



November 28, 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, November 28, 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 address the City Council about items listed on the agenda, as well as on matters that are not specifically listed on the agenda. Alternatively, a citizen may address the City Council about an agenda item when the item comes up for consideration during the meeting. In order to address the City Council, please complete the Public Comment Form and submit it to the City Secretary prior to the start of the meeting. In accordance with the Texas Open Meetings Act, the City Council will not discuss, deliberate, or make any decisions on items not listed on the agenda. Comments are limited to 3 minutes per person.
4. ITEMS TO BE REMOVED FROM CONSENT AGENDA.
5. CONSENT AGENDA: Items included under Consent Agenda require little or no deliberation by Council. Approval of Consent Agenda authorizes the City Manager or his designee to proceed with conclusion of each in accordance with staff recommendations as reflected in the minutes of this meeting.
 - A. Consider approval of a contract by and between the City of Nacogdoches and Schaumburg & Polk, Inc. for professional engineering services for ARPA Drainage Improvements in a not-to-exceed amount of \$265,650.00 (Director of Public Works).
 - B. Consider approval of minutes for the November 7, 2023 Regular City Council meeting and the November 14, 2023 Special City Council meeting (Deputy City Secretary).

- C. Consider approval of an Interlocal Agreement between the City of Nacogdoches and the Texas Division of Emergency Management (TDEM) for purposes of granting a location to TDEM for the coordination of state emergency response, recovery, preparedness, and mitigation efforts. (City Manager)
6. REGULAR AGENDA: City Council will receive staff recommendations and public input on the following items, and may deliberate and take formal action on the item.
- A. Presentation and recognition of the outgoing City Engineer/Director of Public Works, Steve Bartlett (City Council)
 - B. Receive a report, hold a discussion and give staff direction regarding timelines for General Obligation Bond and Utility Infrastructure projects (City Engineer).
 - C. Consider approval of a resolution for the formation of a Capital Needs Advisory Committee for the purpose of evaluating the utility system needs of the City of Nacogdoches and making recommendations to the City Council regarding potential funding options, and discuss and appoint the initial members of the Committee (City Attorney).
7. EXECUTIVE SESSION: Executive Sessions are for City Council to receive information and deliberate on matters specified in Subchapter D of the Texas Open Meetings Act. Council may reconvene in open session to vote on the matter.
- A. Personnel Matters – Pursuant to Texas Government Code Section 551.074, deliberations regarding the appointment or employment of a public officer or employee. The subject of this executive session is City Engineer and Finance Director.
8. 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 November 22, 2023 at 3:00 p.m. and remained posted until the meeting convened.

Rhonda Lewis, Deputy City Secretary



City Council Meeting

Date: November 28, 2023

Agenda Item: 5.A.

PRESENTER: Steve Bartlett, Public Works Director

ITEM/SUBJECT: Consider approval of a contract by and between the City of Nacogdoches and Schaumburg & Polk, Inc. for professional engineering services for ARPA Drainage Improvements in a not-to-exceed amount of \$265,650.00 (Director of Public Works).

SUMMARY/BACKGROUND: The City of Nacogdoches received \$8,162,558 from the American Rescue Plan Act (ARPA) and these funds were originally budgeted to repair and replace various water and sewer lines. In July 2023, City Council approved a budget amendment to reallocate a portion of those funds towards improvements to the storm drainage system.

Schaumburg & Polk, Inc. (SPI), was one of two selected consultants for engineering services for these ARPA projects, specifically for drainage and sanitary sewer improvements. The contract for consideration is for engineering design, bidding and construction administration for drainage improvements on Kenbrook Drive and Colonial Drive, as well as bidding and construction administration services for several other previously designed storm drainage lines. This contract would be in the amount of \$265,650.00. There is an adequate budget to fund this contract.

FINANCIAL:

Item is budgeted:

Account No.: 24.26 680.31

Account Name: *Special Grant Funds – Drainage Capital*

Amount: \$ 2,900,000

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

Infrastructure

CITY CONTACT: Steve Bartlett, Director of Public Works
bartletts@nactx.us
(936) 559-2522

ATTACHMENTS: 1. Contract

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the Controlling Laws and Regulations.

AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE



ENGINEERS JOINT CONTRACT
DOCUMENTS COMMITTEE

and

Issued and Published Jointly by



AMERICAN COUNCIL OF ENGINEERING COMPANIES

ASSOCIATED GENERAL CONTRACTORS OF AMERICA

AMERICAN SOCIETY OF CIVIL ENGINEERS

PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
A Practice Division of the
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

This Agreement has been prepared for use with the Standard General Conditions of the Construction Contract (EJCDC C-700, 2007 Edition). Their provisions are interrelated, and a change in one may necessitate a change in the other. For guidance on the completion and use of this Agreement, see EJCDC User's Guide to the Owner-Engineer Agreement, EJCDC E-001, 2009 Edition.

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AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

THIS IS AN AGREEMENT effective as of _____ (“Effective Date”) between

City of Nacogdoches (“Owner”) and

Schaumburg & Polk, Inc. (SPI) (“Engineer”).

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:

ARPA Drainage Improvements (“Project”).

Engineer's services under this Agreement are generally identified as follows:

Design, Bid and Construction Phase Services for drainage upgrades

Owner and Engineer further agree as follows:

ARTICLE 1 – SERVICES OF ENGINEER

1.01 Scope

- A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A.

ARTICLE 2 – OWNER'S RESPONSIBILITIES

2.01 General

- A. Owner shall have the responsibilities set forth herein and in Exhibit B.
- B. Owner shall pay Engineer as set forth in Exhibit C.
- C. Owner shall be responsible for, and Engineer may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use such requirements, programs,

instructions, reports, data, and information in performing or furnishing services under this Agreement.

ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES

3.01 *Commencement*

- A. Engineer is authorized to begin rendering services as of the Effective Date.

3.02 *Time for Completion*

- A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided in Exhibit A and are hereby agreed to be reasonable.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- C. If Owner authorizes changes in the scope, extent, or character of the Project, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.
- E. If Engineer fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages, if any, resulting from such failure.

ARTICLE 4 – INVOICES AND PAYMENTS

4.01 *Invoices*

- A. *Preparation and Submittal of Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit C. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

4.02 *Payments*

- A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Engineer and then to principal.
- B. *Failure to Pay:* If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then:

amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and

Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.

- C. *Disputed Invoices:* If Owner contests an invoice, Owner shall promptly advise Engineer of the specific basis for doing so, may withhold only that portion so contested, and must pay the undisputed portion.
- D. *Legislative Actions:* If after the Effective Date any governmental entity takes a legislative action that imposes taxes, fees, or charges on Engineer's services or compensation under this Agreement, then the Engineer may invoice such new taxes, fees, or charges as a Reimbursable Expense to which a factor of 1.0 shall be applied. Owner shall reimburse Engineer for the cost of such invoiced new taxes, fees, and charges; such reimbursement shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C.

ARTICLE 5 – OPINIONS OF COST

5.01 *Opinions of Probable Construction Cost*

- A. Engineer's opinions of probable Construction Cost are to be made on the basis of Engineer's experience and qualifications and represent Engineer's best judgment as an experienced and qualified professional generally familiar with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, Owner must employ an independent cost estimator as provided in Exhibit B.

5.02 *Opinions of Total Project Costs*

- A. The services, if any, of Engineer with respect to Total Project Costs shall be limited to assisting the Owner in collating the various cost categories which comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.

ARTICLE 6 – GENERAL CONSIDERATIONS

6.01 *Standards of Performance*

- A. *Standard of Care:* The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same

time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services.

- B. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. *Consultants:* Engineer may employ such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- E. *Compliance with Laws and Regulations, and Policies and Procedures:*
 - 1. Engineer and Owner shall comply with applicable Laws and regulations.
 - 2. Prior to the Effective Date, Owner provided to Engineer in writing any and all policies and procedures of Owner applicable to Engineer's performance of services under this Agreement.- Engineer shall comply with such policies and procedures, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.
 - 3. This Agreement is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date. Changes after the Effective Date to these Laws and Regulations, or to Owner-provided written policies and procedures, may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation.
- F. Engineer shall not be required to sign any documents, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such documents.
- G. The general conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee.
- H. Engineer shall not at any time supervise, direct, control, or have authority over any contractor work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any

failure of a contractor to comply with Laws and Regulations applicable to such contractor's furnishing and performing of its work.

- I. Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.
- J. Engineer shall not provide or have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- K. Engineer shall not be responsible for the acts or omissions of any Contractor, Subcontractor, or Supplier, or of any of their agents or employees or of any other persons (except Engineer's own agents, employees, and Consultants) at the Site or otherwise furnishing or performing any Work; or for any decision made regarding the Contract Documents, or any application, interpretation, or clarification, of the Contract Documents, other than those made by Engineer.
- L. While at the Site, Engineer's employees and representatives shall comply with the specific applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

6.02 *Design Without Construction Phase Services*

- A. Engineer shall be responsible only for those Construction Phase services expressly required of Engineer in Exhibit A, Paragraph A1.05. With the exception of such expressly required services, Engineer shall have no design, Shop Drawing review, or other obligations during construction and Owner assumes all responsibility for the application and interpretation of the Contract Documents, review and response to Contractor claims, contract administration, processing Change Orders, revisions to the Contract Documents during construction, construction surety bonding and insurance requirements, construction observation and review, review of payment applications, and all other necessary Construction Phase engineering and professional services. Owner waives all claims against the Engineer that may be connected in any way to Construction Phase engineering or professional services except for those services that are expressly required of Engineer in Exhibit A, Paragraph A1.05.

6.03 *Use of Documents*

- A. All Documents are instruments of service in respect to this Project, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed. Owner shall not rely in any way on any Document unless it is in printed form, signed or sealed by the Engineer or one of its Consultants.
- B. Either party to this Agreement may rely that data or information set forth on paper (also known as hard copies) that the party receives from the other party by mail, hand delivery, or facsimile, are the items that the other party intended to send. Files in electronic media format of text, data, graphics, or other types that are furnished by one party to the other are furnished only for convenience, not reliance by the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between

the electronic files and the hard copies, the hard copies govern.

- C. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any transmittal errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files.
- D. When transferring documents in electronic media format, the transferring party makes no representations as to long-term compatibility, usability, or readability of such documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the documents' creator.
- E. Owner may make and retain copies of Documents for information and reference in connection with use on the Project by Owner. Engineer grants Owner a limited license to use the Documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment for all services relating to preparation of the Documents and subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Consultants; ~~(3) To the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Engineer; and~~ (4) such limited license to Owner shall not create any rights in third parties.
- F. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

6.04 Insurance

- A. Engineer shall procure and maintain insurance as set forth in Exhibit G, "Insurance." Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.
- ~~B. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, property damage (other than to the Work itself), motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Project. Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insureds with respect to such liability and other insurance purchased and maintained by Contractor for the Project.~~
- C. Owner and Engineer shall each deliver to the other certificates of insurance evidencing the

coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.

- D. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least 30 days prior written notice has been given to Owner and Engineer and to each other additional insured (if any) to which a certificate of insurance has been issued.

~~E. At any time, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit G will be supplemented to incorporate these requirements.~~

6.05 *Suspension and Termination*

A. *Suspension:*

By Owner: Owner may suspend the Project for up to 90 days upon seven days written notice to Engineer.

By Engineer: Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement if Engineer's performance has been substantially delayed through no fault of Engineer.

B. *Termination:* The obligation to provide further services under this Agreement may be terminated:

1. For cause,

By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

By Engineer:

- 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
- 2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control.
- 3) Engineer shall have no liability to Owner on account of such termination.

Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.05.B.1-a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

For convenience,

By Owner effective upon Engineer's receipt of notice from Owner.

- C. *Effective Date of Termination:* The terminating party under Paragraph 6.05.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.
- D. *Payments Upon Termination:*
1. In the event of any termination under Paragraph 6.05, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.E.
 2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.05.D.1, to invoice Owner and to payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using hourly rates as set forth in Exhibit C.

6.06 *Controlling Law*

- A. This Agreement is to be governed by the law of the state of Texas.
- B. Any controversy or claim arising out of or relating to this Agreement or breach thereof shall be settled in the federal and state courts in Nacogdoches County, Texas.

6.07 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.07.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise in this Agreement:

Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Contractor, Subcontractor, Supplier, other individual or entity, or to any surety for or employee of any of them.

All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.

Owner agrees that the substance of the provisions of this Paragraph 6.07.C shall appear in the Contract Documents.

6.08 *Dispute Resolution*

- A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit H or other provisions of this Agreement, or exercising their rights under law.
- B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.08.A, then either or both may invoke the procedures of Exhibit H. If Exhibit H is not included, or if no dispute resolution method is specified in Exhibit H, then the parties may exercise their rights under law.

6.09 *Environmental Condition of Site*

- A. Owner has disclosed to Engineer in writing the existence of all known and suspected Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, hazardous substances, and other Constituents of Concern located at or near the Site, including type, quantity, and location.
- B. Owner represents to Engineer that to the best of its knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at the Site.
- C. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
- D. It is acknowledged by both parties that Engineer's scope of services does not include any services related to Constituents of Concern. If Engineer or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (1) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.
- E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on 30 days notice.
- F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner" "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

6.10 *Indemnification and Mutual Waiver*

- A. ***Indemnification by Engineer:*** To the fullest extent permitted by law, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants, and employees from reasonable claims, costs, losses, and damages arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants. This indemnification provision is subject to and limited by the provisions, if any, agreed to by Owner and Engineer in Exhibit I, "Limitations of Liability."

