taylor enjoys visiting Nacogdoches and visits Ms. Robertson's existing tattoo studio often. He stated that he watched her grow and achieve success and become a successful business owner. He is in favor of the request.
- Ricardo Estrada resides in a home directly across from the proposed studio location. He is opposed to the request stating that there are other locations available that may better serve the business.
- Sean Hightower is in favor of the proposed business and would like Council to consider the impact of denying the request on business in the City overall.
- Emily Dodson, a graphic designer, stated that she is in support of Ms. Robertson and the growth of business in Nacogdoches.
- Jim Elder, owner of a building across the street from the tattoo/piercing salon's proposed location, stated that he has made investments in the city to revitalize the downtown area and is opposed to the business moving onto Main Street. He is asked that City Council to deny the request.
- Hallie Wurth stated that she is strongly opposed to the business moving into the old theatre, as she feels it will lower her property and resale value.
- Tracey Nicholas stated he has done work on many of the historic locations in Nacogdoches. He does not feel that the tattoo business will change the city drastically and will bring business to the downtown area.
- Dr. Charity Rackstraw stated the difficulty in bringing back and preserving the history in historic buildings. She is grateful that Ms. Robertson will attempt to preserve the location's interior and façade.
- Danny Sponberg holds a BS Degree in Criminal Science and shared research data in crime hot spotting and forecasting, a crime analysis that can predict future crimes within a city. She stated that the proposed location would most likely not attract criminal activity, according to the study.
- Jim Elder approached to address Council again, stating that his former business does attract in-person visitors and brings the sales tax revenue to the City.
- William Moser stated that he is in favor of the tattoo business and that the city he resides in, Grand Prairie faced the same issues as Nacogdoches regarding SUPs.

Mayor Johnson ended the public comment and asked the Council if there were any questions. Mayor Johnson asked for clarification on the votes for the SUP. Mr. Bartlett stated that to approve the SUP, there must be an approving vote of four members for the SUP to be granted.

Council Member Belanger asked who or what receives the actual SUP. Mr. Bartlett explained that the SUP will not travel with the business if Ms. Robertson moves her location.

Larissa Philpot-Brown, Director of Economic Development, stated that a Specific Use Permit is granted for the location and the specific business operation, which include the conditions that are applied.

Council Member Maule asked if the building owner applies for the SUP. Mr. Bartlett stated yes, that the owner of the building did sign the SUP form.

Mayor Johnson stated that he does have concerns regarding infrastructure and growth of the City, but would have to vote against the request in a historic district.

Council Member Huckaby asked how the City can enforce the conditions. Mr. Bartlett stated that a violation would have to come to the Planning and Zoning's attention and the issue would come to the Council if the business is not compliant, and Council has the authority to revoke the SUP.

Council Member Maule asked Ms. Robertson if she was aware of the boundaries of the Arts and Entertainment District. Ms. Robertson did not know the boundaries. She is aware that a future plan may have the area listed as "mixed use".

Council Member Boldon stated the statistics on the population that have tattoos and also stated that the tattoo salon does not attract a seedy environment to a city. He also stated that there is no data that proves a tattoo salon lowers the property value of a business or a home.

Council Member Maule asked if there is biohazard material in tattooing. Ms. Robertson stated yes, but the materials are kept in a separate room from the work area.

Council Member Huckaby asked Ms. Robertson her perspective of property owners not in favor of her proposed business. Ms. Robertson stated she welcomes educating those against the business and forming good relationships with neighbors.

Mayor Johnson called for a motion. Council Boldon made a motion to approve Item 6.B. with the stated conditions. Council Member Huckaby duly seconded the motion and the item **was not approved** by a vote of (3-2).

Mayor Johnson called for a five (5) minute recess.

Mayor Johnson called the meeting to order at 6:40 p.m.

- C. **Public Hearing:** Consider amending a previously approved Specific Use Permit for a Piercing Studio to also include a Tattoo Salon in a B-2, General Business District, on Lot 16-A, Block 67, of the North Heights Addition Subdivision, located at 3500 North Street, Suite 10. This request has been submitted by Primal Piercing & Jewelry. Case Number SUP2023-03. (Planning Technician)

Steve Bartlett discussed the request for this SUP to amend the existing SUP. The proposed conditions are to the hours of operations of the business. The request meets the eight (8) conditions for approval and staff believes there has been no change to the conditions.

Mayor Johnson made a motion to approve Item 6.C. with the stated conditions. Council Member Huckaby duly seconded the motion. The motion was approved unanimously.

- D. Consider approval of the Nacogdoches Economic Development Corporation professional services contract. (Economic Development Director)

Larissa Philpot-Brown, Director of Economic Development Corporation, presented an overview of her department's collaboration with the City of Nacogdoches and asked City Council to approve the NEDCO Professional Services Contract. She discussed the structure, comparison with the City of Lufkin, Texas, business development, a technology action plan, business development, agreements and projects, advocacy, and project development.

Scott Boyer, the incoming Chairman of NEDCO, addressed City Council and gave some points as to where NEDCO is going in 2023-24, and discussed the major tasks to fulfill in YR 2024.

Council Member Belanger moved to approve Item 6.D. on the agenda. Council Member Boldon duly seconded the motion, and the motion carried unanimously.

- E. **Public Hearing:** Hold a public hearing and receive citizen input on the Proposed FY2023-2024 Budget. (Director of Finance)

Pam Curbow, Finance Director, presented the Proposed FY2023-24 Budget with minor changes. She explained each update to the proposed budget.

There were no comments from the public.

- F. Consider approval of an ordinance approving and adopting the annual budget for fiscal year beginning October 1, 2023 and ending September 30, 2024; providing that said expenditures for said fiscal year shall be made in accordance with said budget, unless otherwise authorized by an ordinance adopted by City Council; providing for a repeal clause; providing a severability clause; providing an effective date. (Director of Finance)

Pam Curbow, Finance Director, stated Council had the option of moving forward with adopting the budget or postponing until the next meeting on September 12, 2023.

Mayor Johnson made a motion to adopt the proposed budget for the FY2023-24. Council Member Huckaby duly seconded the motion, and the motion carried by unanimous vote.

- G. Consider the ratification and approval of an emergency contract between the City of Nacogdoches and Duplichain Contractors for the construction of a new storm sewer system along Park Street and Mound Street in an amount not to exceed \$689,510.00. (Director of Public Works)

Steve Bartlett, Director of Public Works, stated that this emergency storm drain project is in need of approval to replace the undersized storm drain line.

Council Member Belanger asked when the project would be complete. Mr. Bartlett stated he is negotiating a timeframe but anticipates 45 days for completion. He also mentioned that the drain lines can be overloaded very easily if not replaced as soon as possible.

Council Member Maule asked if there was any liability for the house and church the collapsed drain went under. Mr. Bartlett answered that it is a matter of finding out who performed construction first and up until the collapse.

Council Member Huckaby asked what other areas in town have similar issues. Mr. Bartlett named: Burk Street, Little Zion, Broadmoor, and others with capacity issues.

Council Member Huckaby made a motion to ratify and approve Item 6.G. Council Member Boldon seconded the motion. The item was approved unanimously.

H. Receive a report, hold a discussion and give staff direction regarding the November bond election. (Director of Public Works)

Steve Bartlett discussed the direction and schedule of the bond election for November 7. He stated the he and the Deputy City Secretary, Rhonda Lewis, worked together to meet milestones to move closer to the Election Day. He mentioned that the Public Information Office is working on a “Bond Information” brochure to share with the public.

Council Member Belanger asked that information provided to the public, be very specific. Mr. Bartlett reminded Council that Bond Counsel asked that the City leave some flexibility as developments happen.

Mayor Johnson closed the regular meeting and convened into Executive Session at 8:15 p.m.

7. **EXECUTIVE SESSION:**

A. 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. (City Attorney)

8. City Council reconvened in regular session at 8:53 p.m. taking no action.

9. Adjourned 8:53 p.m.

ATTEST:

Mayor Randy Johnson
City Council
City of Nacogdoches

Rhonda Lewis, Deputy City Secretary



City Council Meeting

Date: September 19, 2023

Agenda Item: 5.D.

PRESENTER: Ashley Morgan

ITEM/SUBJECT: Consider approval of an agreement between the City of Nacogdoches and the Convention and Visitors Bureau for professional services. (Interim Director CVB)

SUMMARY/BACKGROUND: The Nacogdoches Convention and Visitor's Bureau ("CVB") provides tourism and convention marketing services for the City of Nacogdoches ("City"). The Agreement between the City and CVB states the City Council shall approve the budget and marketing plan of the CVB. The marketing plan shall state work to be performed by the CVB with money paid to the CVB by the City from Hotel Occupancy Tax and state specific goals. The Agreement also provides that the City shall pay the CVB 72.5% of available hotel revenue that is taxable and collected under the Authorizing Legislation and Article IV, Hotel Occupancy Tax, Section 94-141 of the City Code. FY 2023/ 2024, the estimated payment is \$616,250. The work of the CVB shall be consistent with its mission statement, in accordance with Chapter 351 of the Texas Tax Code and all other applicable laws and regulations.

FINANCIAL:

Item is budgeted:

Account No.: 18.49.630.94

Account Name: Hotel Fund Convention and Tourism Expense

Amount: \$616,250.00

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

Not Applicable

CITY CONTACT: Ashley Morgan, Interim Director CVB
ashley@visitnacogdoches.org
(936) 564-7351

ATTACHMENTS: 1. CVB Professional Services Agreement_Exp 043024

AGREEMENT BETWEEN THE CITY OF NACOGDOCHES
AND NACOGDOCHES CONVENTION AND VISITORS BUREAU

This Agreement is entered into between the City of Nacogdoches, Texas, a Texas home-rule municipality (“City”) and the Nacogdoches Convention and Visitors Bureau, a Texas non-profit corporation (“CVB”) pursuant to Chapter 351 of the Texas Tax Code (as amended from time to time, the “Authorizing Legislation”). In furtherance of the purposes of the Authorizing Legislation and in consideration of the mutual covenants in this Agreement, the City and the CVB agree as follows:

1. Term

This Agreement shall be effective and binding upon the parties beginning October 1, 2023, and shall remain in effect until April 30, 2024, subject to early termination as described below. Except as otherwise expressly provided in this Agreement, any written notice or other written communication requested or permitted to be given under this Agreement shall be delivered or sent by United States registered or certified mail, postage prepaid, or by express carrier, to:

Nacogdoches Convention and Visitors Bureau
Executive Director
200 East Main Street
Nacogdoches, Texas 75961

City of Nacogdoches
City Manager
202 E. Pilar
Nacogdoches, Texas 75961

unless another address is substituted by notice delivered or sent as provided in this paragraph. Unless specifically noted in this Agreement, any notice is deemed given when received.

2. Statement of Work

The marketing plan approved by the City shall state the work to be performed by the CVB with money paid the CVB by the City from the hotel occupancy tax (“Work”). The Work shall be consistent with the CVB’s “Mission Statement” as follows: to encourage, enhance, and promote tourism-related business in the Nacogdoches area and to promote Nacogdoches as a tourist destination throughout the state, regionally, nationally, and internationally. Any material proposed changes to the approved marketing plan must be approved in writing by the City Manager or designee. As used in this Agreement, the term “hotel tax revenue” means money paid by the City to the CVB from hotel occupancy tax levied and collected by the City in accordance with the Authorizing Legislation (Tax Collections). The CVB agrees to perform the Work in accordance with Chapter 351 of the Texas Tax Code, all other applicable laws and regulations, this Agreement, and the

applicable marketing plan, and the Budget. Contract performance will commence on October 1, 2023 (the “Commencement Date”).

3. Budget, Accounting, and Reports

As used in this Agreement, “fiscal year” means twelve-month period beginning October 1 and ending September 30.

No later than June 15 of each year or at such other date approved by the City Manager of City, CVB shall provide City a proposed Budget and Marketing Plan for the Work, which shall reflect consultations between CVB and appropriate City staff concerning, with respect to the budget, projected available tax collections for the ensuing fiscal year, any amount available in the CVB’s reserve fund, and estimated costs of the Work.

The City Council shall approve the budget and marketing plan. The City and the CVB shall negotiate in good faith to reach an agreement on a marketing plan and budget for the fiscal year by September 1 of the preceding fiscal year.

A. The Work shall be conducted, and all marketing plans and budgets shall contain the following requirements:

- (i) The marketing plan and budgets shall be consistent with required allocation of uses of tax collections as set forth in the Authorizing Legislation and applicable City Ordinances and shall identify those scheduled activities, programs, or events that will directly enhance and promote tourism and the convention and hotel industry.

As part of the Work, CVB shall provide, at a minimum, the following services, activities, and functions:

- (a) Market, solicit, and advertise for conventions, tourism, and other gatherings to maximize use of convention facilities, commercial lodging facilities, and tourism facilities consistent with adopted Marketing Plan. Such includes close cooperation with the Hotel Fredonia and Convention Center.
- (b) Provide registration, housing, and information services for convention groups.
- (c) Develop public awareness of the desirability, benefits and importance of travel to the Nacogdoches area economy.
- (d) Market and distribute materials promoting Nacogdoches as a preferred destination city consistent with Marketing Plan.
- (e) Demonstrate advantages Nacogdoches has to offer visitors from other parts of the state, nation, and world.
- (f) Perform all responsibilities of tourism and marketing.
- (g) Perform additional duties as agreed upon by both parties consistent with aforementioned Mission Statement.

- (ii) The Marketing Plan shall include, but not be limited to, a description of the proposed program of action for the fiscal year. In addition, the annual budget document of CVB shall be presented in such a way as to associate direct costs, where applicable, to the programs presented in the Marketing Plan. The Marketing Plan shall contain convention marketing goals and convention marketing programs. In addition, the Marketing Plan shall include convention services, tourism, marketing, and communication, housing, visitor services, sports association, and music and film marketing goals and programs. Upon approval of Marketing Plan and budget by City Council, CVB shall implement the plan and allocate funds within budgeted limits without further action on the part of the City.

All requests by CVB to City for funds, services, or other items of value shall be directed in writing for approval to the City Manager.

- (ii) CVB is authorized to use any trade or service marks of City in connection with its performance of the Work. Promotional material should contain “Nacogdoches, the oldest town in Texas” logo, and CVB can use any additional logo adopted by its Board of Directors.

- B. It is the intent of City and CVB that budgets for the Work which, other than as hereinafter excepted, reflect the amount of tax collections available for the Work and tax collections equal to 72.5% of the City portion of hotel revenue that is taxable and collected under the Authorizing Legislation and Chapter 94, Article IV, Hotel Occupancy Tax of the City Code, be available for the Work. If during a fiscal year tax collections vary more than ten percent (10%) from the expectations on which the applicable budget is based, CVB shall send City Manager written notice of how CVB proposes to adjust its budget accordingly. Limits of hotel occupancy funds allowed to be used for day-to-day operations, travel, and other matters described in 351.101(e) and (f) shall be strictly observed.

Under a separate agreement, the City may provide that the first \$150,000.00 of the City portion of the Hotel Occupancy Tax generated by the Hotel Fredonia and Convention Center and actually received by the City in any one-year period determined by the City is to be granted to the Hotel Fredonia and Convention Center or the entity owning, leasing, or operating it. Such \$150,000.00 amount shall not be considered in the computation of the 72.5% allocated to the CVB. Amounts of Hotel Occupancy Tax over \$150,000.00 in any such one-year period generated by Hotel Fredonia and Convention Center and received by the City would be considered as part of the 72.5%. It is not anticipated that the exclusion of such \$150,000.00 yearly amount of Hotel Occupancy Tax generated by the Hotel Fredonia and Convention Center and received by the City will extend beyond ten (10) years; however, the beginning of such ten (10) year duration has not yet been determined. Further excluded from the 72.5% would be any of the State portions of the Hotel Occupancy Tax generated by the Hotel Fredonia and

Convention Center and actually received by the City from the Comptroller of Public Accounts.

- C. CVB shall maintain complete and accurate books and records of activities and finances, which City may audit at any time upon reasonable notice. Financial records shall be maintained on a regular basis in accordance with generally accepted accounting principles, subject to any variations as are required by State law or are agreed to in writing by City. Specifically, CVB shall account separately for hotel tax revenue, and any other funds provided it by the City, and shall account separately for receipts and expenditures related to each of the following activities: (A) convention sales, (B) convention services housing, (C) tourism, (D) film and music, (E) marketing and communications, (F) visitor services, (G) administration, (H) advertising, (I) sports commission and (J) other work. On request of City, CVB shall make records relating to handling and expenditure of hotel tax revenue and other City payments available to City or any other person designated by City. CVB shall also follow all provisions of City of Nacogdoches Code of Ordinances Administration of Funds, Section 94-206, et seq and Convention and Visitors Bureau Board, 94-231 et seq.
- D. CVB shall engage an independent firm of certified public accountants previously approved by City Manager to audit its annual financial statements and shall deliver to City Manager a copy of audited annual financial statements, consisting of balance sheet, income statement, statement of cash flows, and notes to financial statements, no later than one hundred twenty (120) days after end of each fiscal year. The engagement letter from the independent firm of certified public accountants shall contain a statement that CVB may request a copy of all audit work papers produced either by the client or the firm during annual audit of the financial statements. Notes to audited annual financial statements shall contain a detailed breakdown of revenues by source and expenditures by category. In addition to audited annual financial statements, upon request, CVB shall deliver a copy of all audit work papers that underlie annual financial statements.
- E. Within thirty (30) days after the end of each quarter in the fiscal year, the CVB shall deliver to City Manager a (i) written report of expenditures relating to the Work with specific allocations and expenditure information as to hotel occupancy taxes, and (ii) unaudited financial statements for the quarter just ended, including at a minimum a balance sheet and income statement.

Within forty-five (45) days after the end of each quarter in the fiscal year, the CVB shall conduct a meeting (on at least three (3) days advance published notice) to present the financial report for the quarter just ended and obtain public input on it and the Work.
- F. CVB will provide City quarterly reports containing detailed information on performance of the Work, including performance reports listing all groups and/or events added to the City Manager or designee schedule in that period with

accompanying information such as names, dates booked, estimated attendance and estimated room nights. CVB shall provide City with any reports or documentation required by federal or state law as such laws may be amended from time to time during term of this Agreement.

4. Payments by the City

- A. In addition to any particular limitations and conditions specifically stated in this Agreement, all obligations of the Agreement from proceeds of the hotel occupancy tax available to pay for the Work under this Agreement, and further subject to the actual collection of these tax proceeds, this Agreement imposes no obligation upon City to levy and collect this tax.
- B. City shall pay to CVB quarterly in arrears from hotel tax revenue appropriated for this Agreement. Hotel tax revenue shall be spent solely to perform the Work allowable under Section 351 and fund compliance with this Agreement, including the preparation of reports and financial statements, and auditing of the latter. CVB acknowledges it has a fiduciary duty to City regarding hotel occupancy funds.
- C. CVB is an independent entity, and the relationship between CVB and City is and shall remain that of independent contractors. City is not and shall not be liable for any of CVB's debts or obligations, including any operating deficit that may arise. CVB shall not hold itself out as an agent of City, nor in any way purport to bind City with respect to any contract or other obligation. **CVB shall defend indemnify and hold City harmless against any cost, claim, expense, liability, award or judgment (claim) arising in whole or in part out of, or alleged to arise in whole or in part out of the operations or activities of CVB. City may set-off and apply against any such claim (or against City's cost of defending against such claim) any amount City owes CVB.**
- D. CVB shall carry insurance in the following types and amounts for the duration of this Agreement and, prior to commencement date, shall furnish City Manager with Certificates of Insurance along with copies of policy declaration pages and all policy endorsements as evidence thereof; including insurance for special events, which may be outside the scope of general coverage
 - (i) Statutory workers' compensation and employers' liability coverage with minimum policy limits for employers' liability of \$100,000 bodily injury to each accident, \$500,000 bodily injury by disease policy limit, and \$100,000 bodily injury by disease each employee;
 - (ii) Commercial general liability insurance with a minimum bodily injury and property damage per occurrence limit of \$1,000,000. The policy shall provide contractual liability coverage for liability assumed under this contract, products and completed operations coverage and independent contractors coverage;

- (iii) Business automobile liability insurance for all owned, non-owned and hired vehicles with a limit of \$500,000 per occurrence for bodily injury and property damage liability;
- (iv) Directors and officers coverage with a minimum of not less than \$1,000,000 per claim shall be in place for protection from claims arising out of negligent acts, errors or omissions for directors and officers while acting in their capacities as such; and
- (v) “All risk” property coverage (excluding flood and earthquake) at 100% replacement cost value for contents in the CVB’s care, custody or control. The coverage will be primary, and the City will be shown as loss payee on the policy.

If coverage is written on a claims-made basis, the coverage, including renewals, shall have a retroactive date coincident with or prior to the date of this Agreement and the certificate of insurance shall state that coverage is claims-made and the retroactive date. This coverage shall be continuous for not less than twenty-four (24) months following completion of service under this Agreement. CVB shall provide all provisions of this Agreement concerning liability, duty and standard of care, together with indemnification or defense provisions herein, shall be underwritten by contractual coverage sufficient to include such obligations within applicable policies. CVB shall not commence work under this Agreement until it has obtained all required insurance and the City Manager’s office has reviewed such insurance coverage. Required insurance shall be written by a company licensed to do business in State of Texas at the time the policy is issued. In any event, Company must be rated by A.M. Best at B+VII or better and acceptable to City. CVB shall produce an endorsement to each affected liability policy that: (a) names City as additional insured (except workers’ compensation), with the right of subrogation against City, waived and (b) obligates insurance company to notify City at the following address of any non-renewal, cancellation, or material changes to the policy, at least thirty (30) calendar days before change or cancellation:

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

CVB shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of this Agreement or the twenty-four (24) month period following completion in the case of a claims-made policy. City reserves right to review insurance requirements of this section during the effective period of this Agreement and to make reasonable adjustments to insurance coverage, their limits when deemed necessary, based upon changes in statutory law, court decisions, or the claims history of the industry or financial condition of the insurance company, as well as that of CVB. City shall be entitled, upon request, and without

expense to City, to receive copies of the requisite insurance policies and all endorsements thereto and may make any reasonable requests for deletion, revisions or modification of particular policy terms, conditions, limitations, or exclusions. (Except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter on any such policies.)

- E. The CVB shall occupy certain areas of the Historic Town Centre rent-free. Such areas of occupancy by the CVB shall be determined at the sole discretion of the City. The CVB shall be responsible for utilities, janitorial supplies, and building maintenance. The CVB shall set aside at least \$5,000 per year for building maintenance and shall accumulate such funds for major repairs and/or replacements. The City shall insure the building.

5. Other Requirements

- A. CVB Treasurer and any other board member or employees deemed applicable, if any, shall be bonded in a minimum amount of \$100,000 each.
- B. For the purposes of this Agreement and CVB Bylaws, City agrees the term “competitive strategy” shall mean: selling Nacogdoches strengths against competitors’ weaknesses, developing and/or negotiating sponsorship and contribution agreements, competition for tourism special events, promotional/seasonal packaging and programs, and introduction of a new advertising campaign.
- C. Except as provided in CVB Bylaws, Articles of Incorporation or in this Agreement, CVB may conduct its affairs and engage in such other activities as it deems appropriate, so long as such actions (i) are consistent with its purposes as stated in this Agreement and Articles of Incorporation, (ii) comply with applicable laws, and (iii) do not impair its ability to carry out its duties under this Agreement.
- D. City may require CVB to perform an annual performance audit. City will determine the scope of work, and CVB will pay for said performance audit.

6. Early Termination

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

7. Applicable Laws

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

8. Non-Waiver

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

9. Venue

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

10. Governing Law

The validity of this Agreement and of any of its terms or provisions, as well as the rights and duties of the parties hereunder, shall be governed by the laws of the State of Texas.

11. Cooperation

Upon expiration or termination hereof for any reason, CVB shall cooperate with City to ensure a smooth transition and completion of the Work. Without limiting the generality of the foregoing, CVB shall promptly, but not more than sixty (60) days following termination, turn over to City without charge all unspent Hotel Tax Revenue as well as all other City contributed revenue funds, including balance of reserve fund, and all property purchased with Hotel Tax Revenue or City provided funds and upon request shall assign to City all contracts, rights and claims relating to the Work. Termination of this Agreement shall not impair the rights of City under state law, articles of incorporation or bylaws of CVB or under any other contract between City and CVB.

12. Contract Administration

This Agreement shall be administered by City through the City Manager or designee, and all communications from CVB to City concerning this Agreement and the Work shall be directed to the City Manager or designee, unless otherwise specified herein or in CVB Bylaws. CVB shall deliver to the City Manager simultaneously a copy of any notice required by this Agreement or such bylaws to be delivered to another City official.

13. Miscellaneous

This Agreement may not be amended without written consent of the parties. This Agreement is for the benefit of City and CVB only and no other party may seek to enforce it or assert any rights under it. CVB may not assign this Agreement without the prior written consent of City. Delay by a party in enforcing, or failure by such party to enforce, a right under this Agreement shall not be deemed a waiver of the same. A waiver of party's rights shall be effective only if in writing and shall be limited to the single event or occurrence specified. This Agreement may be executed in one or more counterparts. This Agreement, including its exhibits, attachments, and applicable City-approved Marketing Plans and Budgets, represents the entire agreement between the parties regarding the subject matter

hereof, and there are no other representations, understandings, or agreements between the parties relative to such subject matter.

14. Articles of Incorporation/Bylaws

City shall have the right to approve any proposed changes to CVB Articles of Incorporation or Bylaws.

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

CITY OF NACOGDOCHES, TEXAS

Signature: _____

Print Name: Randy Johnson

Title: Mayor

Date: _____

NACOGDOCHES CONVENTION AND VISITORS BUREAU

Signature: _____

Print Name: _____

Title: _____

Date: _____



City Council Meeting

Date: September 19, 2023

Agenda Item: 6.A.

PRESENTER: Jessica Sowell, Community Services Asst Director

ITEM/SUBJECT: Receive an annual report from the Boys and Girls Club of Deep East Texas. (Community Services Interim Director and Steve Davidson, President Boys and Girls Clubs of Deep East Texas)

SUMMARY/BACKGROUND: Steve Davidson will provide an annual report to City Council on activities and opportunities at the Boys and Girls Club including information on our annual contract to provide a yearround indoor swimming facility for Nacogdoches citizens,

FINANCIAL:

Item is budgeted:

Account No.: 01.75.630.98

Account Name: *General Fund Non-Departmental*

Amount: \$70,000 total (paid in 12 monthly installments)

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

Community Engagement/Diverse Environment

CITY CONTACT: Jessica Sowell, Community Services Interim Director
sowellj@nactx.us
(936) 559-2940

ATTACHMENTS: 1. Boys & Girls Club Presentation



Boys & Girls Clubs of Deep East Texas

NACOGDOCHES CITY COUNCIL PRESENTATION

TUESDAY SEPTEMBER 6, 2022

5:30 P.M.

The Boys & Girls Club of Nacogdoches originated in the late 1980's beginning at Mike Moses Junior High until a Capital Campaign helped build the club on Park Street in 1996.

The Boys & Girls Clubs of Deep East Texas, the City of Nacogdoches and the Nacogdoches Independent School District entered in to an agreement to build an aquatics center in 1998. After a capital campaign and a lead gift from the Lehmann family, the center opened in 2000.



The Aquatics center serves a number of roles in the community.

- Used by the children who are members of the Boys & Girls Club
- Used by Nacogdoches Independent School District Swim Team and water polo team
 - High School and Middle School
- Used by the Citizens of the City of Nacogdoches
 - General Swim – 3 times a day for 1-3 hour time slots – M – F
 - General Swim – 2 hours on Saturdays/Closed Sundays
 - Available for Rental by any Resident residing in Nacogdoches
- Lifeguard Trainings
- General CPR & First aid Classes
- Swim Lessons – Youth and Adults
- Collaboration with local Boy Scout troops and youth groups
- Water Aerobics

Statistical Numbers of Pool Usage

General Open/Lap Swim

- Hours offered = 1500 Hours over the School-Year and Summer
- Total Patrons attending = 4186
 - 3018 Adults
 - 1168 Youth

Other Youth Served

Swim Team = 231 Participants

Swim Lessons = 351 Participants

Birthday Parties = 14 total party guests = 350

In the Fall of 2021, we received a 21st Century Grant

- Serving 6 additional school sites – underperforming students in underperforming schools
 - Three of those locations are in Nacogdoches
 - Fredonia (Now Mike Moses Elementary); BQJ; and Carpenter Elementary Schools
 - The Grant runs for a period of 5 years – renewable annually
 - Serve an additional 400 children in these locations
 - The program is offered afterschool and during the summer months

Boys & Girls Club General Information

- Total Membership – 1618
 - School Year Members
 - 625 – Club, School Sites, Aquatics/Gymnastics
 - Summer Members
 - 950 – Club, School Sites, Aquatics/Gymnastics
 - Sports Programs
 - Football – 400 registered
 - Communities of Nacogdoches, Lufkin, Diboll, Corrigan
 - Gymnastics
 - This past summer was our busiest since I arrived
 - Between the 3 facilities on our campus and our 21st Century Sites we served 950 unduplicated youth this summer.

Club Hours

- School Year – Monday – Friday 3:00 – 7:00 p.m.
- Summer Months – Monday – Friday 8:00 a.m. – 5:00 p.m.

Fees are kept affordable for all

- School Year – August through May - \$75.00 per year
- Summer - June – August - \$75.00 per summer for first child \$50.00 for additional
- Partnerships with Superior and Amerigroup – Medicaid
 - Will pay for either school year or summer registration fees

Membership Demographics

- Boys 49% Girls 51%
- Ages
 - Under 12 Years Old – 80%
 - Over 13 Years Old – 20%
- Ethnicity
 - Caucasian – 35%
 - African American – 36%
 - Hispanic - 21%
 - Multiple Races – 8%

- Family Breakdown
 - Both Parents – 62%
 - Single Parent – 38%
- Meals Provided to Member
 - Organization Wide – 229,000
 - Nacogdoches Sites – 80,741 or 35% of the Total
- Total Market Penetration of the Boys & Girls Club
 - Total Members – 1618
 - Total NISD Students – 5,940
 - % of members/NISD students – 28%
 - Penetration Rating of 1 out of every 4 children

Revenue Streams

	21/22	22/23
• Donations and Annual Campaign	13 %	18%
• Fundraising Efforts	10 %	10%
• Grants and Foundations	20 %	24%
• Annual Contracts	22 %	22%
• Membership Fees and Dues	26%	26%
• PPP Loan	9%	0%



City Council Meeting

Date: September 19, 2023

Agenda Item: 6.B.

PRESENTER: Jessica Sowell, Community Services Asst Director

ITEM/SUBJECT: Consider approval of an agreement between the City of Nacogdoches and the Boys and Girls Club of Deep East Texas for essential services in an amount not to exceed \$70,000. (Community Services Interim Director)

SUMMARY/BACKGROUND: The Boys and Girls Club of Deep East Texas provides necessary facilities, supplies, qualified staff and volunteer support for a year-round indoor swimming facility for Nacogdoches citizens, which the City deems to be a basic recreational service. The current agreement will expire on September 30, 2023. In return for this provision of these services to the citizens, the City of Nacogdoches pays \$70,000 annually (in 12 monthly installments) to the Boys and Girls Club of Deep East Texas.

If renewed, the contract term will be for an additional 12 months beginning October 1, 2023 and ending on September 30, 2024.

FINANCIAL:

Item is budgeted:

Account No.: 01.75.630.98

Account Name: *General Fund Non-Departmental BNG Club Expense*

Amount: \$70,000 annually in 12 monthly installments

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

Community Engagement/Diverse Environment

CITY CONTACT: Jessica Sowell, Community Services Interim Director
sowellj@nactx.us
(936) 559-2940

ATTACHMENTS: 1. Boys & Girls Club Agreement.2023
2. 6B Presentation Boys & Girls Club Contract PPT

AGREEMENT - BOYS AND GIRLS CLUBS OF DEEP EAST TEXAS

STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF NACOGDOCHES §

THIS AGREEMENT is made and hereby deemed to be effective as of the 1st day of October, 2023, by and between the City of Nacogdoches, a home rule municipality, hereinafter referred to as “City,” and the Boys and Girls Clubs of Deep East Texas, hereinafter referred to as the “Club,” pertaining to the furnishing of essential services which constitute a public purpose in accordance with the terms and provisions set forth herein. This agreement supersedes any and all prior agreements, both oral and written, entered into by and between the City and the Club regarding the recreational facilities and services set forth herein.

I.

The City wishes the Club to provide the necessary facilities, supplies, qualified staff and volunteer support to provide certain recreational facilities, including but not limited to, a year round indoor swimming facility for the citizens of the City of Nacogdoches which the City deems to be a basic recreational service. The Club shall provide the following essential facilities, supplies, staffing, services and activities to the general public as follows:

1. Pool Facilities

The Club will provide and maintain at all times during the term of this agreement at its sole expense and in first class, good and workman like manner and condition a swimming pool and covering facility substantially in conformity with the Club's Indoor Swimming Pool (the "pool") currently in existence as of the date of this agreement. The pool, bleachers and related matters currently in existence and maintained by the Club as of the date of this Agreement shall be housed within an adequate structure to make the pool an indoor facility unaffected by seasonal weather changes.

The Club will also make available as accessory uses paved and striped parking, restrooms, seating facilities, registration area, emergency phones and the like reasonably necessary to the use and enjoyment of the pool by the public. The Club shall also furnish and apply all necessary chemicals and perform other maintenance and treatment of the pool to keep it safe for human use and within recognized chemical tolerances.

The Club will heat and/or cool the structure and/or pool to provide comfortable and appropriate year round temperatures for the pool and interior of the structure.

2. **Pool Staffing**

The Club shall provide adequate numbers of properly trained staff to operate the pool and structure and allow the public safe and comfortable use of the pool and structure. Such staff shall include at a minimum:

1. an Aquatics Coordinator;
2. adequate numbers of lifeguards properly trained and certified to perform their functions; and
3. maintenance staff as needed.

Adequate lifeguards and other staff deemed necessary by the Club shall be on duty at all times members of the public are using the facility and/or pool. This shall not require any particular staffing when private uses of the pool are made, such private uses including without limitation the Nacogdoches High School Swim Program, Summer Swim Program, Boys & Girls Club Swim Program, Ambush Swim Team, and the Sr. Masters Swim Program (all sometimes collectively referred to as “private uses”).

3. **Pool Operation**

The pool and facility shall generally be open year round with reasonable exceptions for holidays, maintenance and certain hours of the day when usage is minimal. The Club estimates that total approximate annual hours of operation will be 3,200 hours of which public use by citizens of the City will be approximately 1,500 hours per year.

Public usage of the pool and facility will be as follows:

School Year

Monday thru Friday	7:30 A.M. – 9:00 A.M. 11 A.M. - 2:00 P.M. 6:45 P.M. –8:45 P.M.
Saturdays	12:00 P.M. - 2:00 P.M.

Summer Program

Monday thru Friday	5:00 A.M.-7:00 A.M. 11:00 A.M.-2:00 P.M. 7:00 P.M.-9:00 P.M.
Saturdays	12:00 P.M. - 2:00 P.M.

Changes to the length, time of day and day of the week for public usage shall be made only with the consent of the City, such consent not to be unreasonably withheld. Recognizing that the foregoing schedule will be publicized and relied on by the public, the Club agrees to inform the City at least seven (7) days in advance of any deviations from the schedule due to swim meets, specialized classes, private parties and the like. The Club shall inform the City within twenty-four (24) hours of an unforeseen interruption of scheduled services and of injuries during public use requiring professional medical attention. The Club shall inform the City one (1) month in advance of holiday closings and scheduled substantial maintenance requiring closure of the pool.

