February 20, 2024

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 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, February 20, 2024. 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 between the City of Nacogdoches and the Department of Public Safety (DPS) for the issuance of a failure to appear (FTA) Report to DPS's Vendor pursuant to Texas Transportation Code Chapter 706. (City Attorney)

   B. Consider approval of a contract by and between the City of Nacogdoches and SCS Engineers for professional engineering services on 2023 Greenhouse Gas (GHG) Reporting for the Nacogdoches Landfill for a not-to-exceed amount of $9,000.

(Director of Public Works)

C. Consider approval of minutes for the January 31, 2024, City Council Work Session and the February 6, 2024, City Council Regular meeting. (City Secretary)

D. Consider approval of an airport hangar ground lease between the City of Nacogdoches and HCH Real Estate Holdings, LLC. (Airport Manager)

E. Consider approval of a change order in the amount of $2,200 for the Zion Hill Baptist Church pew restoration project. (Community Services Director)

F. Consider approval of resolutions for street closures related to annual fundraising and holiday events hosted by the City of Nacogdoches Main Street Department in Downtown Nacogdoches. (Convention and Visitors Bureau Director)

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. **Public Hearing:** Consider a Specific Use Permit to operate a Halfway House in an R-4, Multi-Family District, on Lot 8, Block 3 of the Banita Subdivision, located at 2019 Pearl Street. This request has been submitted by New Hope Communities of Texas, Inc. Case Number 2024-01. **(PLEASE NOTE THAT THIS ITEM WAS POSTPONED BY THE PLANNING AND ZONING COMMISSION ON FEBRUARY 12, 2024)** (Interim City Planner)

B. Consider approval of a contract by and between the City of Nacogdoches and KSA Engineers, Inc. for professional engineering services on 2023/2024 CDBG Water Line Improvements in a not-to-exceed amount of $92,900.00. (Director of Public Works)

C. Consider approval of proposed updates to Chapter 50 - Historic Preservation of the Nacogdoches Code of Ordinances. (Community Services Director and City Attorney)

D. Consider a proposal from Reneau Roofing & Sheet Metal to re-roof the Police Department. (Chief of Police)

7. EXECUTIVE SESSION: Executive Sessions are for City Council to receive information and deliberate on matters specified in Subchapter D of the Texas Open Meetings Act. Council may reconvene in open session to vote on the matter.

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

1. Discuss or deliberate regarding commercial or financial information the governmental body has received from business prospects that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and with which the governmental body is

conducting economic development negotiations; and
2. Deliberate the offer of financial or other incentives to business prospects described by Subdivision 1 above.

8. 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 February 16, 2024 at 3:30 p.m. and remained posted until the meeting convened.

_____

Rhonda Lewis, Deputy City Secretary

PRESENTER: Jerry Baker, City Attorney

ITEM/SUBJECT: Consider approval of a contract between the City of Nacogdoches and the Department of Public Safety (DPS) for the issuance of a failure to appear (FTA) Report to DPS's Vendor pursuant to Texas Transportation Code Chapter 706. (City Attorney)

SUMMARY/BACKGROUND: As permitted under Texas Transportation Code § 706.008, DPS contracts with a private vendor (Vendor) to provide and establish an automated Failure to Appear (FTA) system pursuant to the provisions of Texas Transportation Code Chapter 706. DPS uses the FTA system to properly deny renewal of a driver's license to a person who is the subject of an FTA system entry generated from an FTA Report. An FTA Report is a notice sent by the Municipal Court requesting a person be denied renewal of a driver's license. The Court may submit an FTA Report to the Vendor if a person fails to appear or fails to pay or satisfy a judgment as required by law.

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: Jerry Baker, City Attorney
bakerj@nactx.us
(936) 559-2503

ATTACHMENTS: 1. DPS Contract - FTA program

Interlocal Cooperation Contract
Failure to Appear Program

State of Texas
County of Nacogdoches

I. PARTIES AND AUTHORITY

This Interlocal Cooperation Contract (Contract) is entered into between the Department of Public Safety of the State of Texas (DPS), an agency of the State of Texas and the Municipal Court of the [City ~~or County~~] of Nacogdoches (Court), a political subdivision of the State of Texas, referred to collectively in this Contract as the Parties, under the authority granted in Tex. Transp. Code Chapter 706 and Tex. Gov't Code Chapter 791 (the Interlocal Cooperation Act).

II. BACKGROUND

A peace officer authorized to issue citations within the jurisdiction of the Court must issue a written warning to each person to whom the officer issues a citation for a traffic law violation. This warning must be provided in addition to any other warnings required by law. The warning must state in substance that if the person fails to appear in court for the prosecution of the offense or if the person fails to pay or satisfy a judgment ordering the payment of a fine and cost in the manner ordered by the Court, the person may be denied renewal of the person's driver license.

As permitted under Tex. Transp. Code § 706.008, DPS contracts with a private vendor (Vendor) to provide and establish an automated Failure to Appear (FTA) system that accurately stores information regarding violators subject to the provisions of Tex. Transp. Code Chapter 706. DPS uses the FTA system to properly deny renewal of a driver license to a person who is the subject of an FTA system entry generated from an FTA Report.

An FTA Report is a notice sent by Court requesting a person be denied renewal of a driver's license in accordance with this Contract. The Court may submit an FTA Report to DPS's Vendor if a person fails to appear or fails to pay or satisfy a judgment as required by law. There is no requirement that a criminal warrant be issued in response to the person's failure to appear.

III. PURPOSE

This Contract applies to each FTA Report submitted by the Court to DPS or its Vendor and accepted by DPS or its Vendor.

IV. PERIOD OF PERFORMANCE

This Contract will be effective on the date of execution and terminate five years from that execution date unless terminated earlier in accordance with Section VII.C, *General Terms and Conditions, Termination*.

V. COURT RESPONSIBILITIES

A. FTA Report

For a matter involving any offense which a Court has jurisdiction of under Tex. Code Crim. Proc. Chapter 4, where a person fails to appear for a complaint or citation or fails to pay or

satisfy a judgment ordering payment of a fine and cost in the manner ordered by the Court, the Court will supply DPS, through its Vendor, an FTA report including the information that is necessary to deny renewal of the driver license of that person. The Court must make reasonable efforts to ensure that all FTA Reports are accurate, complete, and non-duplicative. The FTA Report must include the following information:

1. the jurisdiction in which the alleged offense occurred;
2. the name of the court submitting the report;
3. the name, date of birth, and Texas driver license number of the person who failed to appear or failed to pay or satisfy a judgment;
4. the date of the alleged violation;
5. a brief description of the alleged violation;
6. a statement that the person failed to appear or failed to pay or satisfy a judgment as required by law;
7. the date that the person failed to appear or failed to pay or satisfy a judgment; and
8. any other information required by DPS.

B. Clearance Reports

The Court that files the FTA Report has a continuing obligation to review the FTA Report and promptly submit appropriate additional information or reports to the Vendor. The clearance report must identify the person, state whether or not a fee was required, and advise DPS to lift the denial of renewal and state the grounds for the action. All clearance reports must be submitted immediately, but no later than two business days from the time and date that the Court receives appropriate payment or other information that satisfies the person's obligation to that Court.

To the extent that a Court uses the FTA system by submitting an FTA Report, the Court must collect the statutorily required $10.00 reimbursement fee from the person who failed to appear, pay or satisfy a judgment ordering payment of a fine and cost in the manner ordered by the Court. If the person is acquitted of the underlying offense for which the original FTA Report was filed or found indigent by the court, the Court will not require payment of the reimbursement fee.

Court must submit a clearance report for the following circumstances:

1. the perfection of an appeal of the case for which the warrant of arrest was issued or judgment arose;
2. the dismissal of the charge for which the warrant of arrest was issued or judgment arose;
3. the posting of a bond or the giving of other security to reinstate the charge for which the warrant was issued;
4. the payment or discharge of the fine and cost owed on an outstanding judgment of the Court; or
5. other suitable arrangement to satisfy the fine and cost within the Court's discretion.

After termination of the Contract, the Court has a continuing obligation to report dispositions and collect fees for all violators in the FTA system at the time of termination. Failure to comply with the continuing obligation to report will result in the removal of all outstanding entries of the Court in the FTA Report, resulting in the lifting of any denied driver license renewal status from DPS.

C. Quarterly Reports and Audits

Court must submit quarterly reports to DPS in a format established by DPS.

Court is subject to audit and inspection at any time during normal business hours and at a mutually agreed upon location by the state auditor, DPS, and any other department or agency, responsible for determining that the Parties have complied with the applicable laws. Court must provide all reasonable facilities and assistance for the safe and convenient performance of any audit or inspection.

Court must correct any non-conforming transactions performed by the Court, at its own cost, until acceptable to DPS.

Court must keep all records and documents regarding this Contract for the term of this Contract and for seven years after the termination of this Contract, or until DPS or the State Auditor's Office (SAO) is satisfied that all audit and litigation matters are resolved, whichever period is longer.

D. Accounting Procedures

Court must keep separate, accurate, and complete records of the funds collected and disbursed and must deposit the funds in the appropriate municipal or county treasury. Court may deposit such fees in an interest-bearing account and retain the interest earned on such accounts for the Court.

Court will allocate $6.00 of each $10.00 reimbursement fee received for payment to the Vendor and $4.00 for credit to the general fund of the municipal or county treasury.

E. Non-Waiver of Fees

Court will not waive the $10.00 reimbursement fee for any person that has been submitted on an FTA Report, unless any of the requirements in Tex. Trans. Code § 706.006(a) or §706.006(d) are met.

Failure to comply with this section will result in: (i) termination of this Contract for cause; and (ii) the removal of all outstanding entries of the Court in the FTA Report, resulting in the lifting of any denied driver license renewal status from DPS.

F. Litigation Notice

The Court must make a good-faith attempt to immediately notify DPS in the event that the Court becomes aware of litigation in which this Contract or Tex. Transp. Code Chapter 706 is subject to constitutional, statutory, or common-law challenge, or is struck down by judicial decision.

VI. DPS's RESPONSIBILITIES

DPS will not continue to deny renewal of the person's driver license after receiving notice from the Court that the FTA Report was submitted in error or has been destroyed in accordance with the Court's record retention policy.

VII. PAYMENTS TO VENDOR

Court must pay the Vendor a fee of $6.00 per person for each violation that has been reported to the Vendor and for which the Court has subsequently collected the statutorily required $10.00 reimbursement fee. In the event that the fee has been waived by Tex. Trans. Code § 706.006(a) or §706.006(d), no payment will be made to the Vendor.

Court agrees that payment will be made to the Vendor no later than the last day of the month following the close of the calendar quarter in which the payment was received by the Court.

DPS will not pay Vendor for any fees that should have been submitted by a Court.

VIII. GENERAL TERMS AND CONDITIONS

A. Compliance with Law. This Contract is governed by and construed under and in accordance with the laws of the State of Texas. The Court understands and agrees that it will comply with all local, state, and federal laws in the performance of this Contract, including administrative rules adopted by DPS.

B. Notice. The respective party will send the other party notice as noted in this section. Either party may change its information by giving the other party written notice and the effective date of the change.

Court	**Department of Public Safety**
Attn.: Court Administrator	Enforcement & Compliance Service 5805 North Lamar Blvd., Bldg A Austin, Texas 78752-0001 (512) 424-5311 [fax] Driver.Improvement@dps.texas.gov (512) 424-7172
Address: 217 W. Hospital St.	
Address: Nacogdoches, Texas 75961	
Fax: (936) 560-3477	
Email: mcourt@nactx.us	
Phone: (936) 559-2641	

C. Termination.

Either party may terminate this Contract with 30 days' written notice.

DPS may also terminate this Contract for cause if Court doesn't comply with Section V.C., *Quarterly Reports and Audits* and V.E., *Non- Waiver of Fees*.

If either Party is subject to a lack of appropriations that are necessary for that Party's performance of its obligations under this Contract, the Contract is subject to immediate cancellation or termination, without penalty to either Party.

D. Amendments.

This contract may only be amended by mutual written agreement of the Parties.

E. Miscellaneous.

1. The parties shall use the dispute resolution process provided for in Chapter 2260 of the Texas Government Code to resolve any disputes under this Contract; provided

however nothing in this paragraph shall preclude either Party from pursuing any remedies available under Texas law.

2. This Contract shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to either Party or the State of Texas.
3. Any alterations, additions, or deletions to the terms of the contract that are required by changes in federal or state law or regulations are automatically incorporated into the contract without written amendment hereto, and shall become effective on the date designated by such law or by regulation.

CERTIFICATIONS

The Parties certify that (1) the Contract is authorized by the governing body of each party; (2) the purpose, terms, rights, and duties of the Parties are stated within the Contract; and (3) each party will make payments for the performance of governmental functions or services from current revenues available to the paying party.

The undersigned signatories have full authority to enter into this Contract on behalf of the respective Parties.

Court*	**Department of Public Safety**
_____	_____
Authorized Signatory	**Driver License Division Chief or Designee**
_____	
Title	
_____	_____
Date	**Date**

*An additional page may be attached if more than one signature is required to execute this Contract on behalf of the Court. Each signature block must contain the person's title and date.

PRESENTER: Case Opperman, Director of Public Works

ITEM/SUBJECT: Consider approval of a contract by and between the City of Nacogdoches and SCS Engineers for professional engineering services on 2023 Greenhouse Gas (GHG) Reporting for the Nacogdoches Landfill for a not-to-exceed amount of $9,000. (Director of Public Works)

SUMMARY/BACKGROUND: Federal regulations require mandatory annual greenhouse gas (GHG) reporting for certain facilities that directly emit GHG, including landfills. This work includes the preparation and submittal of the required GHG emissions estimates and associated information required by the federal rule. SCS Engineers has historically handled this monitoring and reporting for the City. SCS Engineers has a long history at the City Landfill with projects, and reporting. Staff is comfortable with SCS Engineers handling this task for the 2023 calendar year. This contract is in the amount of $9,000 for this reporting.

FINANCIAL:
Item is budgeted:
Account No.: 31.41 630.71
Account Name: *Sanitation Disposal - Consulting Services*
Amount: $ 9,000

COUNCIL PRIORITIES: THIS AGENDA ITEM IS CONSISTENT WITH THE FOLLOWING CITY COUNCIL PRIORITIES
Not Applicable

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

ATTACHMENTS: 1. Contract

CITY OF NACOGDOCHES
ARCHITECTURAL & ENGINEERING
PROFESSIONAL SERVICES CONTRACT

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

ARTICLE I
Scope of Services

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

ARTICLE II
Payment

2.01 In consideration of the Consultant's provision of the professional services in compliance with all terms and conditions of this Contract, the City shall pay the Consultant according to the terms set forth in **Exhibit B**. Except in the event of a duly authorized change order, approved by the City as provided in this Contract, the total cost of all professional services provided under this Contract may not exceed **Nine Thousand and 00/100 Dollars ($ 9,000.00)**.

ARTICLE III
Time of Performance and Construction Cost

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

3.02 **Time is of the essence of this Contract.** The Consultant shall be prepared to provide the professional services in the most expedient and efficient manner possible in order to complete the work by the times specified. Promptly after the execution of this Contract, the Consultant shall prepare and submit for the City to approve in writing, a detailed schedule for the performance of the Consultant's services to meet the City's project milestone dates which are included in this Contract. The Consultant's schedule shall include allowances for periods of time required for the City's review and for approval of submissions by authorities having jurisdiction over the Project. The schedule will also specify payment milestones associated with design tasks.