~~B. *Indemnification by Owner:* To the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants as required by Laws and Regulations and to the extent (if any) required in Exhibit I, Limitations of Liability.~~

C. *Environmental Indemnification:* To the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, and all court, arbitration, or other dispute resolution costs) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (1) any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (2) nothing in this paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.

D. *Percentage Share of Negligence:* To the fullest extent permitted by law, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.

E. *Mutual Waiver:* To the fullest extent permitted by law, Owner and Engineer waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project.

6.11 *Miscellaneous Provisions*

A. *Notices:* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by facsimile, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.

B. *Survival:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

C. *Severability:* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

D. *Waiver:* A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

- E. *Accrual of Claims*: To the fullest extent permitted by law, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.

ARTICLE 7 – DEFINITIONS

7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following provisions:

Additional Services – The services to be performed for or furnished to Owner by Engineer in accordance with Part 2 of Exhibit A of this Agreement.

Agreement – This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.

Asbestos – Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

Basic Services – The services to be performed for or furnished to Owner by Engineer in accordance with Part 1 of Exhibit A of this Agreement.

Construction Contract – The entire and integrated written agreement between Owner and Contractor concerning the Work.

Construction Cost – The cost to Owner of those portions of the entire Project designed or specified by Engineer. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to properties; Owner's costs for legal, accounting, insurance counseling or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement. Construction Cost is one of the items comprising Total Project Costs.

Constituent of Concern – Any substance, product, waste, or other material of any nature whatsoever (including, but not limited to, Asbestos, Petroleum, Radioactive Material, and PCBs) which is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§1801 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; and (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

Consultants – Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer's independent professional associates and consultants; subcontractors; or vendors.

Contract Documents – Those items so designated in the Construction Contract, including the Drawings, Specifications, construction agreement, and general and supplementary conditions. Only printed or hard copies of the items listed in the Construction Contract are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.

Contractor – The entity or individual with which Owner has entered into a Construction Contract.

Documents – Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.

Drawings – That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings are not Drawings as so defined.

Effective Date – The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.

Engineer – The individual or entity named as such in this Agreement.

Hazardous Waste – The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

Laws and Regulations; Laws or Regulations – Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

Owner – The individual or entity with which Engineer has entered into this Agreement and for which the Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning the Project.

PCBs – Polychlorinated biphenyls.

Petroleum – Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-hazardous waste and crude oils.

Project – The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.

Radioactive Material – Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

Record Drawings – Drawings depicting the completed Project, prepared by Engineer as an Additional Service and based solely on Contractor's record copy of all Drawings, Specifications, addenda, change orders, work change directives, field orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.

Reimbursable Expenses – The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic and Additional Services for the Project.

Resident Project Representative – The authorized representative of Engineer assigned to assist Engineer at the Site during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative agreed to by Owner. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D.

Samples – Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

Shop Drawings – All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.

Site – Lands or areas to be indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.

Specifications – That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.

Subcontractor – An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.

Substantial Completion – The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

Supplier – A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or Subcontractor.

Total Project Costs – The sum of the Construction Cost, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner's costs for legal, accounting, insurance counseling and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement.

Work – The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

8.01 *Exhibits Included:*

- A. Exhibit A, Engineer's Services.
- B. Exhibit B, Owner's Responsibilities.
- C. Exhibit C, Payments to Engineer for Services and Reimbursable Expenses.
- D. Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative.
- E. Exhibit E, Not Included
- F. Exhibit F, Not Included
- G. Exhibit G, Insurance.
- H. Exhibit H, Dispute Resolution.
- I. Exhibit I, Limitations of Liability.
- J. Exhibit J, Not Included
- K. Exhibit K, Amendment to Owner-Engineer Agreement.
- L. Exhibit L, Coronavirus State and Local Fiscal Recovery Funds Addendum
- M. Exhibit M, Not Included

8.02 *Total Agreement:*

- A. This Agreement, (together with the exhibits identified above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This

Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument based on the format of Exhibit K to this Agreement.

8.03 *Designated Representatives:*

- A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such an individual shall have authority to transmit instructions, receive information, and render decisions relative to the Project on behalf of the respective party whom the individual represents.

8.04 *Engineer's Certifications:*

- A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:

"corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the selection process or in the Agreement execution;

"fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;

"coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

8.05 *Scanned Reproductions*

- A. The parties agree and stipulate that the original of this Agreement, including the signature page and any attachments, may be scanned and stored in a computer database or similar device, and that any printout or other output readable by sight, the reproduction of which is shown to accurately reproduce the original, may be used for any purpose just as if it were the original, including proof of the content of the original writing.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

OWNER: City of Nacogdoches

By: _____

Name: Steve Bartlett, P.E.

Title: Director of Public Works

Date Signed: _____

Address for giving notices:

City of Nacogdoches

202 East Pilar Street

Nacogdoches, TX 75961

Designated Representative (Paragraph 8.03.A):

Steve Bartlett, P.E.

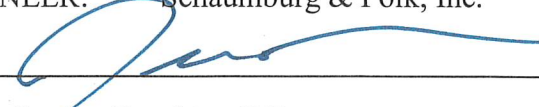
Title: Director of Public Works

Phone Number: _____

Facsimile Number: _____

E-Mail Address: bartletts@nactx.us

ENGINEER: Schaumburg & Polk, Inc.

By: 

Name: Jeremy Buechter, P.E.

Title: Executive Vice President

Date
Signed: 03/21/2023

Engineer License or Firm's
Certificate Number: F-520

State of: Texas

Address for giving notices:

Schaumburg & Polk, Inc.

320 S. Broadway Ave, Suite 200

Tyler, TX 75702

Designated Representative (Paragraph 8.03.A):

Jeremy Buechter, P.E.

Title: Executive Vice President

Phone Number: 903-595-3913

Facsimile Number: 903-595-2093

E-Mail Address: jbuechter@spi-eng.com

This is **EXHIBIT A**, consisting of 13 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____.

Engineer's Services

Article 1 of the Agreement is supplemented to include the following agreement of the parties.

Engineer shall provide Basic and Additional Services as set forth below.

PART 1 – BASIC SERVICES

The project generally includes Easement Preparation and Bidding and Construction Phase Services proposed drainage improvements documented in the planset dated April 14, 2022 and the planset dated October 14, 2022.

General Areas of Upgrade Include:

- Logansport Street
- Burk Street
- Perry Drive
- Humphrey Road
- Old Lufkin Road
- Colonial Hills

The project will also include design for drainage improvements impacting Colonial Hills and Kenbrook Drive with upgrades generally located along Ridgebrook Drive. This will consist of:

- Add Storm Drainage Pipe and Inlets to existing concrete curb and gutter street (along Ridgebrook)
- Curb or grate inlet structures replaced/added on both sides of Ridgebrook Dr.
- Possible flanking curb inlet structures added to Ridgebrook Dr.
- Street and curb/gutter repair to Ridgebrook over proposed infrastructure.
- Add storm drainage pipe and inlets and regarde upstream drainage of existing lots 6,7,8,

in Section 1.

- Route storm drain to Colonial Drive and discharge into existing drainage infrastructure.

A1.01 *Study and Report Phase – No Study and Report Phase Included in this Contract*

A1.02 *Preliminary Design Phase -*

A. Preliminary Design Phase is limited to easement preparation.

1. Conduct necessary survey field work and property research as required to properly locate the easements on the ground.
2. Prepare survey plats for permanent and temporary easements and field note descriptions for permanent easements to be included in the Easement Agreement documents (prepared by the City). We typically refer to these documents as Exhibits A and B.
3. The Plans identify seven(7) permanent easements and twelve(12) temporary easements over twelve(12) separate properties are required for the proposed improvements.
4. One-time staking of the temporary construction easement limits prior to contractor mobilization

A1.03 *Final Design Phase - No Final Design Phase Included in this Contract*

A1.04 *Bidding or Negotiating Phase*

- A. After acceptance by Owner of the bidding documents and the most recent opinion of probable Construction Cost, and upon written authorization by Owner to proceed, Engineer shall (for a single or up to two separate construction contracts, depending on packaging of final plans):

Assist Owner in advertising for and obtaining bids or proposals for the Work and, where applicable, maintain a record of prospective bidders to whom Bidding Documents have been issued, attend pre-bid conferences, if any, and receive and process contractor deposits or charges for the bidding documents.

Issue addenda as appropriate to clarify, correct, or change the bidding documents.

Provide information or assistance needed by Owner in the course of any negotiations with prospective contractors.

Consult with Owner as to the acceptability of subcontractors, suppliers, and other individuals and entities proposed by prospective contractors for those portions of the Work as to which such acceptability is required by the bidding documents.

If bidding documents require, the Engineer shall evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by bidders,

Attend the Bid opening, prepare Bid tabulation sheets, and assist Owner in evaluating Bids or proposals and in assembling and awarding contracts for the Work.

Perform or provide the following additional Bidding or Negotiating Phase tasks or deliverables: None

- ~~B.~~ The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective contractors.

A1.05 *Construction Phase*

- A. Upon successful completion of the Bidding and Negotiating Phase, and upon written authorization from Owner, Engineer shall:

General Administration of Construction Contract: Consult with Owner and act as Owner's representative as provided in the Construction Contract. The extent and limitations of the duties, responsibilities, and authority of Engineer as assigned in the Construction Contract shall not be modified, except as Engineer may otherwise agree in writing. All of Owner's instructions to Contractor will be issued through Engineer, which shall have authority to act on behalf of Owner in dealings with Contractor to the extent provided in this Agreement and the Construction Contract except as otherwise provided in writing.

Selecting Independent Testing Laboratory: Assist Owner in the selection of an independent testing laboratory to perform the services identified in Exhibit B, Paragraph B2.01.0.

Pre-Construction Conference: Participate in a Pre-Construction Conference prior to commencement of Work at the Site.

Schedules: Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.

Baselines and Benchmarks: As appropriate, establish baselines and benchmarks for locating the Work which in Engineer's judgment are necessary to enable Contractor to proceed.

Visits to Site and Observation of Construction: In connection with observations of Contractor's Work while it is in progress: Anticipated as not to exceed 8hrs per week for 40 weeks for all construction combined (whether released as one or two projects).

Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, to observe as an experienced and qualified design professional the progress of Contractor's executed Work. Such visits and observations by Engineer, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of Contractor's Work in progress or to involve detailed inspections of Contractor's Work in progress beyond the responsibilities specifically assigned to Engineer in this Agreement and the Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment, as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.

The purpose of Engineer's visits to, and representation by the Resident Project Representative, if any, at the Site, will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Engineer shall not, during such visits or as a result of such observations of Contractor's Work in progress, supervise, direct, or have control over Contractor's Work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety at the Site, for safety precautions and programs incident to Contractor's Work, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work. Accordingly, Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish or perform the Work in accordance with the Contract Documents.

Defective Work: Reject Work if, on the basis of Engineer's observations, Engineer believes that such Work (a) is defective under the standards set forth in the Contract Documents, (b) will not produce a completed Project that conforms to the Contract Documents, or (c) will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

Clarifications and Interpretations; Field Orders: Issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of Contractor's work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents. Subject to any limitations in the Contract Documents, Engineer may issue field orders authorizing minor variations in the Work from the requirements of the Contract Documents.

Change Orders and Work Change Directives: Recommend change orders and work change directives to Owner, as appropriate, and prepare change orders and work change directives as required.

Shop Drawings and Samples: Review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Engineer shall meet any Contractor's submittal schedule that Engineer has accepted.

Substitutes and "or-equal": Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor.

Inspections and Tests: Require such special inspections or tests of Contractor's work as

deemed reasonably necessary, and receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Contract Documents. Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Contract Documents. Engineer shall be entitled to rely on the results of such tests.

Disagreements between Owner and Contractor: Render formal written decisions on all duly submitted issues relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract Documents pertaining to the execution, performance, or progress of Contractor's Work; review each duly submitted Claim by Owner or Contractor, and in writing either deny such Claim in whole or in part, approve such Claim, or decline to resolve such Claim if Engineer in its discretion concludes that to do so would be inappropriate. In rendering such decisions, Engineer shall be fair and not show partiality to Owner or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.

Applications for Payment: Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:

Determine the amounts that Engineer recommends Contractor be paid. Such recommendations of payment will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, to the best of Engineer's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe Contractor's Work. In the case of unit price work, Engineer's recommendations of payment will include final determinations of quantities and classifications of Contractor's Work (subject to any subsequent adjustments allowed by the Contract Documents).

By recommending any payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement and the Contract Documents. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control Contractor's Work in progress or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Engineer

to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or to determine that title to any portion of the Work in progress, materials, or equipment has passed to Owner free and clear of any liens, claims, security interests, or encumbrances, or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.

Contractor's Completion Documents: Receive, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Contract Documents, certificates of inspection, tests and approvals, Shop Drawings, Samples and other data approved and transmit the annotated record documents which are to be assembled by Contractor in accordance with the Contract Documents to obtain final payment

Substantial Completion: Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, visit the Project to determine if the Work is substantially complete. If after considering any objections of Owner, Engineer considers the Work substantially complete, Engineer shall deliver a certificate of Substantial Completion to Owner and Contractor.

Additional Tasks: Perform or provide the following additional Construction Phase tasks or deliverables: None.

Final Notice of Acceptability of the Work: Conduct a final visit to the Project to determine if the completed Work of Contractor is acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also provide a notice that the Work is to the best of Engineer's knowledge, information, and belief and based on the extent of the services provided by Engineer under this Agreement.