4. **Facilities Provided in Support of After School Programs**

In addition to the provision of the above-described swimming pool, the Club will make available other Club facilities, to include necessary support personnel, supplies and transportation, required for the provision of an After School Program benefitting the youth of the City.

Said Program will be available as follows:

Monday thru Friday during the school year	3:00 P.M. – 7:00 P.M.
--	-----------------------

Monday thru Friday during the summer months	8:00 A.M. - 5:00 P.M.
--	-----------------------

5. **Miscellaneous**

(1) The Club shall create, maintain and provide on request of the City a list of actual hours of public use of the pool.

(2) Any charges to the public for public use shall be presented to the City for prior approval, not to be unreasonably withheld. See Attachment A.

(3) The Club, in keeping with its purpose and history, shall not discriminate on account of race, sex, creed, age, national origin or any other impermissible basis.

(4) It is recognized that the Club is solely and completely in charge of the construction, use and operation of the pool and other provided facilities, the specifications and requirements of the City being solely directed at assuring value to the City for its payments in partial support of the operational costs of the pool and other provided facilities.

(5) No later than June 15 of each year or at such other date approved by the City Manager of the City, the Club shall provide a report to the City's Council containing detailed information concerning pool attendance data and general pool uses, as well as attendance and usage of other provided facilities. Additionally, the above-mentioned report shall provide estimates of public

attendance at all Club sponsored functions as well as a general financial report regarding overall club functions.

II.

The period of this agreement shall commence on the 1st day of October, 2023, and continue for a period of twelve (12) months from said date and ending at midnight on the 30th day of September, 2024, subject to early termination as described below. In return for the Club providing the above described facilities and services the City agrees to pay as follows:

Seventy Thousand and No/100 Dollars (\$70,000.00) per year, such amount to be prorated to reflect the actual portion of the City's fiscal year which the pool and other provided facilities will be open for public use. In the event of termination of this agreement within a fiscal year, the Club will prorata reimburse the City for that fraction of the payment attributable to months of the fiscal year following the date of termination.

This agreement shall automatically renew and continue in force on an annual basis, unless either party to this agreement notifies the other party in writing more than sixty (60) days prior to the end of the annual period of its desire to not renew the agreement or by other provisions set forth in this agreement.

III.

Either party may terminate this agreement by written notice to the other party if such other party breaches any of its obligations hereunder and does not cure such breach within thirty (30) days after receiving written demand from the other party specifying the breach in question and demanding it be cured. Such right to terminate this agreement shall be without prejudice to the other legal and equitable rights of the parties.

This agreement shall not be construed as creating a debt on behalf of the City in violation of Article III, Section 49a of the Texas Constitution. The club acknowledges that this agreement is subject to termination by the City, either in whole or in part, subject to the appropriation of funds by City Council. If funds are not appropriated or become unavailable, this agreement may be terminated without notice and the City will not liable to the Club for any damages that may result.

IV.

Venue of any action brought on or under this agreement shall lie exclusively in Nacogdoches County, Texas, and time is of the essence in this agreement and it is binding on the parties hereto, their successors and assigns.

The Club shall defend, indemnify and hold harmless the City and its officer, agents,

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

V.

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

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

Required insurance shall be written by company licensed to do business in the State of Texas at the time the policy is issued. In any event, Company must be rated A.M. Best at B+VII or better and acceptable to City. The Club shall produce an endorsement to each affected liability policy that names City as additional insured (except workers' compensation), with the right of subrogation against City waived and obligates insurance company to notify City at following address, of any non-renewal, cancellation or material changes to the policy, at least thirty (30) calendar days before change or cancellation.

[Signature Page to Follow]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective and appropriate officials on this 19th day of September, 2023, to be effective on the date for the terms herein provided.

THE CITY OF NACOGDOCHES, TEXAS

BY: _____
Keith Kiplinger, Interim City Manager

BOYS & GIRLS CLUBS OF DEEP EAST TEXAS

BY: _____
Steven Davidson, President/CEO

APPROVED AS TO FORM:

Jerry Baker, City Attorney

Attachment A

General Swim - \$5 per visit or \$60 for punch card for 20 visits

Water Aerobics – \$5 per visit or \$60 for punch card for 20 visits

Swim Lessons per month – \$45 per month for 8 x 30 min classes.

USA Swim Team - \$65 - \$90 per month depending on practice group.

Annual Contract

Boys & Girls Club of Deep East Texas

Contract Details

Essential services provided by the Boys & Girls Club:

- Pool Facilities
- Pool Staffing
- Pool Operation hours
- After School programs

Contract requirements:

- Communication of all hours and pricing schedules
- Notification of any changes in services or hours
- Annual report to the Nacogdoches City Council

Contract Price - \$70,000





City Council Meeting

Date: September 19, 2023

Agenda Item: 6.C.

PRESENTER: Jessica Sowell, Community Services Asst Director

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

SUMMARY/BACKGROUND: The City of Nacogdoches and Keep Nacogdoches Beautiful (KNB) entered into an agreement on October 1, 2022 for a one-year term whereby KNB will provide necessary staff, volunteer support, and technical and education expertise to further recycling programs and beautification within the City. As part of the agreement, KNB will provide the City with an annual report concerning KNB's budget, accomplishments and efforts regarding general recycling and beautification.

FINANCIAL:

No financial impact associated with this item

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

Not Applicable

CITY CONTACT: Jessica Sowell, Community Services Interim Director
sowellj@nactx.us
(936) 559-2940

ATTACHMENTS: 1. KNB Presentation



KNB

KEEP NACOGDOCHES BEAUTIFUL

KEEP NACOGDOCHES BEAUTIFUL MISSION:

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

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

KEEP NACOGDOCHES BEAUTIFUL VOLUNTEER BOARD OF DIRECTORS



- Tyrone Curl Chairman
- Jana Redfield Vice Chair
- Jill Milem Treasurer
- Brandi Derouen Secretary
- Brian Bray Immediate Past Chair
- Tyler Brady Board Member
- Alyssa Faykus Board Member
- Cindy Patterson Board Member
- Cindy Perry Board Member
- Eric Rearwin Board Member
- Dawn Stover Board Member
- Kimberly Wagner Board Member

KEEP NACOGDOCHES BEAUTIFUL 2022-2023 PROGRAMS & EVENTS

- **TechCycle**
- **Adopt-A-Highway**
- **SFA's MLK Day of Service**
- **TX Arbor Day**
- **Friends of the Forest Opening**
- **SFA's The Big Event**
- **Tire Recycle Day**
- **Fall Sweep**
- **Festival Litter Management**
- **Christmas Lights Recycle**

TECHCYCLE SATURDAYS



- Partner with STS Electronics in Jacksonville to collect recyclable electronics
- Quarterly collections throughout the year that is open and free to the public
- Reduces illegal dumping and the number of items going to landfill
- Next collection date is November 4th

ADOPT-A-HIGHWAY



- *DON'T MESS WITH TEXAS* Campaign
- Quarterly litter clean up for designated 2 mile site on Loop 224
- Next clean up is September 30th



Fall Sweep

- A *Keep Texas Beautiful* Program
- KNB had 3 service projects in November 2023
 - Bulb Planting at Banita Creek Park
 - Adopt A Highway
 - TechCycle Collection





MLK DAY OF SERVICE

- An SFA event where student volunteers are assigned to different service projects throughout the community
- KNB had 4 service projects in 2023
 - Temple Spray Park Clean Up
 - Lanana Creek Clean Up
 - Adopt A Highway
 - TechCycle Collection



SFA's The BIG Event

- The BIG Event is put together by SFA where student volunteers are assigned to different service projects throughout the community
- KNB had 4 service projects in 2023
 - Adopt A Highway
 - TechCycle Collection
 - Banita Creek Clean up
 - Lake Nacogdoches Clean up



Earth Day at Pecan Park

- In April KNB participated in the library's Earth Day event
- KNB set up educational activities for youth
 - “Don’t Mess with Texas” coloring books
 - Take home seed starters in upcycled containers





Tire Recycle Day

- We partnered with The City of Nacogdoches and Cook Tire and held our 3rd annual tire recycle collection
- We were able to collect over 300 unwanted tires
- Collected tires were picked up from Liberty Tire in Beaumont to be recycled
- This event helps keep these unwanted tires from being illegally dumped and out of our landfills



TX Arbor Day

- Event with the Garden Capital of Texas
- On TX Arbor Day 2022, we planted 35 native trees at Pioneer Park



Christmas Lights Recycle



- We offered our 2nd Christmas lights recycle in 2022
- Collection bins were set up in the lobby of the Nacogdoches Recreation Center & Public Library, & the Nacogdoches County Chamber of Commerce
- The community could drop off old strands of lights, free of charge
- STS Recycling picked up the collected lights to be recycled

Festival Litter Abatement

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



Friends of the Forest Trail



- Soft opening on Texas Arbor Day, Grand Opening/Ribbon Cutting held in April
- A project partnered with Holden Kelly, the Nacogdoches Recreation Center, and Nacogdoches Public Library
- 2 different interactive, educational trails located at Pecan and Pioneer Park



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

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

PRESENTER: Jessica Sowell, Community Services Asst Director

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

SUMMARY/BACKGROUND: The City of Nacogdoches and Keep Nacogdoches Beautiful (KNB) entered into an agreement on October 1, 2022 for a one-year term whereby KNB will provide necessary staff, volunteer support, and technical and education expertise to further recycling programs and beautification within the City. If the City Council approves the renewal of the agreement for an additional one-year term, the City would agree to collect and distribute to KNB all donations made to KNB for City sanitation and water bills and to supplement the above stated donations in the amount of \$2,000 per month.

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

If renewed, the contract will be for an additional 12 months beginning October 1, 2023 and ending on September 30, 2024.

FINANCIAL:

Item is budgeted:

Account No.: 31.75.630.99

Account Name: *KNB Services*

Amount: \$2,000 per month

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

CITY CONTACT: Jessica Sowell, Community Services Interim Director
sowellj@nactx.us
(936) 559-2940

ATTACHMENTS: 1. Keep Nacogdoches Beautiful Contract_2023
2. 6D KNB Contract PPT

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

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

1. Term

This Agreement shall be effective and binding upon the parties beginning the 1st day of October, 2023, and shall remain in effect until the 30th day of September, 2024, subject to early termination as described below.

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

2. Statement of Work and Obligations of KNB

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

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

3. Obligations of CITY

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

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

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

4. Independent Contractor

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

5. Indemnification

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

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

6. Insurance

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

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

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

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

7. Applicable Law

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

8. Non-Waiver

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

9. Venue

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

10. Miscellaneous

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

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

CITY OF NACOGDOCHES, TEXAS

KEEP NACOGDOCHES BEAUTIFUL

Signature By: _____
Print Name: Keith Kiplinger
Title: Interim City Manager
Date: _____

Signature By: _____
Print Name: Tyrone Curl
Title: Chair, Keep Nacogdoches Beautiful
Date: _____

Approved as to form:

Jerry Baker, City Attorney

Annual Contract

Keep Nacogdoches Beautiful - “KNB”

Contract Details



Essential services provided by Keep Nacogdoches Beautiful:

- Plan, promote and conduct recycling efforts
- Plan, promote and conduct activities which promote beautification
- Plan, promote and conduct educational activities
- Annual presentation to Nacogdoches City Council

City Obligations:

- Collect & distribute donations made to KNB on City sanitation bills
- Monthly donation of \$2,000 in addition to above mentioned donations

Contract Price - \$2,000 per month/ \$24,000 annually

PRESENTER: Juan Pollette, Planning Tech

ITEM/SUBJECT: Public Hearing: Consider approval for a Specific Use Permit for Light Manufacturing/Assembly in a B-2, General Business district, on Lots 4 & 5 of the Reese No. 2 Subdivision located at 2524 South Street and Lot 77-B-1, City Block 56, located at 2516 South Street. This request has been submitted by Ceasar Escalante. (Planning Technician)

SUMMARY/BACKGROUND: The request is for a Specific Use Permit (SUP) for Light Manufacturing/Assembly at 2524 and 2516 South Street. The property is zoned B-2, General Business, and was originally opened as a car audio installation shop in 2011. Within this year, the owner has begun to assemble and distribute metal carports at the back of the car audio installation business located at 2524 South St. Since then, the owner has purchased the property to the north, located at 2516 South Street, with plans to expand his carport business to that location. Per the Zoning Ordinance, Light Manufacturing/Assembly is allowed in the B-2, General Business zoning district with approval of an SUP. The SUP process allows staff, the Commission, and the City Council the opportunity to review and impose conditions if necessary on such development.

The purpose of this SUP is to allow for the continued use of light manufacturing and assembly of metal carports at these locations. The building located at 2524 South Street (car audio shop) is approximately 1,900 square feet in size. The adjacent building to the north, located at 2516 South Street, is approximately 2,400 square feet. Both properties also have frontage along Old Lufkin Road. The combined acreage of the three lots is just under one acre.

Adjacent Land Use & Zoning

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

Direction Comprehensive Plan Zoning Land Use

North Commercial B-2, General Business Commercial

East Commercial B-2, General Business Commercial

South Commercial B-2, General Business Commercial

West Single-Family Residential R-1, Single-Family Single-Family

This property has frontage along South Street to the east and frontage along Old Lufkin Road to the west. The area is predominately zoned and developed as commercial, with the exception of an R-1, Single Family Residential zoning district to the west of Old Lufkin Road. The proposed SUP will not change the uses permitted under the current B-2 zoning district.

REVIEW CRITERIA

Per Section 118.139 of the Zoning Ordinance, a Specific Use Permit may be approved if all of the following conditions have been found:

Compatibility. The specific use will be compatible with and not injurious to the use and enjoyment of other property in the immediate vicinity, nor significantly diminish or impair property values within the immediate vicinity;

The area is located along a major commercial corridor that has a mix of commercial uses, such as auto repair, banks, churches, and mixed retail. The property is adjacent to residential properties to the west but is separated by Old Lufkin Road. The staff believes that SUP will not significantly affect the density of the area, and thus is compatible with the existing commercial and single-family properties.

Orderly growth and development. The establishment of the specific use will not impede the normal and orderly development and improvement of surrounding vacant property;

The proposed SUP is located within one of the city's main commercial corridors and the surrounding properties are fully developed. The approval of the SUP would not impede the normal development of the surrounding properties.

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

The site is adequately served with all basic utilities. All modifications such as renovation, driveways, parking, etc. will conform to current development standards. The applicant is proposing to construct a 7-foot-tall metal panel fence on the west side of the property, adjacent to the residential properties across Old Lufkin Road, to act as a noise buffer and hide the view of daily operations.

Drives and Parking. The design, location, and arrangement of all driveways and parking spaces provide for the safe and convenient movement of vehicular and pedestrian traffic without adversely affecting the general public or adjacent developments;

There is currently sufficient on-site parking to serve the current car audio installation shop and the proposed light manufacturing/assembly of carports. Any modifications to the driveways or parking will meet current standards.

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

The applicant is planning to utilize the newly purchased property to the north as a storage area and assembly/holding area to assist with the shipping and receiving area, in order to self-contain all operations inside the property. The applicant is proposing to no longer stage vehicles along Old Lufkin Road. The applicant is also proposing the following hours of operation:

Monday through Friday, 8:00 a.m. – 6:00 p.m.

Saturday 8:00 a.m. – 12:00 p.m. Closed on Sunday.

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

Outdoor lighting must meet the City's lighting ordinance restrictions, i.e. only down lighting, no spillover lighting onto neighboring properties.

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

The applicant is not proposing to expand the existing footprint of the buildings and, therefore, is not required to comply with the landscaping ordinance.

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

Future Land Use

Although the Future Land Use Plan calls for the area to be commercial, staff believes the

proposed use is a lower-intensity industrial use and with the applicant's proposed conditions, would therefore fit into a commercial zone.

Per the 2003 Comprehensive Plan, this development achieves the objectives of promoting: “Vibrant and viable commercial and industrial areas, supported by a quality community offering many assets and opportunities for economic development”

Access & Utilities

The subject property has access to utilities, with a 6-inch water and sewer main located along South St. The property takes direct access from South St.

Flood Damage Prevention:

Per the FEMA Floodplain Map, there is no FEMA-regulated floodplain or floodway located on the subject property.

Notices:

Staff sent out 11 notices to property owners within the 200-foot notification area. At the time that this report was written, Staff has received two (2) written responses in opposition to the request from a property owner residing within the 200-foot notification area. The residents stated that they were concerned about the noise and the vehicles parked along Old Lufkin Rd.

Neighborhood Input: The applicant held a neighborhood meeting for the property owners within 500 feet of the subject property on July 17, 2023, to discuss and answer questions about the request. None of the surrounding property owners attended the meeting.

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

RECOMMENDATION:

P&Z Recommendation:

The P&Z Commission heard this item on September 11, 2023, and voted unanimously (5-0) to approve the Specific Use Permit for Light Manufacturing/Assembly with the following conditions:

Hours of Operation: Monday through Friday, 8:00 a.m. – 6:00 p.m.

Saturday 8:00 a.m. – 12:00 p.m. Closed on Sundays.

Parking: No parking/staging vehicles along Old Lufkin Rd.

Operation: All light manufacturing and assembly operations will be contained to the interior of the property.

Screening: Construct a seven (7) foot tall metal fence along the western property line to buffer the residential area.

FINANCIAL:

No financial impact is associated with this item.

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

Not Applicable

CITY CONTACT: Juan Pollette, Planning Technician
pollettej@nactx.us
(936) 559-2559

- ATTACHMENTS:**
1. Item Report 6.E. Presentation
 2. Location Map
 3. Response Forms
 4. Ordinance

Agenda Item #6.E

2524/2516 South Street - SUP
Light Manufacturing/Assembly

Aerial Map SUP 2023-04



0 70 140 210 280 Feet

Date Created: 08/18/23 08:47 | Document Generated Automatically

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

Zoning Map SUP 2023-04



0 70 140 210 280 Feet

Date Created: 08/18/23 08:47 | Document Generated Automatically

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.

Nacogdoches
Engineering Department
L&D Division

Proposed SUP Conditions

- Hours of Operation:
- Monday through Friday 8 a.m. – 6 p.m.
- Saturday 8 a.m. - 12:00 p.m.
- Closed Sunday
- All Light Manufacturing & Assembly operations will be contained to the interior of the property
- No parking/staging vehicles along Old Lufkin Rd.
- Construct a 7 foot tall metal fence along the western property line to buffer the residential area.

Site Plan



Example of Proposed Fence



Site Photos: SUP2023-04



Subject property to
the north

Subject Property to the
south



Assembly/Holding Area View from Old Lufkin Rd.



Carport assembly
area view from Old
Lufkin Rd.

Shipping &
Receiving Area





View of Shipping & Receiving Area from South St.

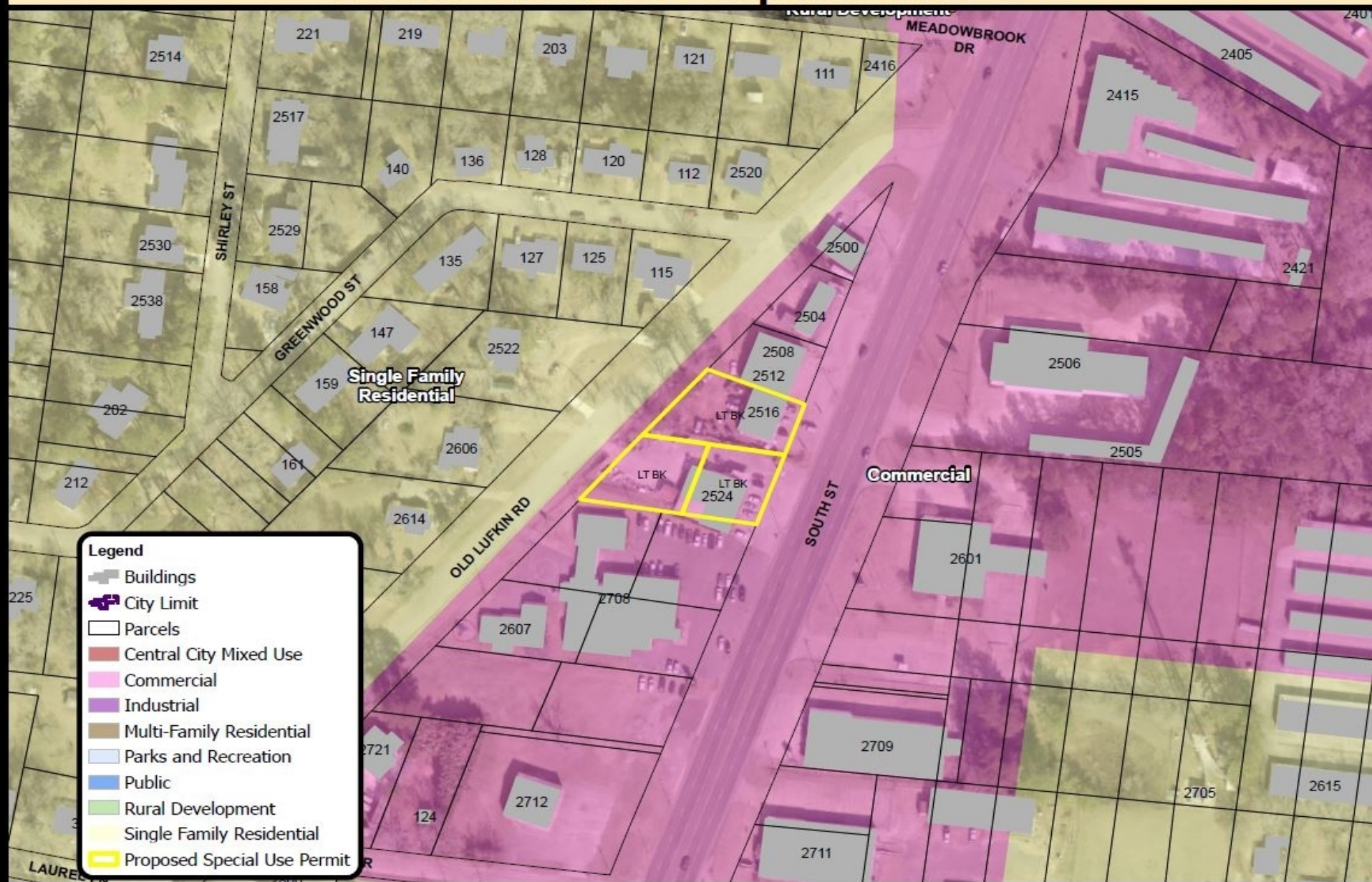
View of Car Audio Installation Area



View of subject property along Old Lufkin Rd.



Future Land Use Map SUP 2023-04



0 70 140 210 280 Feet

Date Created: 08/18/23 08:47 | Document Generated Automatically

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.

Nacogdoches
Engineering Department
418-330-1111

Page

Conditions for Approval

- (1) Compatibility. The...use will be compatible with and not injurious to the use and enjoyment of...property in the...vicinity, nor significantly diminish...property values within the...vicinity;
- (2) Orderly growth and development. The...use will not impede the normal and orderly development and improvement of surrounding vacant property;
- (3) Supporting facilities. Adequate utilities, access roads, drainage and other necessary...facilities have been or will be provided;
- (4) Drives and parking. The design...of all driveways and parking spaces provides for the safe and convenient movement of vehicular and pedestrian traffic without adversely affecting the general public or adjacent developments;
- (5) Nuisances. Adequate nuisance-prevention measures have been or will be taken to prevent or control offensive odor, fumes, dust, noise and vibration;
- (6) Lighting. Any lighting to be provided will be directional so as not to disturb or adversely affect neighboring properties;
- (7) Landscaping. Sufficient landscaping and screening to ensure...compatibility with adjacent property exists or will be provided; &
- (8) Comprehensive plan. The proposed use is in accordance with the comprehensive plan.

200 Foot Notification Map

SUP2023-04: 2524/2516 South Street

Legend

-  200 Foot Buffer
-  Proposed SUP
-  Single Family- Rental
-  Single Family- Owner Occupied
-  Commercial
-  Church



P&Z Commission Recommendation:

On September 11th, the Commission voted unanimously (5-0) to approve the request as presented with the following conditions:

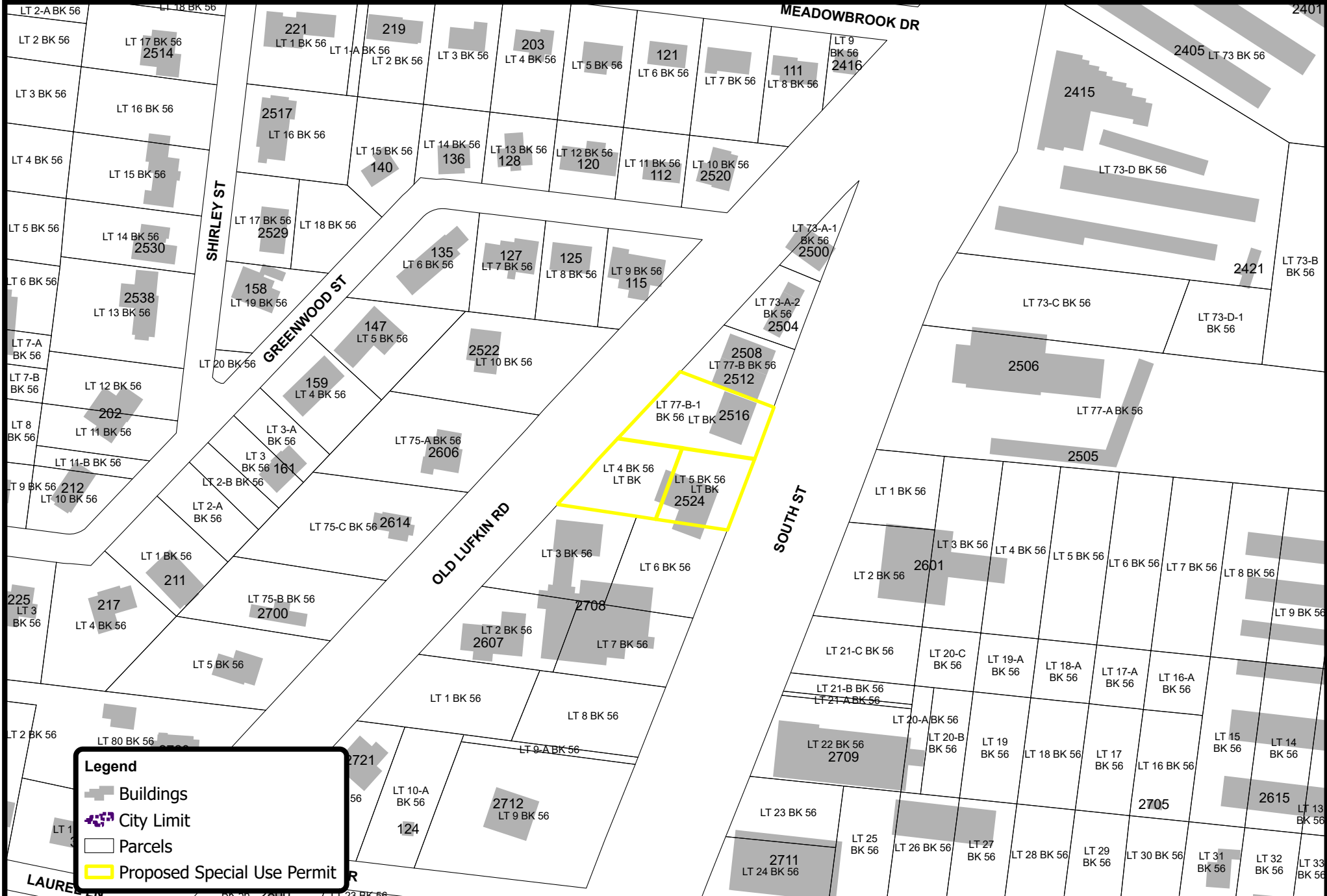
Hours of Operation: Monday thru Friday, 8:00a.m. – 6:00p.m.
Saturday 8:00a.m. – 12:00p.m. Closed on Sunday's.

Parking: No parking/staging vehicles along Old Lufkin Rd.

Operation: All Light Manufacturing & Assembly operations will be contained to the interior of the property.

Screening: Construct a seven (7) foot tall metal fence along the western property line to buffer the residential area.

Location Map SUP2023-04



Legend

- Buildings
- City Limit
- Parcels
- Proposed Special Use Permit



0 70 140 210 280 Feet

Date Created: 08/18/23 08:47 | Document Generated Automatically

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.



Response Form

Project Number: SUP2023-04

2524 & 2516 South Street

You may make your views known by completing this form and returning it to the Planning & Zoning department. You may also make your views known in person by attending the public hearings. **Please complete and return form to:**

City of Nacogdoches Planning & Zoning Department

Attn: Aimee Cloutier

PO Drawer 635030

Nacogdoches, TX 75963

You may also email a copy to pz@nactx.us

Project Number: SUP2023-04

Please circle one:

☐ In favor of request

☒ Opposed to request

Comments:

This business seems to have expanded beyond what their limited space can handle. Employees park on the street on Old Lufkin Road & have from time to time encroached on our parking lot.

Signature: _____

Printed Name: _____

Street Address: _____

City, State and Zip Code: _____

Phone Number: _____

Email Address: _____

Physical Address of Property within 200 Feet: _____

City of Nacogdoches

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

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

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

Concerned resident

2 messages

Slim Pickens <jasoninnac76@gmail.com>
To: pz@nactx.us

Tue, Jul 25, 2023 at 8:27 AM

To whom this concerns, I am emailing in regards to a letter I received in the mail titled "Public / Neighborhood Meeting". I have been out of town on vacation and missed the meeting so I thought I would send an email. This letter states Project Location: 2524 South Street lot(s) 4& 5, & 77-B-1 CB 5 Applicant: Ceasars Escalante. My email may be too late to be considered for your decision, and that's fine, but I wanted to be able to at least give my concerns and opinions about this matter. I have been a resident at my house for 46 years. I grew up in this town and this neighborhood. I'm a proud product of our community's public school system and a local business owner now. I have seen plenty of businesses come and go on the south side of town. I have always been a go along to get along person, but there are a few concerns I have. Ever since Mr. Escalante moved in years ago, we have quietly put up with his car audio business. Loud music and bass at all hours, especially hard to deal with while raising infants and young children needing sleep. Now he has expanded his business into manufacturing carports and everything that goes along with that. My most current concern, is that it has made it impossible to sit on our front porch anymore and relax and enjoy our surroundings. Cars, trucks, scrap metal trailers and goose neck trailers stay parked up and down the street, along with constant beating and banging of hammers, grinders, and the noise of saws and welders. The workers almost always have music playing loud enough for us to clearly hear every word and note. It's turning the neighborhood that I have a great deal of love for, into a manufacturing complex and I'm not thrilled. There is nobody that is a bigger proponent of entrepreneurs and business than me, but there is also a time and place for everything. I would love to live back on a quiet peaceful street again, but I know this probably won't happen again at this location, and it makes me sad. I'm not here trying to cause any problems, and if the decision is made to grant Mr. Escalante his "light assembly" permit, I will quietly keep to myself and continue to do my best where I'm at to raise and support my family. I would ask, if business continues, that the city do something about all the vehicles and trailers that constantly stay parked in the street and also maybe limit work to certain business hours. I know I don't live in the nicest neighborhood, but what little bit I do have, I want it to stay somewhat nice and clean. I also have no idea what all of this is doing to my property value, but what little bit of curb appeal I might of had, is gone with all of this manufacturing in my front yard. Thank you for your time and consideration.

Sincerely,
Jason Hawthorne
2606 Old Lufkin Rd.
Nacogdoches, TX 75964

--

You received this message because you are subscribed to the Google Groups "Planning & Zoning" group.
To unsubscribe from this group and stop receiving emails from it, send an email to pz+unsubscribe@nactx.us.
To view this discussion on the web visit https://groups.google.com/a/nactx.us/d/msgid/pz/CAAYOxU2kkRAJa3aD0M%3Dxg44kH5d6JL5-kbTf7wU_gdWpzi4NMA%40mail.gmail.com.

Cloutier, Aimee <cloutiera@nactx.us>
To: Slim Pickens <jasoninnac76@gmail.com>
Cc: Juan Pollette <pollettej@nactx.us>

Tue, Jul 25, 2023 at 4:15 PM

Mr. Hawthorne,
We have received your email and it has gone into the case file for the Planning and Zoning Commission and City Council to review it. Planning and Zoning will meet on Monday, September 11, 2023, at 5 p.m. and City Council will vote on the specific use permit on Tuesday, September 19, 2023, at 5:30 p.m. You will receive another notice regarding these meetings in the near future. If you have any questions, please don't hesitate to reach out.

Respectfully,
[Quoted text hidden]

--

Aimee Cloutier
Planning and Zoning
City of Nacogdoches

(936) 559-2574

cloutiera@nactx.us



ORDINANCE NO. 1980-09-23

AN ORDINANCE OF THE CITY OF NACOGDOCHES, TEXAS, GRANTING A SPECIFIC USE PERMIT FOR LIGHT MANUFACTURING/ ASSEMBLY LOCATED WITHIN THE B-2, GENERAL BUSINESS ZONING DISTRICT, BEING LOTS 4&5 OF THE REESE NO. 2 SUBDIVISION LOCATED AT 2524 SOUTH STREET AND LOT 77-B-1, CITY BLOCK 56, LOCATED AT 2516 SOUTH STREET, IN NACOGDOCHES, TEXAS, PROVIDING REQUIREMENTS AND CONDITIONS FOR SAID SPECIFIC USE PERMIT; CONTAINING FINDINGS; PROVIDING A REPEAL CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Specific Use Permit process allows the Planning and Zoning Commission and City Council to consider the conditions specific to individual tracts of land and operational characteristics of various businesses; and

WHEREAS, Cesar Escalante, filed an application for a Specific Use Permit for Light Manufacturing/Assembly on property that is currently zoned as B-2, General Business; located at 2524 and 2516 South Street, said tract being legally described as Lot(s) 4&5 of the Reese No. 2 Subdivision located at 2524 South Street and Lot 77-B-1, City Block 56, located at 2516 South Street (the "Property"), and situated within the corporate limits of the City of Nacogdoches, Texas (the "City"), being more particularly described in **Exhibit "A"**, attached hereto and made a part hereof for all purposes; and

WHEREAS, the Owner of the Property, through its above mentioned and duly authorized representatives, has presented an application to the City for the granting a Specific Use Permit to use said Property for the purpose of Light Manufacturing/Assembly (the "Specific Use"), as authorized by the City's Zoning Ordinance; and

WHEREAS, after satisfaction of all conditions precedent required by law, the Planning and Zoning Commission held a public hearing and did make recommendation to City Council for approval of the Specific Use Permit application submitted for the above referenced site; and

WHEREAS, after satisfaction of all conditions precedent required by law and receiving the recommendation of the Planning and Zoning Commission, the City Council conducted a public hearing, and immediately thereafter approved the application for a Specific Use Permit allowing for the construction, operation and maintenance of a Light Manufacturing/Assembly facility.

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

SECTION I
Findings.