3.03 The Consultant's services consist of all of the services required to be performed by Consultant, Consultant's employees and Consultant's sub-consultants under the terms of this Contract. Such services are set forth in the attached Exhibit A. The Consultant shall contract and employ at its expense sub-consultants necessary for the design of the Project, and such sub-consultants shall be licensed as required by the State of Texas and approved in writing by the City.

3.04 The Consultant shall designate a principal of the firm reasonably satisfactory to the City who shall, for so long as acceptable to the City, be in charge of Consultant's services to be performed hereunder through to completion, and who shall be available for general consultation throughout the Project. Any replacement of that principal shall be approved in writing (which shall not be unreasonably withheld) by the City, prior to replacement.

3.05 Consultant shall be responsible for the coordination of all drawings and design documents relating to Consultant's design and used on the Project, regardless of whether such drawings and documents are prepared by Consultant. Consultant shall be responsible for the completeness and accuracy of all drawings and specifications submitted by or through Consultant and for its compliance with all applicable codes, ordinances, regulations, laws and statutes.

~~3.06 Consultant's evaluations of the City's project budget and the preliminary estimates of construction cost and detailed estimates of construction cost represent the Consultant's best judgment as a design professional familiar with the construction industry.~~

~~ARTICLE IV~~
~~Conceptual Design~~

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

~~4.02 The Consultant shall determine the Project needs, including, but not limited to, tests, analyses, reports, site evaluations, surveys, comparisons with other municipal projects,~~

review of budgetary constraints and other preliminary investigations necessary for the Project. Consultant shall verify the observable existing conditions of the Project and verify any existing as-built drawings. Consultant shall confirm that the Project can be designed and constructed within the time limits outlined in this Contract. Consultant shall prepare a detailed design phase schedule which includes all review and approval periods during the project phases from Conceptual Design to Construction, design development and construction document phases. Consultant shall confirm that the Project can be designed and constructed for the dollar amount of the Project budget, if applicable. Consultant shall generally review the City's available budget for the Project and provide an early opinion of the adequacy of funds for the intended scope of work.

4.03 The Consultant shall prepare a Conceptual Design that shall include preliminary schematic layouts, alternative ideas, surveys, sketches and exhibits demonstrating the considerations involved in the Project. The Conceptual Design shall contemplate compliance with all applicable laws, statutes, ordinances, codes and regulations. Upon the City's request, the Consultant shall meet with City staff and/or City Council to make a presentation of its report.

ARTICLE V
Preliminary Design

5.01 The City shall direct the Consultant to commence work on the Preliminary Design by sending to the Consultant a letter of authorization to begin work on the Preliminary Design pursuant to this Contract. Upon receipt of the letter of authorization to commence Preliminary Design, the Consultant shall meet with the City for the purpose of determining the extent of any revisions to the Conceptual Design.

5.02 The Consultant shall prepare the Preliminary Design of the Project, including, but not limited to, the preliminary drawings and specifications and other documents to fix and describe the size and character of the Project as to civil, architectural, structural, mechanical and electrical systems, materials and such other elements as may be appropriate. The Consultant shall submit to the City a detailed estimate of the construction costs of the Project, based on current area, volume, or other unit costs. This estimate shall also indicate costs for allowances, contingencies, fees, permits, and all other costs involved in constructing the Project and the time required for construction of the Project from commencement to final completion.

5.03 Upon completion of the Preliminary Design of the Project, the Consultant shall so notify the City. Upon request the Consultant shall provide a Preliminary Engineering Report and meet with the City staff and/or City Council to make a presentation of its Preliminary Design of the Project. The Consultant shall provide an explanation of the Preliminary Design and cost estimate and shall verify that, to the best of Consultant's belief, the Project requirements and construction can be completed within the Project budget and schedule.

ARTICLE VI
Final Design

6.01 The City shall direct the Consultant to commence work on the Final Design of the Project by sending to the Consultant a letter of authorization to begin work on the Final Design phase of the Project. Upon receipt of the Letter of Authorization to proceed with Final Design of the Project, the Consultant shall immediately prepare the Final Design, including, but not limited to, the bid documents, contract, drawings, and specifications, to fix and describe the size and character of the Project as to civil, structural, mechanical, and electrical systems, materials, and such other elements as may be appropriate. The Final Design of the Project shall comply with all applicable laws, statutes, ordinances, codes and regulations.

6.02 Notwithstanding the City's approval of the Final Design, the Consultant warrants that the Final Design will be sufficient and adequate to fulfill the purposes of the Project. Additionally, Consultant will provide technical criteria, written descriptions and design data for the City's use in filing applications for permits from other governmental authorities or entities. Consultant shall assist the City in the preparation of permits and consultations with other entities having jurisdiction over the Project.

6.03 The Consultant shall prepare and separately seal the special provisions, the technical specifications, and bid proposal form(s) in conformance with the City's *current* pre-approved, "Standard Form of Construction Agreement" for the construction contract between the City and the construction contractor. The Consultant hereby agrees that no changes, modifications, supplementations, alterations, or deletions will be made to the City's standard form without the prior written approval of the City.

6.04 The Consultant shall provide the City with complete construction design plans and contract documents sufficient to be advertised for bids by the City. The contract documents shall include the design and specifications and other changes that are required to fulfill the purpose of the Project. Upon completion of the Final Design of the Project, with the submission of the complete contract documents, and upon request of the City, the Consultant shall meet with City staff and/or the City Council to present the Final Design of the Project. The Consultant shall provide an explanation of the Final Design and cost estimate.

ARTICLE VII
Bid Preparations & Evaluation

7.01 The Consultant shall assist the City in advertising for and obtaining bids or negotiating proposals for the construction of the Project. Upon request, the Consultant shall meet with City staff and/or the City Council to present, and make recommendations on, the bids submitted for the construction of the Project.

7.02 The Consultant shall review the construction contractors' bids, including subcontractors, suppliers, and other persons required for completion of the Project. The Consultant shall evaluate each bid and provide these evaluations to the City along with a recommendation on each bid. The Consultant shall also review the qualifications and references of the

lowest responsible bidder. A written evaluation of the bids shall be provided to the City by Consultant and shall include any bidding irregularities subject to waiver. If the lowest bid for the construction of the Project exceeds the final cost estimate set forth in the Final Design of the Project, then the Consultant, at its sole cost and expense, shall revise the construction documents so that the total construction costs of the Project will not exceed the final cost estimate contained in the Final Design of the Project.

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

ARTICLE VIII
Construction Administration

8.01 The Consultant shall be a representative of, and shall advise and consult with, the City (1) during construction, and (2) at the City's direction from time to time during the correction or warranty period described in the construction contract. The Consultant shall have authority to act on behalf of the City only to the extent provided in this Contract unless modified by written instrument.

8.02 The Consultant shall make visits to the site, with a frequency appropriate to the scope of the Project, to inspect the progress and quality of the executed work of the construction contractor and its subcontractors and to determine if such work is proceeding in accordance with the contract documents. Consultant shall periodically review the as-built drawings for accuracy and completeness, and shall report its findings to the City.

8.03 Resident Project Representative (RPR): The Consultant shall provide the services of an RPR to support more frequent and extensive observations of the contractor's work. The presence of the RPR will not diminish the responsibilities of the Consultant's design professionals to provide site visits to monitor the progress of the project. Duties and responsibilities of the RPR include:

a. The RPR will generally deal directly with the contractor and report to the Consultant, who in turn will report to the City. The RPR works under the direction of the Consultant. The RPR may communicate directly with the City, but only with the knowledge of the Consultant.

b. The RPR will not normally direct the work of the contractor but shall observe its compliance with the plans and specifications and report such directly to the Consultant. The RPR can communicate any concerns directly to the contractor, but all observed conditions will always be given to the Consultant as well.

c. If the RPR observes unsafe conditions, or other potentially hazardous conditions that might risk life and safety to anyone, he/she will immediately report such to the contractor, Consultant and City. In such circumstances, the RPR will have the authority to stop the work of the contractor until the issue can be resolved.

d. The RPR shall, on behalf of the Consultant, make and keep as-built drawings in the field to record any variances from the original designs shown in plans and specifications.

e. The RPR shall keep and maintain inspection reports for each day he/she is present on the project site. These reports shall be made available to the City at the end of the project. The daily reports shall include times of observations, activities observed, materials used or delivered to the job, problems encountered and solutions or adjustments made in the field.

f. The RPR shall review pay estimates from the contractor, on behalf of the Consultant, to verify the quantity and quality of work requested for payment. At no time will the RPR approve pay estimates, contract addendums, modifications, or change orders involving changes in the contract price.

g. The RPR shall be present to observe and witness all testing of on-site equipment and installed materials under the direction of the Consultant.

8.04 The Consultant shall keep the City informed of the progress and quality of the work through periodic project meetings and written monthly status reports. The Consultant shall employ the professional skill and care ordinarily provided by competent engineers or architects practicing in the same or similar locality and under the same or similar circumstances and professional license in discovering and promptly reporting to the City any defects or deficiencies in such work and shall disapprove or reject any work failing to conform to the contract documents.

8.05 The Consultant shall review and approve shop drawings and samples, the results of tests and inspections, and other data that each construction contractor or subcontractor is required to provide. The Consultant's review and approval shall include a determination of whether the work complies with all applicable laws, statutes, ordinances and codes and a determination of whether the work, when completed, will be in compliance with the requirements of the contract documents.

8.06 The Consultant shall determine the acceptability of substitute materials and equipment that may be proposed by construction contractors or subcontractors. The Consultant shall also receive and review maintenance and operating instruction manuals, schedules, guarantees, and certificates of inspection, which are to be assembled by the construction contractor in accordance with the contract documents.

8.07 The Consultant shall issue all instructions of the City to the construction contractor as well as interpretations and clarifications of the contract documents pertaining to the performance of the work. Consultant shall interpret the contract documents and judge the performance thereunder by the contractor constructing the Project, and Consultant shall, within a reasonable time, render such interpretations and clarifications as it may deem

~~necessary for the proper execution and progress of the work. Consultant shall receive no additional compensation for providing clarification of the drawings and specifications.~~

~~8.08 The Consultant shall review the amounts owing to the construction contractor and recommend to the City, in writing, payments to the construction contractor of such amounts. The Consultant's recommendation of payment, being based upon the Consultant's on-site inspections, observations, and its experience and qualifications as a design professional, shall constitute a recommendation by the Consultant to the City that the quality of such work is in accordance with the contract documents and that the work has progressed to the point reflected in Consultant's recommendation for payment.~~

~~8.09 Upon notification from the construction contractor that the Project is substantially complete, the Consultant shall conduct an inspection of the site to determine if the Project is substantially complete. The Consultant shall prepare a checklist of items that shall be completed prior to final acceptance. Upon notification by the construction contractor that the checklist items designated by the Consultant for completion have been completed, the Consultant shall inspect the Project to verify final completion.~~

~~8.10 The Consultant shall not be responsible for the work of the construction contractor or any of its subcontractors, except that the Consultant shall be responsible for the construction contractor's schedules or failure to carry out the work in accordance with the contract documents if such failures result from the Consultant's negligent acts or omissions. This provision shall not alter the Consultant's duties to the City arising from the performance of the Consultant's obligations under this Contract.~~

~~8.11 The Consultant shall conduct at least one on-site inspection during the warranty period and shall report to the City as to the continued acceptability of the work.~~

~~8.12 The Consultant shall recommend and prepare change orders, work directives and clarification notices on behalf of the City but shall not execute and issue such documents or otherwise alter the financial scope of the Project without an advance, written authorization from the City.~~

~~8.13 The Consultant shall perform all of its duties under this Article VIII so as to not cause any delay in the progress of construction of the Project.~~

~~8.14 The Consultant shall assist the construction contractor and City in obtaining a Certificate of Occupancy by accompanying governing officials during inspections of the Project if requested to do so by the City.~~

ARTICLE IX
Change Orders & Documents & Materials

9.01 No changes shall be made, nor will invoices for changes, alterations, modifications, deviations, or extra work or services be recognized or paid to Consultant except upon the prior written order from authorized personnel of the City. The Consultant shall not

execute change orders on behalf of the City or otherwise alter the financial scope of the Project, except upon the prior written approval from authorized personnel of the City.

9.02 a. When the original contract amount plus any prior change orders is less than $50,000, the City Manager or his delegate may approve the written change order provided the change order does not increase the total amount set forth in the contract to more than $50,000. For such contracts, when a change order results in a total contract amount that exceeds $50,000, the City Council must approve such change order prior to commencement of the services or work.

b. When the original contract amount plus any prior change orders is equal to or greater than $50,000, the City Manager or his delegate may approve the written change order provided the change order does not exceed $50,000, and provided the sum of all change orders does not exceed 25% of the original contract amount. For such contracts, when a change order exceeds $50,000 or when the sum of all change orders exceeds 25% of the original contract, the City Council must approve such change order prior to commencement of the services or work.

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

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

ARTICLE X
Warranty, Indemnification & Release

10.01 Pursuant to Section 271.904(d) of the Texas Local Government Code, the Consultant shall perform the services with the professional skill and care ordinarily provided by competent engineers or architects practicing under the same or similar circumstances and

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

10.02 The Consultant shall promptly correct any ~~defective~~ designs or specifications furnished by the Consultant which do not meet the standard of care set forth in paragraph 10.01 above at no cost to the City. The City's approval, acceptance, use of, or payment for, all or any part of the Consultant's services hereunder or of the Project itself shall in no way alter the Consultant's obligations or the City's rights hereunder.

10.03 In all activities or services performed hereunder, the Consultant is an independent contractor and not an agent or employee of the City. The Consultant and its employees are not the agents, servants, or employees of the City. As an independent contractor, the Consultant shall be responsible for the professional services and the final work product contemplated under this Contract. Except for materials furnished by the City, the Consultant shall supply all materials, equipment, and labor required for the professional services to be provided under this Contract. The Consultant shall have ultimate control over the execution of the services it is to provide under this Contract. The Consultant shall have the sole obligation to employ, direct, control, supervise, manage, discharge, and compensate all of its employees or subcontractors, and the City shall have no control of or supervision over the employees of the Consultant or any of the Consultant's subcontractors.

10.04 The Consultant must at all times exercise reasonable precautions on behalf of, and be ~~solely~~ responsible for, the safety of its officers, employees, agents, subcontractors, licensees, and other persons, as well as its personal property, while in the vicinity of the Project or any of the work being done on or for the Project. It is expressly understood and agreed that the City shall not be liable or responsible for the negligence of the Consultant, its officers, employees, agents, and subcontractors, ~~invitees, licensees, and other persons~~.