- B. *Duration of Construction Phase:* The Construction Phase will commence with the execution of the first Construction Contract for the Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractors. If the Project involves more than one prime contract as indicated in Paragraph A1.03.C, then Construction Phase services may be rendered at different times in respect to the separate contracts. Subject to the provisions of Article 3, Engineer shall be entitled to an equitable increase in compensation if Construction Phase services (including Resident Project Representative services, if any) are required after the original date for completion and readiness for final payment of Contractor as set forth in the Construction Contract.
- C. *Limitation of Responsibilities:* Engineer shall not be responsible for the acts or omissions of any Contractor, Subcontractor or Supplier, or other individuals or entities performing or furnishing any of the Work, for safety or security at the Site, or for safety precautions and programs incident to Contractor's Work, during the Construction Phase or otherwise. Engineer shall not be responsible for the failure of any Contractor to perform or furnish the Work in accordance with the Contract Documents.

A1.06 *Post-Construction Phase*

- A. Upon written authorization from Owner during the Post-Construction Phase Engineer shall:
- Together with Owner, visit the Project to observe any apparent defects in the Work, assist Owner in consultations and discussions with Contractor concerning correction of any such defects, and make recommendations as to replacement or correction of defective Work, if any.
 - Together with Owner or Owner's representative, visit the Project within one month before the end of the correction period to ascertain whether any portion of the Work is subject to correction.
1. Perform or provide the following additional Post-Construction Phase tasks or deliverables:
None
- B. The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Exhibit A, will terminate twelve months after the commencement of the Construction Contract's correction period.

PART 2 – ADDITIONAL SERVICES

A2.01 Additional Services Requiring Owner's Written Authorization

- A. If authorized in writing by Owner in Attachment A-1 or in subsequent Amendments to this Agreement, Engineer shall furnish or obtain from others Additional Services of the types listed below.

Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.

Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner or others.

Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Engineer or its design requirements including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date or are due to any other causes beyond Engineer's control.

Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.

Undertaking investigations and studies including, but not limited to, detailed consideration of operations, maintenance, and overhead expenses; the preparation of financial feasibility and

cash flow studies, rate schedules, and appraisals; assistance in obtaining financing for the Project; evaluating processes available for licensing, and assisting Owner in obtaining process licensing; detailed quantity surveys of materials, equipment, and labor; and audits or inventories required in connection with construction performed by Owner.

Furnishing services of Consultants for other than Basic Services.

Services attributable to more prime construction contracts than specified in Paragraph A1.03.D.

Services during out-of-town travel required of Engineer other than for visits to the Site or Owner's office.

Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructibility review requested by Owner; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other Bidding Documents as a result of such review processes.

Preparing additional Bidding Documents or Contract Documents for alternate bids or prices requested by Owner for the Work or a portion thereof.

Assistance in connection with Bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services

Providing construction surveys and staking to enable Contractor to perform its work and any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.

Providing Construction Phase services beyond the original date for completion and readiness for final payment of Contractor.

Providing assistance in responding to the presence of any Constituent of Concern at the Site, in compliance with current Laws and Regulations.

Preparing Record Drawings showing appropriate record information based on Project annotated record documents received from Contractor, and furnishing such Record Drawings to Owner.

Preparation of operation and maintenance manuals.

Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, or other dispute resolution process related to the Project.

Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner.

Assistance in connection with the adjusting of Project equipment and systems.

Assistance to Owner in training Owner's staff to operate and maintain Project equipment and systems.

1. Assistance to Owner in developing procedures for (a) control of the operation and maintenance of Project equipment and systems, and (b) related record-keeping.

Overtime work requiring higher than regular rates.

Other services performed or furnished by Engineer not otherwise provided for in this Agreement.

Providing the services of a Resident Project Representative (RPR) at the Site to assist the Engineer and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth in Exhibit D. The furnishing of such RPR's services will not limit, extend, or modify Engineer's responsibilities or authority except as expressly set forth in Exhibit D.

A2.02 *Additional Services Not Requiring Owner's Written Authorization*

- A. Engineer shall advise Owner in advance that Engineer will immediately commence to perform or furnish the Additional Services of the types listed below. For such Additional Services, Engineer need not request or obtain specific advance written authorization from Owner. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice from Owner.

Services in connection with work change directives and change orders to reflect changes requested by Owner.

Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or-equal" items; services after the award of the Construction Contract in evaluating and determining the acceptability of a proposed "or equal" or substitution which is found to be inappropriate for the Project; evaluation and determination of an excessive number of proposed "or equals" or substitutions, whether proposed before or after award of the Construction Contract.

Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.

Additional or extended services during construction made necessary by (1) emergencies or acts of God endangering the Work (advance notice not required), (2) the presence at the Site of any Constituent of Concern or items of historical or cultural significance, (3) Work damaged by fire or other cause during construction, (4) a significant amount of defective, neglected, or delayed work by Contractor, (5) acceleration of the progress schedule involving services beyond normal working hours, or (6) default by Contractor.

Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of any part of the Work by Owner prior to Substantial Completion.

Evaluating an unreasonable claim or an excessive number of claims submitted by Contractor or others in connection with the Work.

Services during the Construction Phase rendered after the original date for completion of the Work referred to in A1.05.B.

Reviewing a Shop Drawing more than three times, as a result of repeated inadequate submissions by Contractor.

While at the Site, compliance by Engineer and its staff with those terms of Owner's or Contractor's safety program provided to Engineer subsequent to the Effective Date that exceed those normally required of engineering personnel by federal, state, or local safety authorities for similar construction sites.

PART 3 – SCHEDULE

A3.01 Times for rendering the services described in this Agreement are as follows.

Item	Calendar Days From Notice to Proceed
Notice to Proceed from Owner to SPI	0
Complete Design Phase (easement documentation)	180
Time for City to Acquire Easements	240
Compile Bids and Recommend Award	300
Anticipated Start of Construction	330
Anticipated Construction Completion	500

Note:

Should review times exceed those identified above, the project schedule will be extended accordingly.

This is **Attachment A-1 to EXHIBIT A**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____.

Additional Services of Engineer

- A. Additional Services of ENGINEER: As noted below, the ENGINEER is hereby authorized to perform the following additional services as outlined in Exhibit A – Paragraphs 2.01 and 2.02:

Included	Excluded		
☐	☐	a.	Design Survey
☐	☐	b.	Grant or Loan Application
☐	☐	c.	Storm Water Pollution Prevention Plan
☐	☐	d.	Environmental Assessment
☐	☐	e.	Environmental Information Document
☐	☐	f.	Resident Project Representative Services
☐	☐	g.	Construction Staking
☐	☐	h.	Geotechnical Investigation
☐	☐	i.	Materials Testing
☐	☐	j.	Analytical Testing
☐	☐	k.	Reimbursable Expenses (Mileage, Printing, Postage & etc.)
☐	☐	l.	Easement or Boundary Surveys
☐	☐	m.	Easement or Boundary Descriptions
☐	☐	n.	Land Acquisition Services
☐	☐	o.	TxDOT Utility Permits
☐	☐	p.	Operation and Maintenance Manual
☐	☐	q.	Other:
☐	☐	r.	Other:
☐	☐	s.	Other:
☐	☐	t.	Other:
☐	☐	u.	Other:
☐	☐	v.	Other:
☐	☐	w.	Other:

Fees associated with Authorized Additional Services are shown in Exhibit C.

This is **EXHIBIT B**, consisting of 3 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____.

Owner's Responsibilities

Article 2 of the Agreement is supplemented to include the following agreement of the parties.

B2.01 In addition to other responsibilities of Owner as set forth in this Agreement and unless otherwise provided in Exhibit A, Owner shall at its expense:

- A. Provide Engineer with all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which Owner will require to be included in the Drawings and Specifications; and furnish copies of Owner's standard forms, conditions, and related documents for Engineer to include in the Bidding Documents, when applicable.
- B. Furnish to Engineer any other available information pertinent to the Project including reports and data relative to previous designs, or investigation at or adjacent to the Site.
- C. Following Engineer's assessment of initially-available Project information and data and upon Engineer's request, furnish or otherwise make available such additional Project related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:

Property descriptions.

Zoning, deed, and other land use restrictions.

Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.

Explorations and tests of subsurface conditions at or contiguous to the Site, drawings of physical conditions relating to existing surface or subsurface structures at the Site, or hydrographic surveys, with appropriate professional interpretation thereof.

Environmental assessments, audits, investigations, and impact statements, and other relevant environmental or cultural studies as to the Project, the Site, and adjacent areas.

Data or consultations as required for the Project but not otherwise identified in the Agreement or the Exhibits thereto.

- D. Give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of the presence at the Site of any Constituent of Concern, or of any other development that affects the scope or time of performance of Engineer's services, or any defect or nonconformance in Engineer's services, the Work, or in the performance of any Contractor.
- E. Authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement as required.

- F. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.
- G. Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, insurance counselor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
- H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.
- I. Recognizing and acknowledging that Engineer's services and expertise do not include the following services, provide, as required for the Project:
 - Accounting, bond and financial advisory, independent cost estimating, and insurance counseling services.
 - Legal services with regard to issues pertaining to the Project as Owner requires, Contractor raises, or Engineer reasonably requests.
 - Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the moneys paid.
- J. Place and pay for advertisement for Bids in appropriate publications.
- K. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructibility review.
- L. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for Owner so that Engineer may assist Owner in collating the various cost categories which comprise Total Project Costs.
- M. If Owner designates a construction manager or an individual or entity other than, or in addition to, Engineer to represent Owner at the Site, define and set forth as an attachment to this Exhibit B the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.
- N. If more than one prime contract is to be awarded for the Work designed or specified by Engineer, designate a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors, and define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of Engineer as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such services begin.
- O. Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Substantial Completion and final payment visits to the Project.

- P. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Contract Documents, or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof.
- Q. Provide Engineer with the findings and reports generated by the entities providing services to Owner pursuant to this paragraph.
- R. Inform Engineer in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.
- S. Perform or provide the following additional services: None

This is **EXHIBIT C**, consisting of 3 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____.

Payments to Engineer for Services and Reimbursable Expenses

Article 2 of the Agreement is amended and supplemented to include the following agreement of the parties:

ARTICLE 2 – OWNER'S RESPONSIBILITIES

C2.01 Method of Payment

A. Owner shall pay Engineer for services in accordance with one or more of the following methods as identified in Attachment C-1:

1. Method A: Lump Sum
2. Method B: Standard Hourly Rates

C2.02 Explanation of Methods

A. Method A – Lump Sum

1. Owner shall pay Engineer a Lump Sum amount for the specified category of services.
2. The Lump Sum will include compensation for Engineer's services, services of Consultants, and reimbursable expenses, if any. Appropriate amounts will be incorporated in the Lump Sum to account for labor, overhead, profit, and Reimbursable Expenses.
3. The portion of the Lump Sum amount billed for Engineer's services will be based upon Engineer's estimate of the proportion of the total services actually completed during the billing period to the Lump Sum.

B. Method B – Standard Hourly Rates

1. For the specified category of services, the Owner shall pay Engineer an amount equal to the cumulative hours charged to the Specific Project by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class for all services performed on the Specific Project, plus Reimbursable Expenses and Consultant's charges, if any.
2. Standard Hourly Rates include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
3. Engineer's Standard Hourly Rates and Reimbursable Expenses Schedule are attached to this Exhibit as Attachment C-2.

4. The total estimated compensation for the specified category of services shall be stated in the Task Order. This total estimated compensation will incorporate all labor at Standard Hourly Rates, Reimbursable Expenses, and Consultants' charges, if any.
5. The amounts billed will be based on the cumulative hours charged to the specified category of services on the Specific Project during the billing period by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class, plus Reimbursable Expenses and Engineer's Consultant's charges, if any.
6. The Standard Hourly Rates and Reimbursable Expenses Schedule shall be adjusted annually to reflect equitable changes in the compensation payable to Engineer.

C2.03 Reimbursable Expenses

Costs incurred by Engineer in the performance of the Task Order in the following categories constitute Reimbursable Expenses:

- A. Transportation and subsistence incidental thereto; advertisements, postage, and shipping costs; providing and maintaining field office facilities including furnishings and utilities; subsistence and transportation of Resident Project Representative and their assistants; toll telephone calls, faxes, and telegrams; and reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Specific Project-related items in addition to those required under Exhibit A. If authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for computer time and the use of other highly specialized equipment. Reimbursable expenses shall be paid at rates set forth in Attachment C-1 to this Exhibit C which shall be adjusted annually (as of the date of the Agreement) to reflect equitable changes in the rates.
- B. The amounts payable to Engineer for Reimbursable Expenses will be the project-specific internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to a Specific Project, the latter multiplied by a Factor of 1.0.

C2.04 Consultant Charges

- A. The amount payable to Engineer for Additional Services performed by the Engineer's Consultants shall be equal to 1.15 times the consultant's charges for these services.

C2.05 Serving as a Witness

- A. For services performed by Engineer's employees as witnesses giving testimony in any litigation, arbitration or other legal or administrative proceeding, a rate of 1.5 times the witness's standard hourly rate will be assessed. Compensation for Consultants for such services will be by reimbursement of Consultants' reasonable charges to Engineer for such services.

C2.06 Other Provisions Concerning Payment

- A. *Extended Contract Times.* Should the Contract Times to complete the Work be extended beyond the period stated in the Task Order, payment for Engineer's services shall be continued based on the Standard Hourly Rates Method of Payment.
- B. *Estimated Compensation Amounts*

1. Engineer's estimate of the amounts that will become payable for services provided on the basis of hourly rates and reimbursable expenses are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.
2. When estimated compensation amounts have been stated and it subsequently becomes apparent to Engineer that a compensation amount thus estimated will be exceeded, Engineer shall give Owner written notice thereof. Promptly thereafter Owner and Engineer shall review the matter of services remaining to be performed and compensation for such services. Owner shall either agree to such compensation exceeding said estimated amount or Owner and Engineer shall agree to a reduction in the remaining services to be rendered by Engineer so that total compensation for such services will not exceed said estimated amount when such services are completed. If Engineer exceeds the estimated amount before Owner and Engineer have agreed to an increase in the compensation due Engineer or a reduction in the remaining services, the Engineer shall give written notice thereof to Owner and shall be paid for all services rendered thereafter.