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

SECTION II

Approval of Specific Use Permit

Pursuant to the requirements of Chapter 118 of the Code of Ordinances of the City of Nacogdoches, Texas, a Specific Use Permit is hereby approved allowing for the construction, operation and maintenance of a Light Manufacturing/Assembly facility at the above-described location, with the following conditions:

Hours of Operation

- a) Monday-Friday 8:00 am -6:00 pm
- b) Saturday 8:00 am- 12:00 pm
- c) Sunday- CLOSED

Parking

- a) There shall be no parking/staging vehicles along Old Lufkin Road

Operation

- a) All Light Manufacturing & Assembly operations will be contained to the interior of the property

Screening

- a) Construct a seven (7) foot tall metal fence along the western property line to buffer the residential area

SECTION III

Repeal

This Ordinance shall in no manner repeal, amend, change, supplement, or revise any provision of any ordinance of the City, save and except the granting of the Specific Use Permit as herein provided.

SECTION IV

Effective Date

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

SECTION V

Severability

If any word, article, phrase, paragraph, sentence, clause, or provision of this Ordinance shall be adjudged by a court of competent jurisdiction to be invalid, the invalidity shall not affect other

provisions or applications of this Ordinance which can be given effect without the invalid provision, and to this end, the provisions of this Ordinance are declared to be severable.

SECTION VI
Proper Notice and Open Meetings

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

SECTION VII
Filing

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

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

CITY OF NACOGDOCHES

By: _____
Randy Johnson, Mayor

ATTEST:

APPROVED AS TO FORM:

Rhonda Lewis, Deputy City Secretary

Jerry Baker, City Attorney

APPROVED AS TO CONTENT:

Steve Bartlett, Interim City Planner

EXHIBIT A

Legend

- Buildings
- City Limit
- Parcels
- Proposed Special Use Permit

Scale: 0 100 Feet

Date Created: 08/18/23 08:47 | Document Generated Automatically

Note: 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 all-surface property boundaries.

Nacogdoches
Engineering & Surveying
City of Nacogdoches

PRESENTER: Case Opperman, Public Works Asst Director

ITEM/SUBJECT: Consider approval of a contract by and between the City of Nacogdoches and Tiger Creek Enterprises for the FM 1878 Water Line Improvements Project in a not-to-exceed amount of \$119,047.50. (Assistant Director of Public Works)

SUMMARY/BACKGROUND: The existing water line on FM 1878 east of the loop has experienced multiple repairs recently and is undersized to serve the water users in the area. The FM 1878 Water Line Improvements Project will include installation of approximately 1,700 linear feet of 6" water line including new fire hydrants, valves, reconnections of water taps and appurtenances and abandonment of the existing water line.

On September 11, 2023, the City received bids for this project and six (6) contractors submitted bids as follows:

Tiger Creek Enterprises	\$ 119,047.50
Precision Construction Utilities	\$ 153,967.00
Duplichain Contractors	\$ 154,076.00
Horton Excavating	\$ 156,485.00
John Wright Construction	\$ 169,486.00
S-Co Incorporated	\$ 200,774.00

Tiger Creek Enterprises was found to be lowest responsible bidder. Tiger Creek is a Brookeland-based utility contractor who has not previously worked for the City nor for the City's engineering consultant (Two Fifteen Consulting) on any projects to date. Two Fifteen did reach out to references who confirmed that Tiger Creek had successfully performed water line installations for them before. With this reasonable evidence that Tiger Creek is competent and qualified to complete this work, it is recommended that the base bid for this project be awarded to Tiger Creek Enterprises in the amount of \$119,047.50. There is adequate budget to fund this project.

FINANCIAL:

Item is budgeted:

Account No.: 30 179.02

Account Name: *Utility Fund CIP - Water Main*

Amount: \$677,000

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

Infrastructure

CITY CONTACT: Case Opperman, Assistant Director of Public Works

oppermanc@nactx.us

(936) 559-2515

- ATTACHMENTS:**
1. Award Recommendation
 2. Bid Tab
 3. 6F PowerPoint Slide
 4. Contract

September 12, 2023

Mr. Casey R. Opperman
Assistant Director of Public Works/Assistant City Engineer
City of Nacogdoches, Texas
202 E. Pilar
Nacogdoches, Texas 75963

VIA ELECTRONIC MAIL (oppermanc@nactx.us)

**Re: 2023 FM 1878 Water Improvements
Bid Summary and Award Recommendation**

Dear Mr. Opperman,

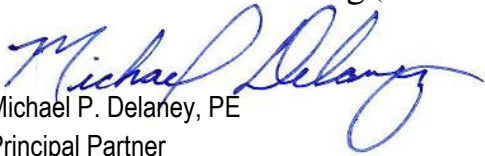
As you are aware, on Monday, September 11, 2023, the City of Nacogdoches received six (6) bids for the above referenced project. Enclosed is a copy of the bid summary for your review. The apparent low bidder at the public reading of the bids was Tiger Creek Enterprises of Brookeland, Texas. A check of the arithmetic confirmed the as-read amounts.

We have not worked with Tiger Creek Enterprises on municipal projects in the past. This prompted us to conduct a review of the references listed in the bid packet for reference. The results of our reference checks and inquiries provided reasonable evidence that the contractor is competent and qualified of completing the scope of work as outlined in the project documents. Therefore, it is our recommendation the City accepts the low bid in the amount of **\$119,047.50** and awards the contract to Tiger Creek Enterprises.

As always, if you should have any questions or need any additional information please do not hesitate to call.

Sincerely,

Two Fifteen Consulting (TBPE F-17461)


Michael P. Delaney, PE
Principal Partner

Encl(1): Bid Tabulation

cc: Greg Murdock, Tiger Creek Enterprises (tigercreekenterprises@ymail.com)

City of Nacogdoches
FM 1878 WATER IMPROVEMENTS

Item	Quan	Unit	Description	Tiger Creek Enterprises		Precision Construction Utilities		Dupichain Contractors		Horton Excavating LLC		John Wright Construction, Inc.		S-Co Incorporated	
				Unit Price	TOTAL	Unit Price	TOTAL	Unit Price	TOTAL	Unit Price	TOTAL	Unit Price	TOTAL	Unit Price	TOTAL
1.	1	LS	Erosion Controls		\$3,000.00	\$2,983.00	\$2,983.00	\$2,000.00	\$2,000.00	\$500.00	\$500.00	\$5,000.00	\$5,000.00	\$11,400.00	\$11,400.00
2.	1694	LF	6" AWWA C900 DR 18 PVC water main	\$32.00	\$54,208.00	\$43.00	\$72,842.00	\$40.00	\$67,760.00	\$45.00	\$76,230.00	\$49.00	\$83,006.00	\$54.00	\$91,476.00
3.	311	LF	6" Uncased bores (excluding pipe)	\$18.00	\$5,598.00	\$41.00	\$12,751.00	\$50.00	\$15,550.00	\$50.00	\$15,550.00	\$60.00	\$18,660.00	\$60.00	\$18,660.00
4.	51	LF	4" Cased bores (excluding carrier pipe)	\$26.50	\$1,351.50	\$52.00	\$2,652.00	\$50.00	\$2,550.00	\$45.00	\$2,295.00	\$52.00	\$2,652.00	\$69.00	\$3,519.00
5.	109	LF	3" Cased bores (excluding carrier pipe)	\$20.00	\$2,180.00	\$51.00	\$5,559.00	\$35.00	\$3,815.00	\$40.00	\$4,360.00	\$52.00	\$5,688.00	\$56.00	\$6,104.00
6.	1	EA	6" MJ Gate valve and riser	\$2,650.00	\$2,650.00	\$2,041.00	\$2,041.00	\$1,300.00	\$1,300.00	\$2,200.00	\$2,200.00	\$2,500.00	\$2,500.00	\$2,006.00	\$2,006.00
7.	3	EA	6" Fire Hydrant assembly	\$6,220.00	\$18,660.00	\$6,689.00	\$20,067.00	\$7,600.00	\$22,800.00	\$7,200.00	\$21,600.00	\$6,800.00	\$20,400.00	\$6,133.00	\$18,399.00
8.	2	EA	Locate and reconnect existing service	\$950.00	\$1,900.00	\$949.00	\$1,898.00	\$1,000.00	\$2,000.00	\$1,900.00	\$3,800.00	\$1,000.00	\$2,000.00	\$1,478.00	\$2,956.00
9.	1	EA	Install new split service tap	\$1,170.00	\$1,170.00	\$1,444.00	\$1,444.00	\$1,300.00	\$1,300.00	\$2,400.00	\$2,400.00	\$1,500.00	\$1,500.00	\$1,455.00	\$1,455.00
10.	1	EA	Install new double service tap	\$1,170.00	\$1,170.00	\$2,380.00	\$2,380.00	\$2,000.00	\$2,000.00	\$1,950.00	\$1,950.00	\$1,200.00	\$1,200.00	\$2,324.00	\$2,324.00
11.	8	EA	Install new single service tap	\$1,020.00	\$8,160.00	\$898.00	\$7,184.00	\$1,000.00	\$8,000.00	\$1,400.00	\$11,200.00	\$850.00	\$6,800.00	\$1,312.00	\$10,496.00
12.	1	EA	Install new 2" service tap and meter box	\$2,600.00	\$2,600.00	\$2,058.00	\$2,058.00	\$3,000.00	\$3,000.00	\$2,500.00	\$2,500.00	\$3,000.00	\$3,000.00	\$2,400.00	\$2,400.00
13.	2	EA	Locate & Connect to existing water mains	\$1,950.00	\$3,900.00	\$2,128.00	\$4,256.00	\$3,000.00	\$6,000.00	\$2,400.00	\$4,800.00	\$1,800.00	\$3,600.00	\$3,993.00	\$7,986.00
14.	1	LS	Existing Water Main abandonment	\$1,950.00	\$1,950.00	\$2,738.00	\$2,738.00	\$1,000.00	\$1,000.00	\$2,500.00	\$2,500.00	\$1,500.00	\$1,500.00	\$2,322.00	\$2,322.00
15.	1	LS	Trench Control	\$3,500.00	\$3,500.00	\$6,000.00	\$6,000.00	\$2,000.00	\$2,000.00	\$2,500.00	\$2,500.00	\$3,000.00	\$3,000.00	\$13,296.00	\$13,296.00
16.	1	LS	Trench safety plan	\$3,500.00	\$3,500.00	\$1,000.00	\$1,000.00	\$1.00	\$1.00	\$1,000.00	\$1,000.00	\$1,000.00	\$1,000.00	\$2,040.00	\$2,040.00
17.	1	LS	Block sod all disturbed areas	\$2,400.00	\$2,400.00	\$5,000.00	\$5,000.00	\$10,000.00	\$10,000.00	\$100.00	\$100.00	\$5,000.00	\$5,000.00	\$1,775.00	\$1,775.00
18.	1	LS	Seed & fertilize	\$1,150.00	\$1,150.00	\$1,114.00	\$1,114.00	\$3,000.00	\$3,000.00	\$1,000.00	\$1,000.00	\$3,000.00	\$3,000.00	\$2,160.00	\$2,160.00
TOTAL					\$119,047.50		\$153,967.00		\$154,076.00		\$156,485.00		\$169,486.00		\$200,774.00

2023 FM 1878 Water Line Improvements Project

- Existing water line is undersized, many recent repairs
- 1,700 LF of new 6" water line, fire hydrants, valves, reconnections



Bid Results:

<i>Tiger Creek Enterprises</i>	<i>\$119,047.50</i>
Precision Construction	\$153,967.00
Duplicchain Contractors	\$154,076.00
Horton Excavating	\$156,485.00
John Wright Construction	\$169,486.00
S-Co Incorporated	\$200,774.00



**BIDDING
and
CONTRACT DOCUMENTS**

FOR

**CONSTRUCTION SERVICES
FOR
FM 1878 WATER LINE IMPROVEMENTS PROJECT**

Bid #: 23-10-128

**DUE DATE
SEPTEMBER 11, 2023 @ 2:00 PM**

City of Nacogdoches, Texas
City Hall
202 E. Pilar
Nacogdoches, TX 75961
936-559-2516

www.nactx.us

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INSTRUCTION TO BIDDERS

CONTRACTOR'S PROPOSAL

CONTRACTOR DATA SHEET

CERTIFICATION

GENERAL AND SPECIAL CONDITIONS OF AGREEMENT

STANDARD FORM OF AGREEMENT FOR CONSTRUCTION

DRAWINGS

INSTRUCTION TO BIDDERS

INSTRUCTIONS TO BIDDERS

1.0 NOTICE

Sealed bids addressed to the City of Nacogdoches Engineering Office, 202 Pilar St., Suite 239, Nacogdoches, TX 75961, will be received for **Construction Services for FM 1878 Water Line Improvements Project** until **2:00 PM, September 11, 2023** after which time all qualified bids will be publicly opened and read aloud at **City Hall Conference Room 203**. Bids received after that time will be returned unopened. No fax or email bids will be accepted.

LOCATION AND DESCRIPTION OF PROJECT

Installation of approximately 1,700 linear feet of 6" PVC water line, including taps, valves, fittings, fire hydrant assemblies, cased and uncased bores and all other appurtenances as shown in the plans, details and specifications.

COPIES OF BIDDING DOCUMENTS

A complete set of Bidding and Contract Documents will be made available for no charge via www.civcastusa.com or on a flash drive (or other electronic means) at:

City of Nacogdoches City Hall
Engineering Office
202 Pilar Street, Suite 239
Nacogdoches, TX 75961

The successful bidder will be required to furnish a Payment Bond and Performance Bond in the amount of the contract. Bidders may not withdraw their Bid Proposal within 60 calendar days of the bid opening date.

Sealed bids shall be clearly marked with the words "Sealed Bid, FM 1878 Water Line Improvements Project" and addressed to the City of Nacogdoches. Bids shall be delivered using one of the following methods:

Hand-deliver to:	Mail to:	Ship to (FedEx, UPS, DHL, etc.):
Engineering Office	Attn: Engineering	Attn: Engineering
202 Pilar Street, Suite 239	PO Box 635030	202 East Pilar, Suite 239
Nacogdoches, TX 75961	Nacogdoches, Texas 75963	Nacogdoches, Texas 75961

A Certified Cashier's Check or an acceptable Bid Bond in an amount of not less than five (5) percent of the total amount bid shall accompany each bid proposal.

2.0 DEFINITION OF TERMS

In order to simplify the language throughout this bid, the following definitions and those defined in the Contract Documents shall apply:

BIDDER - A contractor who submits a Bid directly to the City.

BIDDING DOCUMENTS - the Advertisement, Instructions to Bidders, the Proposal, Special Provisions, Technical Specifications and the proposed Contract Documents (including all Addenda issued prior to the receipt of Bids).

CITY – Same as City of Nacogdoches.

CITY COUNCIL – The elected officials of the City of Nacogdoches, Texas given the authority to exercise such powers and jurisdiction of all City business as conferred by the State Constitution and Laws.

CONTRACT – An agreement between the City and a Supplier to furnish supplies and/or services over a designated period of time during which repeated purchases are made of the commodity specified.

CONTRACTOR – The successful Bidder(s) of this bid request.

CITY – The government of the City of Nacogdoches, Texas.

OWNER – City of Nacogdoches.

SUB-CONTRACTOR – Any contractor hired by the Contractor or Supplier to furnish materials and services specified in this bid request.

SUCCESSFUL BIDDER - the lowest, qualified, responsible and responsive Bidder to whom the City (on the basis of the City's evaluation as hereinafter provided) makes an award.

SUPPLIER – Same as Contractor.

3.0 COPIES OF BIDDING DOCUMENTS

A complete set of Bidding Documents are available for no charge on a flash drive (or other electronic means) by contacting the following:

City of Nacogdoches City Hall
Engineering Office
202 Pilar Street, Suite 239
Nacogdoches, TX 75961

Complete sets of Bidding Documents must be used in preparing Bids; the City assumes no responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.

4.0 COMMUNICATION

The Owner's Representative for all communication regarding the Bidding and Contract Documents, including specifications and drawings is:

Case Opperman – Assistant Director of Public Works
oppermanc@nactx.us
(936) 559-2515

No oral questions and other interpretations or clarification will be considered official or binding.

5.0 PRE-BID CONFERENCE

A Pre-bid Meeting will not be held for this project.

6.0 GENERAL BID PROVISIONS

- a. The Invitation to Bid as advertised will be considered an inclusion of the specifications and conditions.
- b. Bid proposals will be submitted on the forms provided by Owner. All figures must be written in ink or typewritten. However, mistakes may be crossed out, corrections inserted adjacent thereto and initiated in ink by the person signing the proposal. Do not use a whiteout or other cover products on mistakes.
- c. Formal advertised bids indicate date and time by which the bids must be received at the designated location. Bids received after that time will be returned unopened to the bidder.
- d. The bidder will note any exceptions to the conditions of this bid. If no exceptions are stated, it will be understood that all general and specific conditions will be complied with, without exception.
- e. Bidders may request withdrawal of a posted sealed proposal prior to the scheduled bid opening time, provided the request for withdrawal is submitted to the City of Nacogdoches in writing. Owner reserves the right to reject any and all bids by reason of this request.
- f. If it becomes necessary to revise any part of this bid, a written addendum will be provided to all bidders. Owner is not bound by any oral representations, clarifications, or changes made in the written specifications by Owner's employees, unless such clarification of change is provided to bidders in written addendum form from the City of Nacogdoches.
- g. Pursuant to Local Government Code 271.9051, if the bid is less than \$100,000 and the City Council determines that a local bidder whose principal place of business is in the City offers the City the best combination of contract price and additional economic development opportunities for the City created by the contract award, including the employment of residents of the municipality and increased tax revenues to the municipality, the city **may** award the bid to the local bidder whose bid is within 5% of the lowest bid. Otherwise, all bids will be awarded to the lowest responsible bidder. The determination of the lowest responsible bidder may involve all or some of the following factors: price, conformity to specifications, financial ability to perform the contract, previous performance, facilities and equipment, availability of repair parts, qualifications and experience, delivery promise, payment terms, compatibility as required, other costs, and other objectives and accountable factors which are reasonable.
- h. Owner may give an environmental preference to products or services that have a lesser or reduced effect on human health and the environment when compared with competing products and services that serve the same purpose. This comparison may consider raw materials acquisition, product, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product or service;
- i. Bidders may be disqualified and rejection of proposals may be recommended to the Owner for any (but not limited to) of the following causes: 1) Failure to use the proposal form furnished by the Owner; 2) Lack of signature by an authorized representative on the proposal form; 3) Failure to properly complete the proposal; 4) Evidence of collusion among proposers; 5) Omission of a certified Cashier's Check or Bid Bond (if required) proposal guarantee; 6) Unauthorized alteration of bid form; 7) Lack of appropriate qualifications and experience relative to the size and scope of the work proposed; 8) Unsatisfactory performance; 9) Failure to complete projects or 10) Loaded or unbalanced bids. Owner reserved the right to waive any minor informality or irregularity.

- j. Whenever in this invitation, any particular materials, process and/or equipment are indicated or specified by patent, proprietary or brand name, or by name of manufacture, such wording will be deemed to be used for the purpose of facilitating description of the material, process and/or equipment desired and will be deemed to be followed by the words "or equal." Contractor shall provide exactly such items in his bid as described, unless approved pursuant to Paragraph 12.0 herein.
- k. Samples of items shall be furnished, if requested by the Owner, without charge, and if not destroyed, shall be returned upon request at the bidder's expense.
- l. It is agreed that the successful bidder will not assign, transfer, convey or otherwise dispose of the contract or its right, title or interest in or to the same, or any part thereof, without previous written consent of Owner and any sureties.
- m. Contractor must provide audited financial statements, if requested, to the City.
- n. Prices in the Bid Proposal shall be presented in the format requested (Unit Price, Lump Sum, etc.)
- o. No freight or delivery charges will be accepted unless shown on bid.
- p. Owner is exempt from State Retail Tax and Federal Excise Tax. The price bid must be net, exclusive of taxes.
- q. All bidders will comply with all Federal, State, and local laws relative to conducting business in the City of Nacogdoches. The laws of the State of Texas will govern as to the interpretation, validity, and effect of this bid, its award and any contract entered into.
- r. Advanced disclosures of any information to any particular bidder which gives that particular bidder any advantage over any other interested bidder in advance of the opening of bids, whether in response to advertising or an informal request for bids, made or permitted by a member of the governing body or an employee or representative thereof, will operate to void all proposals of that particular bid solicitation or request.
- s. Minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, creed, sex, or national origin in consideration for an award.

7.0 QUALIFICATIONS OF BIDDERS

To demonstrate qualifications to perform the Work, each Bidder must be prepared to submit within five days of City's request, written evidence, such as financial data, previous experience, present commitments and other such data as may be called for below. Each Bid must contain evidence of the Bidder's qualifications to do business in the State of Texas or covenant to obtain such qualification prior to award of the contract.

In determining a bidder's qualifications, the following factors will be considered:

- A. Work previously completed by the bidder and whether the bidder:
 - a. maintains a permanent place of business;
 - b. has adequate plant and equipment to do the work properly and expeditiously;
 - c. has paid or settled all claims for payment promptly;
 - d. has appropriate technical experience;
 - e. has job references for work of similar size and scope to the project; and
 - f. satisfactory performance and completion of public, or comparable, projects.
- B. The safety record of the Bidder, of the corporation, partnership, or institution represented by the Bidder, or of any one acting for such firm, corporation, or partnership.

Each Bidder may be required to show that he has properly completed similar type work and that no claims are now pending against such work. No bid will be accepted from any bidder who is engaged in any work that would impair his ability to fully execute, perform or finance this work. The General/Subcontractors Experience Data Sheet following the proposal must be filled out and submitted with the bid for consideration. Failure to include a completed Data Sheet may result in the rejection of the bid.

8.0 EXAMINATION OF CONTRACT DOCUMENTS AND SITE

A. It is the responsibility of each Bidder before submitting a Bid to:

- a. examine the Contract Documents thoroughly;
- b. visit the site to become familiar with local conditions that may affect cost, progress, performance or furnishing of the Work;
- c. consider federal, state and local Laws and Regulations that may affect cost, progress, performance or furnishing of the Work;
- d. study and carefully correlate Bidder's observations with the Contract Documents;
- e. notify the Owner's Representative of all conflicts, errors or discrepancies in the Contract Documents; and
- f. visit with local utilities, including cable companies, and other entities that may have underground or above-ground infrastructure in the work area for infrastructure location.

B. Information and data reflected in the Contract Documents with respect to underground facilities at or contiguous to the site is based upon information and data from the Owner's files for its underground facilities and information and data furnished by owners of other underground facilities. Owner does not assume responsibility for the accuracy or completeness thereof.

C. Before submitting a Bid each Bidder will be responsible to make or obtain such explorations, at bidders expense and not to be added into cost of bid if accepted (tests and data concerning physical conditions - surface, subsurface and underground facilities - at or contiguous to the site, or otherwise) which may affect cost, progress, performance or furnishing of the Work and which Bidder deems necessary to determine its Bid for performing and furnishing the Work in accordance with the time, price and other terms and conditions of the Contract Documents.

D. The lands upon which the Work is to be performed, rights-of-way and easements for access thereto and other lands designated for use by Contractor in performing the Work are identified in the Contract Documents. All additional lands and access thereto required for temporary construction facilities or storage of materials and equipment or disposal of spoil are to be provided by the Contractor. Contractor is responsible for obtaining all permits required for any of the before mentioned purposes prior to beginning work in accordance with the Standard Form Of Agreement, Paragraph 35 Permits and Licenses.

E. The submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of this section, that without exception the Bid is premised upon performing and furnishing the Work required by the Contract Documents and such means, methods, techniques, sequences or procedures of construction as may be

indicated in or required by the Contract Documents, and that the Contract Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

9.0 INTERPRETATIONS and ADDENDA

All questions about the meaning or intent of the Contract Documents are to be directed to the Owner. Interpretations or clarification considered necessary by the Owner's Representative in response to such questions will be issued by Addenda and mailed or otherwise delivered to all parties recorded by the Owner's Representative as having received the Bidding Documents. Questions received less than 48 hours prior to opening of Bids will not be answered. Only questions answered by formal written Addenda will be binding. No oral and other interpretations or clarification will be considered official or binding.

Addenda may also be issued to modify the Bidding Documents as deemed advisable by the City.

To properly qualify his bid, each Bidder shall, prior to filing his Bid, check the receipt of all Addenda or letters of clarification issued and acknowledge such receipt on the Proposal Form or on a separate attachment to the bid. Bids without such acknowledgment of all issued Addenda and letters of clarification may cause your bid to be considered non-responsive. Such Addenda and letters of clarification shall become a part of the executed contract and modify the contract documents accordingly.

10.0 BID SECURITY

Bidders must submit with their Bids a Cashier's Check or a Certified Check in the amount of five (5%) percent of the maximum amount of Bid payable without recourse to the City of Nacogdoches, Texas, or a bid bond in the same amount from a surety company holding permit from the State of Texas to act as a surety, as a guarantee that Bidder will enter into a contract and execute bond and guarantee forms within fifteen (15) days after notice of award of contract. Bids without checks, as stated above, or acceptable bid bond may not be considered.

Bid Security shall be in effect from the opening of the Bid and will be retained until a Bidder has executed the Agreement and furnished the required contract security, whereupon the Bid Security will be returned. A Bidder may withdraw its Bid at any time until the Agreement is signed. However, it will forfeit its Bid Security in doing so if no material mistake was made in the Bid.

The Bid Security of the Successful Bidder will be retained until such Bidder has executed the Agreement and furnished the required contract security, whereupon the Bid Security will be returned. If the Successful Bidder fails to execute and deliver the Agreement and furnish the required contract security within fifteen (15) days after the Notice of Award, the Owner may annul the Notice of Award and the Bid Security of that Bidder will be forfeited. The Bid Security of other Bidders whom Owner believes to have a reasonable chance of receiving the award may be retained by Owner until 5 days after the Agreement is executed whereupon Bid Security furnished by such Bidders will be returned. Bid Security with Bids which are not competitive will be returned within seven days after the Bid opening.

11.0 CONTRACT TIME

The times for Substantial Completion and Final Completion are set forth in the Special Provisions and will be included in the Agreement. It will be necessary for the Successful Bidder

to satisfy the City of the Bidder's ability to achieve Substantial Completion and Final Completion within the times designated in the Special Provisions.

12.0 SUBSTITUTE OR "OR EQUAL" ITEMS

The materials and equipment described in the Bidding Documents establish a standard of required function, dimension, appearance and quality to be met by any proposed substitution. No substitution will be considered unless a written request for approval has been submitted by the Bidder and has been received by the Owner's Representative at least five (5) working days prior to the date for receipt of Bids or until after the contract for the work has been signed. Each such request shall include the name of the material or equipment for which it is to be substituted and a complete description of the proposed substitute including drawings, cuts, performance and test data and any other information necessary for an evaluation. A statement setting forth any changes in other materials, equipment or work that incorporation of the substitute would require shall be included. The burden of proof of the merit of the proposed substitute is upon the Bidder. The Owner's Representative's decision of approval or disapproval of a proposed substitution shall be final. If the Owner's Representative approves any proposed substitution before the date for receipt of bids, such approval will be set forth in an Addendum issued to all prospective Bidders. Bidders shall not rely upon approvals made in any other manner.

13.0 BID FORM

All blanks on the Bid Form must be completed in ink or by typewriter. Unfilled blanks may result in the bid being disqualified.

Any financial amounts written in words will supersede amounts written by numbers in the Bid Form.

Bids by corporations must be executed in the corporate name by the corporate officer authorized to sign for the corporation, accompanied by evidence of authority to sign. The corporate address and state of incorporation must be shown below the signature.

Bids by partnerships must be executed in the partnership name and signed by a partner, whose title must appear under the signature and accompanied by evidence of authority to sign. The fiscal address of the partnership must be shown below the signature.

All names must be typed or printed below the signature.

The Bid shall contain an acknowledgment of receipt of all Addenda. The numbers and dates of which must be filled in on the Bid Form or on a separate attachment to the Bid.

The address and telephone number(s) for communication regarding the Bid must be shown.

All of the data on the GENERAL/SUBCONTRACTORS EXPERIENCE AND DATA INFORMATION sheet must be completely filled in.

14.0 SUBMISSION OF BIDS

A Bid shall be submitted at the time and place indicated in the Advertisement. It shall be enclosed in an opaque sealed envelope, marked with the project title, name and address of the Bidder. The Bid shall be accompanied by the Bid Security and other required documents. If the Bid is sent through the mail or other delivery system the sealed envelope shall be enclosed in a separate envelope with the notation "BID ENCLOSED" on the face of it.

Each Bidder should, prior to filing his Bid, check the receipt of all Addenda or letters of clarification issued and acknowledge such receipt on the outside of the envelope containing his Bid proposal.

15.0 MODIFICATION AND WITHDRAWAL OF BIDS

Bids may be modified or withdrawn by an appropriate document duly executed, in the described manner that a Bid must be executed and delivered to the place where Bids are to be submitted at any time prior to the opening of Bids.

If prior to the award of the contract by the City Council, any Bidder files a duly signed, written notice with Owner's Representative and promptly thereafter demonstrates to the reasonable satisfaction of Owner's Representative that there was a material mistake in the preparation of his Bid, that Bidder may withdraw his Bid and the Bid Security will be returned. Thereafter, that Bidder will be disqualified from further bidding on the Work to be provided under the Contract Documents.

16.0 OPENING OF BIDS

Properly prepared Bids will be opened publicly and read aloud. A summary of the amounts of the base Bids and major alternates (if any) will be made available to Bidders after the opening of Bids. A tabulation of the Bids which are read will be available upon request as soon as it has been assembled and verified.

Bids received after the specified time of the opening will be returned unopened.

17.0 BIDS TO REMAIN SUBJECT TO ACCEPTANCE

All bids will remain subject to acceptance, for 60 days after the date of the Bid opening, but the Owner may, in its sole discretion, release any Bid and return the Bid Security prior to that date.

18.0 AWARD OF CONTRACT

Owner reserves the right to reject any and all Bids, to waive any and all informalities and irregularities not involving price, time, or changes in the Work and to disregard all non-conforming, non-responsive, unbalanced or conditional Bids. Owner reserves the right to reject the Bid of any Bidder if Owner believes that it would not be in the best interest of the Project to make an award to that Bidder, whether because the Bid is not responsive or the Bidder is unqualified or of doubtful financial ability or fails to meet any other pertinent standard or criteria established by Owner. Discrepancies in the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

In evaluating Bids, the Owner will consider the qualifications of the Bidders, whether or not the Bids comply with the prescribed requirements, time of construction, and such alternates, unit prices and other data, as may be requested in the Bid Form or prior to the Notice of Award.

Owner may consider the qualifications and experience of subcontractors, suppliers, and other persons and organizations proposed for those portions of the Work as to which the identity of subcontractors, suppliers, and other persons and organizations must be submitted as provided. Owner may also consider the operating costs, maintenance requirements, performance data and

guarantees of major items of materials and equipment proposed for incorporation in the Work when such data is required to be submitted prior to the Notice of Award.

Owner may conduct such investigations as Owner deems necessary to assist in the evaluation of any Bid and to establish the responsibility, qualifications and financial ability of Bidders, proposed subcontractors, suppliers and other persons and organizations to perform and furnish the Work in accordance with the Contract Documents to Owner's satisfaction within the prescribed time.

Pursuant to Local Government Code 271.9051, if the bid is less than \$100,000 and the City Council determines that a local bidder whose principal place of business is in the City offers the City the best combination of contract price and additional economic development opportunities for the City created by the contract award, including the employment of residents of the municipality and increased tax revenues to the municipality, the city **may** award the bid to the local bidder whose bid is within 5% of the lowest bid.

Otherwise, all bids will be awarded to the lowest responsible bidder. The determination of the lowest responsible bidder may involve all or some of the following factors: price, conformity to specifications, financial ability to perform the contract, previous performance, facilities and equipment, availability of repair parts, qualifications and experience, delivery promise, payment terms, compatibility as required, other costs, and other objectives and accountable factors which are reasonable.

If the contract is to be awarded, Owner will give the Successful Bidder a Notice of Award within 60 days after the day of the Bid opening.

Bid prices may be compared after adjusting for differences in the time designated in the Bid for Substantial Completion. The adjusting amount will be determined at the rate set forth in the Standard Form of Agreement for liquidated damages indicated for Substantial Completion for each day after the desired date appearing in the City's Standard Form of Agreement, Paragraph 23.

19.0 CONTRACT SECURITY

Paragraph 28 BOND PROVISIONS of the Standard Form of Agreement set forth Owner's requirements as to performance and payment Bonds. When the Successful Bidder delivers the executed Agreement to the Owner, it must be accompanied by the required performance and payment Bonds.

20.0 SIGNING OF AGREEMENT

The Successful Bidder shall execute the Contract and provide proof of insurance as detailed in the Standard Form of Agreement based on Staff recommendation prior to Council action. Within 15 days of Award, all required Bonds shall be delivered to the Owner. A fully executed contract will be presented to the Successful Bidder.

21.0 PERSONAL INTEREST

Bidders shall comply with all applicable ordinances and with state law pertaining to conflict of interest and required disclosures, including, but not limited to, TEXAS LOCAL GOVERNMENT CODE, Chapter 171.

22.0 DISCLOSURE OF INTERESTED PARTIES

Contracting hereunder may require compliance with §2252.908 Texas Government Code/Disclosure of Interested Parties for contracts that (1) require an action or vote by the City Council before the contract may be signed; or (2) has a value of at least \$1 million. The law provides that a governmental entity may not enter into certain contracts with a business entity unless the business entity submits a disclosure of interested parties to the governmental entity at the time the business entity submits the signed contract to the governmental entity or state agency.

For purposes of this section, the following definitions apply:

“Interested party” means a person who has a controlling interest in a business entity with whom the City contracts or who actively participates in facilitating the contract or negotiating the terms of the contract, including a broker intermediary, advisor, or attorney for the business entity.

"Controlling interest" means: (1) an ownership interest or participating interest in a business entity by virtue of units, percentage, shares, stock, or otherwise that exceeds 10 percent; (2) membership on the board of directors or other governing body of a business entity of which the board or other governing body is composed of not more than 10 members; or (3) service as an officer of a business entity that has four or fewer officers, or service as one of the four officers most highly compensated by a business entity that has more than four officers.

"Intermediary," means a person who actively participates in the facilitation of the contract or negotiating the contract, including a broker, adviser, attorney, or representative of or agent for the business entity who:

1. Receives compensation from the business entity for the person's participation;
2. Communicates directly with the City on behalf of the business entity regarding the contract; and
3. Is not an employee of the business entity.

The process as implemented by the Texas Ethics Commission (“TEC”) is as follows:

1. The disclosure of interested parties must be performed using the [Texas Ethics Commission’s electronic filing application](#) listing each interested party of which the business entity is aware of Form 1295, obtaining a certification of filing number for this form from the TEC, and printing a copy of it to submit to the City.
2. The copy of Form 1295 submitted to the City must be notarized and contain the unique certification number from the TEC. The form must be filed with the City pursuant to §2252.908 Texas Government Code, “at the time the business entity submits the signed contract” to the City.

The City, in turn, will submit a copy of the disclosure form to the TEC not later than the 30th day after the date the City receives the disclosure of interested parties from the business entity.