10.05 INDEMNITY. THE CONSULTANT SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY, ITS OFFICERS, AGENTS AND/OR EMPLOYEES, ~~REPRESENTATIVES, CONTRACTORS, ASSIGNEES AND/OR DESIGNEES~~ (SEPARATELY AND COLLECTIVELY REFERRED TO IN THIS PARAGRAPH AS "INDEMNITEE"), FROM ANY AND ALL LIABILITY,

ACTIONS, CLAIMS, DEMANDS OR SUITS, AND ALL RELATED DAMAGES, COSTS, ATTORNEY FEES, AND EXPENSES CAUSED BY, ARISING OUT OF, OR RESULTING FROM ANY ACTS OF NEGLIGENCE, INTENTIONAL TORTS, WILFULL MISCONDUCT, PERSONAL INJURY OR DAMAGE TO PROPERTY AND OTHERWISE RELATED TO CONSULTANT'S FAILURE OF PERFORMANCE, AND/OR FAILURES TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY THE CONSULTANT OR ITS AGENTS, EMPLOYEES, SUB-CONTRACTORS, ORDER FULFILLERS, OR CONSULTANTS UNDER CONTRACT TO CONSULTANT, OR ANOTHER ENTITY OVER WHICH THE CONSULTANT EXERCISES CONTROL, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT.

10.06 CONSULTANT SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE CITY FROM AND AGAINST ANY AND ALL CLAIMS, VIOLATIONS, MISAPPROPRIATIONS OR INFRINGEMENT OF ANY PATENT, TRADEMARK, COPYRIGHT, TRADE SECRET OR OTHER INTELLECTUAL PROPERTY RIGHTS AND/OR OTHER INTANGIBLE PROPERTY, PUBLICITY OR PRIVACY RIGHTS ~~AND/OR~~ IN CONNECTION WITH OR ARISING FROM: (1) THE PERFORMANCE OR ACTIONS OF CONSULTANT PURSUANT TO THIS CONTRACT; (2) ANY DELIVERABLE, WORK PRODUCT, CONFIGURED SERVICE OR OTHER SERVICE PROVIDED HEREUNDER; AND/OR THE CITY'S AND /OR CONSULTANT'S USE OF OR ACQUISITION OF ANY REQUESTED SERVICES OR OTHER ITEMS PROVIDED TO THE CITY BY CONSULTANT ~~OR OTHERWISE TO WHICH THE CITY HAS ACCESS AS A RESULT OF CONSULTANT'S PERFORMANCE UNDER THE CONTRACT~~.

10.07 CONSULTANT AND THE CITY AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM UNDER 10.05 OR 10.06. CONSULTANT SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE, INCLUDING ATTORNEYS' FEES. THE DEFENSE OF ANY LAWSUIT SHALL BE COORDINATED BY THE CONSULTANT WITH THE CITY ATTORNEY WHEN THE CITY IS NAMED DEFENDANT IN ANY LAWSUIT AND CONSULTANT MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE CITY ATTORNEY. IF THE CITY DETERMINES THAT A CONFLICT EXISTS BETWEEN ITS INTERESTS AND THOSE OF CONSULTANT OR IF THE CITY IS REQUIRED BY LAW TO SELECT SEPARATE COUNSEL, THE CITY WILL BE PERMITTED TO SELECT SEPARATE COUNSEL AND THE CONSULTANT WILL PAY ALL REASONABLE COSTS OF THE CITY'S COUNSEL.

~~10.08 Release. The Consultant releases, relinquishes, and discharges the City, its officers, agents, employees, and volunteers from all claims, demands, and causes of action of every kind and character, including the cost of defense thereof, for any injury to,~~

~~**sickness or death of the Consultant or its employees and any loss of or damage to any property of the Consultant or its employees that is caused by or alleged to be caused by, arises out of, or is in connection with the Consultant's work to be performed hereunder. Both the City and the Consultant expressly intend that this release shall apply regardless of whether said claims, demands, and causes of action are covered, in whole or in part, by insurance and in the event of injury, sickness, death, loss, or damage suffered by the Consultant or its employees, but not otherwise, this release shall apply regardless of whether such loss, damage, injury, or death was caused in whole or in part by the City, any other party released hereunder, the Consultant, or any third party.**~~

10.09 The indemnities in this Article 10 are intended to comply with Texas Local Government Code 271.904. It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification, release or other obligations under Paragraphs 10.05, 10.06, 10.07 and 10.08 such legal limitations are made a part of the obligations and shall operate to amend same to the minimum extent necessary to bring the provision(s) into conformity with the requirements of such limitations, and as so modified, the obligations set forth therein shall continue in full force and effect.

ARTICLE XI
Insurance

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

ARTICLE XII
Use of Drawings, Specifications and Other Documents

12.01 The drawings, specifications and other documents prepared by the Consultant and Consultant's sub-consultants for this Project shall become the property of the City whether the Project is completed or not. The City shall be furnished and permitted to retain reproducible copies and electronic versions of Consultant's drawings, specifications and other documents.

12.02 The documents prepared by Consultant may be used as a prototype for other facilities by the City. The City may elect to use the Consultant to perform the site adaptation and other architectural or engineering services involved in reuse of the prototype. If so, the Consultant is obligated to perform the work for an additional compensation that will fairly compensate the Consultant and its sub-consultants only for the additional work involved. It is reasonable to expect that the fair additional compensation will be significantly less than the fee provided for under this Contract. If the City elects to employ a different architect or engineer to perform the site adaptation and other

architectural or engineering services involved in reuse of the prototype, that architect or engineer will be entitled to use Consultant's sub-consultants on the same basis that Consultant would have been entitled to use them for the work on the reuse of the prototype, and such architect or engineer will be entitled, to the extent allowed by law, to duplicate the design and review and refer to the construction documents, approved shop drawings and calculations, and change order drawings in performing its work. The Consultant will not be responsible for errors and omissions of a subsequent architect or engineer. The Consultant shall commit its sub-consultants to the terms of this subparagraph. The provisions of this section shall survive termination of this Contract.

12.03 In the event of termination of this Contract for any reason, the City shall receive all original documents prepared to the date of termination and shall have the right to use those documents and any reproductions in any way necessary to complete the Project.

12.04 The details of the drawings relating to this Project and other general non-project specific information may be used by the Consultant on other projects, but they shall not be used as a whole without written authorization by the City. The City-furnished forms, conditions, and other written documents shall not be used on other projects by the Consultant.

ARTICLE XIII
Termination

13.01 The City may terminate this Contract at any time upon **thirty (30)** calendar days' written notice. Upon the Consultant's receipt of such notice, the Consultant shall cease work immediately. To the extent of funds appropriated or otherwise legally available for such purposes, the Consultant shall be compensated only for the services properly performed prior to the termination date.

13.02 If, through any cause, the Consultant fails to fulfill its obligations under this Contract, or if the Consultant violates any of the agreements of this Contract, the City has the right to terminate this Contract by giving the Consultant **five (5)** calendar days written notice to the Consultant. The Consultant will be compensated for the services properly performed prior to the termination date.

13.03 No term or provision of this Contract shall be construed to relieve the Consultant of liability to the City for damages sustained by the City because of any breach of contract and/or negligence by the Consultant. The City may withhold payments to the Consultant for the purpose of setoff until the exact amount of damages due the City from the Consultant is determined and paid.

ARTICLE XIV
Miscellaneous Terms

14.01 This Contract has been made under and shall be governed by the laws of the State of Texas. The parties agree that performance and all matters related thereto shall be in Nacogdoches County, Texas.

14.02 The City, or if State funds are used to pay any part of this contract, the State Auditor, may conduct an audit or investigation of any entity receiving funds directly under this contract or indirectly through a subcontract under the contract. Acceptance of funds under the contract or through a subcontract under the contract acts as acceptance of the authority of the City or the State Auditor to conduct an audit or investigation. Consultant agrees to cooperate and must provide the City and/or State Auditor with access to any information the City and/or State Auditor considers relevant to the investigation or audit. The Consultant agrees to refund to the City any overpayments disclosed by any such audit.

14.03 The Consultant shall retain all such records for a period of four (4) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Consultant are resolved, whichever is longer.

14.04 Consultant hereby assigns to the City any and all claims for overcharges associated with this Agreement which arise under the antitrust laws of the United States, 15 USCA Section 1 et seq., and/or which arise under the antitrust laws of the State of Texas, Business and Commerce Code Ann., Section 15.01, et seq.

14.05 Notices shall be mailed to the addresses designated herein or as may be designated in writing by the parties from time to time and shall be deemed received when sent postage prepaid U.S. Mail to the following addresses:

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

Consultant:
SCS Engineers
Attn: Jeff Reed
12651 Briar Forest Drive, Suite 205
Houston, Texas 77077

14.06 No waiver by either party hereto of any term or condition of this Contract shall be deemed or construed to be a waiver of any other term or condition or subsequent waiver of the same term or condition.

14.07 This Contract represents the entire and integrated agreement between the City and the Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral. This Contract may only be amended by written instrument approved and executed by the parties.

14.08 This Contract and all rights and obligations contained herein may not be assigned by the Consultant without the prior written approval of the City.

14.09 If any provision of this Contract shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court of competent jurisdiction finds that any provision of this Contract is invalid or unenforceable, but that by limiting such provision it may become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

14.10 The Consultant, its agents, employees, and subcontractors must comply with all applicable federal and state laws, the charter and ordinances of the City of Nacogdoches, and with all applicable rules and regulations promulgated by local, state, and national boards, bureaus, and agencies. The Consultant must obtain all necessary ~~permits and~~ licenses required in completing the work and providing the services required by this Contract.

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

(a) Contractor has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Contract.

(b) Contractor represents and warrants that it has no actual or potential conflicts of interest in the goods and or services described in the scope of work to this contract.

(c) **Antitrust**. Pursuant to 15 U.S.C. §1, et seq. and Tex. Bus. & Comm. Code §15.01, et seq. neither the contractor nor the firm, corporation, partnership, or institution represented by the contractor, or anyone acting for such a firm, corporation or institution has violated the antitrust laws of this state, federal antitrust laws, nor communicated directly or indirectly the bid made to any competitor or any other person engaged in such line of business.

(d) **Debarment**. Contractor certifies that Contractor and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity and that Contractor is in compliance with the State of Texas statutes and rules relating to procurement. Entities ineligible for state procurement are listed on the State of Texas Debarred Vendor List maintained by the Texas Comptroller of Public Accounts and

the System for Award Management (SAM) maintained by the General Services Administration. Entities ineligible for federal procurement are listed at http://www.sam.gov/content/exclusions .

(e) **Terrorism Watch List.** Contractor represents and warrants that it does not do business with Iran, Sudan or a foreign terrorist organization as prohibited by Texas Government Code 2252.152. Contractor certifies that it is not listed on the federal government's terrorism watch list as described in Executive Order 13224.

(f) **Convictions**. Under Sections 2155.006, 2155.0061 and 2261.053 of the Texas Government Code, Contractor certifies that it is not ineligible to receive the specified contract and may be terminated and payment withheld if this certification is inaccurate. These sections prohibit contracts that include proposed financial participation by an individual or business entity who has been convicted in the past five years of (a) violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by §418.004, Gov't Code, occurring after September 24, 2005; and (b) of any offense related to the direct support or promotion of human trafficking.

(g) **COVID Vaccinations**. Contractor certifies that it does not require its customers to provide any documentation certifying the Customer's COVID-19 vaccination or post-transmission recovery on entry to, or to receive service from the Contractor's business.

(h) **Boycotts.** (a) To the extent this Contract is considered a Contract for goods or services subject to § 2270.002 Texas Government Code, Contractor verifies that it: (i) does not boycott Israel; and (ii) will not boycott Israel during the term of this Contract.

(b) To the extent this Contract has a value of $100,000 or more and Contractor is an organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations, that exists to make a profit that employs 10 or more full time employees, Contractor certifies that it: (i) does not and will not boycott energy companies during the term of the contract (*See Texas Government Code 2274.002, et seq.*); and (ii) does not and will not discriminate against a firearm entity or firearm trade association (*See Texas Government Code 2274.002, et seq.*).

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

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

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

SCS ENGINEERS
12651 Briar Forest Drive, Suite 205
Houston, Texas 77077

By: _____
Printed Name: JEFFREY K. REED
Title: VP
Date: 2/12/24
Firm Registration No.: F-3407

CITY OF NACOGDOCHES
P. O. Box 635030
Nacogdoches, Texas 75963-5030

By: _____
Printed Name: _____
Title: City Manager
Date: _____

APPROVED AS TO CONTENT:

_____
Director of Public Works

APPROVED AS TO FORM:

_____
City Attorney

Exhibit A
Scope of Services

Provide Mandatory Greenhouse Gas (GHG) reporting support services for calendar year 2023 emissions at the City of Nacogdoches Landfill (landfill). Services are meant to cover the calculation and reporting of GHG in accordance with the Federal Mandatory GHG Reporting Rule.

Consultant will prepare the required reporting associated with the Federal mandatory GHG reporting rules for calendar year 2023 GHG emissions. Work will include preparation and submittal of the required GHG emissions estimates and associated information required by the GHG reporting rule by the March 31, 2024 deadline. City will provide any needed information to the Consultant for the reporting. Consultant will use their XML submittal form and work with the City to certify the results to the Environmental Protection Agency (EPA) and verify all inputs.

When the reporting has been completed, Consultant will provide City with a memorandum including backup calculation spreadsheets and pertinent assumptions. No site visits are included for this subtask.

Exhibit B
Payment Terms and Schedule

Payment is a fixed fee in the amount listed in paragraph 2.01 of this Contract. This amount shall be payable by the City upon completion of the services and acceptance by the City. The City will pay invoices according to its normal payment procedures.

Exhibit C
Insurance Requirements

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

I. Standard Insurance Policies Required:

A. Commercial General Liability
B. Business Automobile Liability
C. Workers' Compensation
D. Professional Liability

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

III. General Requirements Applicable to All Policies

A. Only insurance carriers licensed and authorized to do business in the State of Texas will be accepted.
B. Deductibles shall be listed on the Certificate of Insurance.
C. "Claims made" policies will not be accepted, except for Professional Liability insurance.
D. Coverage shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) calendar days prior written notice has been given to the City of Nacogdoches.
E. The Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent on the most current State of Texas Department of Insurance-approved forms.
F. The City of Nacogdoches, its officials, employees and volunteers, are to be named as "Additional Insured" to the Commercial General, Umbrella and Business Automobile Liability policies. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees or volunteers.
G. Waiver of subrogation in a form at least as broad as ISO form 2404 shall be provided in favor of the City on all policies obtained by the Contractor in compliance with the terms of this Agreement.

IV. Commercial (General) Liability requirements:

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

V. Business Automobile Liability requirements:

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

VI. The worker's compensation insurance requirements:

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

2. "Texas Waiver of Our Right to Recover From Others Endorsement, WC 42 03 04" shall be included in this policy.

3. Texas must appear in Item 3A of the Workers Compensation coverage or Item 3C must contain the following: All States except those listed in Item 3A and the States of NV, ND, OH, WA, WV, and WY.

VII. Professional Liability requirements:

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

Nacogdoches when requested.