This is **Attachment C-1 to EXHIBIT C**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____.

Services and Fees

Work Task	Study & Report Phase	Preliminary Design Phase	Final Design Phase	Bidding Phase	Construction Phase (See Note Two)	Commissioning Phase	Total	Payment Method (See Note 1)
Basic Services	N/A	71,250	46,600	12,800	135,000		265,650	Lump Sum
Subtotal	0.00	71,250	46,600	12,800	135,000	0.00	\$265,650	

								Hourly Rate and Reimbursable Expenses
Subtotal	0	0.00	0.00	0.00	0.00	0.00	0	
Total	0	0.00	0.00	0.00	0.00	0.00	0	

Notes:

¹ Fees shown for services to be provided on the basis of Hourly Rates and Reimbursable Expenses are estimated only and are not considered lump sum or not-to-exceed values.

² Construction Phase Basic Service assumes a construction period of 280 consecutive calendar days. ENGINEER’s work on this phase beyond the construction period will be billed at hourly rates.

This is **Attachment C-2** to **EXHIBIT C**, consisting of 1 pages, referred to in and part of the **Standard Form of Agreement between Owner and Engineer for Professional Services**, dated _____.



2023 SCHEDULE OF HOURLY RATES and EXPENSES

ADMINISTRATIVE ASSISTANT	\$75.00 /HOUR
SURVEY CREW	\$180.00 /HOUR
SURVEYOR I	\$60.00 /HOUR
SURVEYOR II	\$80.00 /HOUR
SURVEYOR III	\$100.00 /HOUR
SURVEYOR IV	\$120.00 /HOUR
SURVEYOR TECH	\$105.00 /HOUR
RPLS	\$170.00 /HOUR
CONSTRUCTION REPRESENTATIVE I	\$85.00 /HOUR
CONSTRUCTION REPRESENTATIVE II	\$110.00 /HOUR
CONSTRUCTION REPRESENTATIVE III	\$135.00 /HOUR
DESIGN TECHNICIAN I	\$90.00 /HOUR
DESIGN TECHNICIAN II	\$100.00 /HOUR
DESIGN TECHNICIAN III	\$120.00 /HOUR
DESIGN TECHNICIAN IV	\$145.00 /HOUR
ENGINEER I / II	\$115.00 /HOUR
ENGINEER III	\$135.00 /HOUR
ENGINEER IV	\$155.00 /HOUR
ENGINEER V	\$185.00 /HOUR
ENGINEER VI	\$220.00 /HOUR
ENGINEER VII	\$250.00 /HOUR
ENGINEER VIII	\$265.00 /HOUR
ENGINEER IX	\$280.00 /HOUR

REIMBURSABLE EXPENSES		
Mileage		IRS Allowable Rate
Travel and Meals		Actual Cost x 1.10
Misc. Reimbursable Expenses		Actual Cost x 1.10

OUTSIDE CONSULTANT RATES		
Associate Engineer	Civil, Electrical, Env	up to \$225.00/HOUR
Subconsultants		Actual Cost x 1.10

Schaumburg & Polk, Inc. furnishes General Liability Insurance, Professional Liability Insurance and State of Texas mandatory limits of Worker's Compensation insurance.

Preparation for and furnishing expert witness testimony will be billed at three times the hourly rates shown above for the various classifications.

Rates Effective: January 1, 2023 (*adjusted annually*)

This is **EXHIBIT D**, consisting of 1 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____.

Duties, Responsibilities, and Limitations of Authority of Resident Project Representative

Article 1 of the Agreement is supplemented to include the following agreement of the parties:

D1.01 *Resident Project Representative* **- No RPR Included in this Contract**

Insurance

Paragraph 6.04 of the Agreement is amended and supplemented to include the following agreement of the parties.

G6.04 Insurance

A. The limits of liability for the insurance required by Paragraphs 6.04.A and 6.04.B of the Agreement are as follows:

~~1.~~ *By Engineer:*

- | | | |
|----|---|-------------|
| a. | Workers' Compensation: | Statutory |
| b. | Employer's Liability – | |
| | 1) Each Accident: | \$500,000 |
| | 2) Disease, Policy Limit: | \$500,000 |
| | 3) Disease, Each Employee: | \$500,000 |
| c. | General Liability – | |
| | 1) Each Occurrence
(Bodily Injury and Property Damage): | \$1,000,000 |
| | 2) General Aggregate: | \$2,000,000 |
| d. | Excess or Umbrella Liability – | |
| | 1) Each Occurrence: | \$2,000,000 |
| | 2) General Aggregate: | \$2,000,000 |
| e. | Automobile Liability – | |
| | 1) Combined Single Limit
(Bodily Injury and Property Damage):
Each Accident | \$1,000,000 |
| f. | Professional Liability – | |

- | | | |
|----|------------------------|-------------|
| | 1) Each Claim Made: | \$1,000,000 |
| | 2) Annual Aggregate: | \$2,000,000 |
| g. | Other (specify): _____ | \$_____ |
2. *By Owner:*
- | | | |
|----|---|-------------|
| a. | Workers' Compensation: | Statutory |
| b. | Employer's Liability – | |
| | 1) Each Accident | \$500,000 |
| | 2) Disease, Policy Limit | \$500,000 |
| | 3) Disease, Each Employee | \$500,000 |
| c. | General Liability – | |
| | 1) General Aggregate: | \$2,000,000 |
| | 2) Each Occurrence (Bodily Injury
and Property Damage): | \$1,000,000 |
| d. | Excess Umbrella Liability -- | |
| | 1) Each Occurrence: | \$2,000,000 |
| | 2) General Aggregate: | \$2,000,000 |
| e. | Automobile Liability – | |
| | 1) Combined Single Limit
(Bodily Injury and Property Damage):
Each Accident | \$1,000,000 |
| f. | Other (specify): _____ | \$_____ |

This is **EXHIBIT H**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____.

Dispute Resolution

Paragraph 6.08 of the Agreement is amended and supplemented to include the following agreement of the parties:

H6.08 Dispute Resolution

- A. *Mediation*: Owner and Engineer agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof (“Disputes”) to mediation. Owner and Engineer agree to participate in the mediation process in good faith. The process shall be conducted on a confidential basis, and shall be completed within 120 days. If such mediation is unsuccessful in resolving a Dispute, then (1) the parties may mutually agree to a dispute resolution of their choice, or (2) either party may seek to have the Dispute resolved by a court of competent jurisdiction.

This is **EXHIBIT I**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____.

Limitations of Liability

Paragraph 6.10 of the Agreement is supplemented to include the following agreement of the parties:

A. Limitation of Engineer's Liability

1. *Engineer's Liability Limited to Amount of Insurance Proceeds:* Engineer shall procure and maintain insurance as required by and set forth in Exhibit G to this Agreement. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, and Consultants to Owner and anyone claiming by, through, or under Owner for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied, of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants (hereafter "Owner's Claims"), shall not exceed the total insurance proceeds paid on behalf of or to Engineer by Engineer's insurers in settlement or satisfaction of Owner's Claims under the terms and conditions of Engineer's insurance policies applicable thereto (excluding fees, costs and expenses of investigation, claims adjustment, defense, and appeal). If no such insurance coverage is provided with respect to Owner's Claims, then the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, and Consultants to Owner and anyone claiming by, through, or under Owner for any and all such uninsured Owner's Claims shall not exceed \$1,000,000.
2. *Exclusion of Special, Incidental, Indirect, and Consequential Damages:* To the fullest extent permitted by law, and notwithstanding any other provision in the Agreement, consistent with the terms of Paragraph 6.10. the Engineer and Engineer's officers, directors, members, partners, agents, Consultants, and employees shall not be liable to Owner or anyone claiming by, through, or under Owner for any special, incidental, indirect, or consequential damages whatsoever arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to any such damages caused by the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants, ~~and including but not limited to:~~

- B. *Indemnification by Owner:* To the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not

limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Owner or Owner's officers, directors, members, partners, agents, employees, consultants, or others retained by or under contract to the Owner with respect to this Agreement or to the Project.

This is **EXHIBIT K**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____.

AMENDMENT TO OWNER-ENGINEER AGREEMENT
Amendment No.

1. Background Data:

- a. Effective Date of Owner-Engineer Agreement: _____
- b. Owner: City of Nacogdoches
- c. Engineer: Schaumburg & Polk, Inc.
- d. Project: _____

2. Description of Modifications:

- a. Engineer shall perform or furnish the following Additional Services:
- b. The Scope of Services currently authorized to be performed by Engineer in accordance with the Agreement and previous amendments, if any, is modified as follows:
- c. The responsibilities of Owner are modified as follows:
- d. For the Additional Services or the modifications to services set forth above, Owner shall pay Engineer the following additional or modified compensation:
- e. The schedule for rendering services is modified as follows:
- f. Other portions of the Agreement (including previous amendments, if any) are modified as follows:

5. Agreement Summary (Reference only)

- a. Original Agreement amount: \$ _____
- b. Net change for prior amendments: \$ _____
- c. This amendment amount: \$ _____
- d. Adjusted Agreement amount: \$ _____

The foregoing Agreement Summary is for reference only and does not alter the terms of the Agreement, including those set forth in Exhibit C.

Owner and Engineer hereby agree to modify the above-referenced Agreement as set forth in this Amendment. All provisions of the Agreement not modified by this or previous Amendments remain in effect. The Effective Date of this Amendment is _____.

OWNER: City of Nacogdoches

ENGINEER: Schaumburg & Polk, Inc.

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date
Signed: _____

Date Signed: _____

EXHIBIT L

CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY FUNDS ADDENDUM

This **CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY FUNDS ADDENDUM** (this “Addendum”) is entered into by and between Schaumburg & Polk, Inc., (“Contractor”), and City of Nacogdoches (Unit), and forms an integral part of the Contract (as defined in Section I hereof).

RECITALS

WHEREAS, Unit has received, either as a Recipient or Subrecipient (as each such term is defined in Section I hereof) a payment from the Coronavirus State Fiscal Recovery Fund (“State Fiscal Recovery Fund”) or Coronavirus Local Fiscal Recovery Fund (“Local Fiscal Recovery Fund” and, together with the State Fiscal Recovery Fund, the “Fiscal Recovery Funds”) established pursuant to Sections 602 and 603, respectively, of the Social Security Act, as added by Section 9901 of the American Rescue Plan Act of 2021, Pub. L. No. 117-2 (“ARPA”); and

WHEREAS, Unit intends to pay, in part or in whole, for the cost of the Contract (as defined in Section I hereof) using monies received from the Fiscal Recovery Funds; and

WHEREAS, in using such funds, Unit must comply with the terms of ARPA, regulations issued by the U.S. Department of the Treasury (“Treasury”) governing the expenditure of monies distributed from the Fiscal Recovery Funds (including, without limitation, the Interim Final Rule (86 Fed. Reg. 26,786 (May 17, 2021) and Final Rule (87 Fed. Reg. 4,338 (Jan. 27, 2022))), the Award Terms and Conditions applicable to the Fiscal Recovery Funds, and such other guidance as Treasury has issued or may issue governing the expenditure of monies distributed from the Fiscal Recovery Funds (collectively, the “Regulatory Requirements”); and

WHEREAS, pursuant to the Regulatory Requirements, Unit must comply with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury has determined or may determine are inapplicable to the Fiscal Recovery Funds; and

WHEREAS, pursuant to 2 C.F.R. § 200.327, Unit must include within the Contract applicable provisions described in Appendix II to 2 C.F.R. Part 200, each of which is contained in this Addendum; and

WHEREAS, Unit shall not enter into the Contract or make any distributions of funds to Contractor using monies from the Fiscal Recovery Funds absent Contractor’s agreement and adherence to each term and condition contained herein.

NOW THEREFORE, Contractor and Unit do mutually agree as follows:

AGREEMENTS

B. Definitions

- Unless otherwise defined in this Addendum, capitalized terms used in this Addendum shall have the meanings ascribed thereto in this Section I.
- “ARPA” shall mean the American Rescue Plan Act of 2021, Pub. L. No. 117-2, as amended.
- “Administering Agency” shall have the meaning specified in 41 C.F.R. § 60-1.3.

EXHIBIT L

- “Applicant” shall have the meaning specified in 41 C.F.R. § 60-1.3, which is provided here for ease of reference: (“An applicant for Federal assistance involving a construction contract, or other participant in a program involving a construction contract as determined by regulation of an administering agency. The term also includes such persons after they become recipients of such Federal assistance.”).
- “Construction Work” shall have the meaning specified in 41 C.F.R. § 60-1.3, which is provided here for ease of reference: (“[T]he construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.”).
- “Contract” shall mean the legal instrument by which Unit, as a Recipient or Subrecipient, shall purchase from Contractor property or services needed to carry out a project or program under a federal award, and of which this Addendum shall constitute an integral part.
- “Contractor” shall mean the entity named as “Contractor” in this Addendum that has received a Contract from Unit.
- “Federally Assisted Construction Contract” shall have the meaning specified in 41 C.F.R. § 60-1.3, which is provided here for ease of reference: (“[A]ny agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the government of the United States of America for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.”).
- “Government” shall have the meaning specified in 41 C.F.R. § 60-1.3, which is provided here for ease of reference: (“[T]he government of the United States of America.”).
- “Laborer” or “Mechanic” shall have the meaning specified in 29 C.F.R. § 5.2(m), which is provided here for ease of reference: (“The term *laborer* or *mechanic* includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial. The term *laborer* or *mechanic* includes apprentices, trainees, helpers, and, in the case of contracts subject to the Contract Work Hours and Safety Standards Act, watchmen or guards. The term does not apply to workers whose duties are primarily administrative, executive, or clerical, rather than manual. Persons employed in a bona fide executive, administrative, or professional capacity as defined in part 541 of [Title 40 of the United States Code] are not deemed to be laborers or mechanics. Working foremen who devote more than 20 percent of their time during a workweek to mechanic or laborer duties, and who do not meet the criteria of [Title 40 of the United States Code], are laborers and mechanics for the time so spent.”).
- “Recipient” shall mean an entity that receives a federal award directly from a federal awarding agency. The term does not include subrecipients or individuals that are beneficiaries of an award.