CONTRACTOR'S PROPOSAL

CITY OF NACOGDOCHES
FM 1878 WATER IMPROVEMENTS

BID FORM

ITEM	QUANTITY	UNIT	DESCRIPTION	UNIT PRICE	TOTAL
1.	1	LS	Erosion Controls including silt fencing as necessary, erosion blankets, rock filter dams, construction exit(s), SWPPP, if required, all materials and labor; complete, in place three thousand dollars	\$ 3000	\$ 3000
			per LS (written in words)		
2	1694	LF	6" AWWA C900 DR 18 PVC water main, including tracer wire, bedding and backfill, all materials & labor; complete, in place thirty two dollars/ foot	\$ 32	\$ 54208
			per LF (written in words)		
3	311	LF	6" Uncased bores (excluding pipe), including bore pits, backfill, all materials & labor; complete, in place eighteen dollars/ foot	\$ 18	\$ 5598
			per LF (written in words)		
4	51	LF	4" Cased bores (excluding carrier pipe), including bore pits, backfill, all materials & labor; complete, in place twenty six dollars and fifty cents/ foot	\$ 26.5	\$ 1351.5
			per LF (written in words)		
5	109	LF	3" Cased bores (excluding carrier pipe), including bore pits, backfill, all materials & labor; complete, in place twenty dollars/ foot	\$ 20	\$ 2180
			per LF (written in words)		
6	1	EA	6" MJ Gate valve and riser, including all materials & labor; complete, in place two thousand six hundred fifty dollars	\$ 2650	\$ 2650
			per EA (written in words)		
7	3	EA	6" Fire Hydrant assembly, including all bends, fittings, thrust blocking, materials & labor; complete, in place six thousand two hundred twenty dollars	\$ 6220	\$ 18660
			per EA (written in words)		

CITY OF NACOGDOCHES
FM 1878 WATER IMPROVEMENTS

BID FORM

ITEM	QUANTITY	UNIT	DESCRIPTION	UNIT PRICE	TOTAL
8	2	EA	Locate existing service tap and connect existing service to existing meter, all materials & labor; complete, in place nine hundred fifty dollars	\$ 950	\$ 1900
			<i>per EA (written in words)</i>		
9	1	EA	Install new split service tap and connect to existing meters, all materials & labor; complete, in place one thousand one hundred seventy dollars	\$ 1170	\$ 1170
			<i>per EA (written in words)</i>		
10	1	EA	Install new double service tap and connect to existing meters at Sta. 26+94, all materials & labor; complete, in place one thousand one hundred seventy dollars	\$ 1170	\$ 1170
			<i>per EA (written in words)</i>		
11	8	EA	Install new single service tap and connect to existing meter, all materials & labor; complete, in place one thousand twenty dollars	\$ 1020	\$ 8160
			<i>per EA (written in words)</i>		
12	1	EA	Install new 2" service tap and install new meter box, all materials & labor; complete, in place two thousand six hundred dollars	\$ 2600	\$ 2600
			<i>per EA (written in words)</i>		
13	2	EA	Locate & Connect to existing water mains including all adapters, PVC spools, pipe sleeves, materials & labor; complete, in place one thousand nine hundred fifty dollars	\$ 1950	\$ 3900
			<i>per EA (written in words)</i>		
14	1	LS	Existing Water Main abandonment (in place), including cutting pipe ends, installation of MJ caps (diameter as required), concrete plugs, and all materials & labor; complete, in place one thousand nine hundred fifty dollars	\$ 1950	\$ 1950
			<i>per LS (written in words)</i>		

CITY OF NACOGDOCHES
FM 1878 WATER IMPROVEMENTS

BID FORM

ITEM	QUANTITY	UNIT	DESCRIPTION	UNIT PRICE	TOTAL
15	1	LS	Traffic Control including all flagmen, signage, barricades in accordance with MUTCD, all materials & labor; complete, in place three thousand five hundred dollars	\$ 3500	\$ 3500
			<i>per LS (written in words)</i>		
16	1	LS	Trench safety plan for cuts or pits in excess of 5 feet in depth (all excavations) three thousand five hundred dollars	\$ 3500	\$ 3500
			<i>per LS (written in words)</i>		
17	1	LS	Block sod disturbed areas as specified in the plans, all materials & labor; complete, in place two thousand four hundred dollars	\$ 2400	\$ 2400
			<i>per LS (written in words)</i>		
18	1	LS	Seed & fertilize all disturbed areas of project, including laydown yard, ditches, channels, all materials & labor; complete, in place one thousand one hundred fifty dollars	\$ 1150	\$ 1150
			<i>per LS (written in words)</i>		
TOTAL BASE BID (SUM ALL ITEMS)				\$ 119,047.5	

TOTAL MATERIALS BID: \$ 47,890

TOTAL LABOR BID: \$ 71,157.50

BY: _____
 Greg Murdock Owner
Printed Name Title

COMPANY: Tiger Creek Enterprises Phone No. 9366456854
 409 PVT Rd 7065 Brookeland Tx 75931
Address City State Zip

CONTRACTOR DATA SHEET

**GENERAL/SUB-CONTRACTOR'S EXPERIENCE
AND
DATA INFORMATION**

Name of Company: Tiger Creek Enterprises

Company Years in Business: 10

List Municipal Projects
(Similar Projects in Size and Scope Completed in Last Five Years)

Project	Municipality	\$ Amount	Type	Date
CR 271	Appleby Water	11930	4" water	8/23
Golondrina Creek	Arlam/Concord Water	11120	3" water	9/23
FM 1645	Beuna Vista	8200	6" water	12/19
Holly ST	City of Timpson	47242	4" water	7/22
Hwy 84	Paxton Water	15800	6" water	6/18
Shady Grove Church	Swift Water	15245	6" water	7/23

Superintendent & Project Manager Information

Include Superintendent proposed for the project, years of experience as superintendent,
project manager proposed for the project, and years experience as project manager

Superintendent	Years Experience	Projects
Greg Murdock	10	all

Project Manager	Years Experience	Projects
Ryan Pollard	8	all

References: Name 5 projects of similar work, giving owner's name, representative's name, project engineer's name, and telephone numbers for each

1. Lilly Grove Water		Boyd 9362393070

2. Swift Water		Tom Randall 9364627843
		Matt Barrett 9367158463

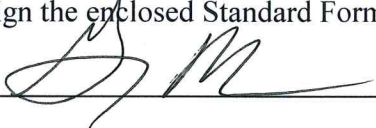
3. Beuna Vista		Randy Askins 9365548179

4. Etoile Water		9368542215

5. Appleby Water		Bobby Stanaland 9365538001

CERTIFICATION OF BID

The undersigned affirms that they are duly authorized to execute this Contract, that this bid has not been prepared in collusion with any other Bidder, and that the contents of this bid have not been communicated to any other Bidder prior to the official opening of this bid. To the extent this Contract is considered a Contract for goods or services subject to § 2270.002 Texas Government Code, Bidder certifies that it: i) does not boycott Israel; and ii) will not boycott Israel during the term of the Agreement. Additionally, the undersigned affirms that the firm is willing to sign the enclosed Standard Form of Agreement (if applicable).

Signed By:  Title: President/ Sec- Treasurer

Typed Name: Greg Murdock Company Name: Tiger Creek Enterprises

Phone No: 9366456854 Fax No: 4096983375

Email: tigercreekenterprises@ymail.com

Bid Address:	<u>409 PVT Rd 7065,</u>	<u>Brookeland</u>	<u>Tx</u>	<u>75931</u>
	<u>P.O. Box or Street</u>	<u>City</u>	<u>State</u>	<u>Zip</u>

Remit Address:	<u>409 PVT Rd 7065,</u>	<u>Brookeland</u>	<u>Tx</u>	<u>75931</u>
	<u>P.O. Box or Street</u>	<u>City</u>	<u>State</u>	<u>Zip</u>

Federal Tax ID No: 46-1671462

DUNS No: _____

Date: 9-11-23

CONDITIONS OF AGREEMENT

CONDITIONS OF AGREEMENT

CONTRACT DOCUMENTS

STANDARD SPECIFICATIONS FOR CONSTRUCTION--CITY OF NACOGDOCHES

FACILITIES: All building construction and related installations shall conform to the City's latest adopted editions of the International Building Code, National Electric Code, and the Uniform Plumbing Code and the Nacogdoches Standards for the Design and Construction of Public Improvements. All other City of Nacogdoches codes and ordinances shall also apply.

CIVIL CONSTRUCTION: These specifications shall be used in conjunction with the City of Nacogdoches' Standard Specifications of Water and Sewer Construction and Street Construction and is hereby incorporated by reference. All City of Nacogdoches codes and ordinances shall apply.

Any discrepancies between the City standards and these specifications shall be clarified per the instructions in Paragraph 9.0, "INTERPRETATIONS AND ADDENDA" in the instructions to Bidders.

GENERAL CONDITIONS OF AGREEMENT

The Standard Form of Agreement between Owner and Contractor shall be governing conditions of this contract.

SPECIAL PROVISIONS OF AGREEMENT

- A. **MEASUREMENTS:** All work not specifically set forth as a pay item in the Proposal shall be considered a subsidiary obligation of the Contractor and all costs in connection therewith shall be included in the various unit prices listed in the Proposal.
- B. **QUANTITIES:** Where unit quantities are shown on each bid item of the Proposal, they shall be construed to represent approximate quantities of Work to be completed. Final quantities will be determined by measurement on the site of the completed Work. Work performed outside of specified limits will not be included in final measurement. Bidders are hereby notified that no incidental items of the Work will be paid for unless it is listed in the Proposal form as a pay item.
- C. **EXPLOSION, COLLAPSE AND UNDERGROUND HAZARDS (XCU):** Contracts where trenching depths exceed twelve (12) feet shall require additional coverage for the following General Liability hazards:

Explosion
Collapse

Applies to blasting operations
Applies to excavation and grading work adjacent to structure

Underground

Applies to excavation, burrowing, trenching, tunneling, etc. For example, severing an electrical line during excavation operations.

An additional premium may be assessed by contractor's insurance provider. Successful contractor is responsible for assessing depth based on plans and specifications contained herein.

- D. **TRAFFIC CONTROL:** When work is performed in or immediately adjacent to a public street right-of-way, the Contractor shall submit to the City Engineer a traffic control plan for each public right-of-way he enters prior to the pre-construction meeting. This plan shall be in conformance to the Texas Manual on Uniform Traffic Control Devices. Once reviewed, the plans will be returned to the Contractor with comments.

Approved Traffic Control Plans shall be in the possession of the contractor on site during all work within the designated right of way.

- E. **MATERIAL STAGING:** Contractor is responsible for identifying and securing a suitable site for the storage of materials and other construction related items unless such a site is specifically identified in the plans.
- F. **PERMITS:** Contractor will be required to get permits pursuant to contract documents; however, the city will waive the fees.
- G. **STORM WATER PERMIT:** For construction areas disturbing more than one (1) acre of land, Contractor shall provide a Storm Water Pollution Prevention Plan and all related inspections, rain gages, signage, subsidiary to the contract.
- H. **SURVEY:** The Owner will provide a one-time survey staking of key construction points, bench marks, horizontal controls, building corners, or utility appurtenances as deemed necessary by the City Engineer. Additional construction staking, or replacement staking, will be at the contractor's expense.
- I. **CONTRACTOR PARKING and BATHROOMS:** Unless noted otherwise in the bid documents and plans, the installation of temporary bathroom facilities on the site will not be allowed. Parking for construction related vehicles, worker vehicles, and other equipment may be limited at the construction site. The Contractor should anticipate the need to provide an off-site parking subsidiary to the bid price in the contract.
- J. **FIELD OFFICES:** The Contractor will not be required to maintain a field office at the construction site. In the event that the Contractor wishes to have a temporary project office, approval will be required by the Owner. The cost for the installation of all utilities will be paid by the Contractor.
- K. **DRAINAGE AND EROSION CONTROLS:** The contractor will be responsible for designing, installing and maintaining interim drainage and erosion controls for the

construction site. Surface drainage channels, culverts, or other features will be maintained by the contractor in such a way to minimize the impacts from storm water to offsite properties.

- L. CONTRACT FORMS, BONDS AND CERTIFICATES: The Standard Form of Agreement bond forms listed below will be made a part of the executed contract documents and are made a part of these specifications:

CITY OF NACOGDOCHES STANDARD FORM OF AGREEMENT BETWEEN THE
OWNER AND THE CONTRACTOR

PERFORMANCE BOND

PAYMENT BOND

These forms are not to be filled in by the bidder at the time of submitting his proposal.

STANDARD FORM OF AGREEMENT FOR CONSTRUCTION

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 **Tiger Creek Enterprises**, a limited liability corporation (the "Contractor"), for **Construction Services for FM 1878 Water Line 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 FM 1878 Water Line 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 **One Hundred Nineteen Thousand Forty-Seven and 50/100 Dollars (\$119,047.50).**

4. CITY'S REPRESENTATIVE

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

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

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

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

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

5. INDEPENDENT CONTRACTOR

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

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

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

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

6. DISORDERLY EMPLOYEES

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

7. HOURS OF WORK

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

8. NATURE OF THE WORK

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

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

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

9. POST-AGREEMENT AWARD MEETINGS

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

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

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

10. PROGRESS OF WORK

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

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

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

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

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

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

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

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

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

11. SITE CONDITIONS AND MANAGEMENT

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

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

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

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

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

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

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

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

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

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

12. MATERIALS

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

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

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

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

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

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

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

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

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

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

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

13. ENTRY, OBSERVATION, TESTING & POSSESSION

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

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

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

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

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

14. REJECTED WORK

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

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

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

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

15. SUBCONTRACTING & SUBCONTRACTORS

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

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

16. PAYMENT

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

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

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

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

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

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

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

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

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

16.09. Unless otherwise provided in the Contract Documents:

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

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

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

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

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

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

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

17. EXTRA WORK CHARGES

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

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

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

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

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

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

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

Method A - By agreed unit prices, or

Method B - By agreed lump sum, or

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

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

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

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

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

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

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

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

18. TIME OF COMPLETION

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

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

18.03. The work shall be Substantially Completed within the time bid, which shall run from the date when the notice to proceed is given by City's Representative. The Contractor has bid **90 calendar days** for the time within which it shall reach Substantial Completion of the Project.

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

19. SUBSTANTIAL COMPLETION

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

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

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

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

20. FINAL COMPLETION

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

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

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

21. DELAYS

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

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

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

22. EXTENSIONS OF TIME

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

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

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

23. LIQUIDATED DAMAGES

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

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

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

24. CHARGES FOR INJURY OR REPAIR

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

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

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

25. WARRANTY

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

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

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

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

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

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

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

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

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

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

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

26. PAYMENT OF EMPLOYEES, SUBCONTRACTORS & SUPPLIERS

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

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

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

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

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

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

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

27. INSURANCE

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

28. BOND PROVISIONS

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

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

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

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

29. SURETY

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

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

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

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

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

30. COMPLIANCE WITH LAW

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

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

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

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

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

31. SAFETY PRECAUTIONS

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

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

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

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

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

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

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

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

32. TRENCH SAFETY

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

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

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

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

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

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

33. INDEMNITY

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

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

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

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

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

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

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

34. RELEASE

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

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

35. PERMITS AND LICENSES

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

36. ROYALTIES AND LICENSING FEES

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

37. BREACH OF CONTRACT & DAMAGES

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

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

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

38. TERMINATION FOR CAUSE

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

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

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

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

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

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

38.06. If the Contractor abandons the Work.

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

39. TERMINATION FOR CONVENIENCE

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

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

40. RIGHT TO COMPLETE

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

41. CLOSE OUT

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

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

42. TERMINATION CONVERSION

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

43. HIRING

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

44. ASSIGNMENT

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

45. EFFECTIVE DATE

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

46. OTHER TERMS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

TIGER CREEK ENTERPRISES

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: TX20230084 01/06/2023

Superseded General Decision Number: TX20220084

State: Texas

Construction Type: Heavy

Counties: Cass, Cherokee, Erath, Fannin, Franklin, Hood, Hopkins, Marion, Montague, Morris, Nacogdoches, Navarro, Palo Pinto, Panola, Rains, Red River, Somervell, Titus, Van Zandt and Wood Counties in Texas.

HEAVY CONSTRUCTION PROJECTS

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

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

	hours spent performing on
	that contract in 2023.

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

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

Modification Number	Publication Date
0	01/06/2023

SUTX2009-129 04/21/2009

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER...	\$ 13.00 **	0.00
LABORER: Common or General.....	\$ 8.61 **	0.00
LABORER: Pipelayer.....	\$ 9.94 **	0.00
OPERATOR: Backhoe/Trackhoe.....	\$ 11.75 **	0.00
OPERATOR: Bulldozer.....	\$ 14.25 **	0.00
OPERATOR: Loader (Front End)....	\$ 11.52 **	0.00
TRUCK DRIVER.....	\$ 10.80 **	0.26

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

=====

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

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this

contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

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

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

Union Rate Identifiers

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

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

Survey Rate Identifiers

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

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

Union Average Rate Identifiers

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

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

WAGE DETERMINATION APPEALS PROCESS

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

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

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

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

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

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

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

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

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

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

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

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END OF GENERAL DECISIO

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 **One Hundred Nineteen Thousand Forty-Seven and 50/100 Dollars (\$119,047.50)** 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 FM 1878 Water Line 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 **One Hundred Nineteen Thousand Forty-Seven and 50/100 Dollars (\$119,047.50)** 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 FM 1878 Water Line 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
FINAL AFFIDAVIT OF ALL BILLS PAID

FINAL BILLS PAID AFFIDAVIT
BY CONTRACTOR

BEFORE ME, the undersigned authority, personally appeared as _____,
(Name), known to me to be a credible person, and after
being by me duly sworn, upon oath stated and affirmed that: "My name is
_____ and I am the _____
(Name) (Title)
of _____", hereafter referred to in this affidavit as
(Firm)
"Contractor". Contractor's business address is _____,
(Address)
Texas, _____. The undersigned Contractor has personal knowledge of the facts
(Zip)
stated herein and has full authority to make the agreements in this affidavit on behalf of
Contractor.
Pursuant to and in accordance with a written contract between Contractor and
_____, collectively referred to as Owner, Contractor furnished
(Owner)
materials and labor for the construction, renovation, installation or repair of certain
improvements (the "Improvements"), being City of Nacogdoches contract for
_____.
(Project Name)

All work provided for under said written construction contract, together with all changes and supplements thereto, has been fully completed in accordance with the terms and provisions of said contract.

Contractor has paid each of its subcontractors, laborers, suppliers and materialmen in full for all labor and materials provided to Contractor for or in connection with the construction, renovation or repair of the Improvements.

Contractor is not aware of any unpaid bills, claims, demands or causes of action by any of its subcontractors, laborers, manufacturers, suppliers or materialmen for or in connection with the furnishing of labor materials, or both, for the construction, renovation or repair of the Improvements.

Contractor further understands that this Final Bills Paid Affidavit is being given pursuant to and in accordance with Section 53.085 of the Texas Property Code and that the

intentional, knowing or reckless making of a false or misleading statement in this Affidavit constitutes an offense under said Section and is a Class A misdemeanor.

Contractor hereby indemnifies and holds harmless the City of Nacogdoches from any and all claims, demands or causes of action, and any costs, expenses and attorney’s fees incurred in connection therewith, arising from or connected with, the statements and representations contained herein.

EXECUTED this ____ day of _____ , 20____.

CONTRACTOR:

By: _____

Name: _____

Title: _____

Notary’s Acknowledgement

Before me, the undersigned authority, on this day personally appeared _____, who first being duly sworn by me to be the person whose name is subscribed to the foregoing Final Bills Paid Affidavit, acknowledged that he/she has the authority to make this Final Bills Paid Affidavit, and further acknowledged to me that he/she executed the same for the purpose and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the _____ day of _____, 20____.

Exhibit F
PLANS, SPECIFICATIONS AND DRAWINGS

TECHNICAL SPECIFICATIONS

THE CITY OF NACOGDOCHES ***FM 1878 WATER IMPROVEMENTS*** ***NACOGDOCHES, TEXAS***



TWO FIFTEEN CONSULTING

412 NORTH STREET

NACOGDOCHES, TX 75961

936-569-0505

TBPE FIRM NO. F-17461 TBPLS FIRM NO. 10194339

TABLE OF CONTENTS - SPECIFICATIONS

- 010 – Shop Drawings Submittals
- 270 – Excavation Trench Backfill Utilities
- 400 – Potable Water Line
- 430 – Horizontal Directional Drilling
- 910 – Clearing and Grubbing
- 915 – Restoration Cleanup
- 917 – Sodding
- 918 – Seeding
- 921 – Trench Safety System
- 930 – Boring and Tunneling

ITEM 010

SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

1.0 GENERAL

1.1 GENERAL - Submit four (4) copies of shop drawings, product data, operation and maintenance literature and one (1) set of samples required by specification sections. Shop drawings, product data and samples are not considered a part of contract documents. Schedule submissions at least 10 days before reviewed submittals will be needed.

1.2 CONTRACTOR RESPONSIBILITIES - Review shop drawings, product data and samples prior to submission. Verify:

- A. Field measurements.
- B. Field construction criteria.
- C. Catalog numbers and other data.
- D. Conformance with submission requirements.

Coordinate each submittal with contract document and work schedules to prevent any delay in the work. Contractor's responsibility for errors and omissions is not relieved by the Engineer's review of submittals. At time of submission and in writing, notify the Engineer of any deviations from contract documents in the submittals. The Engineer's review of submittals and subsequent general approval is not to be construed as approval for any deviations included in the submittals unless the Engineer gives specific written acceptance of these deviations.

Begin no work related to submittals until return of submittals with the Engineer's stamp and initials or signature indicating review. Distribute copies after the Engineer's review.

1.3 ENGINEER'S DUTIES - Review submittals with reasonable promptness to prevent any delay in the work. Review for conformance with:

- A. Design concept of project.
- B. Contract documents.

Review of a separate item does not constitute review of an assembly in which the item functions. Return to Contractor those submittals which do not meet the requirements and require correction and resubmission. Affix stamp and initials or signature certifying review of submittal. Return reviewed submittals to Contractor for distribution.

2.0 PRODUCTS

2.1 PRODUCT DATA-CONTRACTOR'S RESPONSIBILITIES

2.1.1 Modify the manufacturer's standard schematic drawings to delete or supplement information as applicable.

2.1.2 For manufacturer's catalog sheets, brochures, diagrams, schedules, performance charts, illustrations and other descriptive data:

- A. Clearly mark each copy to identify pertinent materials, products or models.
- B. Show dimensions and clearances required.
- C. Show performance characteristics and capacities.
- D. Show wiring diagrams and controls.

2.1.3 Include on the data all information required for submission or submit transmittal letter containing required information.

2.1.4 Contractor shall supply the Engineer with operation and maintenance literature from the

manufacturer for all equipment and systems installed on the project. This literature shall be suitable for use by the Owner's personnel.

- 2.1.5** Prepare the number of copies which the Contractor requires for distribution plus four copies to be retained by the Engineer.

3.0 EXECUTION

3.1 IDENTIFICATION

- 3.1.1 General** - Consecutively number all submittals. Accompany each submittal with a letter of transmittal containing all pertinent information required for identification and checking of submittals.
- 3.1.2 Internal Identification** - On at least the first page of each copy of each submittal, and elsewhere as required for positive identification, clearly indicate the submittal number in which the item was included.
- 3.1.3 Resubmittals** - When material is resubmitted for any reason, transmit under a new letter of transmittal and with a new submittal number.
- 3.1.4 Submittal Log** - Maintain an accurate submittal log for the duration of the Contract, showing current status of all submittals at all times. Make the submittal log available for the Engineer's review upon request.

3.2 PREPARATION REQUIREMENTS

3.2.1 Shop Drawings

- A. Preparation by a qualified detailer is required.
- B. For Mechanical and Electrical work use the same sheet size as contract drawings.
- C. Where necessary for clarity, identify details by reference to sheet and detail number on contract drawings.
- D. Include on the drawing all information required for submission or submit transmittal letter containing required information
- E. Prepare number of copies which the Contractor required for the distribution plus four copies to be distributed by the Engineer.

3.2.2 Samples

- A. Submit office samples of sufficient size and quantity to clearly illustrate:
 - 1. Functional characteristics of product or materials with integrally related parts and attachment devices.
 - 2. Full range of color samples.
- B. Erect field samples and mock-ups in an acceptable location. Construct each sample complete, including work of all trades required in finished work.
- C. Include in transmittal letter all information required for submission.
- D. Prepare the number of samples specified.

3.2.3 Mill Certificates - Submit mill certificate on the following items:

- A. Reinforcing Steel
- B. Bulk Cement
- C. Structural Steel
- D. HDPE pipe/fittings

3.3 SUBMISSION REQUIREMENTS - Accompany submittals with a transmittal letter in duplicate. Include the following information for each submittal.

- A. Date and revision dates.
- B. Project title and number.
- C. The names of:
 - 1. Engineer
 - 2. Contractor
 - 3. Subcontractor
 - 4. Supplier
 - 5. Manufacturer
- D. Identification of product or material.
- E. Relation to adjacent structure or materials.
- F. Field dimensions clearly identified as such.
- G. Specification section number.
- H. Applicable standards, such as ASTM number of Federal Specification.
- I. A blank space on each shop drawing, approximately 5" x 5", for the Engineer's stamp.
- J. Identification of deviations from contract documents.
- K. Contractor's stamp, initialed or signed, certifying review of submittal, verification of field measurements and compliance with contract documents.

3.3.1 Submit all required shop drawings, product data and samples for the following work at one time. Suitably organize an index 8 ½" x 11", 11" x 17" and other compatibly sized material in a 3-ring binder. Larger shop drawings may be submitted together either rolled or folded. Include an index.

3.4 RESUBMISSION REQUIREMENTS

3.4.1 Shop Drawings

- A. Revise initial drawings as required and resubmit as specified for initial submittal.
- B. Indicate on drawings any changes which have been made other than those requested by the Engineer.

3.4.2 Product data and samples - Submit new data and samples as required for initial submission.

3.5 DISTRIBUTION AFTER REVIEW - Distribute copies of shop drawings and product data which carry the Engineer's stamp to:

- A. Contractor's file
- B. Job site file
- C. Record document file
- D. Other prime Contractors
- E. Subcontractors
- F. Supplier
- G. Fabricator

ITEM 270

EXCAVATION, TRENCHING AND BACKFILLING FOR UTILITIES

270.1 GENERAL

A. Description

Work included: All excavation of trenches for sanitary sewer, water or other pipelines and backfilling after the line has been properly laid, inspected and tested, shall be done according to these specifications and subsequent to clearing the ditch line.

The work required shall include the furnishing of all labor, materials, tools, equipment and machinery necessary for the stripping or removal of top soil or sod and subsoil or rock, the furnishing, placing and maintaining of all sheeting, shoring, and bracing necessary to protect the work, adjacent properties and workers; the furnishing of all pumping, bailing and draining necessary to keep the excavation free from seepage water, water from sewers, drains, ditches, creeks, and other sources; the furnishing of provision for the uninterrupted flow of sewers and surface waters during the progress of the construction; the removal, after the completion of the work, of all sheeting, shoring and bracing not ordered left in place to support the sides of the excavation; the satisfactory disposal of excess and unsuitable materials not required or which cannot be used for backfilling, tamping, compacting and refilling after settlement of all excavated areas; the restoration of all rights-of-way and other lands or structures, private or public, damaged or occupied by the Contractor in the performance of the contract to as good a condition as they were prior to the beginning of the work; and maintenance of any trench settlement that occurs within the warranty period or as otherwise specifically provided.

270.2 PRODUCTS

A. Earthen Materials

1. "Select Backfill" material shall be native material from the trench excavation that is suitable for proper backfill as approved by the Engineer. In all cases select backfill shall be free of trash, sticks and other organic materials as well as lumps, clods or rocks larger than six (6) inches in any dimension. Within one foot of the top of the pipe and the top one foot of the trench, select material shall meet the requirements of "crumbling earth".
2. "Crumbling Earth" as used herein shall refer to select backfill material, free of rocks, lumps, roots and other objectionable matter excavated from the trench which at the time of use is in a crumbled, free-flowing condition and has such properties that it can be placed and made firm and free of voids.
3. "Bank Sand" shall be free flowing, fine grained sand without clay lumps or rock. Bank sand shall not have more than 25 percent passing No. 200 sieve and shall not have a plasticity index exceeding 5, when tested by standard laboratory methods. Sand shall be reasonably clean and free of large lumps of clay, loam, rubbish, vegetative matter or other deleterious substance and shall meet the approval of the Engineer.
4. "Granular Material" shall refer to the various granular, hard mineral types such as pea gravel, bank-run gravel and crushed stone with the following gradation requirements:

<u>Sieve Size</u>	<u>% Passing</u>
1"	100
1/2"	25-60
#4	0-10
#8	0-5

The characteristics of the material shall be of such quality to provide a high confined compressive strength.

B. Cement Stabilized Sand Backfill

1. Mixture of bank sand, Portland cement and water. Use not less than 1-1/2 sacks of cement per cubic yard of mixture unless otherwise noted. Add required amount of water and mix thoroughly in approved type mixer. Stamp batch ticket with time of loading. Material not in place within 1-1/2 hours after loading will be rejected.
2. Portland Cement shall be ASTM C150, Type 1.
3. Water shall be clean and free from injurious amounts of oils, acids, salt, organic matter or other deleterious

materials.

C. Tracer and Warning Materials

1. When non-metallic pipe is used for construction of sanitary sewer or water lines, it shall be marked by laying a tracer wire, direct burial cable, 14 gage THHN Stranded, directly over and running parallel to the line.
2. When metallic or non-metallic pipe is used for construction of utility lines, it shall be marked by laying plastic line marking tape directly over and running parallel to the line. The tape shall be marked with the type of line buried below it. Tape shall be "TERRA TAPE-STANDARD" as manufactured by Reef Industries or approved equal and shall act as an early warning system.

270.3 EXECUTION

A. Excavation

1. Entry upon any private property for performance of any work thereon is prohibited until all required easements or rights-of-way have been obtained.
2. Contractor shall perform all special construction operations and take all special precautions to adequately protect the materials and work performed, the property and landscape of the Owner and others, existing buildings and improvements, existing utilities, workers and employees, and the public in general.
3. Clear the entire width of the permanent easement or right-of-way but clear only such timber and brush from the temporary or construction easement as is necessary for construction of the utility system. The width of the area so cleared shall not extend outside the limits of the easement or street right-of-way as the case may be, as shown on the plans. Trees and timber removed shall be disposed in a manner approved by the Owner.
4. Where trees, plants, shrubbery, etc., are adjacent to the line of the work and are designated not to be destroyed, the Contractor shall protect such trees, plants, shrubbery, etc.
5. Excavate to the approved lines and grades as shown on the drawings. Excavated materials not required for fill or backfill shall be removed from the site and disposed of by the Contractor, at a location approved by the Owner.
6. Excess excavation below the required level shall be backfilled at the Contractor's expense with earth, sand or gravel well compacted, or Class C concrete, as directed by the Engineer.
7. Water accumulated in the excavation shall be removed by pumping or other approved means at the Contractor's expense.
8. Unstable soil shall be removed and replaced with an acceptable backfill material as approved by the Engineer and compacted.
9. Excavation shall be by open cut with trenching machine or back hoe. Where machines other than ladder or wheel type trenching machines are used, excavated material composed of large chunks and clods shall not be used for backfilling.
10. When excavating through paved or otherwise improved surfaces, the Contractor shall restore such surfaces to a condition equal to or better than original, to the satisfaction of the Owner.
11. Contractor shall, at his own expense, shore up and otherwise protect any building or other structure which may be endangered during the work and he shall restore all buildings, culverts, fences, walls, or other properties disturbed during the work to a condition equal to that existing before his operation. Contractor shall be responsible for any injuries to persons, for damages to existing buildings or other structures affected by the work, and Owner shall not be liable therefor.
12. It shall be the responsibility of the Contractor to verify the existence and location of all underground utilities and structures along the route of the work. The omission from or the inclusion of utility locations on the plans shall not be considered as the non-existence of or a definite location of the existing underground utilities and structures.
13. It shall be the responsibility of the Contractor to notify the respective owners when markers or facilities are encountered and to protect and support all water, gas, telephone, electric and other conduits or facilities crossed by the excavation or work to be performed by him or to arrange for their temporary removal, and subsequent replacement. In cases where an existing sanitary sewer line crosses the new trench and is either of unsuitable material or has a joint exposed in the excavation, such sanitary sewer line shall be replaced by ductile iron or SDR 26 PVC pipe of sufficient length to span into adequately encased support points on each side.
14. At all streets, drives, walkways and other crossings where applicable, the trenches are to be promptly restored and maintained in such a manner as to prevent any serious interruption of traffic upon the roadway or sidewalks. Where trenches cannot be closed promptly, contractor shall provide temporary bridges to cross trenches when necessary to reduce nuisance and hazard to the public. Such work is to be considered part of

the basic proposal item most nearly related.

15. Contractor must provide and maintain adequate detours around the work under construction. Contractor must provide sufficient lights, warning signs, and watchmen to provide adequately for the safety of the public. All lighting, barricading and traffic control devices shall be provided by the contractor in accordance with the Manual on Uniform Traffic Control Devices (MUTCD), latest edition.

16. Before leaving work for the night, during a storm, or at other times, care must be taken to protect and securely close and protect the unfinished end of the pipe. Any earth or other materials that may find entrance into the pipe through any such open or unplugged end of the pipe must be removed at the Contractor's expense.

17. The sides of all excavations shall be sufficiently sheeted, shored and braced so as to prevent slides, cave-ins, settlement or movement of the banks and to maintain the excavation clear of obstruction that will in any way hinder or delay the progress of the work. In wet, saturated or flowing materials, when it is necessary to install tight sheeting or cofferdams, wood or steel sheet piling of an approved design and type shall be used. All sheeting piling, shoring and bracing shall have sufficient strength and rigidity to withstand the pressure exerted and maintain the sides of the excavation properly in place and protect all persons or property from injury or damage. When excavations are made adjacent to existing buildings or other structures, or in paved streets, particular care shall be taken to adequately sheet, shore and brace the sides of the excavation to prevent undermining of, or settlement beneath the structures or pavement. Underpinning of adjacent structures or pavement shall be done by Contractor at his own cost and expense and in an approved manner, or when required, the pavement shall be removed, the void satisfactory refilled, compacted and the pavement replaced by Contractor; the entire expense of such removal and subsequent replacement thereof shall be borne by Contractor. Sheeting, shoring and bracing shall not be left in place unless otherwise provided for in the contract or specifically authorized. The removal of sheeting, shoring and bracing shall be done in such manner as not to endanger or damage either new or existing structures, private or public properties, and so as to avoid cave-ins, or sliding of the banks. All holes or voids left by the removal of the sheeting, shoring or bracing shall be immediately and completely filled and compacted with suitable materials.

18. Contractor shall immediately remove all surface or seepage water from sewers, drains, ditches and other sources which may accumulate during the excavation and construction work by providing pumping, bailing, or draining. Contractor shall have available at all times sufficient equipment in proper working order for doing the work herein required. All water removed from excavations shall be disposed of in an approved manner, so as to not create unsanitary conditions, nor to cause injury to persons or property or damage to the work in progress, nor to interfere unduly with the use of streets, private driveways or entrances.

19. Tracer wire shall be laid prior to backfilling operations next to the pipe. A monitoring station shall be installed approximately every 500 feet of pipe. Tracer wire and monitor station cost shall be included as part of the linear foot cost of the pipe.

20. Warning tape shall be placed during backfill operations at a depth of six (6) to eight (8) inches below final grade or pavement subgrade.

B. Trench Excavation

1. The trench sides shall be cut vertical from the bottom of the trench to a point one (1) foot above the top of the pipe. In material that may cave, trench sides shall be braced or cut to a stable slope as determined by the material characteristics. Contractor shall be solely responsible for maintaining the trench in a stable condition to prevent slides, cave-ins, settlement or movement of the banks. Contractor shall provide a trench safety system sealed by a Registered Professional Engineer in the State of Texas described in the Technical Specification Trench Safety System and as required by State and Federal law.