C. Policy must include availability of a two-year extended reporting period.

D. Retroactive date must be shown on certificate.

Exhibit D
Certificates of Insurance

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 3/31/2024 | 03/16/2023

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

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

PRODUCER	Lockton Insurance Brokers,LLC CA License #0F15767 777 S. Figueroa Street, 52nd fl. Los Angeles CA 90017 213-689-0065
CONTACT NAME:	
PHONE (A/C, No, Ext):	FAX (A/C, No):
E-MAIL ADDRESS:	

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : Zurich American Insurance Company	16535
INSURER B : Steadfast Insurance Company	26387
INSURER C :	
INSURER D :	
INSURER E :	
INSURER F :	

INSURED 1506868 SCS Engineers, 3900 Kilroy Airport Way, Ste 100, Long Beach, CA 90806-6816

COVERAGES SCSEN01 CERTIFICATE NUMBER: 18259734 REVISION NUMBER: XXXXXXX

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE [X] OCCUR X X,C,U Included X Contractual Liab GEN'L AGGREGATE LIMIT APPLIES PER: POLICY [X] PRO-JECT [X] LOC OTHER:	Y	Y	GLO 0112778-08	03/31/2023	03/31/2024	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG $	$ 5,000,000 $ 1,000,000 $ 25,000 $ 2,000,000 $ 10,000,000 $ 10,000,000 $
A	AUTOMOBILE LIABILITY X ANY AUTO OWNED AUTOS ONLY HIRED AUTOS ONLY SCHEDULED AUTOS NON-OWNED AUTOS ONLY	N	N	BAP 0112780-08	04/01/2023	04/01/2024	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident) $	$ 2,000,000 $ XXXXXXX $ XXXXXXX $ XXXXXXX $ XXXXXXX
	UMBRELLA LIAB OCCUR EXCESS LIAB CLAIMS-MADE DED RETENTION $			NOT APPLICABLE			EACH OCCURRENCE AGGREGATE $	$ XXXXXXX $ XXXXXXX $
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N [N] If yes, describe under DESCRIPTION OF OPERATIONS below	N/A	Y	WC0112779-08	04/01/2023	04/01/2024	X PER STATUTE OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	 $ 1,000,000 $ 1,000,000 $ 1,000,000
B	Env Prof (E&O) - Prof Liab - Claims Made	N	N	PEC 0112862-08	03/31/2023	03/31/2024	Per Claim: 2,000,000 Aggregate: 2,000,000	

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

RE: Job Description: Architectural & Engineering Professional Services Contract - City of Nacogdoches LF, 4602 Northwest Stalling Dr., Nacogdoches 75964. Commercial General Liability Deductible $10,000, Auto Liability Deductible $10,000, Workers' Compensation Deductible $0, and Professional Liability Deductible $100,000. The Professional Liability retroactive date is 04/01/1970. The City of Nacogdoches is included as additional insured on a primary and non-contributory basis in accordance with the policy provisions of the Commercial General Liability policy. Continued on the next page.

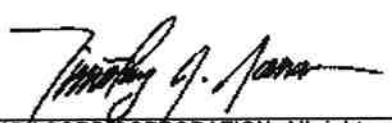
CERTIFICATE HOLDER

18259734
City of Nacogdoches
Attn: City Manager
PO Box 635030
Nacogdoches TX 75961

CANCELLATION See Attachments

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE



© 1988-2015 ACORD CORPORATION. All rights reserved

CONTINUATION DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS (Use only if more space is required)

A Waiver of Subrogation in favor of the City of Nacogdoches in accordance with the policy provisions of the Commercial General Liability and Workers' Compensation policies.

City of Nacogdoches
Attn: City Manager

PO Box 635030

Nacogdoches, TX 75961

To whom it may concern:

In our continuing effort to provide timely certificate delivery, Lockton Companies is transitioning to ***paperless delivery*** of Certificates of Insurance, thus this is your final hard-copy delivery.

To ensure electronic delivery for future renewals of this certificate, we need your email address. Please contact us via one of the methods below, referencing Certificate ID **18259734**

- Email: LACertseDelivery@lockton.com
- Phone: (213) 334- 4669

If you received this certificate through an internet link where the current certificate is viewable, we have your email and no further action is needed.

In the event your mailing address has changed, will change in the future, or you no longer require this certificate, please let us know using one of the methods above.

The above inbox and phone number is for automating electronic delivery of certificates only. Please do NOT send future certificate requests to this inbox or contact the phone number below with email updates.

Thank you for your cooperation and willingness in reducing our environmental footprint.

Lockton Companies

Additional Insured – Automatic – Owners, Lessees Or Contractors

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.	
Policy No. GLO 0112778-08	Effective Date: 03/31/2023

This endorsement modifies insurance provided under the:

Commercial General Liability Coverage Part

A. Section **II – Who Is An Insured** is amended to include as an additional insured any person or organization whom you are required to add as an additional insured under a written contract or written agreement executed by you, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" and subject to the following:

1. If such written contract or written agreement specifically requires that you provide that the person or organization be named as an additional insured under one or both of the following endorsements:

a. The Insurance Services Office (ISO) ISO CG 20 10 (10/01 edition); or

b. The ISO CG 20 37 (10/01 edition),

such person or organization is then an additional insured with respect to such endorsement(s), but only to the extent that "bodily injury", "property damage" or "personal and advertising injury" arises out of:

(1) Your ongoing operations, with respect to Paragraph **1.a.** above; or

(2) "Your work", with respect to Paragraph **1.b.** above,

which is the subject of the written contract or written agreement.

However, solely with respect to this Paragraph **1.**, insurance afforded to such additional insured:

(a) Only applies if the "bodily injury", "property damage" or "personal and advertising injury" offense occurs during the policy period and subsequent to your execution of the written contract or written agreement; and

(b) Does not apply to "bodily injury" or "property damage" caused by "your work" and included within the "products-completed operations hazard" unless the written contract or written agreement specifically requires that you provide such coverage to such additional insured.

2. If such written contract or written agreement specifically requires that you provide that the person or organization be named as an additional insured under one or both of the following endorsements:

a. The Insurance Services Office (ISO) ISO CG 20 10 (07/04 edition); or

b. The ISO CG 20 37 (07/04 edition),

such person or organization is then an additional insured with respect to such endorsement(s), but only to the extent that "bodily injury", "property damage" or "personal and advertising injury" is caused, in whole or in part, by:

(1) Your acts or omissions; or

(2) The acts or omissions of those acting on your behalf,

Includes copyrighted material of Insurance Services Office, Inc., with its permission.

in the performance of:

(a) Your ongoing operations, with respect to Paragraph **2.a.** above; or

(b) "Your work" and included in the "products-completed operations hazard", with respect to Paragraph **2.b.** above,

which is the subject of the written contract or written agreement.

However, solely with respect to this Paragraph **2.**, insurance afforded to such additional insured:

(i) Only applies if the "bodily injury", "property damage" or "personal and advertising injury" offense occurs during the policy period and subsequent to your execution of the written contract or written agreement; and

(ii) Does not apply to "bodily injury" or "property damage" caused by "your work" and included within the "products-completed operations hazard" unless the written contract or written agreement specifically requires that you provide such coverage to such additional insured.

3. If neither Paragraph **1.** nor Paragraph **2.** above apply and such written contract or written agreement requires that you provide that the person or organization be named as an additional insured:

a. Under the ISO CG 20 10 (04/13 edition, any subsequent edition or if no edition date is specified); or

b. With respect to ongoing operations (if no form is specified),

such person or organization is then an additional insured only to the extent that "bodily injury", "property damage" or "personal and advertising injury" is caused, in whole or in part by:

(1) Your acts or omissions; or

(2) The acts or omissions of those acting on your behalf,

in the performance of your ongoing operations, which is the subject of the written contract or written agreement.

However, solely with respect to this Paragraph **3.**, insurance afforded to such additional insured:

(a) Only applies to the extent permitted by law;

(b) Will not be broader than that which you are required by the written contract or written agreement to provide for such additional insured; and

(c) Only applies if the "bodily injury", "property damage" or "personal and advertising injury" offense occurs during the policy period and subsequent to your execution of the written contract or written agreement.

4. If neither Paragraph **1.** nor Paragraph **2.** above apply and such written contract or written agreement requires that you provide that the person or organization be named as an additional insured:

a. Under the ISO CG 20 37 (04/13 edition, any subsequent edition or if no edition date is specified); or

b. With respect to the "products-completed operations hazard" (if no form is specified),

such person or organization is then an additional insured only to the extent that "bodily injury" or "property damage" is caused, in whole or in part by "your work" and included in the "products-completed operations hazard", which is the subject of the written contract or written agreement.

However, solely with respect to this Paragraph **4.**, insurance afforded to such additional insured:

(1) Only applies to the extent permitted by law;

(2) Will not be broader than that which you are required by the written contract or written agreement to provide for such additional insured;

(3) Only applies if the "bodily injury" or "property damage" occurs during the policy period and subsequent to your execution of the written contract or written agreement; and

(4) Does not apply to "bodily injury" or "property damage" caused by "your work" and included within the "products-completed operations hazard" unless the written contract or written agreement specifically requires that you provide such coverage to such additional insured.

Includes copyrighted material of Insurance Services Office, Inc., with its permission.

B. Solely with respect to the insurance afforded to any additional insured referenced in Section **A.** of this endorsement, the following additional exclusion applies:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or failure to render, any professional architectural, engineering or surveying services including:

1. The preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
2. Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of or the failure to render any professional architectural, engineering or surveying services.

C. Solely with respect to the coverage provided by this endorsement, the following is added to Paragraph **2. Duties In The Event Of Occurrence, Offense, Claim Or Suit** of Section **IV – Commercial General Liability Conditions**:

The additional insured must see to it that:

(1) We are notified as soon as practicable of an "occurrence" or offense that may result in a claim;

(2) We receive written notice of a claim or "suit" as soon as practicable; and

(3) A request for defense and indemnity of the claim or "suit" will promptly be brought against any policy issued by another insurer under which the additional insured may be an insured in any capacity. This provision does not apply to insurance on which the additional insured is a Named Insured if the written contract or written agreement requires that this coverage be primary and non-contributory.

D. Solely with respect to the coverage provided by this endorsement:

1. The following is added to the **Other Insurance** Condition of Section **IV – Commercial General Liability Conditions**:

Primary and Noncontributory insurance

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured provided that:

a. The additional insured is a Named Insured under such other insurance; and

b. You are required by written contract or written agreement that this insurance be primary and not seek contribution from any other insurance available to the additional insured.

2. The following paragraph is added to Paragraph **4.b.** of the **Other Insurance** Condition under Section **IV – Commercial General Liability Conditions**:

This insurance is excess over:

Any of the other insurance, whether primary, excess, contingent or on any other basis, available to an additional insured, in which the additional insured on our policy is also covered as an additional insured on another policy providing coverage for the same "occurrence", offense, claim or "suit". This provision does not apply to any policy in which the additional insured is a Named Insured on such other policy and where our policy is required by a written contract or written agreement to provide coverage to the additional insured on a primary and noncontributory basis.

E. This endorsement does not apply to an additional insured which has been added to this Coverage Part by an endorsement showing the additional insured in a Schedule of additional insureds, and which endorsement applies specifically to that identified additional insured.

F. Solely with respect to the insurance afforded to an additional insured under Paragraph **A.3.** or Paragraph **A.4.** of this endorsement, the following is added to Section **III – Limits Of Insurance**:

Additional Insured – Automatic – Owners, Lessees Or Contractors Limit

The most we will pay on behalf of the additional insured is the amount of insurance:

Includes copyrighted material of Insurance Services Office, Inc., with its permission.

1. Required by the written contract or written agreement referenced in Section **A.** of this endorsement; or
2. Available under the applicable Limits of Insurance shown in the Declarations,

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

All other terms, conditions, provisions and exclusions of this policy remain the same.

Includes copyrighted material of Insurance Services Office, Inc., with its permission.

POLICY NUMBER: GLO 0112778-08

COMMERCIAL GENERAL LIABILITY
CG 24 04 05 09

WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

Name Of Person Or Organization:
ANY PERSON OR ORGANIZATION THAT REQUIRES YOU TO WAIVE YOUR RIGHTS OF RECOVERY, IN A WRITTEN CONTRACT OR AGREEMENT WITH THE NAMED INSURED THAT IS EXECUTED PRIOR TO THE ACCIDENT OR LOSS.

©

Policy Number: WC0112779-08

TEXAS WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

This endorsement applies only to the insurance provided by the policy because Texas is shown in Item 3.A. of the Information Page

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule, but this waiver applies only with respect to bodily injury arising out of the operations described in the Schedule where you are required by a written contract to obtain this waiver from us.

This endorsement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

The premium for this endorsement is shown in the Schedule.

Schedule

1. (☐) Specific Waiver

   Name of person or organization
   ALL PERSONS AND/OR ORGANIZATIONS THAT ARE REQUIRED BY WRITTEN CONTRACT OR AGREEMENT WITH THE INSURED, EXECUTED PRIOR TO THE ACCIDENT OR LOSS, THAT WAIVER OF SUBROGATION BE PROVIDED UNDER THIS POLICY FOR WORK PERFORMED BY YOU FOR THAT PERSON AND/OR ORGANIZATION

   (☐) Blanket Waiver

   Any person or organization for whom the Named Insured has agreed by written contract to furnish this waiver.

2. Operations:

3. Premium:
   The premium charge for this endorsement shall be 2 percent of the premium developed on payroll in connection with work performed for the above person(s) or organization(s) arising out of the operations described.

4. Advance Premium: INCL

© Copyright 2014 National Council on Compensation Insurance, Inc. All Rights Reserved.

PRESENTER:

ITEM/SUBJECT: Consider approval of minutes for the January 31, 2024, City Council Work Session and the February 6, 2024, City Council Regular meeting. (City Secretary)

SUMMARY/BACKGROUND:

FINANCIAL:

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

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

ATTACHMENTS:
1. City Council Meeting Minutes - 01.31.24
2. City Council Meeting Minutes - 02.06.24

Work Session
Nacogdoches City Council
January 31, 2024 – 5:30 p.m.
City Council Chambers – City Hall
202 East Pilar Street

DRAFT

Minutes unofficial until approved by City Council

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

1. Called to order at 5:30 p.m.

2. Pledge of Allegiance.

3. Open Forum:

There were no comments from the public in Open Forum.

4. **WORK SESSION:**

A. Receive a presentation and hold a discussion regarding the Low-income Housing Tax Credit Program.

Larissa Philpot-Brown addressed Council with a presentation on Low-income Housing. She stated that the Low-income Program was created to replace the previously built low-income housing providing billions of dollars to the state as tax credits. The administrator is the Texas Department of Housing and Community Affairs and is not Section 8 housing. Ms. Philpot Brown further explained that developers are seeking from Council, letters of support based on a point system on their applications.

After the developers' requests are heard by Council, the Economic Development Department will send the resolutions to the state representative for support. She also stated that the applications are very competitive. Ms. Philpot-Brown shared the Census Data of 2 surrounding cities showing the median income of the cities. She also shared the Existing Tax Credit Properties within the city.

Ms. Philpot-Brown stated the city received four applications, two non-profit and two for-profit. The two non-profits were targeted towards the elderly, and the two for-profit applications were targeted for the general population.

Councilwoman Belanger stated that the questions she thought some of the answers that should be answered by the developers were investing profits back into the community, how residents are screened, who manages the property, and how long the properties are held.

Mayor Johnson asked how close the proposed property is to the Timber Springs development. Ms. Philpot-Brown explained that the property was not near the Timber Springs development.

Councilman Boldon asked how long were the developments subsidized. Ms. Philpot-Brown stated 10 years.

Councilwoman Belanger stated she supported low-income housing for seniors and also supported the developer who keeps their management throughout, hired locals for jobs, and hiring locals for building the complexes. She also shared the scores of the developers.

Councilman Maule asked that the City Manager share his experiences with low-income housing.

Mr. Beverlin gave his opinion on the city's housing needs and overbuilding multi-family developments. He stated that multi-generational poverty is not solved by over supplying multi-family. Mr. Beverlin brought the un-approved Comprehensive Plan that could reveal a large piece regarding the needs of the city. He addressed the UT System and what the growth would look like in the future.