EXHIBIT L

- “Subcontract” shall mean any agreement entered into by a Subcontractor to furnish supplies or services for the performance of this Contract or a Subcontract. It includes, but is not limited to, purchase orders and changes and modifications to purchase orders.
- “Subcontractor” shall mean an entity that receives a Subcontract.
- “Subrecipient” shall mean an entity that receives a subaward from a pass-through entity to carry out part of a federal award; but it does not include an individual that is a beneficiary of such award. A subrecipient may also be a recipient of other federal awards directly from a federal awarding agency.
- “Tier” shall have the meaning indicated in 2 C.F.R. Part 180 and illustrated in 2 C.F.R. Part 180, Appendix II.
- “Unit” shall have the meaning indicated in the preamble to this Addendum.

C. Equal Employment Opportunity

- If this contract is a Federally Assisted Construction Contract exceeding \$10,000, during the performance of this Contract, Contractor agrees as follows:
 - Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
 - Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
 - Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with Contractor's legal duty to furnish information.

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- Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- Contractor will furnish to the Administering Agency and the Secretary of Labor all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the Administering Agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- In the event of Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended, in whole or in part, and Contractor may be declared ineligible for further Government contracts or Federally Assisted Construction Contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965. Such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- Contractor will include the portion of the sentence immediately preceding paragraph A.1. of this Section II and the provisions of paragraphs A.1. through A.7. in every Subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each Subcontractor or vendor. Contractor will take such action with respect to any Subcontract or purchase order as the Administering Agency may direct as a means of enforcing such provisions, including sanctions for noncompliance.

Provided, however, that in the event Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or vendor as a result of such direction by the Administering Agency, Contractor may request the United States to enter into such litigation to protect the interests of the United States.

Unit further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work. Provided, that if Unit so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality, or subdivision of such government which does not participate in work on or under the Contract.
- Unit agrees that it will assist and cooperate actively with the Administering Agency and the Secretary of Labor in obtaining the compliance of Contractor and any Subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor; that it will furnish the Administering Agency and the Secretary of Labor such information as they may require for the supervision of such compliance; and that it will otherwise assist the Administering Agency in the discharge of the agency's primary responsibility for securing compliance.

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- Unit further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and Federally Assisted Construction Contracts pursuant to the Executive Order and that it will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon Contractor and any Subcontractors by the Administering Agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, Unit agrees that if it fails or refuses to comply with these undertakings, the Administering Agency may take any or all of the following actions: Cancel, terminate, or suspend, in whole or in part, this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.
- If this Contract is not a Federally Assisted Construction Contract exceeding \$10,000, the provisions of Section I.A. of this Addendum shall not apply.

D. Copeland “Anti-Kickback” Act

- Contractor and any Subcontractors performing work under the Contract shall comply with 18 U.S.C. § 874 *which provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.* Unit shall report all suspected or reported violations to Treasury.

E. Contract Work Hours and Safety Standards Act

- *Overtime Requirements.* No Contractor or Subcontractor contracting for any part of the Contract work which may require or involve the employment of Laborers or Mechanics shall require or permit any such Laborer or Mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such Laborer or Mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek. *No laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous.*
- *Violation; Liability for Unpaid Wages; Liquidated Damages.* In the event of any violation of the clause set forth in Section IV.A. (*Overtime Requirements*), above, Contractor and any Subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and Subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual Laborer or Mechanic, including watchmen and guards, employed in violation of the clause set forth in Section IV.A. (*Overtime Requirements*), above, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without

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payment of the overtime wages required by the clause set forth in Section IV.A. (*Overtime Requirements*), above.

- *Withholding for Unpaid Wages and Liquidated Damages.* Unit shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold, or cause to be withheld, from any moneys payable on account of work performed by Contractor or Subcontractor under any such contract or any other federal contract with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of Contractor or Subcontractor for unpaid wages and liquidated damages as provided in Section IV.B. (*Violation; Liability for Unpaid Wages; Liquidated Damages*) of this section.
- *Subcontracts.* Contractor or Subcontractor shall insert in any Subcontract the clauses set forth in Sections IV.A. through IV.D. and also a clause requiring Subcontractors to include these clauses in any lower-Tier Subcontracts. Contractor shall be responsible for compliance by any first-Tier Subcontractor or lower-Tier Subcontractor with the clauses set forth in Sections IV.A. through IV.D.
- *Payroll and Records.* Contractor or Subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the Contract for all Laborers and Mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, Social Security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Records to be maintained under this provision shall be made available by Contractor or Subcontractor for inspection, copying, or transcription by authorized representatives of the Department of the Treasury and the Department of Labor, and Contractor or Subcontractor will permit such representatives to interview employees during working hours on the job.
- *Exceptions.* None of the requirements of Section IV of this Addendum shall apply if this Contract is a Contract (1) for transportation by land, air, or water; (2) for the transmission of intelligence; (3) for the purchase of supplies, materials, or articles ordinarily available in the open market; or (4) in an amount that is equal to or less than \$100,000.

F. **Rights to Inventions Made Under a Contract or Agreement**

- The Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for "Government purposes," any subject data or copyright described below. "Government purposes" means use only for the direct purposes of the Government. Without the copyright owner's consent, the Government may not extend its federal license to any other party.
 - Any subject data developed under the Contract, whether or not a copyright has been obtained, and

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- Any rights of copyright purchased by Contractor using federal assistance funded in whole or in part by the Department of the Treasury.
- Unless Treasury determines otherwise, a Contractor performing experimental, developmental, or research work required as part of this Contract agrees to permit Treasury to make available to the public either (1) Treasury's license in the copyright to any subject data developed in the course of the Contract or (2) a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work which is the subject of this Contract is not completed for any reason whatsoever, all data developed under the Contract shall become subject data as defined herein and shall be delivered as the Government may direct.
- Unless prohibited by North Carolina law, upon request by the Government, Contractor agrees to indemnify, save, and hold harmless the Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by Contractor of proprietary rights, copyrights, or right of privacy arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under the Contract. Contractor shall be required to indemnify the Government for any such liability arising out of the wrongful act of any employee, official, or agent of the Contractor.
- Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.
- Data developed by Contractor and financed entirely without using federal assistance provided by the Government that has been incorporated into work required by the underlying Contract is exempt from the requirements herein, provided that Contractor identifies those data in writing at the time of delivery of the Contract work. Contractor agrees to include these requirements in each Subcontract for experimental, developmental, or research work financed in whole or in part with federal assistance.
- For the purposes of this Section V, "subject data" means "recorded information, whether or not copyrighted, . . . that is delivered or specified to be delivered as required by the Contract." Examples of "subject data" include, but are not limited to, "computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses or other similar information used for performance or administration of the Contract."

G. Clean Air Act and Federal Water Pollution Control Act

- *Clean Air Act.* Contractor agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 *et seq.* Contractor agrees to report each violation to Unit and understands and agrees that Unit will, in turn, report each violation as required to Treasury and the appropriate Environmental Protection Agency Regional Office.

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Contractor agrees to include these requirements in each Subcontract exceeding \$150,000 financed, in whole or in part, with federal assistance provided by Treasury.

- *Federal Water Pollution Control Act.* Contractor agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 *et seq.* Contractor agrees to report each violation to Unit and understands and agrees that Unit will, in turn, report each violation as required to assure notification to Treasury and the appropriate Environmental Protection Agency Regional Office. Contractor agrees to include these requirements in each Subcontract exceeding \$150,000 financed, in whole or in part, with federal assistance provided by Treasury.

H. Debarment and Suspension

- Due to its receipt of Fiscal Recovery Funds, Unit is a participant in a nonprocurement transaction (defined at 2 C.F.R. § 180.970) that is a covered transaction pursuant to 2 C.F.R. § 180.210 and 31 C.F.R. § 19.210. Therefore, this Contract is a lower-Tier covered transaction for purposes of 2 C.F.R. Part 180 and 31 C.F.R. Part 19 if (1) the amount of this Contract is greater than or equal to \$25,000 (2 C.F.R. § 180.220(b)(1); 31 C.F.R. § 19.220(b)(1)); (2) the Contract requires the consent of an official of the Department of the Treasury (2 C.F.R. § 180.220(b)(2); 31 C.F.R. § 19.220(b)(2)); or (3) this Contract is for federally required audit services (2 C.F.R. § 180.220(b)(3); 31 C.F.R. § 19.220(b)(3)).
- If this Contract is a covered transaction as set forth in Section VII.A., above, Contractor hereby certifies as of the date hereof that Contractor, Contractor's principals (defined at 2 C.F.R. § 180.995), and the affiliates (defined at 2 C.F.R. § 180.905) of both Contractor and Contractor's principals are not excluded (defined at 2 C.F.R. § 180.935) and are not disqualified (defined at 2 C.F.R. § 180.935). If any of the foregoing persons are excluded or disqualified and the Secretary of the Treasury has not granted an exception pursuant to 31 C.F.R. § 19.120(a), (1) this Contract shall be void, (2) Unit shall not make any payments of federal financial assistance to Contractor, and (3) Unit shall have no obligations to Contractor under this Contract.
- Contractor must comply with 2 C.F.R. Part 180, Subpart C and 31 C.F.R. Part 19 and must include a requirement to comply with these regulations in any lower-Tier covered transaction into which it enters. This certification is a material representation of fact relied upon by Unit, and all liability arising from an erroneous representation shall be borne solely by Contractor.
- If it is later determined that Contractor did not comply with 2 C.F.R. Part 180, Subpart C and 31 C.F.R. Part 19, in addition to remedies available to Unit, the Government may pursue available remedies, including but not limited to suspension and/or debarment.

I. Byrd Anti-Lobbying Amendment

- Contractor certifies to Unit, and Contractor shall cause each Tier below it to certify to the Tier directly above such Tier, that it has not used and will not use federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of

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Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Contractor shall, and shall cause each Tier below it, to disclose any lobbying with non-federally appropriated funds that takes place in connection with obtaining any federal award. Such disclosures (to be set forth on Standard Form-LLL, contained in 31 C.F.R. Part 21, Appendix B) shall be forwarded from Tier to Tier up to the Unit, which will, in turn, forward the certification(s) to Treasury. Contractor shall cause the language of this Section VIII.A. to be included in all Subcontracts. This certification is a material representation of fact upon which Unit has relied when entering into this Contract, and all liability arising from an erroneous representation shall be borne solely by Contractor.

- Contractors that bid or apply for a contract exceeding \$100,000 (including this Contract, if applicable) also must file with Unit the certification in Attachment 1 to this Addendum, which is attached hereto and incorporated herein.
- Contractor also shall cause any Subcontractor with a Subcontract (at any Tier) exceeding \$100,000 to file with the Tier above it the certification in Attachment 1 to this Addendum, which is attached hereto and incorporated herein.

J. Procurement of Recovered Materials

- Section IX.B. shall apply if (1) this Contract involves the purchase of an item designated by the Environmental Protection Agency (“EPA”) in 40 C.F.R. Part 247 that exceeds \$10,000 or (2) the total value of such designated items acquired during Unit’s preceding fiscal year exceeded \$10,000.
- In the performance of the Contract, Contractor shall make maximum use of products containing recovered materials that are EPA-designated items, unless the product cannot (1) be acquired competitively within a timeframe providing for compliance with the Contract performance schedule, (2) meet Contract performance requirements, or (3) be acquired at a reasonable price. Information about this requirement, along with the list of EPA-designated items, is available on EPA’s website. Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

K. Prohibition on Contracting for Covered Telecommunications Equipment or Services

- *Definitions.* Unless otherwise defined in this Contract, capitalized terms used in this Section X shall have the meanings ascribed thereto in this Section X.A.
 - “Backhaul” means intermediate links between the core network, or backbone network, and the small subnetworks at the edge of the network (e.g., connecting cell phones/towers to the core telephone network). Backhaul can be wireless (e.g., microwave) or wired (e.g., fiber optic, coaxial cable, Ethernet).
 - “Covered Foreign Country” means the People’s Republic of China.
 - “Covered Telecommunications Equipment or Services” means (a) telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary

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or affiliate of such entities); (b) for the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities); (c) telecommunications or video surveillance services provided by such entities or using such equipment; or (d) telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a Covered Foreign Country.