2. Complete and shape trench to provide free working space and to permit thorough tamping of backfill around pipe. The width of the trench shall be six (6) inches minimum and twelve (12) inches maximum on each side of pipe bells. In no case shall the upper portions of the trench be of less width than the bottom.

3. Where bedding is not required, grade bottom of trenches accurately to the curvature of pipe to provide uniform bearing on firm soil along entire length of each pipe section.

4. Remove rubbish, rock, or debris encountered at grade to depth of at least six (6) inches below bottom of pipe and reshape and compact trench bottom.

5. Bell holes shall be of ample size to make the joint and relieve the bell of all load. When the joint has been made, the void under the bell shall be filled with bedding material to provide uniform support to the pipe throughout its length.

6. Keep excavated material piles so that it will not endanger work or obstruct roads and driveways. Keep drainage channels clear or provide other satisfactory means for drainage.

7. Pipe shall have been laid in all trench that has been opened and the trench backfilled at the end of each day's

work, except with written permission to do otherwise.

8. Trenches for pressure line shall be of such depth as to give thirty-six (36) inches cover over the top of the pipe to natural grade and at street crossings thirty (30) inches cover over the top of the pipe to street subgrade. In drainage ditches and bar ditches the pipe shall have a minimum of thirty (30) inches cover or be concrete encased. Lines installed in highway or railroad rights-of-way shall conform to the requirements of the applicable owner or agency. Trench depth for sewer lines shall be such that the sewer pipe flow line will be as shown on the Construction Drawings when the pipe has been installed in accordance with these specifications.

C. Rock Excavation

When excavation is in rock, it shall be undercut four (4) inches and then brought back to grade with bank sand or other approved granular bedding material. This material shall be compacted and shaped as required and specified for pipe bedding. Rock excavation shall include removal of boulders larger than 1/3 cubic yard in volume, of ledge rock, concrete or masonry structures or foundations that require drilling or blasting.

D. Bracing, Sheathing and Shoring

Bracing, sheathing and shoring shall be provided as shown on the plans or required in the trench safety system.. Sheathing designated by the Engineer to remain in place shall be cut off one (1) foot below the natural ground line and left in the trench. All sheathing not designated to remain in place shall be removed prior to backfilling the trenches.

E. Temporary Bridges

Temporary bridges or crossings shall be provided by the Contractor as required to maintain traffic. Such bridges or crossing shall be designed by a Registered Professional Engineer in the State of Texas.

F. Pipe Bedding

1. Concrete Encasement: The bottom of the trench shall be undercut to a depth of one-fourth the inside diameter of the pipe or a minimum of six (6) inches. Reinforcing shall be No. 4 bars longitudinally, spaced twelve (12) inches on-center (minimum) around the pipe. No. 2 ties placed twenty-four (24) inches on-center circumferentially shall be used to maintain proper location of the reinforcement. Concrete shall be a four (4)-sack mix and shall be poured in the trench to proper grade and pipe shall be placed in the concrete at the proper line and grade. After the initial concrete has sufficient set to support the additional load without disturbing the alignment and grade of the pipe, additional concrete shall be placed around the pipe extending up to a height of one-fourth the inside diameter or a minimum of six (6) inches above the top of the pipe. Backfill above this point shall conform to these specifications but shall not proceed until concrete has achieved a compressive strength of 75 percent of its design strength, or three (3) days, whichever is greater.

2. Cement Stabilized Sand Backfill: The bottom of the trench shall be undercut to a depth of one-fourth the inside diameter of the pipe or a minimum of four (4) inches. Cement stabilized sand shall be placed in the trench to proper grade and pipe shall be placed on this material at the proper line and grade. After the initial stabilized sand has sufficient set to support the additional load without disturbing the alignment and grade of the pipe, additional cement stabilized sand shall be placed in uniform layers around the pipe extending up to a minimum height of twelve (12) inches above the top of the pipe. Minimum compaction to this level shall be 90 percent Standard Proctor (ASTM-698). Backfill above this level shall be uniform layers not exceeding twelve (12) inches of cement stabilized sand to the top of the trench. In roadway or proposed pavement areas, the backfill from a point twelve (12) inches above the top of the pipe to the top of the trench can be approved road base material placed in layers not to exceed twelve (12) inches. Compaction above the pipe zone shall conform to these specifications.

3. Class "A" Bedding (Concrete Cradle): The bottom of the trench shall be undercut to a depth of one-fourth the inside diameter of the pipe or a minimum of four (4) inches. Concrete shall be a four (4)-sack mix and shall be poured in the trench to proper grade and pipe shall be placed in concrete at the proper line and grade. After the initial concrete has sufficient set to support the additional load without disturbing the alignment and grade of the pipe, additional concrete shall be placed around the pipe extending up to a height of at least one-fourth the pipe outside diameter. Backfill above this point shall conform to these specifications but shall not proceed until concrete has achieved a compressive strength of 75 percent of its design strength, or three (3) days, whichever is greater.

4. Class "AA" Bedding (Concrete Arch): The bottom of the trench shall be undercut to a depth of one-fourth the outside pipe diameter or a minimum of four (4) inches. The pipe shall be bedded in granular material

extending up the sides of the pipe to the spring line and compacted to 90 percent Standard Proctor (ASTM D-698). The top half of the pipe shall be covered with a monolithic concrete arch having a thickness of at least four (4) inches or one-fourth the outside pipe diameter. Concrete shall be a minimum four(4)-sack mix. Backfill above this point shall conform to these specifications.

5. Class “B” Bedding: The bottom of the trench shall be undercut to a depth of one-eighth the outside diameter or a minimum of four (4) inches. Granular material or bank sand shall be placed and compacted to the proper line and grade before the pipe is laid. After the pipe has been laid additional granular material or bank sand shall be placed and compacted to the spring line of the pipe. Compaction shall be 90 percent of Standard Proctor (ASTM D-698). Care shall be taken not to disturb the grade and alignment. Backfill above this point shall conform to these specifications.

6. Class “B Modified” Bedding: The bottom of the trench shall be undercut to a depth of one-eighth the outside pipe diameter or a minimum of four (4) inches. Granular material or bank sand shall be placed and compacted to the proper line and grade before the pipe is laid. After the pipe has been laid additional granular material or bank sand shall be placed and compacted around the pipe to a minimum of six (6) inches above the top of the pipe. Compaction shall be 90 percent of Standard Proctor (ASTM D-698). Care shall be taken not to disturb the grade and alignment. Backfill above this shall conform to these specifications.

SPECIAL “HAUNCHING” REQUIREMENT - Care shall be taken to ensure that sufficient material has been worked under the “haunch” of the pipe (bottom of pipe to spring line of pipe) to provide adequate side support. Take precautions to prevent movement of the pipe during placing of the material under the pipe haunch.

7. Class “C” Bedding: The bottom of the trench shall be undercut to a depth of one-eighth the outside pipe diameter or a minimum of four (4) inches. Granular material shall be placed and compacted to the proper line and grade before the pipe is laid. After the pipe has been laid, the same bedding material shall be placed and compacted to a minimum height of one-sixth the outside pipe diameter. Compaction shall be 90 percent of Standard Proctor (ASTM D-698). Care shall be taken not to disturb the grade and alignment. Backfill above this shall conform to these specifications.

8. Class “D” Bedding: The bottom of the trench shall be accurately graded to support the bottom of the pipe to provide uniform bearing and support for each section of pipe. Backfill above this shall conform to these specifications.

9. Class “D Modified” Bedding: The bottom of the trench shall be accurately graded and rounded to support the bottom quadrant of the pipe to provide uniform bearing and support for each section of pipe. Backfill above this shall conform to these specifications.

10. Designation and Bedding Required: Standard bedding for the various types of pipe shall be as shown in the chart below and shall be used unless otherwise noted on the plans or as directed by the Engineer. When unsuitable trench conditions are encountered during construction the next higher class of bedding shall be required.

<u>Pipe Type</u>	<u>Standard Bedding Class</u>
Corrugated Metal Pipe*	C
(CMP), Aluminum or Steel	
Ductile Iron Pipe (DIP)	
Less than 30” I.D.	D
Ductile Iron Pipe	
30” I.D. and Larger	C
Reinforced Concrete Pipe (RCP)	D
High Density Polyethylene (HDPE),	
PVC (SDR 26 and higher rated)	B

*Large diameter circular arch-pipe or structural plate CMP shall follow manufacturer’s recommendations for bedding, as approved by the Engineer.

G. Excavation of Appurtenances

Excavation for manholes and similar structures shall be sufficient to leave at least two (2) feet clearance between the outer surfaces and the embankment or timber that may be used to hold and protect the banks. Any overdepth

excavated below such appurtenances that has not been directed will be considered unauthorized and shall be refilled with sand, gravel, or concrete, as directed, at no additional cost to the Owner.

H. Backfilling

After pipe joints have been inspected and approved by the Engineer, backfill trench to lines and grades indicated on the drawings. Suspend backfill operations during times of inclement weather or other unsatisfactory conditions in field when satisfactory results cannot be obtained.

1. Open Areas:

- a. Pipe Zone: Backfill material shall be deposited in six (6) inch maximum thickness layers and compacted to 90 percent Standard Proctor Density, ASTM D-698, until there is a cover of not less than one (1) foot over the top of the pipe. The backfill material in this portion of the trench shall conform to the designated bedding classification and be placed at optimum moisture content. Special care shall be taken not to damage the coating or wrapping of pipes. No rocks, clods, or debris shall be allowed.
- b. Above Pipe Zone: Deposit approved materials in uniform layers not to exceed eight (8) inches, compacted to 90 percent Standard Proctor Density, ASTM D-698. In no case shall completed backfill be at a density less than surrounding undisturbed soil. Excess material from the excavation shall be uniformly mounded over the trench unless otherwise directed by the Owner.
- c. Pavement Sections:
 - (1) Pipe Zone: Backfill material shall be deposited in six (6) inch maximum thickness layers and compacted with mechanical hand tampers to 90 percent Standard Proctor Density, ASTM D-698, until there is a cover of not less than one (1) foot over the top of the pipe. The backfill material in this portion of the trench shall conform to the designated bedding classification and be placed at optimum moisture content. Special care shall be taken not to damage the coating or wrapping of pipes. No rocks, clods or debris shall be allowed.
 - (2) Above Pipe Zone: Deposit approved materials in uniform layers not to exceed eight (8) inches, compacted to 96 percent Standard Proctor Density, ASTM D-689, to within two (2) feet of final grade and to 98 percent Standard Proctor Density within the top two (2) feet.

I. Testing

1. Laboratory Services: Contractor shall be responsible for the services of a certified, commercial testing laboratory to perform density testing. Contractor is responsible for testing required by the Owner to verify that bedding and backfill materials meet or exceed specifications.

ITEM 400

POTABLE WATER LINE & FITTINGS

400.1 GENERAL

All materials and construction procedures shall conform to the Texas Commission on Environmental Quality Publication, Rules and Regulations For Public Water Systems, Chapter 290, Subchapter D, Sections 290.38 through 290.47, and all applicable revisions and amendments thereto. All specifications referred to herein shall be of the latest current revision.

Except as otherwise noted herein, all work shall be accomplished as recommended in applicable American Waterworks Associations (AWWA) Specifications; American National Standards Institute/National Sanitation Foundation (ANSI/NSF) Standard 61; and according to the recommendation of the manufacturer of the material or equipment used.

400.2 MATERIALS

The water distribution system shall be constructed of the following materials as dictated on the construction plans.

(A) Ductile Iron Pipe

Ductile iron pipe shall be standard thickness, Class 2, cement-lined unless otherwise specified and shall conform to the standards of USA Standard A-21.51 (AWWA C-151).

Rubber gasket pipe joints to be push-on-joint (Tyton) or mechanical joint (M.J.) in accordance with USA Standard A-21.11 (AWWA C-111), unless otherwise specified.

Flanged joint shall conform to USA Standard B-16.1.

Standard thickness cement lining shall be in accordance with USA Standard A-21.4 (AWWA C-104).

The Contractor shall furnish certification from the manufacturer of the pipe and gasket being supplied that the inspection and all of the specified tests have been made and the results thereof comply with the requirements of this standard.

(B) Steel pipe

Steel pipe shall be hot-dip galvanized steel pipe meeting ASTM Specification A-120-57T. Screw joints shall be made perfectly tight by applying a stiff mixture of graphite and oil, applied with a brush to the threads only. Special fittings for pipe shall conform to Federal Specification WW-P-321.

(C) Polyvinyl Chloride Pressure Pipe

(1) ASTM D-2241 Plastic Pipe: Polyvinyl Chloride (PVC) plastic pipe shall conform to ASTM D-2241, "Standard Specification for Polyvinyl Chloride (PVC) Plastic Pipe (SDR-PR)." Standard Dimension Ratios shall be SDR 26 for Class 160 (160 psi pipe), SDR 21 for Class 200 (200 psi pipe) and SDR 17 for Class 250 (250 psi pipe).

(2) AWWA C900 Plastic Pipe: PVC Pipe shall meet the requirements of AWWA C900, "Standard for Polyvinyl Chloride (PVC) Pressure Pipe, 4 inches through 12 inches for Water" and shall be furnished in cast-iron pipe equivalent outside diameters with neoprene rubber-gasketed separate couplings as listed in that standard. Pipe shall be listed by Underwriters Laboratories, Inc. and Factory Mutual approved. Dimension Ratios shall be DR 25 for Class 100 (100 psi pipe), DR 18 for Class 150 (150 psi pipe) and DR 14 for Class 200 (200 psi pipe).

All PVC Plastic pipe shall be extruded from clean, virgin, approved class 12454-A (PVC 1120) resin compound conforming to ASTM Specification D-1784, "Standard Specification for Rigid Polyvinyl Chloride (PVC) Compounds and Chlorinated Polyvinyl Chloride (CPVC) Compounds." Pipe joints shall conform to ASTM D-3139, "Standard Specification for Joints for Plastic Pressure Pipe Using Flexible Elastomeric Seals" and gaskets shall conform to ASTM F-477, "Standard Specification for Elastomeric Seals (Gaskets) for Joining Plastic Pipe." Plastic pipe proposed for use in public water

systems must bear the NSF Seal of Approval, NSF No. 14, "National Sanitation Foundation Standard No. 14 for Thermoplastic Materials, Pipe, Fittings, Valves, Traps and Joining Materials."

(3) PVC plastic fittings shall be of the same class as the pipe in which they are to be installed. Solvent weld method may be used for joints in pipe sizes smaller than 1½". Plastic pipe shall not be threaded. Female threaded adapters only should be used for making up threaded joints. Gasketed coupling, tees, ells, etc. shall be used for pipe sizes of 1½ inch diameter and larger. Ells, tees, and couplings used in "new" construction and tie-ins to "existing" lines shall be with 200 psi rated fittings and in conformance with ASTM D3139. All piping ells, tees, and couplings for 6 inch and larger shall be Ductile Iron Mechanical Joint Fittings Class 350 or Push-On Joint Ductile Iron Fittings Class 350 in conformance with ANSI/AWWA C153/A21.53-84 and joined to PVC pipe spigot ends by means of transition gaskets, supplied by the manufacturer.

(D) Cast Iron Fittings

Cast iron fittings shall be short body cement-lined and for pressure rating of 150 psi, unless otherwise noted. Metal thickness and manufacturing process shall conform to applicable portions of USA Standard A-21.10, A-21.11, B-16.1, B-16.2 and B-16.4.

Standard cement lining in accordance with USA Standard A-21.4 (AWWA C-104).

Rubber gaskets for push-on-joint (Tyton) or mechanical joint (M.J.) in accordance with USA Standard A-21.11 (AWWA C-111). Rubber gaskets for use with PVC pipe to be furnished with the pipe and shall conform to the requirements of ASTM D-1869 and F-477 (rubber rings for use with PVC).

Gasket material for flanges shall be neoprene, Buna N, chlorinated butyl or cloth-inserted rubber.

Type of ends shall be specified as push-on-joint (Tyton), mechanical joint (M.J.), plain end (P.E.), flanged (FL.), screwed or roll-on hub or ring tight type for PVC (R.T.).

(E) Gate Valves

The minimum requirements, for all gate valves shall, in design, material and workmanship, conform to the Standards of AWWA C-500.

Buried gate valves shall be iron body, resilient seat wedge type, bronze mounted, double disc, non-rising stem, operating stems equipped with Standard two (2) inch operation nut, and O-ring Stem seals, suitable for installation with the type and class of pipe being installed. Ends to be specified. All valves installed underground shall be provided with standard valve boxes.

Gate valves inside pump houses shall be Mueller Resilient Seat gate valves or equal with iron body and modified wedge disc of OS & Y type. Flanged ends complying to ANSI B16.1.

(F) Fire Hydrants

Fire hydrants shall have 5¼ inch main valve opening (MVO) as specified for 36 inch deep trench, unless otherwise designated, flanged at ground line, 6 inch connection that is suitable to the type of pipe being used; two 2½ inch hose connection National Standard Thread; pumper connection and operating nut to match existing. They shall be so constructed that direction of facing of pumper connection may be rotated to face the roadway. Fire hydrants shall comply with AWWA C-502. Unless otherwise specified, they shall be of traffic type with break-away flange construction.

(G) Valve Boxes

Valve boxes shall be cast iron.

(H) Corporation Stop

Corporation stops shall be as shown on the plans and details.

(I) Service Clamp

Pipe saddles shall be double strap with stainless steel straps and cast iron bodies as manufactured by Smith-Blair or Romac.

(J) Angle Meter Stops

Angle Meter stops shall be as shown on the plans and details.

(K) Concrete Meter Box

Concrete meter boxes shall be complete with concrete lid and cast iron inspection cover, equal to Brooks Products, Inc., Meter Box.

(L) Copper Service Pipe

Copper service pipe shall be Type K soft annealed copper service pipe of the sizes shown on the plans and details.

(M) Air and Vacuum Release Valves

Air and vacuum release valves shall be as shown on the plans and details.

(N) Concrete Blocking

Concrete blocking shall be Class "B" concrete.

(O) Bolts in Piping

Bolts shall be cast iron, zinc or chromium plated steel, brass or stainless steel.

(P) Flanged Gaskets

Gasket material shall be neoprene, Buna N, chlorinated butyl, or cloth inserted rubber.

400.3 ALIGNMENT

Pipe shall be laid closely to specified alignment. Alignment deviation is not to exceed 0.5 feet.

400.4 TRENCH EXCAVATION

Clearing and grubbing where required shall be performed within the easement or public right-of-way and as permitted by the property owner or governing agencies. Debris resulting from the clearing and grubbing shall be disposed of by the Contractor.

Trenches shall be excavated to the line and depth designated by the Engineer to provide a minimum of 36 inches of cover over the pipe, unless otherwise shown on the contract drawings. No additional compensation will be made for deeper excavation made for localized grade changes or installing water line under existing culverts or other utilities. Except for unusual circumstances where approved by the Engineer, the trench sides shall be excavated vertically and the trench width shall be excavated only to such widths as are necessary for adequate working space. The minimum trench width at the top of the pipe shall normally be the outside diameter of the pipe barrel plus minimum working room. The trench shall be kept free from water until jointing is complete. Surface water shall be diverted so as not to enter the trench. The Contractor shall maintain sufficient pumping equipment on the job to insure that these provisions are carried out. Bedding required on the bottom of the trench due to action of weather or workmen shall be furnished by the Contractor without expense to the Owner. The Contractor shall perform all excavation of every description and of whatever substance encountered and boulders, solid rock, roots and other obstruction shall be entirely removed or cut out to the width of the trench and to a depth 6 inches below water main grade. Where material is removed from below water main grade, the trench shall backfilled to grade with material satisfactory to the Engineer and thoroughly compacted, as indicated in the construction plans.

All trenching shall comply with the Technical Specification Trench Safety System. Trenching operations shall not proceed more than 500 feet in advance of pipe laying, except with written approval of the Engineer.

When trenching operations cut through concrete pavement, the concrete shall be cut on a straight line and shall be beveled so that the cut will be approximately 1 inch wider at the top than at the bottom. Asphalt paving shall be cut ahead of the trenching equipment to prevent excessive tearing up of the surfacing and eliminate ragged edges.

400.5 TIMBER AND SHEETING

The Contractor shall provide and install timber supports and sheeting as necessary to protect workmen, the work and existing buildings, utilities and other properties as required in the Technical Specification Trench Safety System. All timber and sheeting above the pipe shall be removed prior to backfilling. All sheeting below the top of the pipe shall be cut off and left in place. Removal of timber shall be accomplished in such a manner that there will be no damage to the work or to other properties. All timber and sheeting shall be to the Contractor's design and as approved by the Engineer.

400.6 LAYING PLASTIC PIPE

Installation and backfilling for ASTM D-2241 pressure rated plastic pipe shall be in accordance with ASTM D-2774, "Standard Practice for Underground Installation of Thermoplastic Pressure Piping." Installation and backfilling for AWWA C-900 Pressure Class plastic pipe shall be in accordance with AWWA C-605, "Standard for Installation of PVC Pressure Pipe for Water." The Contractor shall keep the trench free from water. The assembly of pipe and couplings shall be made with dry and clean materials where possible. Couplings shall be assembled in accordance with the manufacturer's instructions.

Whenever it is necessary to cut pipe, it shall be done with tools recommended by the manufacturer. The cut ends of the pipe shall be square and smooth and free from excessive chipping.

Connections to Roll-On Joint cast iron fittings or valves shall be made without nipples except as required for placing the fitting in the proper position. All joints shall be kept clean and free from dirt or rubbish.

400.7 LAYING DUCTILE IRON PIPE

Work shall be accomplished in accordance with AWWA Specification C-600. The bottom of the trench shall be finished to grade with hand tools in such a manner that the pipe will have bearing along the entire length of the barrel. The bell holes shall be excavated with hand tools to sufficient size to make up the joint. Bolts on mechanical pipe and fittings shall be tightened uniformly with a "Torque" wrench which measures the torque applied. Installation of push-on-joint (Tyton) pipe shall be in accordance with the manufacturer's instructions.

400.8 BACKFILLING

Backfilling and surface restoration shall closely follow installation and testing of the pipe, so that not more than 500 feet of pipe is left exposed without express approval of the Engineer. Hand shaping will be required in rock areas prior to backfill. If suitable backfill materials are not available from trenching operations, the Engineer may order the placing of bedding materials around the water main. All backfill within twelve (12) inches of the pipe shall be hand tamped with suitable small hand tools.

Where governmental agencies, other than the Owner, have jurisdiction over the roadways, the backfill and compaction shall be done to the satisfaction of the agency having the jurisdiction.

400.9 TUNNELING

Tunneling may be ordered by the Engineer under pavement or elsewhere as directed on the plans. Tunnels shall be not less than 4 feet high and 2 feet wide and not less than 1 foot wider than the outside diameter of the pipe. Tunnels shall be backfilled with materials acceptable to the Engineer and backfill shall be mechanically compacted.

400.10 HIGHWAY CROSSINGS

The Contractor may use any method which provides satisfactory results and is acceptable to the Engineer and governmental agency having control of the road, provided that the Contractor restores the roadway to its original condition. Normally, highway crossings require the placing of a steel pipe casing by jacking or tunneling and laying the water main within this casing. In case of tunneling, subsequent low pressure grouting through the pavement may be required.

400.11 FIRE HYDRANT INSTALLATION

Fire hydrants shall be set as shown in the Standard Details. Where shackle rods are to be used, the valve barrel must have lugs and also the gate valve must have lugs. Fire hydrants above ground shall be painted with two coats of paint, type and color as selected by the Owner.

400.12 GATE VALVE INSTALLATION

Gate valves shall be set in the ground vertically and shall be opened and shut under pressure to check operation and at the same time, show no leakage. Valves 4 inches and larger shall be blocked in accordance with the Standard Detail.

400.13 VALVE BOX INSTALLATION

Valve boxes shall be set flush in pavement and in gravel roads as required by the Engineer and shall conform to the Standard Detail.

400.14 CONCRETE BLOCKING

Concrete blocking shall be cast in place against undisturbed soil as shown in the plans and details. Blocking shall bear against fittings only and shall be clear of joints so as to permit taking up or dismantling joint. All bends and tees shall be blocked in accordance with Standard Details. The Contractor shall install blocking which is adequate to withstand full test pressure as well as to continuously stand operating pressures under all conditions of service. The concrete blocking is based on 150 psi test pressure with safe soil bearing load of 2,000 pounds per square foot (sand). For a safe soil bearing load of 1,000 psf (soft clay) multiply thrust block bearing area by 2.0.

400.15 AIR AND VACUUM RELEASE VALVE INSTALLATION

Installation shall be as shown on the Standard Detail. Iron piping and fittings shall be galvanized. Location of the air release valves as shown on the plans is approximate. The installation shall be set at the high point of the line. Water line must be constructed so the air release valve may be installed in convenient location.

400.16 HYDROSTATIC TESTS

When all piping, fittings, connections including water service connections are complete in-place, the installation shall be subjected to a hydrostatic pressure test with allowable leakage not to exceed 10 gallons per inch of pipe diameter per mile of pipe per 24 hours, when tested at the pressure rating or class of the pipe. A minimum 4-hour test shall be performed successfully before approved by the engineer. Any leaks or imperfections developing under said pressure shall be remedied by the Contractor before final acceptance of the work. Test pressure shall be maintained while the entire installation is inspected. The Contractor shall provide all necessary equipment and shall perform all work connected with the tests. Tests shall be made after corporation stops are installed. Insofar as is practical, tests shall be made with pipe joints, fittings and valves exposed for inspection.

Test shall be performed as follows:

- (1) Fill pipe with water until all air is exhausted.
- (2) Raise pressure to pressure rating or class of the pipe by means of pumping from a container.
- (3) Refill container and maintain pressure for 4 hours.
- (4) Measure water required to refill container to pre-test level.

The Contractor shall perform the tests to assure that the equipment to be used for the test is adequate and in good operating condition and the air in the line has been released before requesting the Engineer to witness the test. The Engineer shall witness the test; if the test does not pass inspection for any reason, additional trips required to witness the test shall be at the Contractor's expense.

400.17 STERILIZATION AND FLUSHING OF WATER MAINS

Sterilization of water mains shall be accomplished by the Contractor in accordance with the requirements of the current standard, AWWA C-651 and in a manner satisfactory to the Engineer. The section to be sterilized shall be thoroughly flushed at maximum flow prior to chlorination. Flushing period must be approved by the Owner. Sections will ordinarily be sterilized between adjacent gate valves unless, in the opinion of the Engineer, a longer section may be satisfactorily handled. Chlorine shall be applied by solution feed at one end of the section with a valve at the opposite end opened sufficiently to permit a flow through during chlorine application. The chlorine solution shall be fed into the pipeline already mixed by any automatically proportioning applicator so as to provide a steady application rate of not less than 60 PPM chlorine. Flushing valves along the chlorinated section shall be opened during application until the presence of chlorine has definitely been detected. When a chlorine concentration of not less than 50 PPM has been established throughout the line, the valves shall be closed and line left undisturbed for 24 hours. The line shall then be thoroughly flushed and water samples taken for approval by the local health agency. A minimum of three (3) consecutive samples of chlorine free water from each line, with one sample required for each 1000 linear foot section, shall be free of organisms of the Coli-aerogenous groups before the system is approved and placed into service. The disinfection and submission of samples shall be in

accordance with the requirements of the State Health Department. Flushing period must be approved by the Owner. The Contractor shall exercise special care in flushing to avoid damage to surrounding property.

400.18 REPLACING ROAD SURFACING

The Contractor shall restore all roadway and driveway surfaces excavated or disturbed to condition acceptable to the governmental agency having control of the road and/or acceptable to the Engineer.

400.19 SERVICE CONNECTION

Connections shall be installed with pipe saddles on plastic pipe and steel pipe and by direct tap into ductile iron pipe, except where connections 1½ inches and larger are being made to ductile iron pipe 6 inches and smaller, in which case, saddles shall be used.

Installation shall be as shown in the Standard Details.

400.20 CONNECTIONS TO EXISTING PIPELINES

Connections may be made to existing pipes under pressure with tapping machine by determining the size and type of pipe and installing tapping sleeve to fit complete with tapping gate valve. Where cut-ins are permitted to be made in existing pipes, the work shall be conducted at such a time and in such a manner as to minimize the interruption of service. Cut-in time must be approved by the Owner. Necessary pipe, fittings and gate valves shall be assembled at the site ready for installation prior to the shutting off of water in the existing main. Once the water has been cut off, the work shall be prosecuted vigorously and shall not be halted until the line is restored to service.

Unless specifically provided for elsewhere in these specifications, the contractor shall have the responsibility of giving at least twenty-four (24) hours' notice to the water line supervisor of intention to disrupt service and shall give at least one (1) hour notice to the affected water users.

400.21 PUMP AND PRESSURE REDUCING STATIONS

Pipe, fittings and equipment shall be supported and blocked against static and dynamic loading in accordance with Section, "Concrete Blocking," and the equipment manufacturer's recommendations. Drain lines from pumps and other equipment shall be piped to a below grade drainage system connected to the station sump or drain.

400.22 CONCRETE

All concrete shall conform to the requirements of the construction plans and shall be approved by the Engineer.

400.23 MEASUREMENT

Bid items for water lines shall be measured by the linear foot of pipe materials found in-place. All fittings, valves and appurtenances shall be measured by each individual unit.

400.24 PAYMENT

The work performed and the materials furnished in accordance with this item and measured as provided under "MEASUREMENT" will be paid for at the unit price bid for each size and type of water line and at the unit price bid for each type of fitting, valve and appurtenance. These prices shall be full compensation for furnishing all materials, excavation, backfill, blocking, labor, tools and equipment necessary to complete the work.

ITEM 430

HORIZONTAL DIRECTIONAL DRILLING

430.1 DESCRIPTION

This item shall govern the furnishing and installation of sanitary sewer and water mains by the horizontal directional drilling method. This item shall also include, but not be limited to, other construction activities such as traffic control measures, excavation, removal of all materials encountered in HDD operations, disposal of all material not required in the work, backfilling and re-vegetation. This specification is applicable for projects or work involving either inch-pound or SI units. In this text and accompanying tables, the inch-pound units are given preference, followed by SI units shown in parentheses.

430.2 SUBMITTALS

The submittal requirements for this specification item shall include:

- A. Shop drawings or other information identifying proposed HDD method.
- B. Trench Safety Plan including pits, trenches and sheeting or bracing if necessary.
- C. Detailed Installation Plan including proposed entry and exit points.

430.3 MATERIALS

D. Pipe

Carrier pipe shall be size, type materials, thickness and class indicated on the Drawings, unless otherwise specified. Normal pipe installation will be a restrained joint PVC pipe.

E. Grout

If voids are noted between the encasement pipe and surrounding excavated material, the voids shall be filled with a grout consisting of 1 part Portland cement and 4 parts fine, clean sand mixed with water. The grout shall have a consistency such that it will flow into and completely fill voids.

430.4 CONSTRUCTION METHODS

A. General

The Contractor is responsible for:

- 1. Installing all pipe and couplings in accordance with the manufacturer's recommendations.
- 2. An installation accomplished by personnel experienced in Horizontal Directional Drilling of water and sewer lines.
- 3. Final locations of other potentially conflicting utilities and obstructions by all necessary means, including open cut pits, to avoid damage during drilling operations.

B. Storage

Pipes shall be stored on level ground in a safe and secure area where loading and unloading will not hamper local traffic or business activities. The Contractor is responsible for obtaining, paying for, and maintaining a private storage yard. Pipes shall not be stored in such a manner that they will cause deflection or deformation of the bottom layers of pipe.

C. Handling

The required pipe sections shall be assembled in such a way to avoid blocking driveways, roads, etc. unless prior permission has been obtained from the Engineer. All care shall be given to avoid damage to the pipe and couplings during the installation process. Damaged pipe must be removed from the work area. The open ends of pipe sections shall be plugged at night to prevent water, soil, animals and foreign materials from entering the line. Rags or paper stuffed into the ends of the pipe are not considered acceptable plugs.

D. Installation

The Contractor shall install the pipelines by means of Horizontal Directional Drilling (HDD). HDD shall consist of drilling a small pilot hole followed by a reamer to enlarge the hole for pipe insertion. Sections of pipe shall be pulled through the hole at the designated lines and grades. Pipe segments that do not meet the required line and grade must be removed and discarded and will not be accepted by the Engineer for payment.

The Contractor shall prepare a plan to be submitted for Engineer approval that describes the noise reduction program, solids control plan, pilot hole drilling procedure, the reaming operation, and the pullback procedure. All drilling operations shall be performed by supervisors and personnel experienced in horizontal directional drilling. The Contractor shall provide all required support including drilling tool suppliers, survey systems, mud cleaning, mud disposal, and other support systems used during this operation.

Drill pipe shall be API steel drill pipe, Range 2, Premium Class or higher, Grade S-135 in a diameter sufficient for the torque and longitudinal loads and fluid capacities required for the work. Only drill pipe inspected under API's Recommended Practice Specification API RP 7G within 30 days prior to start and certified as double white band or better shall be used.

During the entire operation, waste and leftover drilling fluids from the pits and cuttings shall be dewatered and disposed of in accordance with all permits and regulatory agencies' requirements. Remaining water shall be cleaned by Contractor to meet permit requirements.

Technical criteria for bentonite shall be as given in API Spec. 13A; "Specification for Oil Well Drilling Fluids Material for fresh water drilling fluids". Any modification to the basic drilling fluid involving additives must describe the type of material to be used and be included in Contractor's drilling plan presented to the Engineer. The Owner retains the right to sample and monitor the waste drilling mud, cuttings and water.

The Contractor shall maintain instrumentation that will accurately locate the pilot hole and measure drilling fluid flow and pressure. The Contractor shall plot the actual horizontal and vertical alignment of the pilot bore and verify that the pipe will be installed within the desired tolerances for line and grade prior to inserting the carrier pipe. The Engineer shall have access to all field measurements and data upon request. The Engineer may, at his option, reject the pilot bore and require a new pilot bore to be made.

Small variations in horizontal alignment may be allowed if the final location of the line does not create a clearance problem for existing or future utilities or features. For gravity sanitary sewer installations, sags in the pipeline shall not exceed 2% of the nominal pipe diameter. Sags will only be allowed where the entering and exiting grades are adequate, in the opinion of the Engineer, to provide velocities through the sag area for moving solids. No more than one (1) sag area shall occur between two (2) manholes. The Engineer must accept or reject each drilled segment that varies from the planned alignment before the Contractor may proceed with a connecting pipe segment. In general, the Contractor shall make every effort to match the horizontal and vertical pipe locations shown on the plans.

The Contractor shall have sole responsibility for the safety of the HDD operations and for persons engaged in the work. The Contractor's attention is directed to the Construction Industry Occupational Safety and Health Administration (OSHA) Standards (29 FR 1926/1920) as published in U.S. Department of Labor publication OSHA 2207, latest revision, with particular attention to Subpart S. The Contractor shall conform to the requirements in accordance with TxDOT Standard Specification Item 402, "Trench Excavation Protection" and shall provide an appropriate Trench Safety Plan.

When the grade of the pipe is below the ground surface, suitable pits or trenches shall be excavated to provide sufficient room to conduct the HDD operations and for placement of end joints of the pipe. In order to provide a safe and stable work area, the excavated area shall be securely sheeted and braced to prevent earth caving in accordance with the Trench Safety Plan.