Councilman Maule asked if there were criteria that would keep a student from qualifying for low-income housing. Ms. Philpot-Brown stated if the student met the income requirements there should be no restrictions on a student.

Council asked Ms. Philpot-Brown to research other city's historical homeownership rates, what the composition of the builds, and if the developers will provide transportation for the residents, and how many jobs the developers will bring.

5. **ADJOURNED:** 6:49 p.m.

_____
Mayor Randy Johnson
City Council
City of Nacogdoches

ATTEST:

_____
Rhonda Lewis, City Secretary

Regular Session
Nacogdoches City Council
February 6, 2024 – 5:30 p.m.
City Council Chambers – City Hall
202 East Pilar Street

DRAFT

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

1. Called to order at 5:30 p.m.

2. Pledge of Allegiance.

3. Open Forum:

Grace Garrigan a resident of Nacogdoches, attended Councilman Maule's Ward meeting. She expressed her concerns for the safety of her family in the City and the lack of walkability. Ms. Garrigan stated that the City can do much more to protect and safeguard pedestrians, as well.

4. ITEMS TO BE REMOVED FROM CONSENT AGENDA.

There were no items removed from the Consent Agenda.

5. **CONSENT AGENDA:**

A. Consider approval of Historic Restoration Grant (HRG) budget for FY2024.

B. Accept a previously approved Grant Agreement and Contract between the City of Nacogdoches and Humanities Texas (HTx) in the award amount of $4,600.00.

C. Consider approval of a resolution to amend the Designated Authorized Representatives for the TexPool Investment Pools.

D. Consider approval of a resolution calling the General Election of City Council Members for Southeast Ward and Southwest Ward in and for the City of Nacogdoches, Texas.

E. Consider approval of minutes for the rescheduled Regular City Council Meeting for January 23, 2024.

F. Consider approval of a contract by and between the City of Nacogdoches and Curtis Architecture for professional architectural services on City Hall Roof & HVAC Replacements Project in a not-to-exceed amount of $49,500.00.

G. Consider approval of a contract by and between the City of Nacogdoches and Hydrex Environmental for professional engineering services for Landfill Soil Sampling for Metals with SPLP Analysis in a not-to-exceed amount of $9,716.00.

H. Presentation of the Investment Report for the quarter ended September 30, 2023.

6. **REGULAR AGENDA:**

A. Consider approval of a contract by and between the City of Nacogdoches and McKinney & Moore of Texas, LLC for the WWTP Bar Screen Rehabilitation Project for a not-to-exceed amount of $114,040.00.

Case Opperman, Public Works Director and City Engineer, stated that his department brought this item before Council in August of 2023. The item was approved and Bar Screen was purchased. Mr. Opperman stated that bids were received on January 25, with McKinney & Moore being the lowest qualifying bid. Mayor Johnson asked if the if the installation project is budgeted. Mr. Opperman stated, yes.

Councilwoman Belanger moved to approve Item 6.A., awarding the contract of McKinney & Moore. Councilman Huckaby duly seconded the motion and the item was approved unanimously.

Minutes unofficial until approved by City Council

B. Receive presentations and hold discussions regarding the Low-Income Housing Tax Credit Program applications, and requests for support.

i. Project Name: Pine Creek Senior Village, Project Location: SEC N University Dr. and E. Main Street., TDHCA Application Number: 24115.

ii. Project Name: Elm Grove Apartments, Project Location: N University, TDHCA Application Number: 24156.

iii. Project Name: Ridgebrook Senior Village, Project Location: SEC N University and NE Stallings Dr, TDHCA Application Number: 24106.

iv. Project Name: GardenWalk of Nacogdoches, Project Location: 3279 N. University Dr., TDHCA Application Number: 24254.

Larissa Philpot-Brown, Economic Development Director, addressed City Council stating that the previous Work Session held for this item was a success in providing Council with the information needed to make a decision on low-income housing. She stated that the developers requesting support were present to speak on their proposed projects.

Russ Michaels of Pinecreek Senior Village and Executive Director of Texas Interfaith Housing presented on this project in the Southeast Ward. He explained that the development is age-restricted senior developments and will have up to 60 units. Mr. Michaels stated that his non-profit pays property taxes, bring in social services, and is about building up lives and not just homes. He also mentioned the Ridgebrook Senior Village project that scored slightly higher than Pinecreek.

Councilman Maule asked what Mr. Michaels meant by long-term. Mr. Michaels answered that the affordability for the properties lasts from 45-55 years.

Councilwoman Belanger asked what materials are used in the build. Mr. Michaels stated masonry, stucco, brick and limestone to blend in with the area of the build.

Councilwoman Belanger asked if the developer hired locally. Mr. Michaels stated that with current construction costs, he attempts to find as many local sources as possible.

Councilman Boldon asked if there is a difference in long-term rental when considering the cost of materials used to build. Mr. Michaels stated that maximizing the use of the credits given determine the building materials that are more in line with the community and has a big impact on the longevity of the property.

Councilman Huckaby asked if there have been discussions with Brazos Transit. Mr. Michaels stated they have not had discussions; however, his company does provide a van service that can be discussed moving forward.

Jake Mooney of JCM Investors and Elm Grove Apartments, described to Council what set his development apart from the other is the scoring of the various developments. He also stated that general occupancy sets them apart, supporting the citizens that are working in the City of Nacogdoches. Mr. Mooney stated his company's goal is to help people establish themselves and then transition to owning a home. He stated his focus is to serve young families, and changing the quality of lives of young people and provide opportunities to grow.

Councilman Maule asked how Mr. Mooney's company knows when they are getting a young family vs. a college student. Mr. Mooney stated that students did not qualify for affordable housing according to the program.

Councilwoman Belanger asked how much is the value of the development. Mr. Mooney answered around 3-4 million.

Councilman Huckaby asked about the process of qualifying for the program. Mr. Mooney stated that the landlord has more responsibilities in controlling the rules of the development and also the vetting process of tenants.

C. Discuss and consider resolutions of support, no-opposition, or denial for developers applying for Texas Department of Housing and Community Affairs 2022 Competitive 9% Low-Income Housing Tax Credit Program.

Larissa Philpot-Brown asked City Council to consider the resolution options for each development. After a discussion by Council, Projects ii., iii., and iv. Received no action and Project i., received a letter of support from the City of Nacogdoches.

D. Receive the 2023 Racial Profiling Report.

Police Chief, Scott Weems, presented this yearly report to Council which is also submitted to TCOLE. He went over the total stops by the department, and the numbers for the known race and ethnicity of the individuals. He also went over the searches conducted in 2023.

Mr. Boldon questioned the number of stops when the ethnicity was not known prior to the stop. Chief Weems explained that the percentage depended on the type of stop the officer is conducting.

Chief Weems continued with the searches conducted and the reasons for conducting the search, which include, consent, probable cause, contraband in plain view, inventory, and incident to arrest. Chief Weems went over the result of stops, and the arrest based on violations of the penal code.

E. Consider approval of the January Boards and Commissions appointments, namely, the Airport Advisory Board; Building Standards Commission; Health Code Advisory Board; Industrial Development Authority; Nacogdoches Cemetery Board; and Main Street Advisory Board.

Mayor Johnson named the nominees to each of the Boards and Commissions slated for approvals. The votes are as follows:

Airport Advisory Board – Councilman Maule made a motion to accept the nominations as stated. Councilman Boldon duly seconded the motion, and the motion was approved unanimously.

Building Standards Commission – Councilman Huckaby made a motion to approve the nominations as stated. Councilman Maule duly seconded the motion, and the motion was approved unanimously.

Health Code Advisory Board – Councilmember Belanger made a motion to approve the nomination as stated. Councilman Maule duly seconded the motion, and the motion was approved unanimously.

Industrial Development Authority – Councilmember Boldon made a motion to approve the nomination as stated. Councilman Huckaby duly seconded the motion, and the motion was approved unanimously.

Nacogdoches Cemetery Board – Councilmember Boldon made a motion to approve the nominations as stated. Councilman Maule duly seconded the motion, and the motion was approved unanimously.

Main Street Advisory Board – Councilman Huckaby made a motion to approve the nominations as stated. Councilman Boldon duly seconded the motion, and the motion was approved unanimously.

F. Consider approval of a contract by and between the City of Nacogdoches and Schaumburg & Polk, Inc. for professional engineering services on ARPA Sewer Improvements in a not-to-exceed amount of $90,560.00.

Case Opperman, Public Works Director and City Engineer, stated that this contract is for sewer line replacements on North St.; Chestnut, and Pinecrest.

Councilman Maule asked who picks the projects to repair. Mr. Opperman stated that staff looks at which projects makes the most since to take on first.

Councilwoman Belanger made a motion to approve item 6.F. Councilman Boldon duly seconded the motion and the motion was approved unanimously.

G. Consider the purchase of a BME Model 34 Type-3 Wildland Fire Engine from Siddons-Martin Emergency Group for the amount of $458,881.00. (Fire Chief)

Fire Chief Brown presented his item to Council to request approval of a new Type 3 Fire Engine. He stated that the purchase came under budget. The Fire Engine is 4-wheel drive and can carry around 4-5 Fire staff. The tank capacity is 500 gallons. The fire engine they will replace is a 1994 refurbished unit.

Councilwoman Belanger moved to approve the purchase of the new Type 3 Fire Engine. Councilman Maule duly seconded the motion, and the motion was approved unanimously.

7. **EXECUTIVE SESSION:**

Council adjourned into Executive Session at 7:15 p.m.

City Council reconvened in Regular Session at 7:23.

Councilwoman Belanger made a motion to approve the appointment of Rhonda Lewis to the position of City Secretary for the City of Nacogdoches. Councilman Huckaby duly seconded the motion and the motion was approved unanimously.

8. **ADJOURNED:** 7:24 p.m.

_____
Mayor, Randy Johnson
City Council
ATTEST: City of Nacogdoches

_____
Rhonda Lewis, Deputy City Secretary

PRESENTER: Colin Smith, Airport Manager

ITEM/SUBJECT: Consider approval of an airport hangar ground lease between the City of Nacogdoches and HCH Real Estate Holdings, LLC. (Airport Manager)

SUMMARY/BACKGROUND: All hangars at the airport are on ground that is leased by the City for 20 year-terms. These leases are renewed on occasions such as expiration, sale, and change of use. Existing hangar D-124 has both been sold and is undergoing a change of use. HCH Real Estate Holdings, LLC, recently purchased hangar D-124 with the declared intent of subleasing to HCH Aviation for aircraft storage and other uses related to its flight instruction business.

The lease up for consideration of approval is based on the City Council approved standard airport ground lease with additions concerning permissions to operate the HCH Aviation business from hangar D-124 pursuant to the existing HCH Aviation FBO (Fixed Base Operator) agreement in place with the City, and also considerations for automobile parking in conjunction with said business operations.

FINANCIAL:
Item generates budgeted revenue of: $958.16/yr

COUNCIL PRIORITIES: THIS AGENDA ITEM IS CONSISTENT WITH THE FOLLOWING CITY COUNCIL PRIORITIES
Not Applicable

CITY CONTACT: Colin Smith, Airport Manager
smithcm@nactx.us
(936) 560-9567

ATTACHMENTS: 1. D-124_Hangar Ground Lease - Signed by Lessee

CITY OF NACOGDOCHES

A.L. MANGHAM, JR REGIONAL AIRPORT

GROUND LEASE AGREEMENT

STATE OF TEXAS §

§ **KNOW ALL MEN BY THESE PRESENTS:**

COUNTY OF NACOGDOCHES §

This lease is made and entered into this _____day of _____, **2024**, by and between the City of Nacogdoches, hereinafter referred to as LESSOR and which is the owner of the A.L. Mangham, Jr. Regional Airport, hereinafter referred to as AIRPORT and **HCH Real Estate Holdings, LLC** hereinafter referred to as LESSEE who covenant and agree as follows:

WHEREAS, Lessor and Lessee are committee to the proper operation, improvement and continued development of the AIRPORT; and

WHEREAS, Lessor deems it advantageous to itself and to the operation of the Airport to lease to Lessee certain land/hangar/building/office as stated herein;

NOW THEREFORE, in accordance of the terms, considerations and privileges listed herein, Lessor and Lessee covenant and agree as follows:

I. LEASED AREA

Lessor, in consideration of the rents, covenants and promises by Lessee herein contained, does hereby lease to Lessee and Lessee does hereby rent and accept from Lessor that real property referred to as the leased premises and more particularly described as **Tract No. D-124**, accompanying septic tank and leach field, located on the Airport as shown on Exhibit A attached hereto and incorporated herein by reference.

Lessee, and their sublessees, shall utilize the existing paved public parking spaces on the land side (north) of the hangar until the volume of parked automobiles associated with activities at hangar D-124 regularly reaches levels to which public parking for other airport users is diminished to a level at which the Airport Manager deems to be too low. At such time the Lessee will be required to construct and provide parking improvements meeting City standards and requirements on newly leased ground where designated by the City.

II. TERM

This Lease shall be for a term of twenty (20) years (the "lease term") beginning on **January 1, 2024,** and ending on **January 1, 2044,** subject to earlier termination as hereinafter provided. At the end of the lease term the Lessee shall have the right of first refusal to re-lease the leased property on terms to be negotiated in good faith by both parties.

III. GROUNDS FOR TERMINATION

Grounds for termination of this lease at any time by Lessor shall include but not limited to:

1. Non-payment of rental.
2. Violation of any term, condition or promise contained or referenced herein.
3. Conduct of operations covered or controlled by categories A through G of Section 10-3 Minimum Standards for Fixed Base Operators and Airport Tenants of the Code of Ordinances of the City of Nacogdoches (incorporated herein by reference) as such may be amended in the future.
4. Violation by Lessee of any other provision of Chapter 10 of the Code of Ordinances of the City of Nacogdoches as amended, and as amended in the future, all of which is incorporated herein by reference.
5. Violation of Airport Zoning or the lawful rules or orders of the City of Nacogdoches or the Airport Manager for the City of Nacogdoches.
6. Violation of the laws, rules, rulings, orders or regulations of the State of Texas, the United States or the Federal Aviation Administration pertaining to the A.L. Mangham, Jr. Regional Airport or tenants or aircraft operators thereon.

Prior to termination under this section the City of Nacogdoches shall provide Lessee with written notice of anything deemed to be a violation or cause for lease termination and Lessee shall, except as otherwise set forth herein, have seven (7) days to cease and desist such violation or to remedy such other act or omission. As to any such violation, act or omission deemed by the Airport Manager or appropriate officers or officials of Lessor to be a source of substantial or imminent danger to the safety of persons or property, including air or ground traffic, Lessee shall, upon written or oral notice from Lessor, immediately and forthwith cease and desist such violation, act or omission or Lessee's leasehold right hereunder shall be subject to immediate oral termination by Lessor. The seven (7) day notice, where applicable, shall further only apply to the first two notifications of violations, act or omissions by Lessee in any lease term, there being no necessity for such notice before termination thereafter.