- “Critical Technology” means (1) defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations; (2) items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations and controlled (a) pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology, or (b) for reasons relating to regional stability or surreptitious listening; (3) specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities); (4) nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material); (5) select agents and toxins covered by part 331 of title 7, Code of Federal Regulations; part 121 of title 9 of such Code; or part 73 of title 42 of such Code; or (6) emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. § 4817).
- “Interconnection Arrangements” means arrangements governing the physical connection of two or more networks to allow the use of another’s network to hand off traffic where it is ultimately delivered (e.g., connection of a customer of telephone provider A to a customer of telephone company B) or sharing data and other information resources.
- “Roaming” means cellular communications services (e.g., voice, video, data) received from a visited network when unable to connect to the facilities of the home network either because signal coverage is too weak or because traffic is too high.
- “Substantial or Essential Component” means any component necessary for the proper function or performance of a piece of equipment, system, or service.
- “Telecommunications Equipment or Services” means telecommunications or video surveillance equipment or services, such as, but not limited to, mobile phones, land lines, internet, video surveillance, and cloud services.

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- Prohibitions.
 - Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after August 13, 2020, from obtaining or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.
 - Unless an exception in Section X.C. applies, Contractor and any Subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds (including, without limitation, Fiscal Recovery Funds) received from a federal government to:
 - Procure or obtain any equipment, system, or service that uses Covered Telecommunications Equipment or Services as a Substantial or Essential Component of any system or as Critical Technology of any system;
 - Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses Covered Telecommunications Equipment or Services as a Substantial or Essential Component of any system or as Critical Technology of any system;
 - Enter into, extend, or renew contracts with entities that use Covered Telecommunications Equipment or Services as a Substantial or Essential Component of any system or as Critical Technology as part of any system; or
 - Provide, as part of its performance of this Contract, any Subcontract; any other contractual instrument; or any equipment, system, or service that uses Covered Telecommunications Equipment or Services as a Substantial or Essential Component of any system or as Critical Technology as part of any system.
- Exceptions.
 - This clause does not prohibit Contractor or Subcontractors from providing:
 - A service that connects to the facilities of a third party, such as Backhaul, Roaming, or Interconnection Agreements, or
 - Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.
 - By necessary implication and regulation, the prohibitions also do not apply to:
 - Covered telecommunications equipment that:
 - Is not used as a Substantial or Essential Component of any system and
 - Is not used as Critical Technology of any system.

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- Other telecommunications equipment or services that are not considered Covered Telecommunications Equipment or Services.
- Reporting Requirement
 - In the event Contractor identifies, during contract performance, covered Telecommunications Equipment or Services used as a Substantial or Essential Component of any system or as Critical Technology as part of any system, or if Contractor is notified of such by a Subcontractor at any Tier or by any other source, Contractor shall report the information in paragraph D.2(d)(2) of this Section X to Unit, unless procedures for reporting the information are established elsewhere in this Contract.
 - Contractor shall report the following information to Unit pursuant to paragraph D.1 of this Section X:
 - Within one business day from the date of such identification or notification: contract number; order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.
 - Within ten business days of submitting the information in paragraph D.2.a. of this Section: any further available information about mitigation actions undertaken or recommended. In addition, Contractor shall describe (i) the efforts it undertook to prevent use or submission of Covered Telecommunications Equipment or Services and (ii) any additional efforts that will be incorporated to prevent future use or submission of Covered Telecommunications Equipment or Services.
 - *Subcontractor.* Contractor shall cause to be inserted into all Subcontracts and other contractual instruments relating to the performance of this Contract the substance of this Section X, including this paragraph E.

L. Domestic Preferences for Procurements

- For purposes of this Section XI, the terms below are defined as follows:
 - “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coating, occurred in the United States.
 - “Manufactured Products” means items and construction materials composed, in whole or in part, of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.
- As applicable, and to the extent consistent with law, Contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products or

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materials Produced in the United States. This includes, but is not limited to, iron, aluminum, steel, cement, and other Manufactured Products. Contractor shall cause any Subcontractors to include the requirements of this Section XI in any Subcontracts.

M. **Solicitation of Minority and Women-Owned Business Enterprises**

- If Contractor intends to let any Subcontracts, Contractor shall (1) place qualified small and minority businesses and women's business enterprises on its solicitation lists; (2) assure that small and minority businesses and women's business enterprises are solicited whenever they are potential sources; (3) divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises; (4) establish delivery schedules, where the requirement permits, which encourage participation by small and minority businesses and women's business enterprises; (5) use the services and assistance, as appropriate, of the Small Business Administration, the Minority Business Development Agency of the Department of Commerce, and the North Carolina Office for Historically Underutilized Businesses.
- For the purposes of Section XII.A., an entity shall qualify (1) as a "minority business" or "women's business enterprise" if it is currently certified as a North Carolina "historically underutilized business" under Chapter 143, Section 128.4(a) of the N.C. General Statutes (hereinafter G.S.), and (2) as a "small business" if it is independently owned and operated and is qualified under the Small Business Administration criteria and size standards at 13 C.F.R. Part 21.

N. **Access to Records**

- Contractor agrees to provide Unit, the Department of the Treasury, the Treasury Office of Inspector General, the Government Accountability Office, and the Comptroller General of the United States, or any authorized representatives of these entities, access to any records (electronic and otherwise) of Contractor which are directly pertinent to this Contract to conduct audits or any other investigations. Contractor agrees to permit any of the foregoing parties to reproduce such records by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- Contractor agrees to retain all records covered by this Section XIII through December 31, 2031, or such longer period as is necessary for the resolution of any litigation, claim, negotiation, audit, or other inquiry involving the Contract.

O. **Conflicts of Interest; Gifts and Favors**

- Contractor understands that (1) Unit will use Fiscal Recovery Funds to pay for the cost of this Contract and (2) the expenditure of Fiscal Recovery Funds is governed by the [*Conflict of Interest Policy*] of the Unit, the Regulatory Requirements (including, without limitation, 2 C.F.R. §

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200.318(c)(1)), and North Carolina law (including, without limitation, G.S. 14-234(a)(1) and - 234.3(a)).

- Contractor certifies to Unit that as of the date hereof, to the best of its knowledge after reasonable inquiry, no employee, officer, or agent of Unit involved in the selection, award, or administration of this Contract (each a “Covered Individual”); no member of a Covered Individual’s immediate family; no partner of a Covered Individual; and no organization (including Contractor) which employs or is about to employ a Covered Individual has a financial or other interest in, or has received a tangible personal benefit from, Contractor. Should Contractor obtain knowledge of any such interest or any tangible personal benefit described in the preceding sentence after the date hereof, Contractor shall promptly disclose the same to Unit in writing.
- Contractor certifies to Unit that it has not provided, nor offered to provide, any gratuities, favors, or anything of value to an officer, employee, or agent of Unit. Should Contractor obtain knowledge of the provision, or offer of any provision, of any gratuity, favor, or anything of value to an officer, employee, or agent described in the preceding sentence after the date hereof, Contractor shall promptly disclose the same to Unit in writing.

P. Assurances of Compliance with Title VI of the Civil Rights Act of 1964

- Contractor and any Subcontractor, or the successor, transferee, or assignee of Contractor or any Subcontractor, shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. §§ 2000d *et seq.*), as implemented by the Department of the Treasury’s Title VI regulations, 31 C.F.R. Part 22, which are herein incorporated by reference and made a part of this Contract. Title VI also provides protection to persons with “Limited English Proficiency” in any program or activity receiving federal financial assistance, 42 U.S.C. §§ 2000d *et seq.*, as implemented by Treasury’s Title VI regulations, 31 C.F.R. Part 22, and herein incorporated by reference and made a part of this Contract.

Q. Other Non-Discrimination Statutes

- Contractor acknowledges that Unit is bound by and agrees, to the extent applicable to Contractor, to abide by the provisions contained in the federal statutes enumerated below and any other federal statutes and regulations that may be applicable to the expenditure of Fiscal Recovery Funds:
 - The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 *et seq.*), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;
 - Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;

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- The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 *et seq.*), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and
- Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 *et seq.*), which prohibits discrimination on the basis of disability in programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.

R. **Miscellaneous**

- *Increasing Seat Belt Use in the United States*. Pursuant to Executive Order 13043, 62 Fed. Reg. 19,216 (Apr. 18, 1997), Unit encourages Contractor to adopt and enforce on-the-job seat belt policies and programs for its employees when operating company-owned, rented, or personally owned vehicles.
- *Reducing Text Messaging While Driving*. Pursuant to Executive Order 13513, 74 Fed. Reg. 51,225 (Oct. 6, 2009), Unit encourages Contractor to adopt and enforce policies that ban text messaging while driving.

S. **Conflicts and Interpretation**

- To the extent that any portion of this Addendum conflicts with any term or condition of this Contract expressed outside of this Addendum, the terms of this Addendum shall govern.

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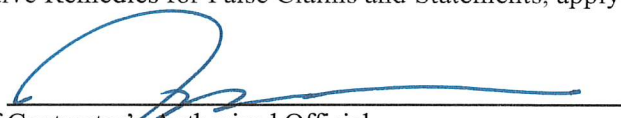
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ATTACHMENT 1 TO CORONA VIRUS STATE AND LOCAL FISCAL RECOVERY FUNDS ADDENDUM APPENDIX A131 C.F.R. PART 21- CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of the undersigned's knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
4. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31 of the U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, Schaumburg & Polk, Inc., certifies and affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chapter 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.


Signature of Contractor's Authorized Official

JEREMY BURCHTEL Ex. Vice-President
Name and Title of Contractor's Authorized Official

Date

03/21/2023



City Council Meeting

Date: November 28, 2023

Agenda Item: 5.B.

PRESENTER:

ITEM/SUBJECT: Consider approval of minutes for the November 7, 2023 Regular City Council meeting and the November 14, 2023 Special City Council 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
lewisl@nactx.us
(936) 559-2506

ATTACHMENTS:

1. City Council Meeting Minutes 11.07.23
2. City Council Meeting Minutes 11.14.23



Regular Session
Nacogdoches City Council
November 7, 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, Chad Huckaby, Brad Maule, Kathleen Belanger and Mayor Pro Tem Roy Boldon

1. Called to order at 5:30 p.m.
2. Pledge of Allegiance.
3. Open Forum:

Chad Stazan who resides at 316 Quail Ridge Drive addressed City Council with concerns of E. Main Street from the E. Stallings interchange, and Quail Ridge Drive to Community Grocery Road. Specifically, how dangerous the intersection has become with speeding drivers and those that tailgate. He asked that Council consider a redesign of the roadways. Mr. Stazan stated that a young male lost his life recently at the intersection and there have been numerous accidents and near misses including his own encounter. He presented a petition with 54 signatures in favor of changes to the area to City Council Members.

Evie LeBlanc-Jones spoke in support of Mr. Stazan and the petition for changes to the intersection. She stated she has lived in the neighborhood for 35 years and has seen near misses. She also stated that she fears for her life because of the dangers at the intersection.

4. ITEMS TO BE REMOVED FROM CONSENT AGENDA.

5. **CONSENT AGENDA:**

- A. Consider an Agreement by and between the City of Nacogdoches and The Nacogdoches Convention and Visitors Bureau in furtherance of the enhancement and promotion of convention, tourism and hotel industry services (City Manager).
- B. Consider approval of minutes for the October 17, 2023 regular City Council meeting (Deputy City Secretary).
- C. Consider approval of a contract renewal between the City of Nacogdoches and Environmental Systems Research Institute (ESRI) for the City-wide site license of ArcGIS software (City Engineer).

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

6. **REGULAR AGENDA:**

- A. Consider approval of a resolution casting the City of Nacogdoches' votes for the Nacogdoches Central Appraisal District Board of Directors (Interim City Manager).

Interim City Manager, Keith Kiplinger, addressed Council stating that City Council voted to appoint Council Member Brad Maule to the Board of Directors by resolution. He also stated that the City has 680 votes that can be split between candidates or all votes cast in favor of Council Member Maule.

Mayor Johnson made a motion to cast all 680 votes for Council Member Maule and Council Member Huckaby duly seconded the motion. The motion was carried by unanimous vote.

- B. Discuss work occurring in the rights of way, including fiber optic installation.

Council Member Maule stated that he has received several calls and letters with inquiries about the green towers that are being installed for fiber optics throughout the City. He is concerned with the aesthetics of the towers and is looking for an alternative to the towers.

Minutes unofficial until approved by City Council

Mr. Nathan Alders who lives on Williamsburg Drive provided Council with photos of an installed tower at his home. He was troubled by the installation of the tower as there was damage done to an oak tree during the installation. Mr. Alders made several phone calls to the company that installed the towers, requesting the company to place a flat box in its place.

Steve Bartlett, City Engineer, approached Council and stated that there is some capability by the company to retrofit some areas with the flat boxes in place of the towers. He also stated that the companies performing work in the City are certificated by the state and not permitted to do work by the City.

Council Member Belanger asked if we can find out the specifics that would make it possible to convert the towers to flat boxes.

- C. Presentation and recognition of the incoming City Manager, Rick Beverlin, and the outgoing Interim City Manager, Keith Kiplinger.

City Council honored Interim City Manager, Keith Kiplinger for his continued service to the City and presented him with a gift of appreciation. Council also welcomed the newly appointed City Manager, Rick Beverlin and presented him with a welcome gift. Both gifts contained items from businesses within Nacogdoches.

7. **ADJOURNED:** 6:03 p.m.

ATTEST:

Mayor Randy Johnson
City Council
City of Nacogdoches

Rhonda Lewis, Deputy City Secretary



Special Session
Nacogdoches City Council
November 14, 2023 – 5:00 p.m.
City Council Chambers – City Hall
202 East Pilar Street

DRAFT

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

1. Called to order at 5:00 p.m.
2. Pledge of Allegiance.
3. Open Forum:

There were no comments for Open Forum.

4. **REGULAR AGENDA:**

- A. Receive a report, hold a discussion and give staff direction regarding funding solutions and possible public committee involvement for future capital utility projects.