The location of the work pit and associated traffic control measures required for the HDD operations shall conform to the requirements of the TxDOT Manual on Uniform Traffic Control Devices. During construction operations, and until the work pits are backfilled and fill material compacted, traffic barricades and warning lights to safeguard traffic and pedestrians shall be furnished and maintained by the Contractor. The Contractor shall submit the proposed pit location and traffic control plan for review by the Engineer or designated representative. The Review by the Engineer or designated representative, however, does not relieve the Contractor from the responsibility to obtain specified results in a safe, workmanlike manner.

Where installation of pipe by HDD is required under railroad embankments, highways, streets, or other facilities, construction shall be performed in such a manner that it will not interfere with operation of any railroad, street, highway, utility or other facility and shall not weaken or damage any embankment or structure. All appropriate permits shall be acquired prior to the initiation of the work.

The work pits or trenches which are excavated to facilitate these operations, shall be backfilled as soon as possible after the carrier pipe installation is completed. The backfill in the street ROW shall be compacted to not less than 95 percent of the maximum density conforming to TxDOT Test Method Tex-114-E, "Laboratory Compaction Characteristics & Moisture-Density Relationship of Subgrade & Embankment Soil". Field density measurements will be made in accordance with TxDOT Test Method Tex-115-E, "Field Method for Determination of In-Place Density of Soils and Base Materials".

E. Environmental Provisions:

The Horizontal Directional Drilling operation is to be conducted in a manner to eliminate the discharge of water, drilling mud and cuttings to adjacent creeks or land areas during the construction process. The Contractor shall provide equipment and procedures to maximize the re-circulation or reuse of drilling mud to minimize waste. Contractor shall line all excavated pits used in the drilling operation with heavy-duty plastic sheeting with sealed joints to prevent the migration of drilling fluids and/or ground water.

The Contractor shall visit the site and must be aware of all structures and site limitations at the directional drill crossing and provide the Engineer with a drilling plan outlining procedures to prevent drilling fluid from adversely affecting the surrounding area.

The general work areas on the entry and exit sides of the crossing shall be enclosed by a berm to contain unplanned spills or discharge. Waste cuttings and drilling mud shall be processed through a solids control plant comprised as a minimum of sumps, pumps, tanks, desalter/desander, centrifuges, material handlers, and haulers all in a quantity sufficient to perform the cleaning/ separating operation without interference with the drilling program. The cuttings and excess drilling fluids shall be dewatered and dried by the Contractor to the extent necessary for disposal in offsite landfills. Water from the dewatering process shall be treated by the Contractor to meet permit requirements and disposed of locally. The cuttings and water for disposal are subject to being sampled and tested. The construction site and adjacent areas will be checked frequently for signs of unplanned leaks or seeps.

Equipment (graders, shovels, etc.) and materials (such as groundsheets, hay bales, booms, and absorbent pads) for cleanup and contingencies shall be provided in sufficient quantities by the Contractor and maintained at all sites for use in the event of inadvertent leaks, seeps or spills. Waste drilling mud and cuttings shall be dewatered, dried, and stock piled such that it can be loaded by a front end loader, transferred to a truck and hauled offsite to a suitable legal disposal site. The maximum allowed water content of these solids is 50% of weight.

430.5 MEASUREMENT

Bid Items for horizontal directional drilling shall be measured by the linear foot of pipe installed.

430.6 PAYMENT

The work performed and the materials furnished in accordance with this item and measured as provided under "MEASUREMENT" will be paid for at the unit price bid for each size and type of pipe installed by horizontal directional drilling method. These prices shall be full compensation for furnishing all materials, excavation, backfill, blocking, labor, tools and equipment necessary to complete the work.

ITEM 910

CLEARING AND GRUBBING

910.1 DESCRIPTION

"CLEARING AND GRUBBING" shall consist of the removal and disposal of trees, stumps, brush, roots, vegetation, logs, rubbish and other objectionable matter.

910.2 CONSTRUCTION METHODS

The site or right of way shall be cleared of stumps, brush, logs, rubbish, trees and shrubs, except such trees and shrubs and certain areas designated by the Engineer for preservation. Those trees, shrubs and other landscape features specifically designated by the Engineer for preservation shall be carefully protected from abuse, marring or damage during construction operations. On areas required for embankment construction, all stumps, roots, etc. (except for designated trees and brush) shall be removed to a depth of at least 2 feet below the existing ground surface. All holes remaining after clearing and grubbing shall be backfilled and tamped as directed by the Engineer and the entire area bladed to prevent ponding of water and to provide drainage, except, in areas to be immediately excavated, the Engineer may direct that the holes not be backfilled. When permitted by the plans, trees and stumps may be cut off as close to natural ground as practicable on areas which are to be covered by at least 3 feet of embankment and/or waste excavation.

All cleared and grubbed material shall be disposed of in a manner satisfactory to the Engineer. Unless otherwise provided, all merchantable timber removed as required above shall become the property of the Contractor.

910.2 MEASUREMENT

"Clearing and Grubbing" will be measured by the acre. Measurement for payment will be made only on areas indicated and classified on plans as "Clearing and Grubbing", except that required work on additional areas (such as additional right of way, additional borrow and material sources, additional cut and embankment areas, etc.) not originally proposed by plans but found necessary during construction, and which comes within the purview of "Clearing and Grubbing" as established on plans for the contract shall be measured accordingly.

When indicated on the plans, "Clearing and Grubbing (Tree)" will be measured by each tree removed.

910.4 PAYMENT

All work performed and measured as provided under "MEASUREMENT" will be paid for at the unit price bid for "Clearing and Grubbing". Said price shall be full compensation for furnishing all labor, equipment, tools, supplies, arranging for providing disposal sites and incidentals necessary to complete the work.

ITEM 915

RESTORATION AND CLEANUP

915.1 GENERAL

The Contractor shall furnish all labor, equipment, materials and incidentals to restore any disturbed or damaged surfaces and/or items to a condition equal to or better than that which existed before work began. The Contractor shall leave the construction site clean.

915.2 PRODUCTS

The Contractor may use equipment and materials as necessary to properly complete the restoration and cleanup phase of the project.

915.3 EXECUTION

General

- A. As soon as the pipe is laid and backfilled or structures built, clean the construction site and any adjoining areas used by the Contractor in construction and make any restorations necessary to leave the site in a condition equal to or better than prior to construction.
- B. As a matter of record, the Contractor shall photograph improved or planted areas before and after working across them.

Restoration

- A. The Contractor shall restore and/or replace any paving, curbing, sidewalks, culverts, gutters, shrubbery, plants, fences, sod or other disturbed surfaces or structures. The size, thickness, strength, texture or condition of restored items shall equal to that which existed before the work began.
- B. All terraces, levees and water courses shall be restored to their former condition so that they shall function as originally intended.
- C. Private roads used by the Contractor shall be restored to former condition.

Cleanup

- A. The cleaning up shall be done by a special labor crew organized by the Contractor at the time he starts backfill operations and such work shall be diligently prosecuted until the entire construction site has been covered.
- B. Any rock, including loose rock having a dimension three (3) inches or more, encountered by the grading, trenching or boring operations, not backfilled according to the specifications, shall be removed from the construction site and disposed of at locations and in a manner that is satisfactory to the Owner.
- C. Unless directed otherwise by the Owner, all materials used for providing temporary roadways for construction equipment shall be removed and disposed of.
- D. All debris, pavement and excess earth from excavations shall be removed and disposed of by the Contractor.
- E. Seeding or sodding will be necessary in areas of excavation as required by the Owner. The seeding or sodding to be performed according to specifications dealing with this work.
- F. To prevent erosion of soil disturbed by construction, the Contractor shall construct terraces or shall place over the construction site and trench backfill suitable control devices composed of sacks filled with earth or sand, silt fences, silt dams or hay bales.
- G. The Contractor should not attempt to perform cleanup operations during adverse weather or wet ground conditions.
- H. At no time during the progress of the work shall the completed cleanup operation be a greater distance behind the completed pipe trench than is deemed advisable by the Engineer.
- I. Before the final acceptance of the project, the entire project site shall be cleared of all surplus and waste materials from the work and otherwise restored as required above.

915.4 PAYMENT

Not Applicable

ITEM 917

SODDING

917.1 DESCRIPTION

This item shall provide for furnishing and planting sod of the kinds specified along and across all disturbed grassed areas within the project. The work covered by this specification also includes preparation of the ground, fine grading, all required fertilizer, geo-synthetic fabrics, watering and maintenance of the sodded areas.

917.2 MATERIALS

The soil for areas to be repaired shall be at least of equal quality to the soil existing in areas adjacent to the areas to be repaired. The soil shall be reasonably free from subsoil, clay lumps, brush, objectionable weeds and other litter, and shall not contain stones, stumps, roots, toxic substances, other objects larger than 1-inch in diameter or any other material or substance that might be harmful to plant growth or be a hindrance to grading, planting or maintenance operations.

Geo-synthetic fabrics shall be as stated on the plans or approved equal, and shall be applied over the entire area disturbed by construction in those areas designated on the plans. Staples shall be installed in accordance with manufacturer's recommendation.

The sod shall consist of live, growing Bermuda, San Augustine, centipede or other grass as shown on the plans or as directed by the Engineer. The sod shall have a healthy, minimum one (1) inch thick, virile root system consisting of dense thickly matted roots throughout the soil. The sod shall be free from noxious weeds, other grasses and any matter deleterious to its growth or which might affect its subsistence or hardiness when transplanted. Sod material shall be kept moist from the time it is dug until the time it is planted.

Fertilizer shall be uniform in composition, free flowing and suitable for application with acceptable equipment and delivered to the site in bags or containers. Each container shall be labeled, conform to the state fertilizer laws and bear the name or trademark and warranty of the producer. Fertilizer shall be 13-13-13 at 300 pounds per acre.

917.3 CONSTRUCTION METHODS

Site grading shall include all cutting, filling, importing and moving of earth necessary to bring the disturbed areas to required grades. Grading shall be such as to conduct drainage away from structures and into drainage channels. Grading shall be done with selected materials as directed by the Engineer and, if necessary, top soil shall be imported to the site.

Any area being prepared to receive sod shall be brought to an elevation that will leave the block sod surface flush with the adjacent ground surfaces. After areas to be sodded have been brought to the proper grade, they shall be thoroughly tilled to a depth of two (2) inches by discing, harrowing or by other approved method until the condition of the soil is sufficiently pulverized for planting. The work shall be performed only during periods when satisfactory results are likely to be obtained. When conditions are such, by reason of drought, excessive moisture or other factors, that results are not likely to be satisfactory, the Engineer may stop the work and it shall resume only when, in the Engineer's opinion, the desired results are likely to be obtained. Any irregularities in the surface resulting from tilling or other operations shall be leveled out before planting operations are begun.

After completion of tilling operations, the surface shall be cleared of stones, stumps, other objects larger than 1-inch in thickness or diameter, roots, brush, wire and grade stakes. If required, geo-synthetic fabric shall be installed in accordance with manufacturer's instructions and as directed by the Engineer, over the prepared areas. The sod blocks shall be carefully placed on the prepared areas. The fertilizer shall then be distributed uniformly at the rate specified over all areas being sodded and thoroughly watered. When sufficiently dry, the sodded area shall be rolled or tamped to form a thoroughly compacted, solid mat. Any voids left in the block sodding shall be filled with additional sod and tamped. Surfaces of block sod which, in the opinion of the Engineer, may slide due to the height and slope of the surface or nature of the soil shall, upon direction by the Engineer, be secured with wooden pegs driven through the sod blocks into firm earth sufficiently close to hold the blocks of sod firmly in

place. Any excess soil from planting operations shall be spread uniformly over adjacent areas or disposed of as directed by the Engineer so that the completed surfaces will present a neat appearance.

917.4 ESTABLISHMENT

The Contractor shall be responsible for the proper care of the sodded areas and shall maintain, repair and water the areas as required during the construction period and, at final acceptance of the project, turn over to the Owner a prime stand of grass.

The newly planted areas shall be watered frequently to promote healthy growth. Light sprinkling shall be performed in a manner that will not cause sod displacement and surface erosion. As turf develops, the frequency of watering will be reduced and application volumes increased, as growth and moisture requirements dictate. Watering equipment shall be of a type that will not damage the finished surface.

The Contractor is responsible for establishing and maintaining a dense healthy stand of grass for the duration of the project including the one (1) year warranty period. Areas that require re-sodding will be designated by the Engineer. Re-sodding shall be completed within a period of time designated by the Engineer and in a manner that will cause minimum disturbance to the existing grass. Re-sodding shall be accomplished at no additional cost to the Owner.

If, at any time before completion and acceptance of the entire work covered by this contract, any portion of the surface becomes gullied or otherwise damaged following sodding, the affected portion shall be repaired to re-establish the condition and grade of the soil prior to sodding and re-sodded as specified above.

917.5 MEASUREMENT

No separate measurement will be used to determine the scope of this activity. It will be considered a lump sum unit, including all items necessary to accomplish the work.

917.6 PAYMENT

The work performed and material furnished as prescribed by this item, and measured as provided under "MEASUREMENT", will be paid for at the lump sum price bid for "sod & fertilize". Such price shall be full compensation for excavation, material disposal, compaction, preparing, hauling and placing all materials, freight, labor, materials, equipment, maintenance and incidentals necessary to complete the work.

ITEM 918

SEEDING

918.1 DESCRIPTION

This item shall provide for furnishing and planting seed of the kinds specified along and across all disturbed grassed areas within the project. The work covered by this specification also includes preparation of the ground, fine grading, all required fertilizer, geo-synthetic fabrics, watering and maintenance of the seeded areas.

918.2 MATERIALS

The soil for areas to be repaired shall be at least of equal quality to the soil existing in areas adjacent to the areas to be repaired. The soil shall be reasonably free from subsoil, clay lumps, brush, objectionable weeds and other litter, and shall not contain stones, stumps, roots, toxic substances, other objects larger than 1-inch in diameter or any other material or substance that might be harmful to plant growth or be a hindrance to grading, planting or maintenance operations.

Geo-synthetic fabrics shall be as stated on the plans or approved equal, and shall be applied over the entire area disturbed by construction in those areas designated on the plans. Staples shall be installed in accordance with manufacturer's recommendation.

The seed shall consist of a 50/50 mixture of Bermuda and unhulled rye grass or other seed mixtures as shown on the plans or as directed by the Engineer. The seed mixture shall be free from noxious weed seeds, other grasses and any matter deleterious to its growth or which might affect its subsistence or hardness when planted. The Bermuda/rye seed mixture shall be applied at a rate of 5 pounds per acre.

Fertilizer shall be uniform in composition, free flowing and suitable for application with acceptable equipment and delivered to the site in bags or containers. Each container shall be labeled, conform to the state fertilizer laws and bear the name or trademark and warranty of the producer. Fertilizer shall be 13-13-13 at 300 pounds per acre.

918.3 CONSTRUCTION METHODS

Site grading shall include all cutting, filling, importing and moving of earth necessary to bring the disturbed areas to required grades. Grading shall be such as to conduct drainage away from structures and into drainage channels. Grading shall be done with selected materials as directed by the Engineer and, if necessary, top soil shall be imported to the site.

Any area being prepared to receive seed shall be brought to an elevation that will leave the grass surface flush with the adjacent ground surfaces. After areas to be seeded have been brought to the proper grade, they shall be thoroughly tilled to a depth of two (2) inches by discing, harrowing or by other approved method until the condition of the soil is sufficiently pulverized for planting. The work shall be performed only during periods when satisfactory results are likely to be obtained. When conditions are such, by reason of drought, excessive moisture or other factors, that results are not likely to be satisfactory, the Engineer may stop the work and it shall resume only when, in the Engineer's opinion, the desired results are likely to be obtained. Any irregularities in the surface resulting from tilling or other operations shall be leveled out before planting operations are begun.

After completion of tilling operations, the surface shall be cleared of stones, stumps, other objects larger than 1-inch in thickness or diameter, roots, brush, wire and grade stakes. If required, geo-synthetic fabric shall be installed in accordance with manufacturer's instructions and as directed by the Engineer, over the prepared areas. The seed mixture shall be carefully placed on the prepared areas and lightly raked under the soil. The fertilizer shall then be distributed uniformly at the rate specified over all areas being planted and thoroughly watered. Any excess soil from planting operations shall be spread uniformly over adjacent areas or disposed of as directed by the Engineer so that the completed surfaces will present a neat appearance.

918.4 ESTABLISHMENT

The Contractor shall be responsible for the proper care of the planted areas and shall maintain, repair and water the areas as required during the construction period and, at final acceptance of the project, turn over to the Owner a prime stand of grass.

The newly planted areas shall be watered frequently to promote healthy growth. Light sprinkling shall be performed in a manner that will not cause displacement and surface erosion. As turf develops, the frequency of watering will be reduced and application volumes increased, as growth and moisture requirements dictate. Watering equipment shall be of a type that will not damage the finished surface.

The Contractor is responsible for establishing and maintaining a dense healthy stand of grass for the duration of the project including the one (1) year warranty period. Areas that require re-seeding will be designated by the Engineer. Re-seeding shall be completed within a period of time designated by the Engineer and in a manner that will cause minimum disturbance to the existing grass. Re-seeding shall be accomplished at no additional cost to the Owner.

If, at any time before completion and acceptance of the entire work covered by this contract, any portion of the surface becomes gullied or otherwise damaged following planting, the affected portion shall be repaired to re-establish the condition and grade of the soil prior to seeding and re-seeded as specified above.

918.5 MEASUREMENT

No separate measurement will be used to determine the scope of this activity. It will be considered a lump sum unit, including all items necessary to accomplish the work.

918.6 PAYMENT

The work performed and material furnished as prescribed by this item, and measured as provided under "MEASUREMENT", will be paid for at the lump sum price bid for "seed & fertilize". Such price shall be full compensation for excavation, material disposal, compaction, preparing, hauling and placing all materials, freight, labor, materials, equipment, maintenance and incidentals necessary to complete the work.

ITEM 921

TRENCH SAFETY SYSTEM

921.1 GENERAL

The Contractor shall comply with the minimum requirements of this specification. Maintenance and inspection of any shoring and related equipment shall be the responsibility of the Contractor. The Owner and/or the Engineer reserves the rights to require the Contractor to remove, repair and/or replace any portions of the shoring system deemed unsafe, but the final responsibility for workers' safety remains with the Contractor.

The Contractor shall determine the safety system needed for the project within the minimum requirements of this specification. The Contractor shall submit to the Owner, a certified submittal from a Registered Professional Engineer from the State of Texas that the Contractor's Trench Safety System meets the minimum requirements of this specification, and shall make adjustments as required by the Owner to meet minimum requirements at Contractor's expense. Approval of a trench safety system by the Owner shall not relieve the Contractor of his responsibility to provide a safe working place for his employees. The Contractor agrees to hold harmless and defend the Owner and/or its Engineer against any claim resulting from failure of the trench safety system or lack of one.

921.2 PRODUCTS

A. Regulatory Requirements

1. Conform to applicable Occupational Safety and Health Administration (OSHA) Standards as contained in 29 CFR, Part 1926, Subpart P - Excavations (as may be amended) including OSHA "Proposed Rules: Excavations Federal Register, Vol. 52, No. 72 Wednesday, April 15, 1987, pages 12325-12339. The sections that are made part of these specifications by reference include Sections 1926.652 and 1926.653.
2. The Contractor's Trench Safety System shall be designed by "a registered professional engineer" or "a qualified person or a qualified engineer"; such a person shall be a Professional Engineer registered in the State of Texas.
3. The Contractor's "Engineer" shall develop a specific trench safety system design for the project in general compliance to the requirements set forth by House Bills 662 and 665 of the 70th Legislature, and in accordance with Part 1926.652 (c)(4) of OSHA "Proposed Rules".

B. Definitions

1. Angle of Repose: The greatest angle above the horizontal plane at which a material will lie without sliding.
2. Bank: A mass of soil rising above a digging level.
3. Braces: The horizontal members of the shoring system whose ends bear against the uprights or stringers.
4. Excavation: Any man-made cavity or depression in the earth's surface, including its sides, walls, or faces, formed by earth removal and producing unsupported earth conditions by reasons of the excavation. If installed forms or similar structures reduce the depth-to-width relationship, an excavation may become a trench.
5. Hard Compact Soil: All earth materials not classified as running or unstable.
6. Kickouts: Accidental release or failure of a shore or brace.
7. Sheet Pile: A pile or sheeting that may form one of a continuous interlocking line, or a row of timber, concrete or steel piles, driven in close contact to provide a tight wall to resist the lateral pressure of water, adjacent earth or other materials.
8. Sides, Walls, Faces: The vertical or inclined earth surfaces formed as a result of excavation work.
9. Slope: The angle with the horizontal at which a particular earth material will stand indefinitely without movement.
10. Stringers, Wales: The horizontal members of a shoring system whose sides bear against the uprights or earth.
11. Trench: A narrow excavation made below the surface of the ground. In general, the depth is greater than the width, but the width of a trench is not greater than 15 feet.
12. Trench Jack: Screw or hydraulic type jacks used as cross bracing in a trench shoring system.
13. Trench Shield: A shoring system composed of steel plates and bracing, welded or bolted together, which support the walls of a trench from the ground level to the trench bottom and which can be moved along as work progresses.
14. Unstable Soil: Earth material, other than running, that because of its nature or the influence of related

conditions, cannot be depended upon to remain in place without extra support, such as would be furnished by a system of shoring.

15. Uprights: The vertical members of a shoring system.

C. Construction Materials and Maintenance

1. Materials used for sheeting, sheet piling, cribbing, bracing, shoring and underpinning shall be in good serviceable condition, and timbers shall be sound, free from large or loose knots, and of proper dimensions as called for in the latest revision of OSHA Construction Standards, Subpart P, "Table P-2 - Trench Shoring -Minimum Requirements", of which is made a part of these specifications. All Materials which are found to be defective in any way shall be immediately removed from the job site. It shall be the responsibility of the Contractor to regularly check all trench safety equipment for soundness and adequacy.

2. Steel trench shields shall be constructed of steel plate sides, welded to a steel framework. All shields shall be constructed in order to provide protection equivalent to or greater than sheeting of shoring required for the trench. The Contractor shall provide written certification from the manufacturer's engineer to the Owner of adequacy before using any trench shield. Adjustable jacks may be used in order to adjust the shield to varying trench widths. An access ladder shall be provided at the midpoint. Pipe or flat steel runners or wheels shall be installed under the side walls for ease of movement of the shield during trenching operations. Substantial lifting eyes and /or rings shall be welded at proper points for moving the shield. For adaptability to deep and shallow trenches, the shield may be made with top and bottom sections. When the sides of the trench extend above the top of the shield, a reinforced roof with hatches shall be provided. Forced ventilation shall be provided for fully enclosed shields.

3. All maintenance of the trench safety equipment shall be the sole responsibility of the Contractor.

921.3 EXECUTION

A. General

Within fifteen (15) days after the bid opening, or at least ten (10) days prior to beginning construction, the Contractor shall submit a written plan for a Trench Safety System specifically for construction of trench excavation, together with the general safety program required by OSHA standards governing the presence and activities of individuals in and around trench excavations. Failure to submit a Trench Safety System submittal as required may result in forfeiture of the bid bond. The Trench Safety System submittal shall be all inclusive of specific requirements of OSHA and the Owner.

The Contractor shall provide a trench safety system for all trench excavations which exceed a depth of five (5) feet or are in unstable or unsuitable soils as designated by the responsible Engineer. The Trench Safety System shall conform to the OSHA standards, latest revision, the same of which is made a part of these specifications, along with the following additions and revisions. The types of trench safety systems currently allowed include shoring, bracing, solid shoring, sloping of the ground and trench shields. The Contractor may submit an alternative method of trench safety, but may not implement until a sealed submittal by a Registered Professional Engineer from the State of Texas is approved by the Owner. Should the Contractor decide to slope the sides of the trench, he shall have the angle of repose of the soil determined by an approved independent soils testing laboratory. At a minimum, the Contractor's design for sloping of the trench sides shall conform to the latest revision of OSHA Construction Standards, Subpart P, "Table P-1 - Approximate Angle of Repose For Sloping of Sides of Excavations", which is made a part of these specifications. Soil core samples taken to a depth of at least the depth of the trench plus four (4) feet shall be taken a minimum of every 700 feet. A minimum of two (2) copies of the results of the lab tests shall be provided to the Owner.

1. Each Contractor shall be responsible and liable for his own Trench Safety System, including self inspections, whether or not a project representative is present on the job site. The Contractor shall install additional safety equipment if requested to do so by the Engineer or Owner, whose decision shall be final.

2. Before beginning any excavation the Contractor shall make an inspection of the job site. He shall pay special attention to the type of soil or soils in which he will be working, any adjacent roads, highways, railroads and any previous excavations. All underground installations shall be located, including utility lines, pipelines, etc., before any excavation begins.

3. The Contractor shall provide a trench safety system in every trench. The trench safety system shall be installed in a true horizontal position, be spaced vertically and shall be secured to prevent sliding, falling or kickout. The trench safety system shall be effective to the bottom of the excavation. All trenches shall be provided with an adequate means of exit at all times with spacings of 25 feet or less. These means of exit shall be anchored in place in order to aid in the event a quick exit is necessary. During trench excavation, the excavated material shall be placed a minimum of two (2) feet away from the edge of the trench.

4. The Contractor shall make an inspection of all trench excavations. He shall check for any evidence of

cave-ins, slides, etc. If any change in soil conditions or failure of the trench is found, the Contractor shall remedy such. All water shall be diverted by suitable means to prevent the entrance of same into any excavation. No water shall be allowed to accumulate in any excavation and shall be removed as soon as possible.

B. Indemnification

1. The Contractor shall indemnify and hold harmless the Owner, its employees, agents and Engineer, from any and all damages, cost (including without limitation, legal fees, court costs and investigation costs), judgments or claims by anyone for injury or death of persons resulting from the collapse or failure of trenches constructed. These specifications for the trench safety system in no way relieve the Contractor of his responsibilities and liability to ensure the safety of the workers or any other party from the hazards of the construction operations.
2. The Trench Safety System plan by the Contractor's Engineer shall cover the situations that may be encountered during construction. It should be recognized that information contained in the required Geotechnical Report is based on the data obtained from the soil borings and conditions along the line route may differ from those found at the soil boring locations. It is the Contractor's responsibility to detect varying conditions which may be hazardous and take appropriate action.
3. The Contractor is responsible for determining the appropriate trench safety systems necessary for specific locations based on actual subsurface conditions encountered during construction. The Owner and its Engineer shall be held harmless from any claim or liability for injury or loss that results from failure on the part of the Contractor to implement the Trench Safety System plan properly or to make necessary changes to the trench safety systems necessitated by conditions encountered during construction.

921.4 MEASUREMENT AND PAYMENT

There will be no separate payment for this item. It shall be subsidiary to and included with the unit price bid for all applicable items.

ITEM 930

BORING AND TUNNELING

930.1 GENERAL

Where the utility line crosses under railroad tracks and state highways, the Owner will obtain a permit from the railroad or the Texas Department of Transportation for this crossing. The Contractor will be required to abide by the terms of the permit. This will include the Contractor giving proper notice of the time he expects to begin work on each crossing to the proper railroad or highway official at the proper time. At each of these crossings, the Contractor shall furnish and install casing under the railroad or highway and install the sewer or water line inside the casing. The payment for this item will be made by the length of casing furnished and installed.

In places where other underground utility lines are encountered or where sewer or water lines cross under sidewalks, driveways, designated streets, curbs or storm sewers, the Contractor will be required to tunnel under these and all other obstructions without additional payment. In the case of tunneling, the void space around the pipe shall be refilled by tamping in earth or by pumping cement grout in the opening in such a manner as to fill completely the void space, or by jacking the pipe through a pilot hole.

Grout shall be used to seal the ends of casing in such places that ground water is present or it is evident that ground water could enter the casing. All wooden skids used to support pipe inside the casing shall be treated with a wood preservative.

930.2 CASING

Sewer or water lines that are installed under railroads and highways shall be installed in casing in a bore hole. The casing shall be standard wall steel pipe. The minimum casing sizes and minimum wall thickness for casing shall be in accordance with the following table. Steel pipe shall be made of steel with a minimum yield of 35,000 psi.

CASING REQUIREMENT

<u>Size of Utility Pipe</u>	<u>Minimum Size Of Casing</u>	<u>Minimum Wall Thickness Steel Pipe</u>
6"	12"	0.365"
8"	14"	0.375"
10"	16"	0.375"
12"	18"	0.375"
14"	20"	0.375"
16"	24"	0.375"
18"	24"	0.500"

930.3 MEASUREMENT AND PAYMENT

Casing required shall be measured from end to end and paid for at the bid price per foot. This payment shall be complete payment for making the bore hole or tunnel for the casing, digging and backfilling the approaches, disposing of the surplus earth, furnishing and installing the casing, the extra work for installing the pipe inside the casing, furnishing and installing the required blocking for the pipe inside the casing, furnishing and installing the grout to fill the casing or tunnel after the pipe has been installed (where required), and making the final cleanup.

Boring and jacking shall be paid for at the price bid per foot and will be measured from pit to pit only for the length bored. This payment shall include the cost for the bore hole, jacking work, digging and backfilling pits or approaches, excess earth disposal and any required grout or fillers. The unit price for boring and jacking shall not include the cost for the utility line. Water line or sewer line piping shall be paid under the normal unit price item.

PRESENTER: Steve Bartlett, Public Works Director

ITEM/SUBJECT: Consider approval of an ordinance amending ARTICLE II, DIVISION 1, of the City of Nacogdoches Code of Ordinances to add Sections 98-30, 98-31, 98-32 and 98-33 to require any person excavating within the public right-of-way to obtain line location information; addressing construction around marked and unmarked utility lines within the public right-of-way; providing a penalty; providing an effective date; and providing for related matters.
(Director of Public Works/City Engineer)

SUMMARY/BACKGROUND: This ordinance clarifies the requirements for utility owners, contractors, subcontractors and installers to identify, preserve and protect existing private and public infrastructure within the right-of-way. This ordinance should help reduce the number of accidental utility strikes, provide enforcement penalties for non-compliance, require contractors to immediately repair damaged private facilities, and also provide for below ground cable boxes in residential areas.

FINANCIAL:

No financial impact associated with this item

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

Infrastructure

CITY CONTACT: Steve Bartlett, Director Public Works/City Engineer
bartletts@nactx.us
(936) 559-2522

ATTACHMENTS: 1. 6G Utility Locations Presentation
2. Utility Locations Ordinance FINAL 09142023

UTILITY LOCATION ORDINANCE



UTILITY LOCATION ORDINANCE

- Any contractor building in the Right-of-Way must obtain line locates through the 811 One Call System
- Must pothole or hand locate all marked lines before boring or excavating. This gives confirmation of a depth.
- Marked utilities under streets requires the City to be on-site before boring



UTILITY LOCATION ORDINANCE

- Contractor must IMMEDIATELY fix all damaged private services before moving forward.
- Work Hours: 7:00 am to 6:00 pm Monday-Friday, except no boring after 2:00 pm on Fridays.
- Limits how and when they can close traffic lanes
- Residential to have flat at-grade boxes. Pedestals can be used in non-residential areas but must be near side lot property lines.



UTILITY LOCATION ORDINANCE

- Contractor is responsible for all damages unless utilities were not marked.
- Must follow standards when working in Historic or Downtown Districts
- Brick Streets only removed with approval of City Engineer
- Enforcement: Class C Misdemeanor up to \$500/day fine



ORDINANCE NO. 1351-09-23

AN ORDINANCE OF THE CITY OF NACOGDOCHES, TEXAS, AMENDING CHAPTER 98, ARTICLE II, DIVISION 1, OF THE CITY OF NACOGDOCHES CODE OF ORDINANCES TO ADD SECTIONS 98-30, 98-31, 98-32 AND 98-33 TO REQUIRE ANY PERSON EXCAVATING WITHIN THE PUBLIC RIGHT-OF-WAY TO OBTAIN LINE LOCATION INFORMATION; ADDRESSING CONSTRUCTION AROUND MARKED AND UNMARKED UTILITY LINES WITHIN THE PUBLIC RIGHT-OF-WAY; PROVIDING A PENALTY; PROVIDING AN EFFECTIVE DATE; AND PROVIDING FOR RELATED MATTERS.

Whereas, the City of Nacogdoches, Texas, a home rule municipality (the “City”), desires to provide regulations to address the location of utility lines within the public right-of-way before third parties begin construction within the right-of-way and to address construction around marked and unmarked utility lines; and

Whereas, the City Council finds that the regulations set forth herein are reasonable and necessary to protect and preserve public property and to protect the public health, safety, and welfare;

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

SECTION I

Findings. The foregoing recitals are hereby found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes as findings of fact.

SECTION II

Adoption of Regulations Governing Construction Around Utilities Located within the Public Right-of-Way. Article II, Division 1, of the City of Nacogdoches Code of Ordinances is hereby amended by adding Section 98-30, 98-31, 98-32 and 98-33 to read as follows:

Sec. 98-30. – Line Location and Related Construction Requirements.

- (a) Any contractor performing construction activity in the right of way shall obtain line locates through the 811 One Call Center as described in the Texas Utilities Code, Chapter 251 “Underground Facility Damage Prevention and Safety”, as amended. The notification will be made no earlier than the fourteenth (14th) day before the start of the construction activity and no later than the 48th hour before the construction activity begins, excluding Saturdays, Sundays, and observed holidays. At the time of notification, the owner will inform the department of the name, address and phone numbers of the contractor or subcontractors who will perform the project construction, including the name and telephone number of an individual with the contractor who will be available at

all times during construction. Such information shall be required prior to the commencement of any work.

- (b) *Existing Utilities found outside paved areas:* If a marked water, wastewater, or storm sewer utility line is observed within the proposed construction pathway, outside paved areas, mechanical excavation or boring is prohibited until the conflicting utility is identified and sufficiently potholed or excavated within a tolerance zone of twenty four inches (24") on either side of the pipe. The only methods to use for excavation of marked utilities within the tolerance zone shall be non-mechanical, i.e., hand digging, soft digging vacuum excavation methods, and/or pneumatic hand tools. Other methods of non-invasive excavation may be used if approved by the City Engineer or his designee. Once the utilities are physically identified, boring or mechanical excavation may proceed only if protection of the existing utilities is ensured.
- (c) *Existing Utilities found within paved areas:* If a marked water, wastewater, or storm sewer utility line is observed within the proposed construction pathway under streets, parking lots, sidewalks or other paved areas, mechanical excavation or boring is prohibited until the contractor or installer has contacted the Utility Construction Department (Department) to meet on-site and verify the utility location and depth. Potholing may still be required in some cases, at the discretion of the Department.
- (d) If the marked utilities are not found within the 48" tolerance zone, then construction activity will cease and the Utility Construction Department will be notified. Construction activity will not re-commence until a Department representative both re-marks and updates the utility locates and another attempt to uncover the lines is performed, or the Utility Construction Department representative verifies the contractor or installer is clear of the marked utilities and authorizes the contractor to continue working.
- (e) Without affecting the legal relationship between the utility owner and their contractor, utility owners are responsible for the workmanship of and any damages by their contractors, subcontractors and any entity employed by the utility owner. A responsible representative of the utility owner will be available to the Department at all times during construction.
- (f) The cost and effort to repair any damages to private or public property by the general contractor, subcontractor, or other entities employed by the utility owner, will be the responsibility of the owner. Repairs must restore all damaged property, streets, and right-of-ways to a state that is equal or better than the original condition.
- (g) If a marked utility line is damaged by the general contractor, their subcontractor, or installer, they shall immediately notify the Utility Construction Department and the

property owner if they are available at the site. The general contractor, subcontractor, or installer shall provide immediate repairs to private damaged water service lines, sanitary sewer service lines, and irrigation lines before commencing further work in the right-of-way. Damage to public utilities including electrical, gas, and telecommunication lines, shall be immediately reported to the utility owner. Damage to City-owned utility lines shall be immediately reported to the Utility Construction Department. The City reserves the right to make emergency repairs to any damaged facilities at its sole discretion, and the costs for such repairs will be paid by the general contractor or owner. In all cases, the general contractor, subcontractor, or utility owner is responsible for the cost of repair to any damaged facilities that have been properly located, marked or identified.