IV. CONSIDERATION

1. In consideration for the lease of the Land/Hangar/Building/Office referenced herein, Lessee hereby agrees to pay yearly rental of **Tract No. D-124** of approximately **4130** square feet at **$0.232** per square foot for a total of **$958.16** per year, as may be modified set forth in this Ground Lease. The first year's payment shall be prorated to the beginning of the City's next fiscal year and shall be made in advance upon the signing of this lease. Thereafter, all future payments shall be billed during the first month of each fiscal year during the term of this contract plus any extensions thereto, and shall be payable within 20 days of billing.
2. Lessee agrees that the lease payment listed herein shall be subject to review annually by Lessor throughout the term of the lease and prior to any extensions granted. Any adjustments to the lease payment shall be based on the United States Consumer Price Index for all Urban Consumers (CPI-U) for the month of June preceding the change date. Any adjustment to the lease fee shall become effective the first day of the Lessor's fiscal year and shall not exceed five percent (5%) per year. Such increase in the lease payment shall begin immediately upon request from Lessor and continue at that rate until the next adjustment. Upon review, if the CPI shall have decreased as compared to the previous review date, the lease fee for the subject Land/Hangar/Office/Building

shall not be decreased, but shall remain at the same level as was charged during the preceding 1-year period.

3. Lessee agrees to at all times keep the premises of the Land/Hangar/Building/office, including the inside and outside of the Hangar/Building/Office, clean and free of trash, litter, tall grass, weeds, junked automobiles, boats and scrap aircraft parts. Lessee shall abide by all applicable rules and regulations of the Environmental Protection Agency, the Texas Commission of Environmental Quality, the Texas Department of Agriculture, the Texas Department of Transportation, and any other public agency regarding the use, storage, and disposal of hazardous chemicals, fuel and/or oil. Lessee further agrees to abide by the manufacturer's directions in regards to the use, storage and disposal of all pesticides, herbicides, and other chemicals plus their containers used at the airport. Should Lessee fail to keep the leased premises clean and free of hazards, such failure shall be a ground for termination under this lease. Lessor may, after thirty (30) days written notice, arrange for the clean-up of the littered or hazardous area. Such clean-up shall be charged to Lessee and payable upon demand. Failure to render proper payment for such clean-up and/or general disregard of the considerations and restrictions listed in this lease agreement are ground for Lessor to terminate this lease.
4. Lessee agrees to maintain the hangar and improvements located on the leased premises in a good state of repair. Such Lessee shall further keep the leased premises insured with policies of general liability insurance, in any amount of $100,000.00 for each person injured, up to an aggregated $300,000.00 for personal injury in any one accident and $300,000.00 for property damage. Such policy originals shall name the City of Nacogdoches as an additional insured and be paid for and kept in force by lessee throughout the term of this lease and duplicates of such policies and renewals thereof and changes thereto shall promptly be delivered to Lessor.
5. Lessee shall be responsible for any and all taxes assessed on improvements placed on leased premises.

V. PERMITTED USE

Lessor covenants and agrees that Lessee, on paying the rent and other charges herein provided for and observing and keeping the covenants, conditions, and terms of this lease on Lessee's part to be kept or performed, shall lawfully and quietly hold, occupy and enjoy the leased premises during the term of this lease without hindrance or molestation of Lessor or nay person claiming under Lessor except such portion of the leased premises, if any, as shall be taken under the power of eminent domain.

In the event the tract herein leased has a hangar or other improvements located thereon or such are subsequently placed thereon, Lessor expressly disclaims any express or implied warranties regarding such structure including soundness, habitability, safety or condition. Lessor further advises Lessee that it makes no warranties regarding the fitness for purpose of any equipment and fixtures and the like, Lessee taking them As Is and with all faults since this is a ground lease only.

Where T hangars are allowed by Lessor, lessee agrees to allow other Lessees of adjoining tracts subsequently constructing T hangars to attach to and use Lessee's walls and supports. Consideration for such use to the Lessee of the existing T hangar shall be prompt payment by the subsequent T hangar Lessee of one-half (1/2) of the actual cost of T hangar common walls payable to the current Lessees of the adjoining T hangars.

Lessee may store his privately owned property inside the hangar, provided that it meets local fire codes and at least fifty percent (50%) of the hangar floor area is used for aircraft and aviation related purposes.

Lessee may store aviation related products or equipment inside the hangar for use in his aircraft so long, and only so long, as such products or equipment are contained in marked, approved containers, and are stored in accordance with the Airport Rules and Regulations (2003) as amended and incorporated herein by reference. Such storage shall be at the discretion of and with written approval from the Nacogdoches Fire Marshal certifying such storage is allowed under local fire codes.

Lessor reserves the right to enter the leased premises at all reasonable times to inspect for compliance with this lease and the ordinances, regulations, laws, rules and orders of the Lessor, the State of Texas and of the United States.

At the expiration of the lease term, Lessee shall quit and surrender the leased premises hereby demised in a like state and condition as they were in at the commencement of the term, excepted reasonable use and wear and tear thereof.

VI. RESTRICTED USE

Lessee hereby consents to the use of the Premises by HCH Aviation LLC (as sublessee under an approved sublease) to operate a flight school and avionics program pursuant to the FBO agreement between HCH and the City of Nacogdoches. Texas.

Lessee agrees that that Lessee and its sublessees will not conduct any commercial activity on the leased premises other than any commercial activity permitted by the City of Nacogdoches under a separate FBO Agreement. Where commercial operations or operations contained in Fixed Based Operator categories are conducted on such leaseholds, then permission for such operations must be granted in writing by Lessor and additional rental fees may be charged by Lessor. Lessee agrees to pay such fees directly to Lessor.

When not subleased to HCH Aviation LLC, Lessee agrees that, subject to the other terms of this paragraph, the usage of at least fifty percent of the hangar floor area shall be limited to the parking/hangaring of Lessee's owned or leased aircraft and aviation related purposes. In addition, no personal property, including automobile, bus, truck, or other transportation mode, may be permanently stores or habitually parked on associated apron, paved or grass area.

A lessee shall not be deemed to be engaged in commercial operations for purposes of determining whether such person is or should become a Fixed Base Operator engaged in hangar rental if the Lessee:

A. Allows such storage or parking pursuant to a written sublease agreement on a form provided by the City of Nacogdoches which requires Sublessee to honor all terms and conditions of the Sublessor's lease with the City, and
B. Owns, leases or subleases not more than 35 percent of the number of hangars of all types located at the A.L. Mangham, Jr. Regional Airport, whether or not such hangars are subleased.

The fact that a Lessee or Sublessee is a corporation, partnership, joint venture, limited partnership, or association shall not, of itself, cause the Lessor's or Sublessor's use of the leased premises to be deemed commercial use. Use of the leased premises for purposes other than storage or parking of tenant's aircraft (whether owned or bona fide leased to tenant) and storage and use of aircraft related items such as tools and parts and Lessee's or Sublessee's maintenance on his owned or leased aircraft, or expense sharing as set out in this section, shall be deemed commercial. For purposes of number B above, a Lessee shall be considered to include persons related in the second degree of consanguinity or affinity or a legal entity majority owned or controlled by such person.

If a hangar is not presently located on the leased premises, Lessee represents that Lessee has the present intention of constructing a permanent conforming aircraft hangar on the leased premises and shall begin construction of such hangar within thirty (30) days of obtaining a building permit from the City of Nacogdoches, which permit shall be obtained within forty-five (45) days after the signing of this Agreement. Such permit shall be sought with due diligence. Hangars shall be completed within two hundred seventy (270) days of the date of beginning of construction. All hangars constructed on the leased premises shall be built to minimum requirements of the Standard Building Code, as amended, as adopted by the City of Nacogdoches and as from time to time amended and Minimum Requirements for Construction of Airplane Hangars at A.L. Mangham, Jr. Regional Airport as required by the City of Nacogdoches which are incorporated herein by reference. Plans, construction, materials and workmanship of and in such hangar shall be subject to the same approval and inspection and certificates of occupancy by the building inspectors, officials, and sanitarians of the City of Nacogdoches as if such were located within the corporate limits of the City of Nacogdoches. Failure to obtain such building permit, to timely commence and complete such hangar construction, or to build such hangar in compliance with the referenced code and requirements or to obtain such inspections and certificate shall be an additional ground for termination of this lease by Lessor.

Nonconforming hangars already built on leased premises shall be allowed to remain unless abandoned for aircraft storage for one (1) year, destroyed or damaged to the extent of fifty percent (50%). Such abandoned, destroyed, or damaged hangars shall be forthwith removed by the Lessee at Lessee's expense. Such abandoned, destroyed, or damaged hangar may be rebuilt in conforming manner as if it were new construction under the terms of Section V above.

Lessee agrees not to fuel or defuel any aircraft parked inside the hangar.

Lessee agrees to have a sufficient number of fire extinguishers of acceptable size as determined by the local fire marshal inside the hangar. Such fire extinguishers shall be readily available in the event of fire.

Lessee's agents, employees, invitees and guests shall be held to the same standards for conduct as Lessee, and their violations, acts or omissions hereunder shall be seen as those of Lessee for the purposes of this lease.

Lessee, in exercising any of the rights or privileges herein granted to it, shall not on the grounds of sex, race, color, or national origin discriminate or permit discrimination against any person or group of persons in any manner prohibited by Part 21 of the Regulations of the Secretary of Transportation, Part 15 of the Federal Aviation Regulations or by the United States or the State of Texas. The Lessor is hereby

granted the right to take such action, anything for the contrary notwithstanding, as the United States, State of Texas or their agencies or courts may direct to enforce this nondiscrimination covenant.

VII. SUBLEASE, ASSIGNMENT OR SALE

Lessee agrees not to assign or sublease the leased premises or any improvements placed on leased premises, or allow any other person except Lessee's agents and employees to occupy the premises, other than HCH Aviation LLC as set forth below, without first obtaining Lessor's written consent. This lease is for the purpose of storing only aircraft owned or bona fide leased to Lessee or Sublessee. Upon written consent from Lessor to sublease or assign this leased premises, the proposed Sublessee or assignee shall agree to perform Lessee's duties and responsibilities contained in this Lease Agreement.

Lessor hereby consents to a sublease of the premises to HCH Aviation LLC to operate a flight school and avionics program pursuant to the FBO agreement between HCH and the City of Nacogdoches, Texas dated October 1, 2021 as it may be amended.

Should Lessee or Lessee's assignee in an assignment approved in writing by Lessor, have completed construction on a hangar on the leased premises and Lessee or Lessee's assignee desire to sell such improvements, assign or transfer such leasehold interest herein granted, or such leasehold interest is terminated, then Lessor shall have the first option to purchase such improvements, based upon the following provisions.

a) Lessee may at his option sell any improvements placed by Lessee on the leased premises. If Lessee has received a bona fide offer to purchase the improvements, then Lessee shall serve written notice to Lessor of such offer. Should Lessor elect not to exercise its option to purchase, such sale be made subject to approval by Lessor of a new lease to the purchaser of the improvements, (such approval shall not be unreasonably withheld, and provided such sale shall be subject to the right of first refusal provided above). Purchaser of the improvements shall have the right to assume the current lease or negotiate a new lease with the Lessor.
b) Lessee shall not serve written notice of such offer upon Lessor unless Lessee actually intends to accept same.
c) Upon receipt of such written notice, Lessor shall have the option to purchase Lessee's leasehold interest upon the same terms stated in such bona fide offer.
d) Lessor shall exercise such option to purchase by serving written notice to Lessee within ten (10) days after receipt of Lessee's written notice of the offer.
e) If Lessor fails to exercise its option to purchase in the manner provided in this section. Lessor's right to purchase shall terminate and Lessee may assign the remaining portion of the Lease (subject to Lessor's approval which shall not be unreasonably withheld) to the offeror in accordance with the terms of such written offer.
f) Lessee shall not assign this lease or sell such improvements except as herein provided, and any attempted assignment or sale in violation hereof shall be voidable by Lessor.
g) If improvements placed on the leased premises by Lessee are determined by Lessor to impede airport improvements or expansions detailed in the Airport Master Plan or Airport Layout Plan approved by the Texas Department of Transportation and the Federal Aviation Administration, Lessor may elect to terminate this lease or refuse any renewal term upon any proposed sale or assignment by Lessee. Further, Lessor may refuse to negotiate a further

lease at the end of the lease term. In the event Lessor refuses renewal of this lease on the grounds stated above, then Lessor shall so notify Lessee in writing and the parties shall negotiate in good faith a purchase price for the improvements to be paid by the Lessor to the Lessee. If the parties cannot agree, then the Parties shall have the improvements appraised. Value shall be based upon present value of a ten (10) year lease. The appraised value of the improvements shall be determined by a panel of three certified appraisers. Lessor and Lessee shall each appoint one certified appraiser, and the two appraisers so appointed shall selected a third person to serve as appraiser. The appraisers shall be selected by Lessor and Lessee within thirty (30) days after Lessor serves notice upon Lessee of its election not to re-lease the leased premises. If the Parties agree with the appraised value, Lessor shall pay Lessee the calculated appraised value of such improvements, and Lessee shall transfer and convey such improvements to Lessor within ninety (90) days after Lessor serves notice of its election not to re-lease the leased premises. If the Parties do not agree to the appraised value, then the Lessee may remove the improvements as set forth in the following paragraph (h).

h) In the event of default by Lessee of any term or condition of this lease, and the lease is terminated by Lessor on grounds so specified in this Agreement, on in the event that Lessor and Lessee are unable in the exercise of good faith to agree on the terms of a re-lease of the leased premises at the end of the lease term, then Lessee may at his option either:

1. Within a period of sixty (60) days, upon reasonable advance notice to the Airport Manager, remove all improvements placed upon the leased premises by Lessee, with the exception of common walls in T hangars, provided that if Lessee elects to remove such improvements, he shall restore the leased premises to as good a condition as at the commencement of this Lease, normal use and wear and slab removal excepted. Lessee shall not remove the common wall on T hangars or on any other hangars having a common wall. If Lessee so elects to remove such improvements, he shall quit and surrender the leased premises to Lessor on the termination date of the Lease subject to his right of re-entry upon the Leased Premises for the sole purpose of removing such improvements and restoring the leased premises to its original condition.
2. Elect to sell improvements placed on the leased premises. If Lessee elects to sell such improvements, Lessee shall serve written notice of such election upon Lessor within sixty (60) days after the termination of the Lease. Such notice shall be accompanied by payment of rent for a period of one (1) year, together with any rent arrearage owed by Lessee to Lessor. Upon giving notice and paying the rent stipulated above, Lessee shall have a period of one (1) year following the Lease termination date within which to sell such improvements, and upon such termination of such one-year period Lessee shall have an option to extend the time for selling such improvements for additional one-year periods by giving notice and paying one year's rent in the same manner set forth above. During such period of time, not to exceed five (5) years following termination of the Lease, the leased premises shall remain vacant and shall not be used for any purpose by Lessor or Lessee. Upon the sale of such improvements by lessee, Lessee's right and privilege to use the leased premises for any purpose whatsoever shall terminate, and the ratable portion of rent paid by Lessee for the remainder of the year during which the sale of such improvements is made shall be refunded by Purchaser to Lessee.

(i) If Lessee fails to remove or sell his improvements on the Leased Premises in the manner provided above, or if Lessee fails to serve such notices on Lessor and pay the rent required above for extending the time within which Lessee may sell such improvements, such improvements shall be deemed abandoned by Lessee sixty (60) days following the Lease termination date, and all improvements on the Leased Premises shall be forfeited to Lessor as liquidated damages for any past or future default by Lessee in payment of rent under this Agreement, and Lessee's obligation to pay rent hereunder, either arrearages or future rent, shall be terminated.