City Engineer, Steve Bartlett, presented to Council a report on the current conditions in the City and evaluated utility projects. He is asking Council to provide guidance on moving forward with the design phase and sewer replacement projects of Lanana Creek and Banita Creek. Mr. Bartlett explained the funding for these projects was set aside and approved about two years prior. He discussed other projects and funding sources with Council.

- B. Consideration and approval of an ordinance canvassing the returns and declaring the results of a Bond Election held on November 7, 2023 by the City of Nacogdoches, Texas.

Council Member Belanger made a motion to approve the ordinance and Council Member Maule duly seconded the motion. The motion carried by unanimous vote.

5. **ADJOURNED:** 6:08 p.m.

ATTEST:

Mayor Randy Johnson
City Council
City of Nacogdoches

Rhonda Lewis, Deputy City Secretary

Minutes unofficial until approved by City Council

PRESENTER: Rick Beverlin, City Manager

ITEM/SUBJECT: Consider approval of an Interlocal Agreement between the City of Nacogdoches and the Texas Division of Emergency Management (TDEM) for purposes of granting a location to TDEM for the coordination of state emergency response, recovery, preparedness, and mitigation efforts. (City Manager)

SUMMARY/BACKGROUND: The Texas Division of Emergency Management (TDEM) has submitted a proposed Interlocal Agreement in order to establish a location in the City of Nacogdoches from which it may coordinate state emergency response, recovery, preparedness, and mitigation efforts. It is proposed that space be made available in City Hall to accommodate TDEM's request. Under the Agreement, the City would provide access to TDEM personnel to the building, as well as to office space, parking, staff restrooms, and other common spaces located in the building to permit it to perform its emergency management duties on behalf of the State. This proposed term of the Interlocal Agreement is from December 1, 2023 through November 30, 2024.

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: Rick Beverlin, City Manager
beverlinr@nactx.us
(936) 559-2506

ATTACHMENTS: 1. TDEM and Local Gov Entity Interlocal Agreement (City of Nacogdoches)

**INTERLOCAL AGREEMENT
BETWEEN _____ AND
TEXAS DIVISION OF EMERGENCY MANAGEMENT**

This Interlocal Agreement ("Agreement") is made and entered into between _____, a local government entity located in _____ County, Texas ("LGE"), and Texas Division of Emergency Management, a member of the Texas A&M University System, an agency of the State of Texas ("TDEM") for the purpose of facilitating the provision of emergency services. The LGE and TDEM are sometimes referred to herein individually as "Party" or collectively as "Parties."

RECITALS:

WHEREAS, pursuant to the Interlocal Cooperation Act, Texas Government Code Chapter 791, as amended, cities, counties, special districts and other legally constituted political subdivisions of the State of Texas are authorized to enter into local contracts and agreements with each other regarding governmental functions and services; and

WHEREAS TDEM personnel require a location from which they may operate to coordinate state emergency response, recovery, preparedness, and mitigation efforts; and

WHEREAS, TDEM has requested that space be made available to it for its personnel and;

WHEREAS the LGE has determined there is available space to accommodate TDEM's request in the _____ Building located at _____
_____ (the "Building");

NOW THEREFORE, in consideration of the mutual covenants contained herein and subject to the conditions herein set forth, the LGE and TDEM hereby agree as follows.

A. LGE AGREEMENTS

- 1) The LGE will provide office space to TDEM personnel in which they can conduct routine functions connected with their emergency management efforts at the Building. The LGE may change the location of the designated office space upon notice to TDEM. TDEM staff may utilize the staff restrooms and any other common spaces in the Building. The LGE will provide TDEM with ___ parking spot(s) which exclusive.
- 2) The LGE will maintain the space and provide electrical, water, gas, heating and air conditioning services to the space. The LGE will also provide the following services:

- 3) (A) The LGE reserves the right to utilize the space for its own purposes and the access granted to TDEM hereunder is not exclusive. OR (B) The access granted to TDEM hereunder to utilize the space is exclusive.

- 4) The LGE will provide TDEM personnel 24-hour access to the Building by _____, which will be returned to LGE at the termination of this Agreement.

B. TDEM AGREEMENTS

- 5) TDEM will identify to the LGE a point of contact who will communicate with the LGE related to the use of the space under this Agreement. TDEM's initial current point of contact for this Agreement is _____, phone: _____, email: _____.
- 6) TDEM agrees that it will be utilizing the space provided in furtherance of its emergency management duties for the State.
- 7) TDEM will advise the LGE as soon as practicable when its personnel shall be utilizing the space provided under this Agreement.
- 8) TDEM personnel will be providing all their own equipment and communications devices and will access state computer programs utilizing their own equipment. TDEM agrees that no access to the LGE computer system will be required or requested at any time. TDEM may access a public or guest wireless network, if available.
- 9) While located at the LGE premises, TDEM personnel shall perform their duties in a manner so as to not interfere with the ordinary functioning of public safety activities of the police, fire, EMS and/or other personnel of the LGE.

C. JOINT AGREEMENTS

- 10) The LGE will not charge TDEM for the use of the space under this Agreement, and TDEM will not make a claim for providing services under this Agreement to the LGE.
- 11) The employees of each of the Parties under this Agreement shall at all times continue to be employees of that Party, and there shall be no claim by either Party that any of their employees are considered to be borrowed servants working for the other Party. Each Party under this Agreement will be responsible for the acts and omissions of its own employees. An employee of either Party injured during the performance of their duties shall be provided benefits, if any, by the employing Party.
- 12) This Agreement shall be effective beginning _____ and shall remain in effect until _____; provided, however, that the term of this Agreement may not exceed ten (10) years.
- 13) Notwithstanding anything herein to the contrary, this Agreement shall remain in force at the pleasure of either Party; either Party may terminate this Agreement upon the issuance of a thirty-day notice to the other Party. The Parties may provide notice to the following addresses:

TDEM:

TDEM

Attn: Stacia Rivera, Facilities and Property Administrator
313 E Anderson Ln
Austin, Texas 78752
Phone: 512-696-7282
Email: stacia.rivera@tdem.texas.gov

LGE

Attn: _____
_____, Texas _____
Phone: _____
Email: _____

- 14) This is the entire agreement between the Parties; no oral representations made by either Party to this Agreement not reduced to writing herein shall be of any effect whatsoever.
- 15) This Agreement may be executed in multiple copies for the convenience of the Parties.

This Agreement has been approved by LGE and executed by its authorized signatory. TDEM has executed this Agreement in accordance with its governing regulations.

LGE:

Name: _____
Title: _____
Date: _____

TEXAS DIVISION OF EMERGENCY MANAGEMENT:

W. Nim Kidd
Vice Chancellor for Disaster and Emergency Services and
Chief of the Texas Division of Emergency Management, TDEM
Date: _____

PRESENTER: Steve Bartlett, Public Works Director

ITEM/SUBJECT: Receive a report, hold a discussion and give staff direction regarding timelines for General Obligation Bond and Utility Infrastructure projects (City Engineer).

SUMMARY/BACKGROUND: With the passing of all seven (7) General Obligation bond propositions, it becomes important to identify and understand the process of beginning work on the proposed projects. John Martin of Hilltop Securities will outline the next steps to sell and fund the bonds. Staff will present preliminary schedules for procurement, design, and construction of the projects. Staff will also discuss the general schedule for near-term work on some of our utility infrastructure needs.

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. GO Bond Preliminary Timeline
2. Utility Projects Timeline
3. Financial Calendar-2024 GO
4. PowerPoint Schedule Bond & Utility Projects

CITY OF NACOGDOCHES GENERAL OBLIGATION BOND PRELIMINARY SCHEDULE																													
ID	Task Mode	Task Name	Duration	Start	Finish	Qtr 3		Qtr 4	2024		Qtr 1	Qtr 2	Qtr 3	Qtr 4	2025		Qtr 1	Qtr 2	Qtr 3	Qtr 4	2026		Qtr 1	Qtr 2	Qtr 3	Qtr 4	2027		Qtr 1
1																													
2		GENERAL OBLIGATION BOND PROJECTS																											
3																													
4		FINANCE AND FUNDING																											
5		Bond Election	1 day	Tue 11/7/23	Wed 11/8/23																								
6		Develop Project Approaches	60 days	Wed 11/8/23	Sun 1/7/24																								
7		Preliminary Official Statement	40 days	Thu 1/18/24	Tue 2/27/24																								
8		Bond Ratings	1 day	Thu 2/29/24	Fri 3/1/24																								
9		Bond Ordinance Approval	1 day	Tue 3/5/24	Wed 3/6/24																								
10		Final Ofcial Statement	5 days	Wed 3/6/24	Mon 3/11/24																								
11		Closing & Delivery	1 day	Wed 3/27/24	Thu 3/28/24																								
12																													
13		PROFESSIONAL PROCUREMENT	169 days	Mon 11/27/23	Tue 5/14/24																								
14		Develop RFQ Documents	30 days	Mon 11/27/23	Wed 12/27/23																								
15		RFP Environmental Services - All Project Areas	60 days	Mon 1/8/24	Fri 3/8/24																								
16		RFQ for Surveying Services - All Project Areas	60 days	Mon 1/8/24	Fri 3/8/24																								
17		RFQ for Engineering Services - Airport	120 days	Mon 1/15/24	Tue 5/14/24																								
18		RFQ for Architectural Services - Fire Stations	90 days	Mon 1/15/24	Sun 4/14/24																								
19		RFQ for Engineering - Storm Drainage & Sidewalks	90 days	Mon 1/22/24	Sun 4/21/24																								
20		RFQ for Architectural Services - Sunset Cemetery	60 days	Mon 1/22/24	Fri 3/22/24																								
21		RFQ for Architectural/Engineering - Parks	90 days	Mon 1/29/24	Sun 4/28/24																								
22																													
23		FIRE STATIONS	960 days	Sun 4/14/24	Mon 11/30/26																								
24		Schematic Design - All 3 Stations	90 days	Sun 4/14/24	Sat 7/13/24																								
25		Site Selection & Surveying	90 days	Sat 7/13/24	Fri 10/11/24																								
26		Station Site Acquisition	270 days	Fri 10/11/24	Tue 7/8/25																								
27		Central Station A&E Design	240 days	Sat 7/13/24	Mon 3/10/25																								
28		Station 1 A&E Design	150 days	Mon 3/10/25	Thu 8/7/25																								
29		Station 3 A&E Design	150 days	Mon 3/10/25	Thu 8/7/25																								
30		Central Station Construction	360 days	Mon 3/10/25	Thu 3/5/26																								
31		Station 1 Construction	270 days	Thu 3/5/26	Mon 11/30/26																								
32		Station 3 Construction	270 days	Thu 3/5/26	Mon 11/30/26																								
33																													
34		STORM DRAINAGE & SIDEWALKS	485 days	Mon 6/3/24	Wed 10/1/25																								
35		Public Meeting - Sidewalk Locations	15 days	Mon 6/3/24	Tue 6/18/24																								
36		Phase 1 Drainage Projects Bid & Construction	270 days	Mon 7/8/24	Fri 4/4/25																								
37		Phase 2 Engineering Design	180 days	Mon 7/8/24	Sat 1/4/25																								
38		Phase 2 Drainage Projects Bid & Construction	270 days	Sat 1/4/25	Wed 10/1/25																								
39																													
40		CEMETERY BUILDING	300 days	Mon 5/6/24	Sun 3/2/25																								
41		Cemetery Building Design	120 days	Mon 5/6/24	Tue 9/3/24																								
42		Cemetery Building Constrution	180 days	Tue 9/3/24	Sun 3/2/25																								
43																													
44		PARKS FACILITIES	270 days	Mon 6/3/24	Fri 2/28/25																								
45		Site designs for Restrooms and Playgrounds	90 days	Mon 6/3/24	Sun 9/1/24																								
46		Restroom Construction	180 days	Sun 9/1/24	Fri 2/28/25																								
47		Playground Construction	180 days	Sun 9/1/24	Fri 2/28/25																								
48																													
49		STREET IMPROVEMENTS	973 days	Mon 4/15/24	Mon 12/14/26																								
50		Phase 1 Street Design	45 days	Mon 4/15/24	Thu 5/30/24																								
51		Phase 1 Street Bid & Construction	270 days	Thu 5/30/24	Mon 2/24/25																								
52		Phase 2 Street Design	45 days	Mon 2/3/25	Thu 3/20/25																								
53		Phase 2 Street Bid & Construction	270 days	Thu 3/20/25	Mon 12/15/25																								
54		Phase 3 Street Design	45 days	Mon 2/2/26	Thu 3/19/26																								
55		Phase 3 Street Bid & Construction	270 days	Thu 3/19/26	Mon 12/14/26																								
56																													
57		AIRPORT IMPROVEMENTS - TBD																											
Project: GO Revised 2 Date: Tue 11/21/23		Task		Summary		Inactive Milestone		Duration-only		Start-only		Finish-only		External Milestone		Manual Progress													
		Split		Project Summary		Inactive Summary		Manual Summary Rollup		Manual Summary		External Tasks		Deadline		Progress													
		Milestone		Inactive Task		Manual Task		Manual Summary		External Tasks		Progress		Manual Progress															
Page 1																													