- (h) If an unmarked utility is found, construction activity shall cease and the contractor or installer shall contact the Utility Construction Department to verify the unmarked/uncovered utility's origin. If there is an obvious sign of a utility that has not been marked, like a water meter, valve, clean out, manhole, etc, then the Utility Construction Department should be contacted to re-verify the existence of utilities in the area.
- (i) The Utility Construction Department reserves the right to remain on-site to verify the general contractor, subcontractor, or installer is taking precautions to prevent damage to underground facilities.
- (j) In general, utility marking flags or marking paint must be preserved while any new facilities are being constructed. If the utility locate markings cannot be preserved, the general contractor, subcontractor, or installer shall call the One Call Center to have the markings refreshed in accordance with Texas Utilities Code, Chapter 251, as amended. The general contractor or subcontractor shall be responsible for removing and disposing of locate flags after the construction area has been restored.

Sec. 98-31 Installations in Public Right-of-Way

- (a) The working hours in public right-of-ways shall generally be between the hours of 7:00 a.m. and 6:00 p.m., Monday through Friday, unless otherwise approved by the City Engineer except no boring activities shall begin after 2:00 p.m. on Fridays. No boring or excavation work will be performed, except for emergencies, on Saturday, Sunday or City holidays.
- (b) It is the City's policy not to cut streets or sidewalks: however, in the case of an emergency when a street or sidewalk cut is required, prior approval must be obtained from the Utility Construction Department and all requirements of the Department shall be followed. Repair of all street and sidewalk removals must be made promptly to

avoid safety hazards to both vehicle and pedestrian traffic and shall be in accordance with City of Nacogdoches standard construction details.

- (c) For any closure of a traffic lane or blocking of a sidewalk or alley lasting six (6) days or less, the contractor shall conspicuously mark its vehicles with the company's name and telephone number.
- (d) Lane closures on thoroughfares will be limited to one (1) lane between 9:00 a.m. and 3:30 p.m. unless the City Engineer grants prior approval. Arrow boards will be required for lane closures on all arterials and collectors, with all barricades, advance warning signs and thirty-six (36) inch reflector cones, etc. All traffic controls shall be installed in accordance with the Texas Manual on Uniform Traffic Control Devices, current edition. All road closures shall be approved in advance by the City Engineer.
- (e) Above-ground facilities such as pedestals, switching boxes and similar facilities shall be located no less than three (3) feet from the edge of an alley or the back of street curbs in such a manner that they do not create a physical or visual barrier to vehicles leaving or entering roads, driveway or alleys.
- (f) Flush mount hand-holes or splice boxes shall be used on all residential properties unless a special exception is granted by the City Engineer or his designee. Vertical pedestals may be used on non-residential properties but shall generally be placed at or near side lot property lines and shall not create an unreasonable physical, visual or aesthetic impairment for the property owner.
- (g) Hand-holes, manholes, splice boxes or pedestals shall not be located in sidewalks, trails, paved pedestrian paths, driveways, or roadways, unless approved by the City Engineer or his designee.
- (h) Open excavations shall generally be avoided overnight. If necessary, all open holes or pits shall be enclosed on orange safety construction fencing until the excavation is backfilled to grade.
- (i) When boring within four (4) feet of a water line 12 inches in diameter or larger a representative from the Utility Construction Department must be present.

Sec. 98-32 Permits and Construction in Downtown or Historical Districts

- (a) It shall be the contractor or installer's responsibility to know whether they are working in a Downtown or Historical District and shall follow all ordinances, standards, and

specifications adopted by such district. Flush mount hand-holes or splice boxes shall be used on all properties within Historic Districts.

- (b) Brick streets shall only be removed with the approval of the City Engineer, except for emergency repairs. The restoration of brick streets shall be in accordance with the Design Standards, details and specifications published by the City of Nacogdoches.

Sec. 98-33 Enforcement.

- (a) The City shall have the power to administer and enforce provisions of this article. Any person, firm, entity, corporation or agent who violates a provision of this article, or fails to comply therewith, or with any of the requirements thereof, is subject to suit for injunctive relief as well as prosecution for criminal violations. Any violation of this article is declared to be a nuisance.
- (b) Any person violating any provision of this article shall, upon conviction, be subject to a misdemeanor fine. Each day a provision of this article is violated shall constitute a separate offense. An offense under this article is a class C misdemeanor, punishable by a fine up to \$500.
- (c) Nothing in this article shall be construed as a waiver of the City's right to bring a civil action to enforce provisions of this article and to seek remedies as allowed by law, including, but not limited to the following:
 - (1) Injunctive relief to prevent specific conduct that violates this article or to require specific conduct necessary for compliance with this article; and
 - (2) Other available relief.

SECTION III

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

SECTION IV

Penalty. Any person, firm, corporation, agent, entity, or employee thereof who violates any provisions of this Ordinance shall be guilty of a Class C misdemeanor and upon conviction thereof shall be fined an amount not to exceed Five Hundred and No/100 Dollars (\$500.00) for each offense. Each day a violation is permitted to exist shall constitute a separate offense.

SECTION V

Continuation. All provisions of Chapter 98 of the Code of Ordinances existing prior to the date of passage of this Ordinance remain in full force and effect.

SECTION VI

Repeal. This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Nacogdoches, and this ordinance shall not operate to repeal or affect any such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with provisions of this ordinance, in which such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

SECTION VII

Effective Date. This Ordinance shall take effect ten (10) days from its passage and publication as may be required by governing law.

SECTION VIII

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

SECTION IX

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

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

ATTEST:

CITY OF NACOGDOCHES

City Secretary

BY: _____
Randy Johnson, Mayor

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Jerry Baker, City Attorney

Steve Bartlett, PE, City Engineer



City Council Meeting

Date: September 19, 2023

Agenda Item: 6.H.

PRESENTER: Jessica Sowell, Community Services Asst Director

ITEM/SUBJECT: Consider approval of a contract between City of Nacogdoches and Craig's Dirt Work for the Lake Nacogdoches Accessible Walkway project in an amount not-to-exceed \$109,373.00. (Interim Community Services Director)

SUMMARY/BACKGROUND: The Lake Nacogdoches Accessible Walkway Project will create an ADA-accessible walkway from the parking lot to the swimming area and fishing pier at Lake Nacogdoches. The City of Nacogdoches advertised for bids beginning July 2nd and opened bids on Thursday, August 3, 2023.

This is the second time this project has gone out for bid. The project was first bid on in April 2023 with a low bid of \$339,700. The project scope was re-worked and bidding was re-opened in July 2023.

The lone bidder on this project is Craig's Dirt Work with a total project bid of \$109,373.00. This project will rehabilitate an existing asphalt trail and extend the 8' trail to the swimming area. The existing trail will also be extended to the fishing pier and concrete sidewalk, creating a fully accessible loop from the parking lot to the fishing pier and swimming area. This contract also includes re-grading an eroded slope and establishing permanent vegetation, as well as the installation of additional beach sand.

Full engineering drawings, prepared by Schaumburg & Polk, Inc. are included in the agenda packet.

FINANCIAL:

Item is budgeted:

Account No.: 01.86.680.40

Account Name: *General Fund Committed Reserves: Park Improvement*

Amount: \$165,000

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

Infrastructure

CITY CONTACT: Jessica Sowell, Interim Community Services Director
sowellj@nactx.us
(936) 559-2940

ATTACHMENTS:

1. Award Recommendation - Craig's Dirt Work
2. Craig's Dirt Work Contract
3. Lake Nac West - Construction

August 8th, 2023

Jessica Sowell
 Community Services Assistant Director
City of Nacogdoches

Re: Recommendation of Award for the “Lake Nacogdoches West Park Improvements” Project

As you are aware, bids for the above-referenced project were solicited and opened on Thursday, August 3rd, 2023. A total of one bid was received and is summarized below. A complete bid tabulation is also attached. For reference, this project include the rehabilitation of the existing walking trail at the Lake Nacogdoches West Park.

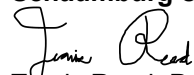
CONTRACTOR	BASE BID AMOUNT
Craig's Dirt Service	\$109,373.00

The lowest bidder for the project is:

Craig's Dirt Service, LLC
 18199 County Road 4108
 Lindale, TX, 75771
 903-882-5096
 email: Monica@craigsdirtservice.com

Although there was only one bidder, the submitted bid is within budgeted expectations. Our office has reviewed the qualifications of Craig's Dirt Service, LLC. The Contractor appears to be financially stable. They have adequate bonding capacity and insurance to construct the project. The Contractor also has access to adequate equipment, manpower, and experienced supervision to construct the project. Based on these qualifications, it is the recommendation of Schaumburg & Polk, Inc. that the City of Nacogdoches, award the Lake Nacogdoches West Park Improvements, for the base bid amount of **\$109,373.00**

Sincerely,
Schaumburg & Polk, Inc.



Travis Reed, P.E.
 Project Manager

City of Nacogdoches
Lake Nacogdoches West Park Improvements
August 3, 2023 at 2:00 PM
Nacogdoches City Hall, 202 E Pilar St., Suite 335, Nacogdoches, TX 75961

Base Bid Items				Craig's Dirt Service	
Bid No.	Quantity	Unit	Item Description	Unit Price	Total Price
1	1	LS	CONTRACTOR MOBILIZATION, BONDS AND INSURANCE	\$ 15,500.00	\$ 15,500.00
2	1	LS	CONSTRUCTION STAKING	2,500.00	2,500.00
3	1	LS	PRE-CONSTRUCTION LOCATION & CONFIRMATION OF EXISTING UTILITIES	500.00	500.00
4	1	LS	BEST MANAGEMENT PRACTICES FOR EROSION CONTROL	12,500.00	12,500.00
5	490	CY	EXCAVATION PER TXDOT ITEM 110	10.00	4,900.00
6	190	CY	EMBANKMENT (TYPE D) PER TXDOT ITEM 132	20.00	3,800.00
7	73	TON	2" HMAC TYPE D OVERLAY PER TXDOT ITEM 340	281.00	20,513.00
8	132	GAL	PRIME COAT (0.2 GAL/SY) PER TXDOT ITEM 310	15.00	1,980.00
9	242	SY	REHABILITATION OF EXISTING HMAC TRAIL FOR RECONSTRUCTION	40.00	9,680.00
10	1	AC	PERMANENT SEEDING	7,500.00	7,500.00
11	1	LS	OWNER'S ALLOWANCE FOR FIELD CHANGES	20,000.00	20,000.00
12	1	LS	OWNER'S ALLOWANCE FOR MATERIAL TESTING	10,000.00	10,000.00

Total Base Bid (Items 1 - 19):	\$ 109,373.00
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ALTERNATE				Craig's Dirt Service	
Bid No.	Quantity	Unit	Item Description	Unit Price	Total Price
A1	662	SY	REINFORCED CONCRETE WALKING PATH	\$ 115.00	\$ 76,130.00
A2	242	SY	DEMOLISH EXISTING HMAC TRAIL FOR CONSTRUCTION OF NEW CONCRETE TRAIL	15.00	3,630.00
A3	80	CY	SAND FOR BEACH AREA	200.00	16,000.00

Alternate Bid #1 (Items #A1 - A3):	\$ 95,760.00
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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 Craig's Dirt Service, LLC, a limited liability corporation (the "Contractor"), for **Construction Services for Lake Nacogdoches West Park Improvements** 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 _Lake Nacogdoches West Park Improvements_** located in Nacogdoches, Texas.
- 1.16. Working Day. A "working day" means any day not including Saturdays, Sundays, or legal holidays.

2. CONTRACT DOCUMENTS

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

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

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

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

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

3. AWARD OF CONTRACT

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

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

3.03. **Contract Amount.** Except in the event of a duly authorized change order approved by the City as provided in this Contract, and in consideration of the Contractor’s final completion of all work in conformity with this Contract, the City shall pay the Contractor an amount not to exceed One Hundred Ten Thousand and 00/100 Dollars (\$110,000.00).

4. CITY'S REPRESENTATIVE

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

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

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

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

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

5. INDEPENDENT CONTRACTOR

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

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

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

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

6. DISORDERLY EMPLOYEES

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

7. HOURS OF WORK

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

8. NATURE OF THE WORK

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

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

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

9. POST-AGREEMENT AWARD MEETINGS

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

- (a) Schedules of work contemplated, including the starting and ending date, as well as an indication of the completion of stages of work hereunder.
- (b) The names and addresses of all proposed subcontractors in writing.
- (c) Schedules of the starting and ending dates of subcontractors and the scope of work contemplated for subcontractors.

- (d) Name, local office, phone number and addresses and, home phone numbers for the Contractor and its Project Superintendent/Manager.
- (e) For construction projects, four (4) copies of all shop and/or setting drawings or schedules for the submission thereof.
- (f) Where applicable, materials procurement schedules and material supplier names, addresses and phone numbers.

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

10. PROGRESS OF WORK

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

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

- (a) The Contractor shall submit a progress schedule and payment schedule of the work contemplated by this Agreement at the initial post-agreement award meeting and subsequent meetings.
- (b) City's Representative shall be entitled to make objections to the Contractor's schedule submitted herein. The Contractor shall promptly resubmit a revised schedule to City's Representative.
- (c) The Project Superintendent/Manager shall coordinate its activities with City's Representative. If required by the City, the Contractor shall provide a weekly schedule of planned activities, which may be reviewed on a daily basis.
- (d) The Contractor shall submit, at such time as may reasonably be requested by City's Representative, additional schedules that shall list the order in which the Contractor proposes to carry on the work with dates at which the Contractor will start the several parts of the work and the estimated dates of completion of the several parts.
- (e) The Contractor shall attend additional meetings called by City's Representative upon twenty-four (24) hours written notice unless otherwise agreed in writing by the parties.
- (f) When the City is having other work done, either by agreement or by its own force, City's Representative may direct the time and manner of work done under this Agreement so that conflicts will be avoided and the various work being done by and for the City shall be coordinated.

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

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

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

11. SITE CONDITIONS AND MANAGEMENT

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

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

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

11.04. **Layout of Work.** Except as specifically provided herein, the Contractor shall lay out all work in a manner acceptable to City's Representative in accordance with applicable City of Nacogdoches codes and ordinances. City's Representative will review the Contractor's layout of all structures and any other layout work done by the Contractor at the construction meeting, or at the Contractor's request, but this review

does not relieve the Contractor of the responsibility of accurately locating all work in accordance with the plans and specifications.

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

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

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

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

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

12. MATERIALS

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

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

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

- (a) Upon acceptance of the materials furnished or ordered by the City, the Contractor warrants that it shall properly handle, transport, store and safeguard the materials.
- (b) Further, the Contractor shall repair, repaint or replace any and all materials or any part thereof damaged or stolen while in its possession. Such materials are considered to be in the Contractor's possession from the moment the Contractor either accepts delivery of the materials or signs a receipt accepting delivery of said materials until the Project is accepted by the City's Representative.
- (c) Before transporting any of the materials furnished or ordered by the City, the Contractor shall establish to the City's satisfaction that it has obtained insurance against losses, theft, damage, equal to or greater than the amounts spent by the City in securing said materials. It shall be incumbent upon the Contractor to verify the cost of materials.
- (d) The City shall not be obligated to furnish materials in excess of the quantities, size, kind, and type set forth in the attached List of City Furnished Materials and List of Materials Ordered by the City. If the City furnishes, and the Contractor accepts, materials in excess thereof, the values of such excess materials shall be their actual cost as stated by the City.
- (e) Upon delivery, the Contractor shall promptly receive, unload, transport, and handle all materials and equipment on the List of Materials Ordered by the City at its expense and shall be responsible for all shipping costs.

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

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

13. ENTRY, OBSERVATION, TESTING & POSSESSION

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

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

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

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

14. REJECTED WORK

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

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

- (a) The Contractor may be required, at the City's option, after notice from City's Representative, to remedy such work so that it shall be in full compliance with this Agreement. All rejected work or materials shall be immediately replaced in order to conform with this Agreement.
- (b) If the City deems it inexpedient to correct work damaged or not done in accordance with this Agreement, an equitable deduction from the agreed sum may be made by the City at the City's sole discretion.

15. SUBCONTRACTING & SUBCONTRACTORS

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

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

16. PAYMENT

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

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

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

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

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

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

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

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

16.09. Unless otherwise provided in the Contract Documents:

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

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

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

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

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

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

17. EXTRA WORK CHARGES

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

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

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

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

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

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

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

Method A - By agreed unit prices, or

Method B - By agreed lump sum, or

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

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

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

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

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

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

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

(2) All costs must be directly and specifically shown to be caused by a proven wrong. No recovery shall be based on a comparison by planned expenditures to total actual expenditures or on estimated losses of labor efficiency, or on a comparison of planned

manloading to actual manloading, or any other analysis that is used to show damages indirectly.

- (3) Damages are limited to extra costs specifically shown to have been directly caused by a proven wrong.
- (4) The maximum daily limit on any recovery for delay shall be the amount established by the Contractor for job overhead costs, defined in the pay applications, divided by the total number of days specified for completion called for in the original Contract. Absent an overhead amount in the Schedule of Values, the amount estimated by Contractor for job overhead cost shall be used.

18. TIME OF COMPLETION

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

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

18.03. The work shall be Substantially Completed within the time bid, which shall run from the date when the notice to proceed is given by City's Representative. The Contractor has bid **90 calendar days** for the time within which it shall reach Substantial Completion of the Project.

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

19. SUBSTANTIAL COMPLETION

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

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

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

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

20. FINAL COMPLETION

20.01. Contractor shall notify the City's Representative when it believes that the work has reached Final Completion as defined in Paragraph 1.08. If the City's Representative and the City accept and deems such

work Finally Complete, then Contractor shall be so notified and certificates of completion and acceptance, as provided herein, shall be issued. A complete itemized statement of this Agreement account, certified by the City's Representative as correct, shall then be prepared and delivered to Contractor. Contractor or City, as the case may be, shall pay the balance due as reflected by said statement within thirty (30) calendar days.

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

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

21. DELAYS

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

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

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

22. EXTENSIONS OF TIME

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

- (1) an act or neglect of the City, the City's Representative, employees of the City, or other contractors employed by the City;
- (2) by changes ordered in the work, or reductions thereto approved in writing;
- (3) by "rain days" (days with rainfall in excess of one-tenth of an inch) during the term of this Agreement that exceed the average number of rain days for such term for this locality, both as determined by the Texas A&M University weather service; or
- (4) by other causes that the City and the Contractor agree may reasonably justify delay and that were beyond the Contractor's reasonable control and ability to estimate, predict, or avoid, such as delays caused by unforeseen labor disputes, fire, natural disasters, acts of war, and other rare and

unpredictable events. This term does **not** include normal delays incident to the delivery of materials, tools, or labor that reasonably could have been predicted and/or accounted for in the Contractor's proposal or decision to bid.

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

23. LIQUIDATED DAMAGES

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

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

24. CHARGES FOR INJURY OR REPAIR

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

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

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

25. WARRANTY

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

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

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

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

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

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

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

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

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

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

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

26. PAYMENT OF EMPLOYEES, SUBCONTRACTORS & SUPPLIERS

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

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

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

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

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

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

27. INSURANCE

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

28. BOND PROVISIONS

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

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

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

29. SURETY

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

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

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

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

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

30. COMPLIANCE WITH LAW

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

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

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

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

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

31. SAFETY PRECAUTIONS

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

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

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

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

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

31.06. City and Contractor may enter into a separate agreement and/or Change Order for Contractor to remediate and/or render harmless the Hazardous Substance, but Contractor shall not be required to

remediate and/or render harmless the Hazardous Substance absent such agreement. Contractor shall not be required to resume work in any area affected by the Hazardous Substance until such time as the Hazardous Substance has been remediated and/or rendered harmless.

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

32. TRENCH SAFETY

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

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

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

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

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

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

33. INDEMNITY

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

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

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

- (a) In the event the City is damaged due to the act, omission, mistake, fault or default of the Contractor, then the Contractor shall indemnify and hold harmless and defend the City for such damage.**
- (b) The Contractor shall indemnify and hold harmless and defend the City from any claims for payment for goods or services brought by any material suppliers, mechanics, laborers, or other subcontractors.**
- (c) The Contractor shall indemnify and hold harmless and defend the City from any and all injuries to or claims of adjacent property owners caused by the Contractor, its agents, employees, and representatives.**
- (d) The Contractor shall be responsible for any damage to the floor, walls, etc., caused by the Contractor's personnel or equipment during installation.**
- (e) The Contractor shall also be responsible for the removal of all related debris.**
- (f) The Contractor shall also be responsible for subcontractors hired by it.**
- (g) The Contractor shall indemnify, hold harmless, and defend the City from any liability caused by the Contractor's failure to comply with applicable federal, state, or local regulations, that touch upon or concern the maintenance of a safe and protected working environment and the safe use and operation of machinery and equipment in that working**

environment, no matter where fault or responsibility lies.

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

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

34. RELEASE

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

35. PERMITS AND LICENSES

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

36. ROYALTIES AND LICENSING FEES

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

37. BREACH OF CONTRACT & DAMAGES

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

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

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

38. TERMINATION FOR CAUSE

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

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

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

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

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

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

38.06. If the Contractor abandons the Work.

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

39. TERMINATION FOR CONVENIENCE

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

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

40. RIGHT TO COMPLETE

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

41. CLOSE OUT

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

- (a) Stop the work on the date and to the extent specified in the notice of termination;
- (b) Place no further orders or subcontracts for services, equipment, or materials, except as may be necessary for completion of such portion of the work as is not terminated;
- (c) Terminate all orders and subcontracts to the extent that they relate to the performance of the work terminated by the notice of termination;
- (d) Assign to City's Representative, in the manner and to the extent directed by it, all of the right, title, and interest of the Contractor under the orders or subcontracts so terminated; in which case, City's Representative shall have the right to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

(e) With the approval of City's Representative, settle all outstanding liabilities and all claims arising out of such termination, orders, and subcontracts;

(f) Deliver to City's Representative, when directed by City's Representative, all documents and all property, which if the work had been completed, Contractor would have been required to account for or deliver to City's Representative, and transfer title to such property to City's Representative to the extent not already transferred.

42. TERMINATION CONVERSION

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

43. HIRING

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

44. ASSIGNMENT

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

45. EFFECTIVE DATE

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

46. OTHER TERMS

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

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

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

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

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

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

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

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

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

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

- (a) Contractor has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Contract
- (b) Contractor represents and warrants that it has no actual or potential conflicts of interest in the goods and or services described in the scope of work to this contract.

- (c) **Antitrust.** Pursuant to 15 U.S.C. §1, et seq. and Tex. Bus. & Comm. Code §15.01, et seq. neither the contractor nor the firm, corporation, partnership, or institution represented by the contractor, or anyone acting for such a firm, corporation or institution has violated the antitrust laws of this state, federal antitrust laws, nor communicated directly or indirectly the bid made to any competitor or any other person engaged in such line of business.
- (d) **Child Support.** Pursuant to §231.006(d), Texas Family Code, regarding child support, the Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive the specified payment and acknowledges that the contract may be terminated, and payment may be withheld if this certification is inaccurate. Furthermore, any Contractor subject to §231.006, Gov't Code, must include names and Social Security numbers of each person with at least 25% ownership of the business entity submitting the bid. This information must be provided prior to award. Enter the Name & Social Security Numbers for each person below:

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

- (e) **Debarment.** Contractor certifies that Contractor and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity and that Contractor is in compliance with the State of Texas statutes and rules relating to procurement. Entities ineligible for state procurement are listed on the State of Texas Debarred Vendor List maintained by the Texas Comptroller of Public Accounts and the System for Award Management (SAM) maintained by the General Services Administration. Entities ineligible for federal procurement are listed at <http://www.sam.gov/content/exclusions>.
- (f) **Terrorism Watch List.** Contractor represents and warrants that it does not do business with Iran, Sudan or a foreign terrorist organization as prohibited by Texas Government Code 2252.152. Contractor certifies that it is not listed on the federal government's terrorism watch list as described in Executive Order 13224.
- (g) **Critical Infrastructure.** If Contractor will be granted direct or indirect access to a communication infrastructure system, cybersecurity system, electric grid, hazardous waste treatment system, or water treatment facility, Contractor certifies that neither it or its parent company, is (1) majority owned by citizens or governmental entities of China, North Korea, Russia or any other country designated by the Governor under Government Code 2274.0103, or (2) headquartered in any of those countries.
- (h) **Convictions.** Under Sections 2155.006, 23155.0061 and 2261.053 of the Texas Government Code, Contractor certifies that it is not ineligible to receive the specified contract and may be terminated and payment withheld if this certification is inaccurate. These sections prohibit contracts that include proposed financial participation by an individual or business entity who has been convicted in the past five years of (a) violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by §418.004, Gov't Code, occurring after September 24, 2005; and (b) of any offense related to the direct support or promotion of human trafficking.

- (i) **COVID Vaccinations.** Contractor certifies that it does not require its customers to provide any documentation certifying the Customer's COVID-19 vaccination or post-transmission recovery on entry to, or to receive service from the Contractor's business.
- (j) **Boycotts.** (1) To the extent this Contract is considered a Contract for goods or services subject to § 2270.002 Texas Government Code, Contractor verifies that it: (i) does not boycott Israel; and (ii) will not boycott Israel during the term of this Contract. (2) To the extent this Contract has a value of \$100,000 or more and Contractor is an organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations, that exists to make a profit that employs 10 or more full time employees, Contractor certifies that it: (i) does not and will not boycott energy companies during the term of the contract (*See Texas Government Code 2274.002, et seq.*); and (ii) does not and will not discriminate against a firearm entity or firearm trade association (*See Texas Government Code 2274.002, et seq.*).

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

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

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

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

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

CRAIG'S DIRT SERVICE, LLC.

By: 
Printed Name: Brittany Brown
Title: President
Date: 9/13/2023

CITY OF NACOGDOCHES

By: _____
City Manager
Date: _____

APPROVED AS TO FORM:

City Attorney
Date: _____

Exhibit A
DAVIS BACON WAGE RATES

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

Exhibit B
INSURANCE REQUIREMENTS

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

I. Standard Insurance Policies Required:

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

II. General Requirements Applicable to All Policies:

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

III. Commercial General Liability

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

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

IV. Business Automobile Liability

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

V. Excess Liability

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

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

VII. Workers Compensation Insurance

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

"A. Definitions:

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

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

Persons providing services on the project ("subcontractors" in § 406.096 [of the Texas Labor Code]) - includes all persons or entities performing all or part of the services the Contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent Contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to

provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

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

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

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

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

VIII. Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent, and shall contain the following provisions and warranties:

A. The company is licensed and admitted to do business in the State of Texas.

- B. The insurance policies provided by the insurance company are underwritten on forms that have been provided by the Texas State Board of Insurance or ISO.
- C. All endorsements and insurance coverages according to requirements and instructions contained herein.
- D. The form of the notice of cancellation, termination, or change in coverage provisions to the City of Nacogdoches.
- E. Original endorsements affecting coverage required by this section shall be furnished with the certificates of insurance.

Exhibit C
PERFORMANCE AND PAYMENT BONDS

PERFORMANCE BOND

Project No. _____

THE STATE OF TEXAS

§
§

KNOW ALL MEN BY THESE PRESENTS:

THE COUNTY OF NACOGDOCHES

§

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

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

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

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

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

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

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

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

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

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

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

(Name of Contractor)

By: _____
Name:
Title:

By: _____
Name:
Title:
Date:

ATTEST/WITNESS (SEAL)

(Full Name of Surety)

By: _____
Name:
Title:
Date:

(Address of Surety for Notice)

By: _____
Name:
Title:
Date:

REVIEWED:

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

City Attorney's Office

City Manager

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

TEXAS STATUTORY PAYMENT BOND

Project No. _____

THE STATE OF TEXAS

§
§

KNOW ALL MEN BY THESE PRESENTS:

THE COUNTY OF NACOGDOCHES

§

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

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

WHEREAS, Principal has entered into a certain contract with the City of Nacogdoches, dated the _____ day of _____, 20____, for **Construction Services for Lake Nacogdoches West Park Improvements**, 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
FINAL AFFIDAVIT OF ALL BILLS PAID

FINAL BILLS PAID AFFIDAVIT
BY CONTRACTOR

BEFORE ME, the undersigned authority, personally appeared as _____,
(Name), known to me to be a credible person, and after
being by me duly sworn, upon oath stated and affirmed that: “My name is
_____ and I am the _____
(Name) (Title)
of _____”, hereafter referred to in this affidavit as
(Firm)
“Contractor”. Contractor’s business address is _____,
(Address)
Texas, _____. The undersigned Contractor has personal knowledge of the facts
(Zip)
stated herein and has full authority to make the agreements in this affidavit on behalf of
Contractor.
Pursuant to and in accordance with a written contract between Contractor and
_____, collectively referred to as Owner, Contractor furnished
(Owner)
materials and labor for the construction, renovation, installation or repair of certain
improvements (the “Improvements”), being City of Nacogdoches contract for
_____.
(Project Name)

All work provided for under said written construction contract, together with all changes and supplements thereto, has been fully completed in accordance with the terms and provisions of said contract.

Contractor has paid each of its subcontractors, laborers, suppliers and materialmen in full for all labor and materials provided to Contractor for or in connection with the construction, renovation or repair of the Improvements.

Contractor is not aware of any unpaid bills, claims, demands or causes of action by any of its subcontractors, laborers, manufacturers, suppliers or materialmen for or in connection with the furnishing of labor materials, or both, for the construction, renovation or repair of the Improvements.

Contractor further understands that this Final Bills Paid Affidavit is being given pursuant to and in accordance with Section 53.085 of the Texas Property Code and that the

intentional, knowing or reckless making of a false or misleading statement in this Affidavit constitutes an offense under said Section and is a Class A misdemeanor.

Contractor hereby indemnifies and holds harmless the City of Nacogdoches from any and all claims, demands or causes of action, and any costs, expenses and attorney’s fees incurred in connection therewith, arising from or connected with, the statements and representations contained herein.

EXECUTED this ____ day of _____ , 20____.

CONTRACTOR:

By: _____

Name: _____

Title: _____

Notary’s Acknowledgement

Before me, the undersigned authority, on this day personally appeared _____, who first being duly sworn by me to be the person whose name is subscribed to the foregoing Final Bills Paid Affidavit, acknowledged that he/she has the authority to make this Final Bills Paid Affidavit, and further acknowledged to me that he/she executed the same for the purpose and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the _____ day of _____, 20____.

Exhibit F
PLANS, SPECIFICATIONS AND DRAWINGS



Bid Bond

KNOW ALL MEN BY THESE PRESENTS, that we Craig's Dirt Service, LLC,
18199 County Road 4108, Lindale, TX 75771,
as principal, hereinafter called the Principal, and **Granite Re, Inc., 14001 Quailbrook Drive, Oklahoma City, OK 73134**,
a corporation duly organized under the laws of the State of Minnesota as Surety, hereinafter called the Surety, are held
and firmly bound unto City of Nacogdoches,
202 Pilar Street Suite 239, Nacogdoches, TX 75961,
as Obligee, hereinafter called the Obligee, in the sum of **** Five Percent of Bid Amount (5%) ****
for payment of which sum well and truly to be made, the said Principal and the said Surety, bind ourselves, our heirs,
executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a bid for

Project: Lake Nacogdoches West Park Improvements / #: 23-10-117

Bid Date: 08/03/2023

The conditions of this Bond are such that if the Obligee accepts the bid of the Principal within the time specified in the bid documents or within such time period as may be agreed to by the Obligee and Principal, and the Principal either (1) enters into a contract with the Obligee in accordance with the terms of such bid, and gives such bond or bonds as may be specified in the bidding or Contract Documents, with a surety admitted in the jurisdiction of the Project and otherwise acceptable to the Obligee, for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof; or (2) pays to the Obligee the difference, not to exceed the amount of this Bond, between the amount specified in said bid and such larger amount for which the Obligee may in good faith contract with another party to perform the work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect. The Surety hereby waives any notice of an agreement between the Obligee and Principal to extend the time in which the Obligee may accept the bid. Waiver of notice by the Surety shall not apply to any extension exceeding sixty (60) days in the aggregate beyond the time for acceptance of bids, and the Obligee and Principal shall obtain the Surety's consent for an extension beyond sixty (60) days.

When this Bond has been furnished to comply with a statutory or other legal requirement in the location of the Project, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this bond shall be construed as a statutory bond and not as a common law bond.

Signed and sealed this 08/03/2023.



Witness

Craig's Dirt Service, LLC



Title (SEAL)

Granite Re, Inc.



Kenneth D. Whittington, Attorney-in-Fact (SEAL)

GRANITE RE, INC.
GENERAL POWER OF ATTORNEY

Know all Men by these Presents:

That GRANITE RE, INC., a corporation organized and existing under the laws of the State of MINNESOTA and having its principal office at the City of OKLAHOMA CITY in the State of OKLAHOMA does hereby constitute and appoint:

KENNETH D. WHITTINGTON; KYLE MCDONALD its true and lawful Attorney-in-Fact(s) for the following purposes, to wit:

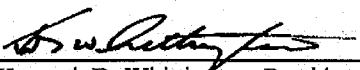
To sign its name as surety to, and to execute, seal and acknowledge any and all bonds, and to respectively do and perform any and all acts and things set forth in the resolution of the Board of Directors of the said GRANITE RE, INC. a certified copy of which is hereto annexed and made a part of this Power of Attorney; and the said GRANITE RE, INC. through us, its Board of Directors, hereby ratifies and confirms all and whatsoever the said:

KENNETH D. WHITTINGTON; KYLE MCDONALD may lawfully do in the premises by virtue of these presents.

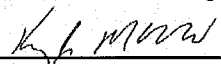
In Witness Whereof, the said GRANITE RE, INC. has caused this instrument to be sealed with its corporate seal, duly attested by the signatures of its President and Assistant Secretary, this 3rd day of January, 2020.

STATE OF OKLAHOMA)
) SS:
COUNTY OF OKLAHOMA)





Kenneth D. Whittington, President

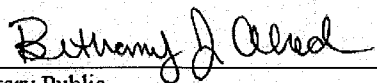


Kyle P. McDonald, Assistant Secretary

On this 3rd day of January, 2020, before me personally came Kenneth D. Whittington, President of the GRANITE RE, INC. Company and Kyle P. McDonald, Assistant Secretary of said Company, with both of whom I am personally acquainted, who being by me severally duly sworn, said, that they, the said Kenneth D. Whittington and Kyle P. McDonald were respectively the President and the Assistant Secretary of GRANITE RE, INC., the corporation described in and which executed the foregoing Power of Attorney; that they each knew the seal of said corporation; that the seal affixed to said Power of Attorney was such corporate seal, that it was so fixed by order of the Board of Directors of said corporation, and that they signed their name thereto by like order as President and Assistant Secretary, respectively, of the Company.