VIII. HOLD HARMLESS

Lessor shall not be liable for any loss, damage or injury of any kind or character to any person or property arising from any use of the leased premises, or any part thereof, or caused by any defect in any building, structure, or other improvement thereon or in any equipment or other facility therein, or caused by or arising from any act or omission of Lessee, or any of his agents, employees, licensees, or invitees, or by or from any accident on the land or any fire or other casualty thereon, or occasioned by the failure of Lessee to maintain the premises in safe condition, or arising from any other cause whatsoever; and Lessee hereby waives on its behalf of all claims and demands against Lessor of any such loss, damage, or injury of Lessee, and hereby agrees to indemnify and hold Lessor entirely free and harmless from all liability for any such loss, damage or injury of other persons, and from all costs and expenses arising therefrom, even in the event of the concurrent negligence of Lessor.

IX. MAINTENANCE, IMPROVEMENT OF AIRPORT

Lessor has applied for and received or may receive a grant or grants of money from the Federal Aviation Administration pursuant to the Federal Airport Act of 1946, as amended, and/or the Texas Department of Transportation, and the Lessor may in the future apply for and receive other such grants. In connection therewith, Lessor has undertaken and may in the future undertake certain obligations respecting its operation of the airport and activities of its contractors, lessees, and permittees thereon. The performance by Lessee of the covenants, conditions, and obligations contained in this agreement is therefore a special inducement to and consideration for the execution of this lease by Lessor, and Lessee further covenants and agrees that if the Federal Aviation Administration, the Texas Department of Transportation or other governmental body or officer having jurisdiction over the enforcement of the obligations of Lessor in connection with federal or state aid shall make any orders, recommendations, or suggestions respecting the performance by Lessee of its obligations under this agreement, Lessee will promptly comply therewith at the time or when and to the extent that Lessor may direct.

Lessee agrees and understands that Lessor reserves the right to further expand, develop, or improve the airport, including the termination of this lease agreement, in such instance that the continued leasing of the leased premises would have a negative impact on, or impair any proposed development or improvements at the Airport. This contract agreement may be terminated regardless of the desires, wishes or views of Lessee and without interference or hindrance from Lessee, but only so long as such expansion, development or improvements are shown on a Texas Department of Transportation and/or FAA approved Airport Layout Plan or Master Plan. In this case, Lessor shall exercise its right to acquire such improvements as outlined in Section VII above.

Lessee understands and agrees that Lessor reserves the right, but not the obligation, to maintain the Airport to at least the minimum standards as recommended by the FAA and/or the Texas Department of Transportation. Such right includes the right to maintain and keep in repair all public use areas at the Airport and the right to direct and control all activities necessary at the Airport and may close the Airport at any time and at its own discretion. Such closure shall immediately void this contract and no damages or moneys or other compensation will be owed to Lessee by Lessor. In the event of permanent closure of the airport, Lessee shall be permitted to remove Lessee's building/hangar/office as described in section VII (h) above.

Lessee shall pay or cause to be paid all charges for water, heat, gas, electricity, sewers and any and all other utilities used on the leased premises throughout the term of this lease, including any connection fees.

X. EXCLUSIONS

No waiver by Lessor of any default or breach of any covenant, condition, or stipulation herein contained shall be treated as a waiver of any subsequent default or breach of the same or any other covenant, condition, or stipulation hereof.

In the event Lessor or Lessee breaches any of the terms of this agreement whereby the party not in default employs attorneys to protect or enforce its rights hereunder and prevails, then the defaulting party agrees to pay the other party reasonable attorney's fees so incurred by such other party.

The numeric captions and headings are inserted solely for the convenience of reference and are not part of nor intended to govern, limit, or aid in the construction of any provision hereof.

Time is of the essence of this agreement.

For the purpose of this agreement, the singular number shall include the plural and the masculine shall include the feminine and vise-versa, whenever the context so admits or requires.

This agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns where permitted by this agreement.

This agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Nacogdoches County, Texas.

In case any one or more of the provisions contained in this agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect. such invalidity, illegality or unenforceability shall not affect any other provision thereof and this agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

This agreement constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties respecting the written subject matter.

No amendment, modification, or alteration of the terms hereof shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by the parties hereto.

The rights and remedies provided by this lease agreement are cumulative.

This lease entered into this the _____ day of _____, **2024 to be effective as of January 1, 2024.**

Lessor:

_____

Richard B. Beverlin, III, City Manager
City of Nacogdoches
PO Box 635030
Nacogdoches, TX 75963

Lessee:

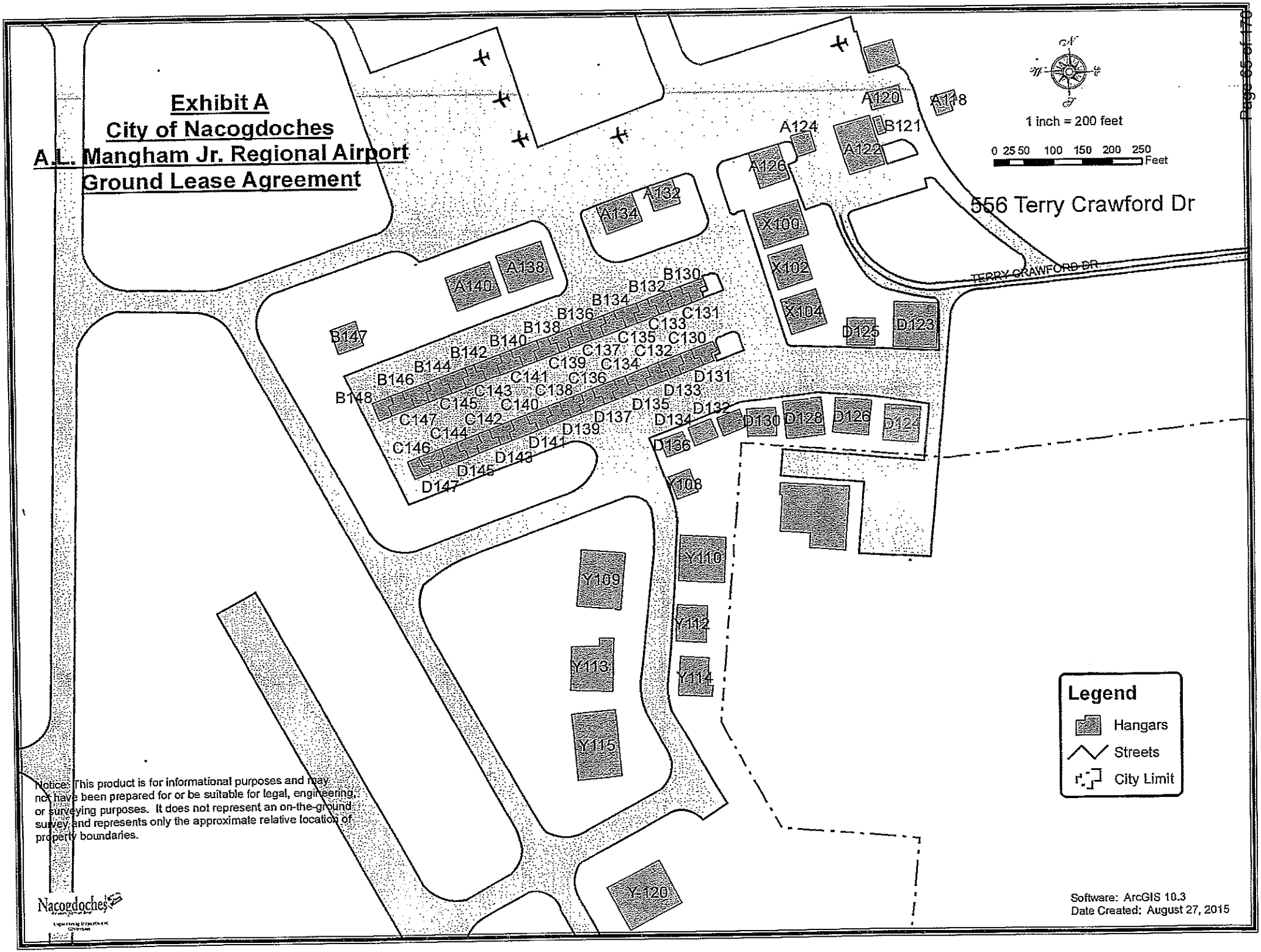
_____

Kristen Conklin, Manager/Owner
HCH Real Estate Holdings, LLC
PO Box 632247
Nacogdoches, Texas 75963

Attest: _____
Colin Smith, Airport Manager

EXHIBIT A

Exhibit A
City of Nacogdoches
A.L. Mangham Jr. Regional Airport
Ground Lease Agreement



PRESENTER: Jessica Sowell, Community Services Director

ITEM/SUBJECT: Consider approval of a change order in the amount of $2,200 for the Zion Hill Baptist Church pew restoration project. (Community Services Director)

SUMMARY/BACKGROUND: In September 2023, Tracy's Custom Carpentry was awarded the contract for the Zion Hill Pew Restoration Project with the do not exceed amount set at $49,000. The Zion Hill adopt a pew fundraiser raised the $49,000 that was used in this restoration project. Due to the nature of the project and the different stages of deterioration of each pew, we were able to restore 20 pews. This leaves five (5) pews still in need of restoration.

Tracy's Custom Carpentry presented a quote of $2,200 to complete the remaining five (5) pews. We have secured funds to complete this project from Friends of Historic Nacogdoches, Inc. using donations made from the community to the historic sites over the years. We are presenting this to the City Council because the $2,200 put the project over $50,000. If approved, a Change Order in the amount of $2,200 will be added to the current contract, bringing the total to $51,200.

FINANCIAL:
Item is not budgeted *(Budget Amendment required – see attached)*
Account No.:
Account Name:
Amount:

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

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

ATTACHMENTS: 1. Change Order - Zion Hill Pew Restoration

CHANGE ORDER NO. DATE: 02/15/2024 Contract No.
P.O.# 2023-000230 PROJECT: Zion Hill Pew Restoration

OWNER:
City of Nacogdoches
P.O. Box 635030
Nacogdoches, Texas 75963

CONTRACTOR:
Tracy's Custom Carpentry
Ph: 936-552-4054
Fax:

PURPOSE OF THIS CHANGE ORDER:
A. Total Cost of Project was initially $49,000. Due to additional work needed, an additional $2,200 was acquired to finish project.
B. All monies used for completion of this project were donor funded.
C.

ITEM NO	UNIT	DESCRIPTION	UNIT PRICE	ORIGINAL QUANTITY	REVISED QUANTITY	ADDED COST
1	1	Work performed to complete pew restoration	$49,000.00	1		($49,000.00)
2	1	Additional work needed	$2,200.00	1		($2,200.00)
3						$0.00
					TOTAL	($51,200.00)

THE NET AFFECT OF THIS CHANGE ORDER IS 4.49 % INCREASE/DECREASE.

LINE 1 (acct. number)		
LINE 2 (acct. number)		
LINE 3 (acct. number)		
TOTAL CHANGE ORDER	0.00	
ORIGINAL CONTRACT AMOUNT	$49,000.00	
CHANGE ORDER NO. 1	$2,200.00	0.044897959 % CHANGE
CHANGE ORDER NO. 2		0 % CHANGE
REVISED CONTRACT AMOUNT	$51,200.00	0.044897959 % TOTAL CHANGE
ORIGINAL CONTRACT TIME		Days
Time Extension No. 1		Days
Revised Contract Time	0	Days
SUBSTANTIAL COMPLETION DATE		
REVISED SUBSTANTIAL COMPLETION DATE		

APPROVED

A/E CONTRACTOR (if applicable)	Date	FINANCE DIRECTOR (over $3,000)	2-15-24 Date
CONTRACTOR	Date	CITY MANAGER ($25,000 and over)	Date
CITY ENGINEER (if applicable)	Date	CITY ATTORNEY (over $50,000)	Date
CONTRACT MANAGER ($3,000 or less)	2.15.24 Date	MAYOR (over $50,000)	Date
DEPARTMENT DIRECTOR (over $3,000)	Date	CITY SECRETARY	Date

PRESENTER:

ITEM/SUBJECT: Consider approval of resolutions for street closures related to annual fundraising and holiday events hosted by the City of Nacogdoches Main Street Department in Downtown Nacogdoches. (Convention and Visitors Bureau Director)

SUMMARY/BACKGROUND: The City of Nacogdoches holds annual fundraising and holiday events hosted by the City of Nacogdoches Main Street Department in Downtown Nacogdoches. This year's events include Wine Swirl, Blueberry Festival, Old Town Rig Down, Dia de los Muertos, Veterans Day Parade, Christmas Parade, and Juneteenth Parade. These events will attract visitors from all over the state, city and county, local food vendors and live entertainment. Any profits from the events go towards holiday decorations in Downtown Nacogdoches as well as other Main Street beautification projects.

For these events, and in order to close the street, City Council must pass resolutions to temporarily close certain streets in Nacogdoches. A map of the street closures will be included in the Agreement for Temporary Closure of State Right of Way with TxDOT, along with the time of the closures of each route and event.

FINANCIAL:

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

CITY CONTACT: Ashley Morgan, Convention and Visitors Bureau Director
morgans@nactx.us
(936) 564-7351

ATTACHMENTS:

1. Blueberry Resolution '24
2. Blueberry Festival Map 2024
3. Blueberry Permit '24
4. Lighted Christmas Parade Resolution '24
5. Christmas Parade Route '24
6. Christmas Parade Permit '24
7. Dia De Los Muertos Resoultion '24
8. Dia de los Muertos Vendor Map
9. Dia de los Muertos Permit '24
10. Juneteenth Parade Resolution '24
11. Juneteenth Parade Map '24
12. Juneteenth Permit '24
13. Old Town Rig Down Resolution '24

14. Old Town Rig Down Map (will be changed)
15. Old Town Rig Down Permit '24
16. Veterans Day Resolutions '24
17. Veterans parade map '24
18. Veterans Parade Permit '24
19. Wine Swirl Resolution '24
20. Wine Swirl Map '24
21. Wine Swirl Permit '24

RESOLUTION NO. 1363-02-24

WHEREAS, organizers of the Texas Blueberry Festival desire to have a safe and successful event for all vendors and participants; and

WHEREAS, organizers of the Texas Blueberry Festival are requesting that the city of Nacogdoches close Main Street (SH 21) from its intersection with North Street eastward to its intersection at Mound Street from 6:00 PM June 7, 2024, until 5: 30 PM June 9, 2024 in order to provide safety for the vendors and participants; and

WHEREAS, after duly considering such a request, it is the consent of the City Council that a resolution be adopted requesting the Texas Department of Transportation to allow the closing of Main Street for the Texas Blueberry Festival.

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of Nacogdoches, Texas that this resolution be adopted requesting the Texas Department of Transportation to allow the closing of Main Street (SH 21) from its intersection with North Street eastward to its intersection at Mound Street from 6:00 PM June 7, 2024, until 5:30 PM June 9, 2024, in order to provide safety for the vendors and participants, for the Texas Blueberry Festival.

BE IT FURTHER RESOLVED that Richard B. Beverlin, City Manager, be authorized to execute an agreement with the Texas Department of Transportation for the closing of Main Street (SH 21).

PASSED AND APPROVED this 20th day of February, 2024.