CITY OF NACOGDOCHES UTILITY PROJECTS PRELIMINARY SCHEDULE																																							
ID		Task Mode	Task Name	Duration	Start	Finish			2024				2025				2026				2027				2028				2029				2030						
							Qtr 3	Qtr 4	Qtr 1	Qtr 2	Qtr 3	Qtr 4	Qtr 1	Qtr 2	Qtr 3	Qtr 4	Qtr 1	Qtr 2	Qtr 3	Qtr 4	Qtr 1	Qtr 2	Qtr 3	Qtr 4	Qtr 1	Qtr 2	Qtr 3	Qtr 4	Qtr 1	Qtr 2	Qtr 3	Qtr 4	Qtr 1	Qtr 2					
1			UTILITY CAPITAL NEEDS																																				
2																																							
3																																							
4																																							
5			Review Documented Utility Needs & Update	30 days	Mon 12/4/23	Wed 1/3/24																																	
6																																							
7			Rate Study Modeling	90 days	Mon 11/20/23	Sun 2/18/24																																	
8																																							
9			Finalize ARPA contracts for Engineering	16 days	Tue 11/28/23	Thu 12/14/23																																	
10			APRA Project Sanitary Sewer Engineering Designs	90 days	Thu 12/14/23	Wed 3/13/24																																	
11			ARPA Projects Sanitary Sewer Construction Ph 1	270 days	Tue 4/2/24	Sat 12/28/24																																	
12			ARPA Projects Sanitary Sewer Construction Ph 2	270 days	Wed 3/13/24	Sun 12/8/24																																	
13			APRA Projects Water System Design	180 days	Wed 12/20/23	Mon 6/17/24																																	
14			ARPA Projects Water System Ph 1	270 days	Mon 6/17/24	Fri 3/14/25																																	
15			ARPA Projects Water System Ph 2	270 days	Mon 11/4/24	Fri 8/1/25																																	
16																																							
17			CIP Water Projects Engineering Designs (cash)	180 days	Mon 3/4/24	Sat 8/31/24																																	
18			CIP Water Projects - Construction (cash)	270 days	Sat 8/31/24	Wed 5/28/25																																	
19			CIP Sewer Projects Engineering Designs (cash)	90 days	Mon 3/4/24	Sun 6/2/24																																	
20			CIP Sewer Projects - Construction (cash)	270 days	Sun 6/2/24	Thu 2/27/25																																	
21																																							
22			RFQ Engineering Surveying Environmental	90 days	Tue 1/2/24	Mon 4/1/24																																	
23			Lanana & Banita Creeks Sewer Engineering (cash)	730 days	Tue 5/7/24	Thu 5/7/26																																	
24			Lanana & Banita Creeks Easement Acquisition (cash)	550 days	Mon 5/5/25	Fri 11/6/26																																	
25			Lanana & Banita Creeks Construction (no funding)	1100 days	Fri 11/6/26	Sat 11/10/29																																	
26																																							
27			Revenue Bond ??	60 days	Tue 9/1/26	Sat 10/31/26																																	
Project: Utility Timeline Date: Tue 11/21/23			Task		Project Summary		Manual Task		Start-only		Deadline		Progress		Manual Progress																								
			Split		Inactive Task		Duration-only		Finish-only		Progress		Manual Progress		Manual Progress																								
			Milestone		Inactive Milestone		Manual Summary Rollup		External Tasks		Manual Progress		Manual Progress		Manual Progress																								
			Summary		Inactive Summary		Manual Summary		External Milestone		Manual Progress		Manual Progress		Manual Progress																								
Page 1																																							

CITY OF NACOGDOCHES
(Nacogdoches County, Texas)

General Obligation Improvement Bonds, Series 2024

Proposed Schedule of Events

January 2024						
S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

February 2024						
S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29		

March 2024						
S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

Proposed Date	Action
January 18, 2024	Hilltop sends City Request for Information (RFI) for information necessary for the completion of the Preliminary Official Statement ("POS").
February 1, 2024	City returns RFI to Hilltop.
February 7, 2024	Hilltop sends out initial draft of POS for review and comment. Hilltop sends necessary information to S&P Global Ratings (S&P).
February 13, 2024	Comments on initial draft of POS due to Hilltop.
February 15, 2024	Hilltop sends second draft of POS to parties for review and comment.
February 20, 2024	Conference calls with Underwriters Counsel and S&P (Exact date and time TBD)
February 22, 2024	Comments on second draft of POS due to Hilltop.
February 27, 2024	Hilltop submits POS to MuniPlatform.com for internet posting.
February 29, 2024	Receive ratings.
March 4, 2024	Underwriters pre market bonds
March 5, 2024	Pricing of Bonds (approx. 10:00 am) City Council considers Bond Ordinance (Regular Meeting 5:30 pm CST)
March 6, 2024	Draft of Final Official Statement distributed for review.
March 8, 2024	Comments due on Final Official Statement. Bond Counsel submits Transcript of Proceedings to Attorney General
March 12, 2024	Final Official Statement posted to internet.
March 21, 2024	Hilltop to notify all parties of closing and delivery instructions.
March 27, 2024	Closing and Delivery.



SCHEDULES FOR BOND PROJECTS AND UTILITY INFRASTRUCTURE

CITY OF NACOGDOCHES
(Nacogdoches County, Texas)

General Obligation Improvement Bonds, Series 2024

Proposed Schedule of Events

January 2024							February 2024							March 2024						
S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S
	1	2	3	4	5	6					1	2	3						1	2
7	8	9	10	11	12	13	4	5	6	7	8	9	10	3	4	5	6	7	8	9
14	15	16	17	18	19	20	11	12	13	14	15	16	17	10	11	12	13	14	15	16
21	22	23	24	25	26	27	18	19	20	21	22	23	24	17	18	19	20	21	22	23
28	29	30	31				25	26	27	28	29			24	25	26	27	28	29	30

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February 20, 2024	Conference calls with Underwriters Counsel and S&P (Exact date and time TBD)
February 22, 2024	Comments on second draft of POS due to Hilltop.
February 27, 2024	Hilltop submits POS to MuniPlatform.com for internet posting.
February 29, 2024	Receive ratings.
March 4, 2024	Underwriters pre market bonds
March 5, 2024	Pricing of Bonds (approx. 10:00 am) City Council considers Bond Ordinance (Regular Meeting 5:30 pm CST)
March 6, 2024	Draft of Final Official Statement distributed for review.
March 8, 2024	Comments due on Final Official Statement. Bond Counsel submits Transcript of Proceedings to Attorney General
March 12, 2024	Final Official Statement posted to internet.
March 21, 2024	Hilltop to notify all parties of closing and delivery instructions.
March 27, 2024	Closing and Delivery.

Task Mode	Task Name	Duration	Start	Finish	2024				2025				2026				2027				2028				2029				2030				2031			
					Qtr 4	Qtr 1	Qtr 2	Qtr 3	Qtr 4	Qtr 1	Qtr 2	Qtr 3	Qtr 4	Qtr 1	Qtr 2	Qtr 3	Qtr 4	Qtr 1	Qtr 2	Qtr 3	Qtr 4	Qtr 1	Qtr 2	Qtr 3	Qtr 4	Qtr 1	Qtr 2	Qtr 3	Qtr 4	Qtr 1	Qtr 2	Qtr 3	Qtr 4			
1																																				
2		UTILITY CAPITAL NEEDS																																		
3																																				
4																																				
5		Review Documented Utility Needs & Update	30 days	Mon 12/4/23	Wed 1/3/24																															
6																																				
7		Rate Study Modeling	90 days	Mon 11/20/23	Sun 2/18/24																															
8																																				
9		Finalize ARPA contracts for Engineering	16 days	Tue 11/28/23	Thu 12/14/23																															
10		APRA Project Sanitary Sewer Engineering Designs	90 days	Thu 12/14/23	Wed 3/13/24																															
11		ARPA Projects Sanitary Sewer Construction Ph 1	270 days	Tue 4/2/24	Sat 12/28/24																															
12		ARPA Projects Sanitary Sewer Construction Ph 2	270 days	Wed 3/13/24	Sun 12/8/24																															
13		APRA Projects Water System Design	180 days	Wed 12/20/23	Mon 6/17/24																															
14		ARPA Projects Water System Ph 1	270 days	Mon 6/17/24	Fri 3/14/25																															
15		ARPA Projects Water System Ph 2	270 days	Mon 11/4/24	Fri 8/1/25																															
16																																				
17		CIP Water Projects Engineering Designs (cash)	180 days	Mon 3/4/24	Sat 8/31/24																															
18		CIP Water Projects - Construction (cash)	270 days	Sat 8/31/24	Wed 5/28/25																															
19		CIP Sewer Projects Engineering Designs (cash)	90 days	Mon 3/4/24	Sun 6/2/24																															
20		CIP Sewer Projects - Construction (cash)	270 days	Sun 6/2/24	Thu 2/27/25																															
21																																				
22		RFQ Engineering Surveying Environmental	90 days	Tue 1/2/24	Mon 4/1/24																															
23		Lanana & Banita Creeks Sewer Engineering (cash)	730 days	Tue 5/7/24	Thu 5/7/26																															
24		Lanana & Banita Creeks Easement Acquisition (cash)	550 days	Mon 5/5/25	Fri 11/6/26																															
25		Lanana & Banita Creeks Construction (no funding)	1100 days	Fri 11/6/26	Sat 11/10/29																															
26																																				
27		Revenue Bond ??	60 days	Tue 9/1/26	Sat 10/31/26																															



City Council Meeting

Date: November 28, 2023

Agenda Item: 6.C.

PRESENTER: Jerry Baker, City Attorney

ITEM/SUBJECT: Consider approval of a resolution for the formation of a Capital Needs Advisory Committee for the purpose of evaluating the utility system needs of the City of Nacogdoches and making recommendations to the City Council regarding potential funding options, and discuss and appoint the initial members of the Committee (City Attorney).

SUMMARY/BACKGROUND: This resolution was developed at the request of the City Council at its meeting on November 14, 2023 following a report from the City Engineer concerning certain utility system needs that exceed the current cash revenue stream for the City of Nacogdoches. The City Engineer identified water system needs of \$59,788,9465, which included 23 Tier 1 water line projects, and sewer system needs of \$56,679,030, which included 26 Tier 1 sewer line projects, Banita Creek and Lanana Creek sewer line projects.

To ensure the participation of the citizens of Nacogdoches in the process of evaluating the utility system needs of the City, the formation of an ad hoc Capital Needs Advisory Committee is proposed and tasked with assessing the utility system needs, and making recommendations to the Council concerning those that are identified and how to best fund the projects to meet these needs.

FINANCIAL:

No financial impact associated with this item

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. Resolution_Capital Needs Committee

RESOLUTION NO. 1356-11-23

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NACOGDOCHES, TEXAS TO ESTABLISH A CAPITAL NEEDS ADVISORY COMMITTEE FOR THE CITY OF NACOGDOCHES

WHEREAS, at a Special Board Meeting held on November 14, 2023, the City Council received a report from the City Engineer concerning certain utility system needs that exceed the current cash revenue stream for the City of Nacogdoches;

WHEREAS, the City Engineer identified water system needs of \$59,788,9465, which included 23 Tier 1 water line projects, and sewer system needs of \$56,679,030, which included 26 Tier 1 sewer line projects, Banita Creek and Lanana Creek sewer line projects;

WHEREAS, the City Council wishes to encourage the citizens to participate in the process of evaluating the utility system needs of the City, and determine how to best fund the projects to meet these needs; and

WHEREAS, the City Council has determined that an ad hoc Capital Needs Advisory Committee should be established to provide this input to the City Council.

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

SECTION 1. The City of Nacogdoches Capital Needs Advisory Committee (the “Committee”) is established as an ad hoc committee created for the purpose of evaluating the utility system needs of the City, and making recommendations to City Council regarding those needs and how to fund them.

SECTION 2. The Committee is charged with the following tasks:

- A. The Committee will work with City staff and consultants, including, but not limited to, rate study and engineering consultants, to study the current and future utility system needs.
- B. The Committee has the authority to recommend the priority of future utility system needs, including those projects identified as Tier 1 water and sewer system needs identified by the City Engineer.
- C. The Committee has the authority to make recommendations as to which utility system needs or projects should be funded and the manner of such funding.
- D. The Committee has the authority to make other recommendations to the City Council regarding the identification and/or funding of any utility system needs that were not previously identified or known.

- E. The Committee shall prepare a report to City Council identifying the utility system needs and projects and recommending the best options to fund the projects to meet these needs.

SECTION 3. The Committee shall consist of members appointed by the City Council. The initial members of the Committee are listed on Exhibit A to this resolution. The term limit of the Committee is for the duration of the fulfillment of the tasks set forth in **Section 2** above, including the presentation of its report and to the City Council as stated therein;

SECTION 4. The City Manager shall designate a staff member as the Committee Liaison, who shall serve as an ex-officio member and secretary;

SECTION 5. A Chair or Vice-Chair shall be appointed by the City Council to preside over meetings of the Committee, and shall represent the Committee before the City Council on matters which they have majority vote approval of the Committee members.

SECTION 6. Any member of the Committee may be removed, for any reason, by majority vote of the City Council. Any member of the Committee who files or announces a candidacy for city office or who fails to attend three or more meetings is automatically removed from the Committee unless specifically excepted by vote of City Council;

SECTION 7. The Committee shall hold their meetings in accordance with the Texas Open Meetings Act, shall establish a time and date for the committee meetings, and adopt procedures for those meetings. The Committee Liaison shall keep an accurate record of proceedings of the meetings. Minutes of the meeting shall be approved at the next following meeting. Copies of the minutes shall be provided to the City Council.

SECTION 8. 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 9. 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

Exhibit A

John Anderson
Philip Blackburn
Brandi Cartwright
Doug Clark
Ron Collins
Margaret Forbes
Barbara Gandy
Victor Lofgreen
Chad Huckaby
Olivia Kiritsy
Albert Lassiter
Roger McKnight
Milton Moorner
Carlos Palomo
Hunter Perry
James Standley
Erika Tolar