My Commission Expires:
April 21, 2027
Commission #: 11003620





Notary Public

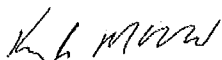
GRANITE RE, INC.
Certificate

THE UNDERSIGNED, being the duly elected and acting Assistant Secretary of Granite Re, Inc., a Minnesota Corporation, HEREBY CERTIFIES that the following resolution is a true and correct excerpt from the July 15, 1987, minutes of the meeting of the Board of Directors of Granite Re, Inc. and that said Power of Attorney has not been revoked and is now in full force and effect.

“RESOLVED, that the President, any Vice President, the Assistant Secretary, and any Assistant Vice President shall each have authority to appoint individuals as attorneys-in-fact or under other appropriate titles with authority to execute on behalf of the company fidelity and surety bonds and other documents of similar character issued by the Company in the course of its business. On any instrument making or evidencing such appointment, the signatures may be affixed by facsimile. On any instrument conferring such authority or on any bond or undertaking of the Company, the seal, or a facsimile thereof, may be impressed or affixed or in any other manner reproduced; provided, however, that the seal shall not be necessary to the validity of any such instrument or undertaking.”

IN WITNESS WHEREOF, the undersigned has subscribed this Certificate and affixed the corporate seal of the Corporation this
August 3 , 2023 .





Kyle P. McDonald, Assistant Secretary

CITY OF NACOGDOCHES, TEXAS
2023 PROJECT NO. 918111
LAKE NACOGDOCHES WEST PARK IMPROVEMENTS

Date: March 2023

To: City of Nacogdoches, TX

To Whom it Concerns:

Pursuant to the foregoing NOTICE TO BIDDERS and General Information, the undersigned BIDDER, having examined the plans and specifications with related documents and the site of the proposed work, and being familiar with all the conditions surrounding the construction of the proposed project hereby proposes to do all the work and to furnish all necessary superintendence, labor, machinery, equipment, tools and to complete all the work upon which he bids, and binds himself to execute a contract and bond according to the accompanying forms for performing and completing the said work within the required time and furnish all required quantities for the following prices:

ITEM	QUANTITY	UNIT	DESCRIPTION & UNIT PRICE (FILL IN UNIT PRICE IN SCRIPT & NUMBERS)	TOTAL PRICE
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GENERAL BID ITEMS

1.	1	LS	MOBILIZATION INCLUDES BUT IS NOT LIMITED TO SECURING BONDS AND INSURANCE, ESTABLISHMENT AND REMOVAL OF ANY NECESSARY PROJECT FACILITIES, MOVEMENT OF PERSONNEL, MOVEMENT OF EQUIPMENT & SUPPLIES, CLEANUP OF PROJECT SITE, AND ALL OTHER PROJECT INCIDENTALS, NECESSARY TO COMPLETE THE PROJECT IN ACCORDANCE WITH THE PLANS AND SPECIFICATIONS, FOR THE SUM OF <u>fifteen thousand five hundred</u> DOLLARS & CENTS Lump Sum (\$ <u>15 500</u>)	<u>15500</u>
2.	1	LS	CONSTRUCTION STAKING INCLUDING LOCATION, CONFIRMATION, AND TIE-IN OF PRE-ESTABLISHED BENCHMARKS AND EASEMENTS, AS DESCRIBED IN PLANS. THE SUM OF <u>Two thousand five hundred</u> DOLLARS & CENTS Lump Sum (\$ <u>2500</u>)	<u>2500</u>
3.	1	LS	PRE-CONSTRUCTION LOCATION & CONFIRMATION OF EXISTING UTILITIES , INCLUDING COORDINATION WITH TEXAS 811, FRANCHISE UTILITY COMPANIES, AND THE CITY OF NACOGDOCHES, LOCATION AND VERIFICATION OF EXACT DEPTH, LOCATION, SIZE, AND MATERIALS OF ALL UTILITIES PRIOR TO COMENCING CONSTRUCTION ACTIVITIES, ALL EQUIPMENT, MATERIALS, LABOR & SUPERINTENDENCE, ALL IN ACCORDANCE WITH THE PLANS & THE SPECS, THE SUM OF <u>five hundred</u> DOLLARS & CENTS Lump Sum (\$ <u>500</u>)	<u>500</u>

CITY OF NACOGDOCHES, TEXAS
2023 PROJECT NO. 918111
LAKE NACOGDOCHES WEST PARK IMPROVEMENTS

ITEM	QUANTITY	UNIT	DESCRIPTION & UNIT PRICE (FILL IN UNIT PRICE IN SCRIPT & NUMBERS)	TOTAL PRICE
4.	1	LS	BEST MANAGEMENT PRACTICES FOR EROSION CONTROL INCLUDES COMPLETION AND SUBMISSION OF SW3P, NOI, AND NOT. INCLUDES ALL SW3P DOCUMENTATION, TEMPORARY AND FINAL SEEDING, SOIL RETENTION BLANKETS, AND STRUCTURAL CONTROLS FOR EROSION (WATTLES, HAY BALES, ROCK FILTER DAMS, ETC.) ALSO INCLUDES, BUT IS NOT LIMITED TO EQUIPMENT, LABOR, AND HAULING NECESSARY TO REPAIR ANY EROSION THAT OCCURS DURING THE PROJECT CONSTRUCTION PROCESS. ALSO INCLUDES SUPPLYING ALL MATERIALS, EQUIPMENT, LABOR, TOOLS, AND INCIDENTALS NECESSARY FOR INSTALLATION, REPLACEMENT, INSPECTION, MAINTENANCE, AND FINAL REMOVAL OF EROSION CONTROL MEASURES NECESSARY TO COMPLETE THE PROJECT IN ACCORDANCE WITH THE PLANS AND SPECIFICATIONS, FOR THE SUM OF <u>twelve thousand five hundred</u> DOLLARS & CENTS Lump Sum (\$ <u>12,500</u>)	<u>12,500</u>
6.	490	CY	EXCAVATION PER TXDOT ITEM 110, IN ACCORDANCE WITH THE PLANS, FOR THE SUM OF <u>ten</u> DOLLARS & CENTS Per Cubic Yard (\$ <u>10</u>)	<u>4,900</u>
7.	190	CY	EMBANKMENT (TYPE D) PER TXDOT ITEM 132, IN ACCORDANCE WITH THE PLANS, FOR THE SUM OF <u>twenty</u> DOLLARS & CENTS Per Cubic Yard (\$ <u>20</u>)	<u>3,800</u>
8.	73	TON	2" HMAC TYPE D OVERLAY PER TXDOT ITEM 340, FOR THE SUM OF <u>two hundred eight one</u> DOLLARS & CENTS Per Ton (\$ _____)	<u>20,513</u>

CITY OF NACOGDOCHES, TEXAS
2023 PROJECT NO. 918111
LAKE NACOGDOCHES WEST PARK IMPROVEMENTS

ITEM	QUANTITY	UNIT	DESCRIPTION & UNIT PRICE (FILL IN UNIT PRICE IN SCRIPT & NUMBERS)	TOTAL PRICE
9.	132	GAL	PRIME COAT (0.2 GAL/SY) PER TXDOT ITEM 310, FOR THE SUM OF <u>fifteen</u> DOLLARS & CENTS Per Gallon (\$ <u>15</u>)	<u>1980</u>
10.	242	SY	REHABILITATION OF EXISTING HMAC TRAIL FOR RECONSTRUCTION, INCLUDING BUT NOT LIMITED TO SCARIFY, REMIX, AND COMPACT EXISTING ASPHALT TRAIL. ALL EQUIPMENT, AND LABOR & SUPERINTENDENCE NECESSARY TO COMPACT SUBGRADE AREA IN ACCORDANCE WITH THE PLANS AND SPECIFICATIONS, FOR THE SUM OF <u>for 40</u> DOLLARS & CENTS Per Square Yard (\$ <u>40</u>)	<u>9,680</u>
11.	1	AC	PERMANENT SEEDING, INCLUDES BUT IS NOT LIMITED TO SUPPLYING ALL MATERIALS, EQUIPMENT, LABOR, TOOLS, SEED, TOPSOIL, FERTILIZER, SOD, EROSION BLANKETS, WATER, AND INCIDENTALS NECESSARY FOR THE ESTABLISHMENT OF VEGETATION IN ALL DISTURBED AND DREDGING APPLICATION AREAS, FOR THE SUM OF <u>seven thousand five hundred</u> DOLLARS & CENTS Per Acre (\$ <u>7500</u>)	<u>7500</u>
12.	1	LS	OWNER'S ALLOWANCE FOR FIELD CHANGES, CONTINGENT ON THE OWNER'S APPROVAL, FOR THE SUM OF DOLLARS & CENTS Lump Sum (<u>\$20,000</u>)	<u>\$20,000</u>
13.	1	LS	OWNER'S ALLOWANCE FOR MATERIAL TESTING, CONTINGENT ON THE OWNER'S APPROVAL, FOR THE SUM OF DOLLARS & CENTS Lump Sum (<u>\$10,000</u>)	<u>\$10,000</u>
BASE BID ITEMS:			TOTAL BASE BID (SUM ITEMS 1-13)	<u>109,373</u>

CITY OF NACOGDOCHES, TEXAS
2023 PROJECT NO. 918111
LAKE NACOGDOCHES WEST PARK IMPROVEMENTS

ITEM	QUANTITY	UNIT	DESCRIPTION & UNIT PRICE (FILL IN UNIT PRICE IN SCRIPT & NUMBERS)	TOTAL PRICE
ALTERNATE BID ITEMS:				
1A	662	SY	REINFORCED CONCRETE WALKING PATH, INCLUDING SUPPLYING AND INSTALLING 4" THICK CONCRETE, REBAR, AND CRUSHED AGGREGATE BASE MATERIAL, AND ANY NECESSARY EXCAVATION, EMBANKMENT, AND PREPARATION OF SUBGRADE. INCLUDES BUT IS NOT LIMITED TO SUPPLYING EQUIPMENT, REBAR, FORMS, MATERIALS, LABOR & SUPERINTENDENCE NECESSARY TO CONSTRUCT THE 8' WIDE CONCRETE TRAIL, COMPLETE IN PLACE, IN ACCORDANCE WITH THE PLANS AND SPECS, TO BE ADDED TO PROJECT IN LIEU OF BASE BID ITEMS 8-10, FOR THE SUM OF <u>one hundred fifteen</u> DOLLARS & CENTS Per Square Yard (\$ <u>115</u>)	<u>76,130</u>
2A	242	SY	DEMOLISH EXISTING HMA TRAIL FOR CONSTRUCTION OF NEW CONCRETE TRAIL, INCLUDING BUT NOT LIMITED TO ALL EQUIPMENT, AND LABOR & SUPERINTENDENCE NECESSARY TO COMPACT SUBGRADE AREA IN ACCORDANCE WITH THE PLANS AND SPECIFICATIONS, TO BE ADDED TO PROJECT IN LIEU OF BASE BID ITEMS 8-10, FOR THE SUM OF <u>fifteen</u> DOLLARS & CENTS Per Square Yard (\$ <u>15</u>)	<u>3630</u>
3A	80	CY	SAND FOR BEACH AREA, INCLUDES DELIVERY, GRADING, LABOR & SUPERINTENDENCE NECESSARY TO GRADE SAND FOR BEACH AREA AS INDICATED IN PLANS , TO BE ADDED TO PROJECT IN LIEU OF BASE BID ITEMS 8-10, FOR THE SUM OF <u>two hundred</u> DOLLARS & CENTS Per Cubic Yard (\$ <u>200</u>)	<u>16000</u>
ALTERNATE BID ITEMS:			TOTAL ALT. BID (SUM ITEMS 1A-3A)	<u>95760</u>

**GENERAL/SUB-CONTRACTOR'S EXPERIENCE
AND
DATA INFORMATION**

Name of Company: Craig's Dirt Service

Company Years in Business: 27

List Municipal Projects
(Similar Projects in Size and Scope Completed in Last Five Years)

Project	Municipality	\$ Amount	Type	Date
Noble E Young	Tyler	194250	Park	August 22
PT Cole	Tyler	91 700	Park	May 23

Superintendent & Project Manager Information

Include Superintendent proposed for the project, years of experience as superintendent,
project manager proposed for the project, and years experience as project manager

Superintendent	Years Experience	Projects
Blake Blalock	15	
Ervin Kuebler	35	

Project Manager	Years Experience	Projects
David McClellan	7	

References: Name 5 projects of similar work, giving owner's name, representative's name, project engineer's name, and telephone numbers for each

1. Noble E Young		City of Tyler
Garrett and Associates (GC)		903-839-2907
Mark Priestner Halff (engineer)		903-617-5360

2. PT Cole		City of Tyler
Paragon & Associates (GC)		903-871-5601
William Spencer MHS		903-597-6606

3. Dayspring VMC		
Gary Olive (rep)		936-443-1110
Margen Schneider Agreco		903-266-9089

4.		

5.		

CERTIFICATION OF BID

The undersigned affirms that they are duly authorized to execute this Contract, that this bid has not been prepared in collusion with any other Bidder, and that the contents of this bid have not been communicated to any other Bidder prior to the official opening of this bid. To the extent this Contract is considered a Contract for goods or services subject to § 2270.002 Texas Government Code, Bidder certifies that it: i) does not boycott Israel; and ii) will not boycott Israel during the term of the Agreement. Additionally, the undersigned affirms that the firm is willing to sign the enclosed Standard Form of Agreement (if applicable).

Signed By: DM Title: Project Manager

Typed Name: David McLellan Company Name: Craig's Dirt Service

Phone No: 903-882-5096 Fax No: N/A

Email: david@craigsdirtservice.com

Bid Address:	<u>PO Box 2627</u>	<u>Lindale</u>	<u>TX</u>	<u>75771</u>
	P.O. Box or Street	City	State	Zip

Remit Address:	<u>PO Box 2627</u>	<u>Lindale</u>	<u>TX</u>	<u>75771</u>
	P.O. Box or Street	City	State	Zip

Federal Tax ID No: _____

DUNS No: _____

Date: 8/3/23

August 8th, 2023

Jessica Sowell
Community Services Assistant Director
City of Nacogdoches

Re: Recommendation of Award for the “Lake Nacogdoches West Park Improvements” Project

As you are aware, bids for the above-referenced project were solicited and opened on Thursday, August 3rd, 2023. A total of one bid was received and is summarized below. A complete bid tabulation is also attached. For reference, this project include the rehabilitation of the existing walking trail at the Lake Nacogdoches West Park.

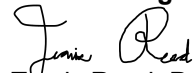
CONTRACTOR	BASE BID AMOUNT
Craig's Dirt Service	\$109,373.00

The lowest bidder for the project is:

Craig's Dirt Service, LLC
18199 County Road 4108
Lindale, TX, 75771
903-882-5096
email: Monica@craigsdirtservice.com

Although there was only one bidder, the submitted bid is within budgeted expectations. Our office has reviewed the qualifications of Craig's Dirt Service, LLC. The Contractor appears to be financially stable. They have adequate bonding capacity and insurance to construct the project. The Contractor also has access to adequate equipment, manpower, and experienced supervision to construct the project. Based on these qualifications, it is the recommendation of Schaumburg & Polk, Inc. that the City of Nacogdoches, award the Lake Nacogdoches West Park Improvements, for the base bid amount of **\$109,373.00**

Sincerely,
Schaumburg & Polk, Inc.



Travis Reed, P.E.
Project Manager

City of Nacogdoches
Lake Nacogdoches West Park Improvements
August 3, 2023 at 2:00 PM
Nacogdoches City Hall, 202 E Pilar St., Suite 335, Nacogdoches, TX 75961

Base Bid Items				Craig's Dirt Service	
Bid No.	Quantity	Unit	Item Description	Unit Price	Total Price
1	1	LS	CONTRACTOR MOBILIZATION, BONDS AND INSURANCE	\$ 15,500.00	\$ 15,500.00
2	1	LS	CONSTRUCTION STAKING	2,500.00	2,500.00
3	1	LS	PRE-CONSTRUCTION LOCATION & CONFIRMATION OF EXISTING UTILITIES	500.00	500.00
4	1	LS	BEST MANAGEMENT PRACTICES FOR EROSION CONTROL	12,500.00	12,500.00
5	490	CY	EXCAVATION PER TXDOT ITEM 110	10.00	4,900.00
6	190	CY	EMBANKMENT (TYPE D) PER TXDOT ITEM 132	20.00	3,800.00
7	73	TON	2" HMAC TYPE D OVERLAY PER TXDOT ITEM 340	281.00	20,513.00
8	132	GAL	PRIME COAT (0.2 GAL/SY) PER TXDOT ITEM 310	15.00	1,980.00
9	242	SY	REHABILITATION OF EXISTING HMAC TRAIL FOR RECONSTRUCTION	40.00	9,680.00
10	1	AC	PERMANENT SEEDING	7,500.00	7,500.00
11	1	LS	OWNER'S ALLOWANCE FOR FIELD CHANGES	20,000.00	20,000.00
12	1	LS	OWNER'S ALLOWANCE FOR MATERIAL TESTING	10,000.00	10,000.00

Total Base Bid (Items 1 - 19):	\$	109,373.00
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ALTERNATE				Craig's Dirt Service	
Bid No.	Quantity	Unit	Item Description	Unit Price	Total Price
A1	662	SY	REINFORCED CONCRETE WALKING PATH	\$ 115.00	\$ 76,130.00
A2	242	SY	DEMOLISH EXISTING HMAC TRAIL FOR CONSTRUCTION OF NEW CONCRETE TRAIL	15.00	3,630.00
A3	80	CY	SAND FOR BEACH AREA	200.00	16,000.00

Alternate Bid #1 (Items #A1 - A3):	\$	95,760.00
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CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

9/6/2023

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

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

PRODUCER K & S Rockwall 0104 2255 Ridge Rd, Ste 333 Rockwall TX 75087	CONTACT NAME: PHONE (A/C, No, Ext): 972-771-4071 FAX (A/C, No): 972-771-4695 E-MAIL ADDRESS:
INSURED Craig's Dirt Service, LLC PO Box 2627 Lindale TX 75771	INSURER(S) AFFORDING COVERAGE INSURER A: FCCI Insurance Company INSURER B: Monroe Guaranty Insurance Co INSURER C: INSURER D: INSURER E: INSURER F:

COVERAGES**CERTIFICATE NUMBER:** 830063164**REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☒ PRO-JECT ☒ LOC OTHER:			CPP 100086919	9/1/2023	9/1/2024	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
B	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY			CA 100086922	9/1/2023	9/1/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE DED ☒ RETENTION \$ 10,000			UMB 100086920	9/1/2023	9/1/2024	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N ☐	N/A	WC0 100086921	9/1/2023	9/1/2024	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

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

The General Liability policy includes a blanket automatic additional insured endorsement (CGL121 02/21) that provides additional insured status to the certificate holder only when there is a written contract between the named insured and the certificate holder that requires such status. The endorsement's wording includes both the insured's Ongoing and Completed Operations.

The Business Auto policy includes a blanket automatic additional insured endorsement (CAU058 10/22) that provides additional insured status to the certificate holder only when there is a written contract between the named insured and the certificate holder that requires such status.

The General Liability, Auto Liability and Umbrella policies contain an endorsement with "Primary and Noncontributory" wording. See Attached...

CERTIFICATE HOLDER**CANCELLATION**

For Information Only

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

AUTHORIZED REPRESENTATIVE

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ADDITIONAL REMARKS SCHEDULE

AGENCY K & S Rockwall 0104		NAMED INSURED Craig's Dirt Service, LLC PO Box 2627 Lindale TX 75771	
POLICY NUMBER		EFFECTIVE DATE:	
CARRIER	NAIC CODE		

ADDITIONAL REMARKS

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

The General Liability, Auto Liability, Worker's Compensation and Umbrella policies include blanket automatic waiver of subrogation endorsements that provide this feature, only when there is a written contract between the named insured and the certificate holder that requires it.

The General Liability, Auto Liability, Workers Compensation and Umbrella policies include a 30-Day Notice of Cancellation, only when required by written contract between the named insured and the certificate holder.

Construction Contract

Lake Nacogdoches West Accessible Walkway

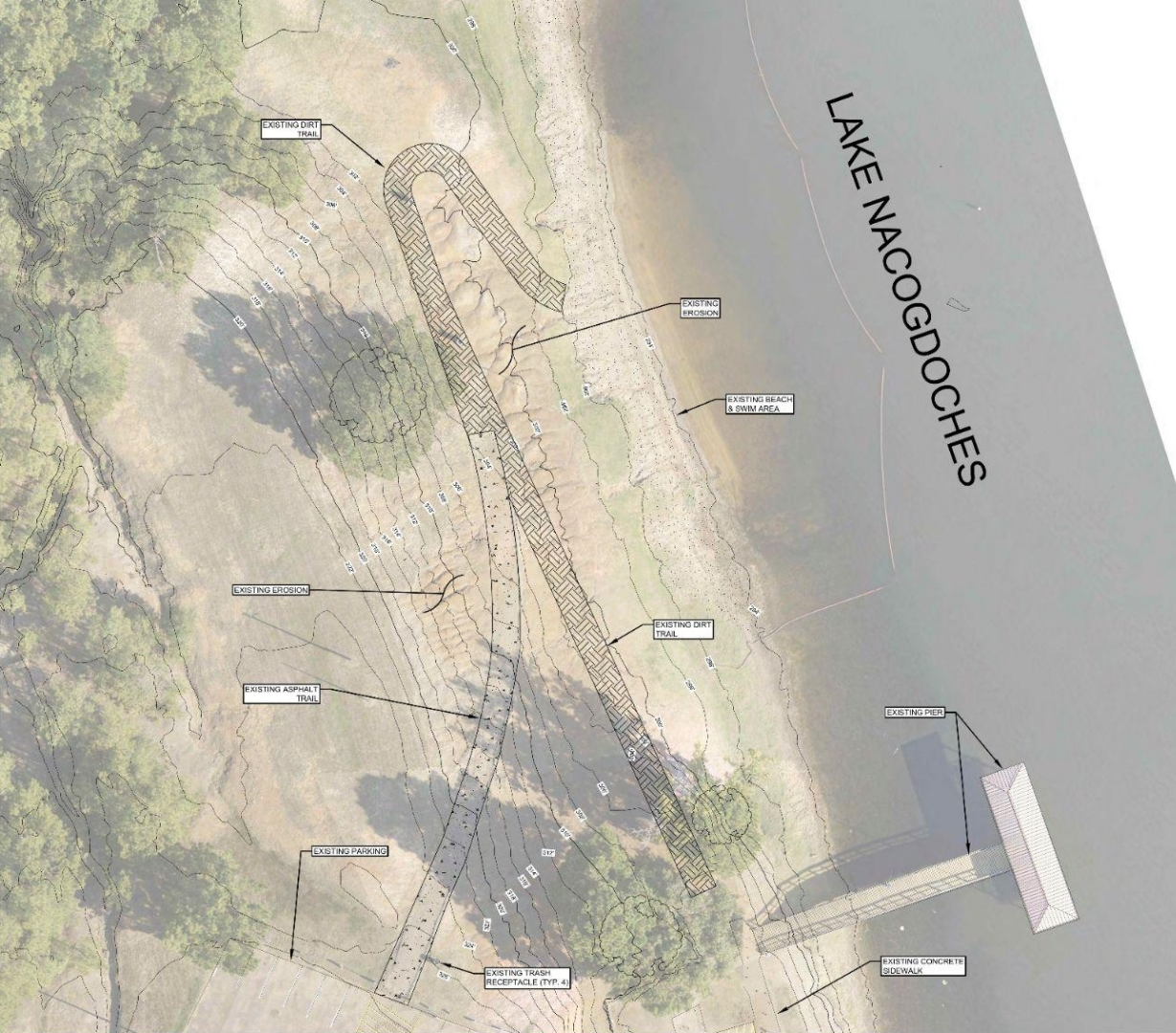
Craig's Dirt Work

Project Overview

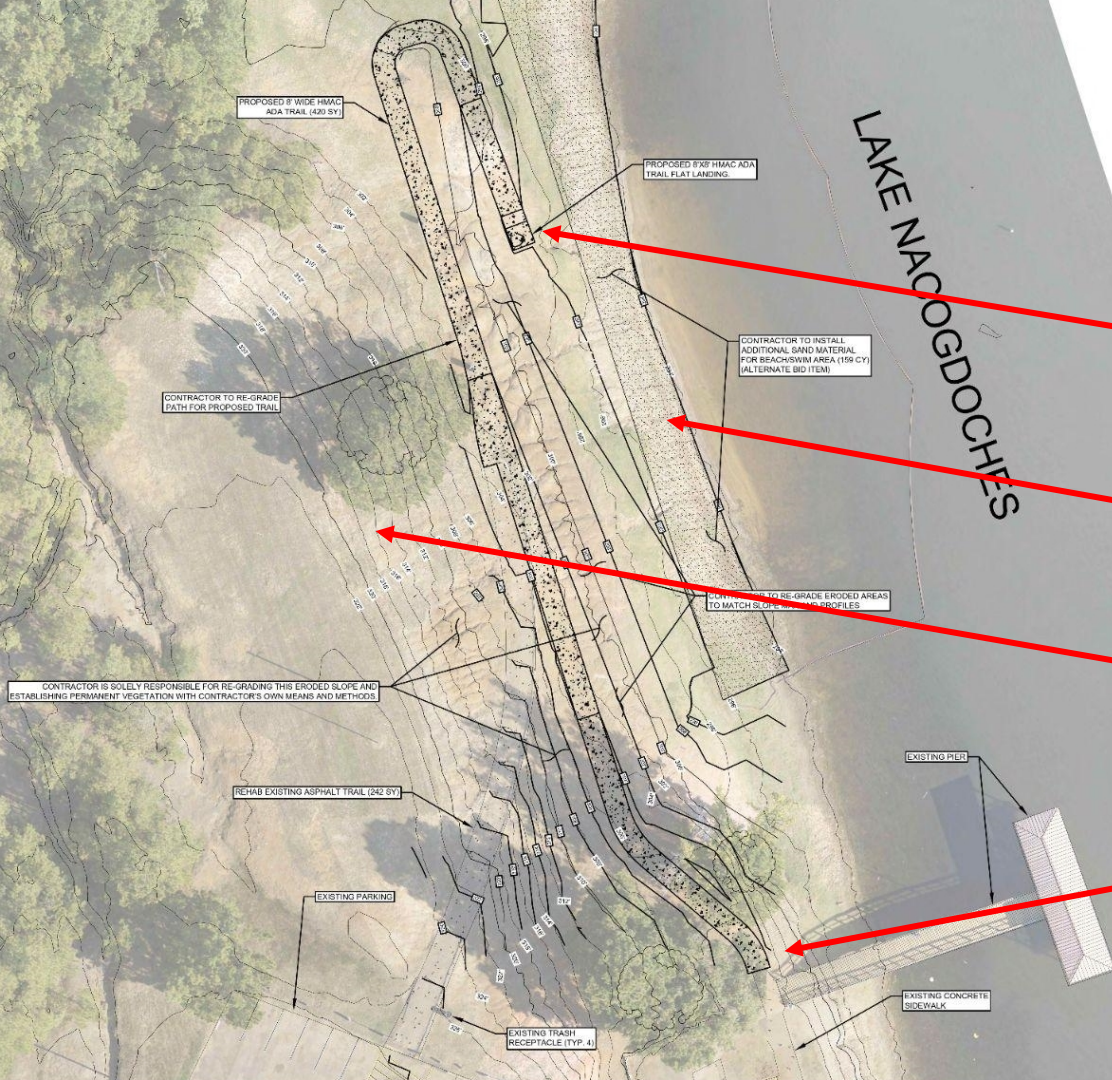
- Rehabilitate existing asphalt trail
- Extend 8' ft. wide trail to swimming area
- Extend existing trail to fishing pier and concrete sidewalk
- Re-grading eroded slope & establishing permanent vegetation
- Installation of additional beach sand

Contract Price - \$109,373.00

Existing Site Plan



Proposed Site Plan



Extending existing trail to swimming area

Additional beach sand

Re-grade slope & vegetation

Extend trail to existing sidewalk & fishing pier



City Council Meeting

Date: September 19, 2023

Agenda Item: 6.I.

PRESENTER: Jerry Baker, City Attorney

ITEM/SUBJECT: Consider approval of a resolution related to the use of a general obligation bond if approved by the voters of the City of Nacogdoches for improvements to the City's airport. (City Attorney)

SUMMARY/BACKGROUND: This resolution was developed at the request of City Council on August 15, 2023, and describes the requirements and restrictions for the use of general obligation bonds under Proposition A (Airport) proposed for the November 7, 2023 bond election. The resolution states that Council only wishes to approve the issuance of bonds related to Airport Proposition A, and levy ad valorem taxes to meet its debt service requirements thereunder, in an amount not to exceed a dollar-for-dollar match of any funds the City receives from federal and state grants and other such sources of funding for airport improvements.

FINANCIAL:

No financial impact associated with this item until bonds related to the Airport are sold.

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

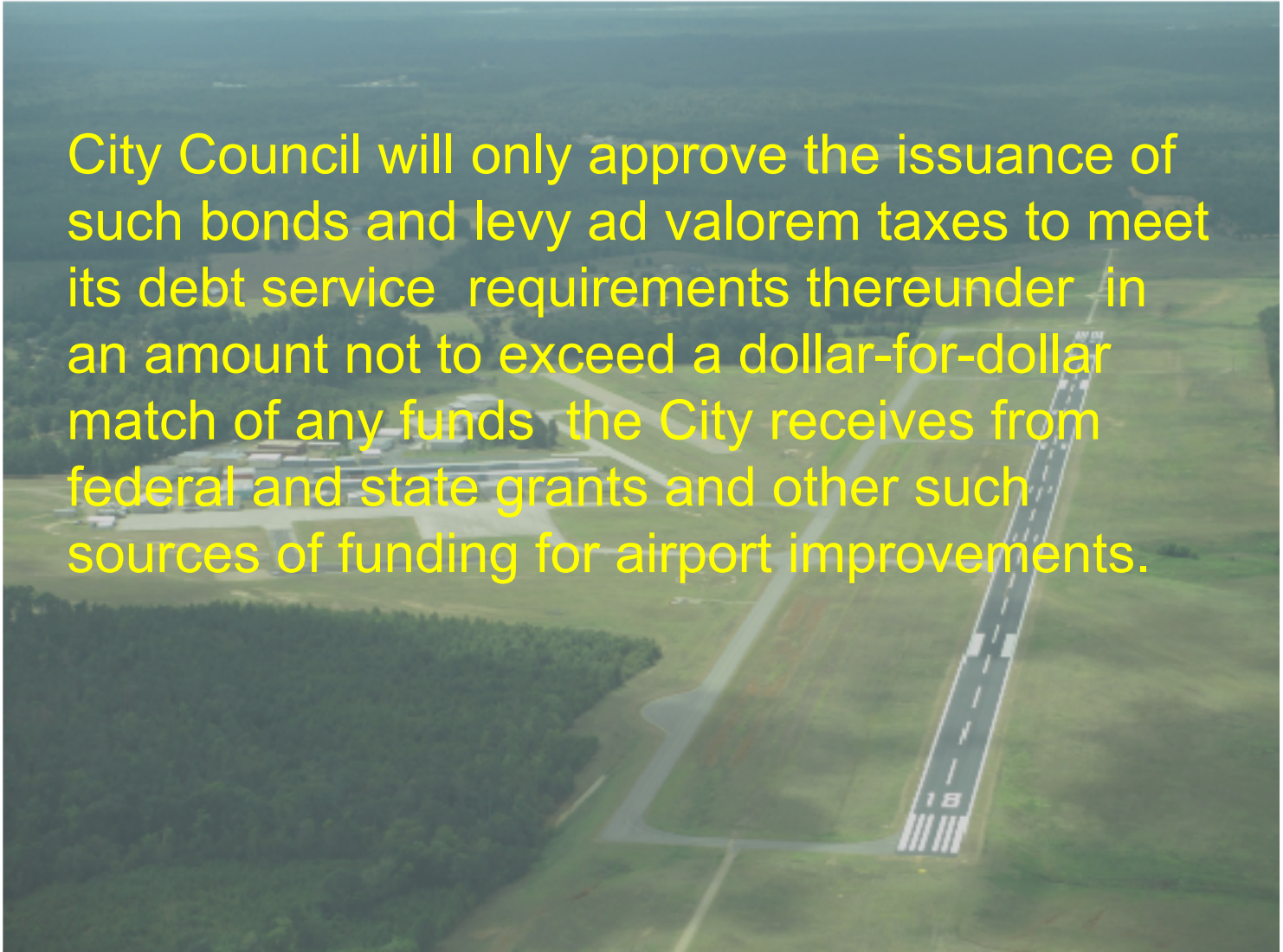
Infrastructure

CITY CONTACT: Jerry Baker, City Attorney
bakerj@nactx.us
(936) 559-2503

ATTACHMENTS: 1. 6I Presentation Airport Resolution for Bond Funds
2. Resolution Airport Bond Final 09152023

RESOLUTION FOR USE OF FUNDS RELATED TO PROPOSITION A – AIRPORT GENERAL OBLIGATION BOND

City Council will only approve the issuance of such bonds and levy ad valorem taxes to meet its debt service requirements thereunder in an amount not to exceed a dollar-for-dollar match of any funds the City receives from federal and state grants and other such sources of funding for airport improvements.



RESOLUTION NO. 1352-09-23

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NACOGDOCHES, TEXAS RELATED TO THE USE OF A GENERAL OBLIGATION BOND IF APPROVED BY THE VOTERS OF THE CITY OF NACOGDOCHES FOR IMPROVEMENTS TO THE CITY'S AIRPORT.

WHEREAS, on August 15, 2023, at a regular meeting of the City Council (the "Council") of the City of Nacogdoches, Texas (the "City"), the Council approved Resolution No. 1349-08-23 authorizing an election for the issuance of certain general obligation bonds;

WHEREAS, the election is scheduled to be held on November 7, 2023 and will allow the qualified voters of the City of Nacogdoches to determine whether the Council shall be authorized to issue bonds in the amounts and for the purposes set forth in Resolution No. 1349-08-23;

WHEREAS, included in the propositions to be decided is Proposition A which seeks authorization to issue general obligation bonds in the principal amount of \$7,300,000 for designing, developing, engineering, constructing, enlarging, improving and equipping airport improvements at the City's airport, including runways, taxiways, roadways, terminal buildings, aprons, fuel centers, parking lots, and other facilities incident and related to the operation of the City's airport and acquiring lands, interests in lands, and rights-of-way related thereto; and

WHEREAS, if Proposition A is approved by the qualified voters of the City of Nacogdoches, the Council seeks to provide direction concerning the amount of debt to be incurred by the City for such airport improvements in relation to any matching funds that might be received by the City;

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

SECTION 1. The findings and recitations contained in the preamble of this Resolution are found and declared to be true and correct and are hereby adopted as part of this Resolution.

SECTION 2. The Council will only approve the issuance of such bonds and levy ad valorem taxes to meet its debt service requirements thereunder in an amount not to exceed a dollar-for-dollar match of any funds the City receives from federal and state grants and other such sources of funding for airport improvements.

SECTION 3. The meeting at which this resolution was approved was in all things conducted in compliance with the Texas Open Meetings Act, Texas Government Code, Chapter 551.

SECTION 4. Pursuant to the provisions of Section 1201.028, as amended, Texas Government Code, this Resolution shall be effective immediately upon adoption.

APPROVED AND ADOPTED at a regular meeting of the Nacogdoches City Council on this _____ day of _____ 2023.

CITY OF NACOGDOCHES

By: _____
Randy Johnson, Mayor

ATTEST:

APPROVED AS TO FORM:

Rhonda Lewis, Deputy City Secretary

Jerry Baker, City Attorney