_____

Mayor, Randy Johnson
City of Nacogdoches

ATTEST:

_____

Rhonda Lewis, City Secretary

W. HOSPITAL STREET
W. MAIN STREET
NORTH STREET
E. HOSPITAL STREET
N. PRESIDIA STREET
N. CHURCH STREET
EDWARD STREET
N. MOUND STREET
PRICE STREET
N. LANANA STREET
OAK GROVE CEMETERY
OAK GROVE CEMETERY DRIVE
OLD TYLER ROAD
W. PILAR STREET
SOUTH STREET
N. PECAN STREET
BERRY JANGLES
E. MAIN STREET
COMMERCE STREET
VISION CENTER
E. PILAR STREET
S. PECAN STREET
S. PRESIDIA STREET
BERRY SALES
INSIDE
TOILETS
S. CHURCH STREET
S. MOUND STREET
WALKER ALLEY
WALKER AVENUE
SWIFT STREET
SIMPSON STREET
S. LANANA STREET
RULPS STREET
GAZEBO
ACCESS TO VENDOR PARKING
SOCCER FIELDS
BANITA CREEK
W. COX STREET
WASHER BOARD TOURNAMENT
TRUCK FORD
KSWP OBSTACLE COURSE
RV BATTYFITTERS
ARMY
ACROBATIC ACTS
TOILET
MONK STREET
CAR SHOW
FESTIVAL PARK
CERT HELP CTR.
PAVILION
PETTING ZOO
PONY RIDE
KID'S GET WET & BOUNCE PARK
TICKETS
WATER
BOUNCE
MAGNOLIA STREET

Thank you for submitting your Festival and Event Permit, we will contact you if we have any questions. If you would like to have alcohol at your event, please request a Alcohol Permit by emailing shelby@visitnacogdoches.org

Festival & Event Permit

Date: 02/12/2024

Date of Event
June 8 2024

Name of Event
Texas Blueberry Festival

First Name
Kelly

Last Name
Augustine

Email Address
president@nactx.com

Sign me up for email updates
No

Contact Person Daytime Phone:
936-560-5533

Desired Location of Event:
Main Street

Event Set Up Time:
Friday June 7

Event Start Time:
4:00pm

Event End Time:
7:00Pm

Please include general schedule information and any additional details here:
Vender tents and more

Number of Expected Attendees:
25,000

Will you need any streets closed?
Yes

If yes, what street(s) do you need closed?:
Main Street and the square down to Festival Park

Please describe your event in detail:
Festival of vendors and children activities

Will alcohol be served?
No

Please list an estimated number of vendors who will be selling items:
225

Will you need city trash receptacles to dispose of garbage onsite?
Yes

If available at your event location, will you need electricity?
Yes

Is 220 Volt needed?
As many as possible

Security or Police needed?
Yes

Security or Police - Other Explained:
Please use 2023 Map

Upload Map
https://cdn.saffire.com/files.ashx?t=fg&rid=VisitNacogdoches&f=TX_BBF_Map_2024.eml

Yes

This form does not guarantee event approval. Once submitted, the form will be forwarded to corresponding city departments to determine if your event is feasible. You will receive a response once a decision is made, or if additional information is needed. If you have questions

or concerns, please contact Shelby Lero at shelby@visitnacogdoches.org or call 936-564-7351.

If you are requesting to have alcohol at your event, please review the city ordinance on alcohol in parks **here.**

© Visit Nacogdoches
200 East Main
Nacogdoches, TX 75961
United States

info@visitnacogdoches.org
https://www.visitnacogdoches.org/

RESOLUTION NO. 1367-02-24

WHEREAS, organizers of the 2024 Lighted Christmas Parade desire to have a safe and successful event for all vendors and participants; and

WHEREAS, organizers of the 2024 Lighted Christmas Parade are requesting that the city of Nacogdoches close Main Street (SH 21) from its intersection with North Street eastward to its intersection at Mound Street as well as the TJR parade route from 2:00 PM December 7, 2024, until 8:30 PM December 7, 2024, in order to provide safety for the vendors and participants; and

WHEREAS, after duly considering such a request, it is the consent of the City Council that a resolution be adopted requesting the Texas Department of Transportation to allow the closing of Main Street for the 2024 Lighted Christmas Parade.

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of Nacogdoches, Texas that this resolution be adopted requesting the Texas Department of Transportation to allow the closing of Main Street (SH 21) from its intersection with North Street eastward to its intersection at Mound Street as well as the TJR parade route from 2:00 PM December 7, 2024, until 8:30 PM December 7, 2024, in order to provide safety for the vendors and participants for the 2024 Lighted Christmas Parade.

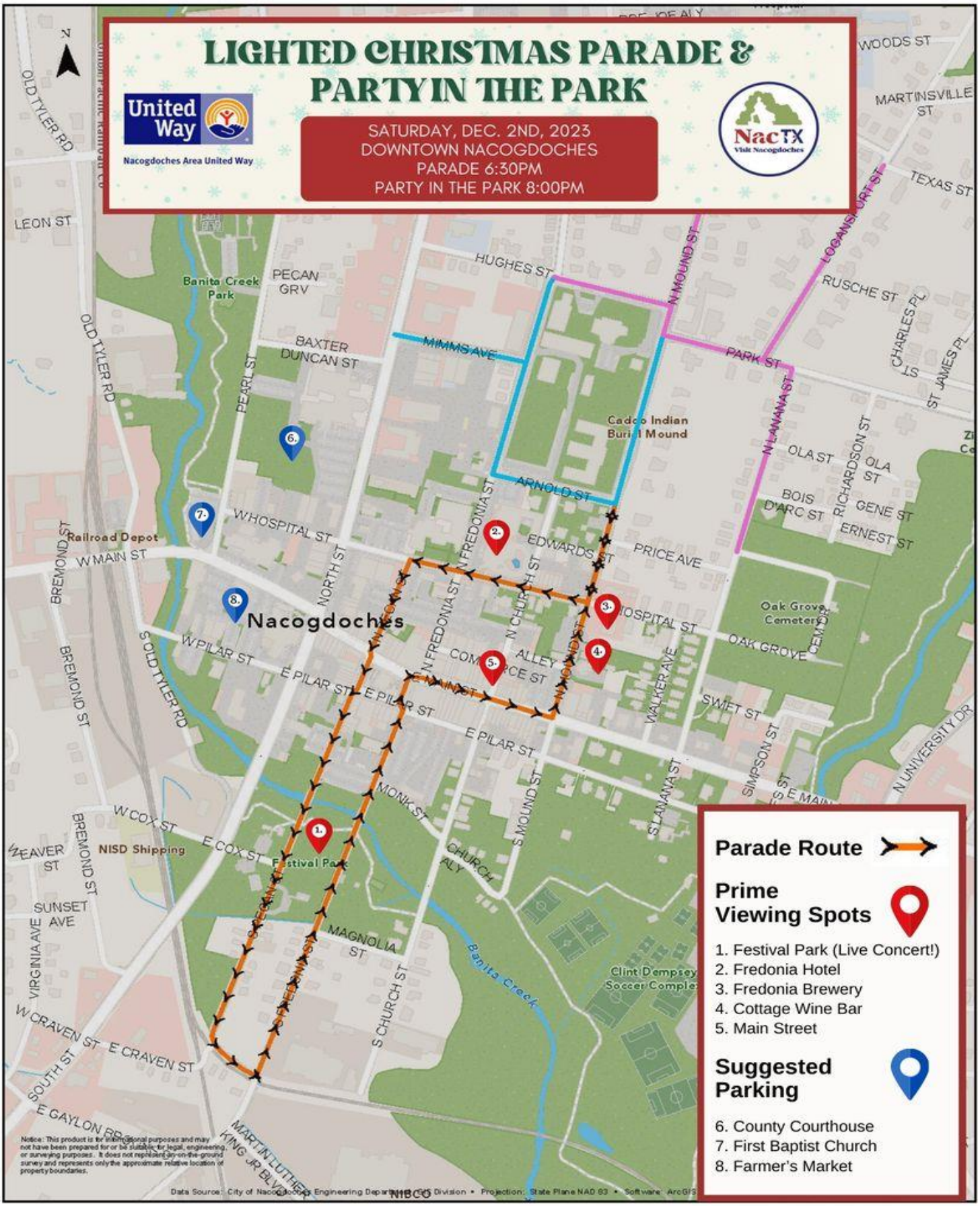
BE IT FURTHER RESOLVED that Richard B. Beverlin, City Manager, be authorized to execute an agreement with the Texas Department of Transportation for the closing of Main Street (SH 21).

PASSED AND APPROVED this 20th day of February, 2024.

_____
Mayor, Randy Johnson
City of Nacogdoches

ATTEST:

_____
Rhonda Lewis, City Secretary


LIGHTED CHRISTMAS PARADE & PARTY IN THE PARK
United Way
Nacogdoches Area United Way
SATURDAY, DEC. 2ND, 2023
DOWNTOWN NACOGDOCHES
PARADE 6:30PM
PARTY IN THE PARK 8:00PM
NacTX
Visit Nacogdoches
Parade Route
Prime Viewing Spots
1. Festival Park (Live Concert!)
2. Fredonia Hotel
3. Fredonia Brewery
4. Cottage Wine Bar
5. Main Street
Suggested Parking
6. County Courthouse
7. First Baptist Church
8. Farmer's Market
Nacogdoches
Railroad Depot
Festival Park
NISD Shipping
Banita Creek Park
Caddo Indian Burial Mound
Oak Grove Cemetery
Clint Dempsey Soccer Complex
Banita Creek
HUGHES ST
MIMMS AVE
PARK ST
ARNOLD ST
EDWARDS ST
PRICE AVE
W HOSPITAL ST
E HOSPITAL ST
W MAIN ST
W PILAR ST
E PILAR ST
E COX ST
W COX ST
E CRAVEN ST
W CRAVEN ST
MAGNOLIA ST
MONK ST
SWIFT ST
OAK GROVE
N MOUND ST
S MOUND ST
N FREDONIA ST
N CHURCH ST
S CHURCH ST
N LANANA ST
S LANANA ST
OLD TYLER RD
BREMOND ST
NORTH ST
SOUTH ST
PEARL ST
WALKER AVE
N UNIVERSITY DR
LOGANSPORT ST
TEXAS ST
WOODS ST
MARTINSVILLE ST
LEON ST
RUSCHE ST
OLA ST
BOIS D'ARC ST
GENE ST
ERNEST ST
SUNSET AVE
VIRGINIA AVE
E GAYLON BLVD
MARTIN LUTHER KING JR BLVD
Data Source: City of Nacogdoches Engineering Department, GIS Division • Projection: State Plane NAD 83 • Software: ArcGIS
NIBCO

Thank you for submitting your Festival and Event Permit, we will contact you if we have any questions. If you would like to have alcohol at your event, please request a Alcohol Permit by emailing shelby@visitnacogdoches.org

Festival & Event Permit

Date: 02/14/2024

Date of Event
12/7/2024

Name of Event
Lighted Christmas Parade

First Name
Caroline

Last Name
Garner

Email Address
cgarner@unitedway.com

Sign me up for email updates
No

Contact Person Daytime Phone:
936-564-5869

Desired Location of Event:
Downtown Nacogdoches

Organization Hosting Event:
Nacogdoches Area United Way

Event Set Up Time:
2pm

Event Start Time:
6:30pm

Event End Time:
8:30pm

Please include general schedule information and any additional details here:
stages for judging

Number of Expected Attendees:
1000

Will you need any streets closed?
Yes

If yes, what street(s) do you need closed?:
TJR Campus, Main, Pecan, Fredonia, Mound, Lanana, Church

Please describe your event in detail:
Christmas parade

Will alcohol be served?
No

Please list an estimated number of vendors who will be selling items:
2

Will you need city trash receptacles to dispose of garbage onsite?
Yes

If available at your event location, will you need electricity?
Yes

Is 220 Volt needed?
no

Security or Police needed?
Yes

Upload Map
https://cdn.saffire.com/images.ashx?t=ig&rid=VisitNacogdoches&i=Christmas_Parade_Route.jpg

Yes

This form does not guarantee event approval. Once submitted, the form will be forwarded to corresponding city departments to determine if your event is feasible. You will receive a response once a decision is made, or if additional information is needed. If you have questions or concerns, please contact Shelby Lero at shelby@visitnacogdoches.org or call 936-564-7351.

If you are requesting to have alcohol at your event, please review the city ordinance on alcohol in parks **here.**

© Visit Nacogdoches
200 East Main
Nacogdoches, TX 75961
United States

info@visitnacogdoches.org
https://www.visitnacogdoches.org/

RESOLUTION NO. 1365-02-24

WHEREAS, organizers of the Dia de los Muertos event desire to have a safe and successful event for all vendors and participants and

WHEREAS, organizers of the Dia de los Muertos event are requesting that the city of Nacogdoches close Main Street (SH 21) from its intersection with North Street eastward to its intersection at Mound Street as well as the plaza square from noon November 2, 2024, until 9:00 PM November 2, 2024, in order to provide safety for the vendors and participants; and

WHEREAS, after duly considering such a request, it is the consent of the City Council that are solution be adopted requesting the Texas Department of Transportation to allow the closing of Main Street for the Dia de los Muertos event.

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of Nacogdoches, Texas that this resolution be adopted requesting the Texas Department of Transportation to allow the closing of Main Street (SH 21) from its intersection with North Street eastward to its intersection at Mound Street as well as the plaza square from noon November 2, 2024, until 9:00 PM November 2, 2024, in order to provide safety for the vendors and participants for the Dia de los Muertos event.

BE IT FURTHER RESOLVED that Richard B. Beverlin, City Manager, be authorized to execute an agreement with the Texas Department of Transportation for the closing of Main Street (SH 21).

PASSED AND APPROVED this 20th day of February, 2024

_____

Mayor, Randy Johnson
City of Nacogdoches

ATTEST:

_____

Rhonda Lewis, City Secretary

FT 1 · EL COCO LOCO
FT 2 · DOS AMIGOS
FT 3 · ICE ICE BABY TACOS & SNACKS
FT 4 · CASA DE BAYOU
FT 5 · SHALI'S INDIAN KITCHEN
FT 6 · REED'S FISH AND MORE
FT 7 · TACO MEX
FT 8 · WHITEHOUSE FARM BAKING

1 · MRS. A/S WREATHS & MORE
2 · THE CALICO DRAGON
3 · WOVEN BY WEHE
4 · KNIGHTS OF COLUMBUS
5 · DOODLEBUGS DESIGN
6 · B'S CREATIVE CREATIONS
7 · EMPTY
8 · EL ROBLE TORTILLERIA
9 · EL ROBLE TORTILLERIA
10 · RUSTIC TEQUILA BOUTIQUE
11 · HARRIS GIRL CREATIONS
12 · EL TACO RIENDO
13 · PEMBERLEY'S
14 · PEMBERLEY'S
15 · NAY NAY'S NOVEL CREATIONS
16 · ELLO BABY BOUTIQUE
17 · JACK'S TREATS
18 · JACK'S TREATS
19 · STUDIO YVETTE
20 · CUTTIN' CLASSICS W/ LUPE
21 · FIVE K CREATIONS
22 · ONEMADE
23 · EL PATRON MEXICAN FOOD
24 · BRACELETS BY ELIZA
25 · TAQUERIA MEXICAN FOOD
26 · ECHINATA ARTS
27 · TACOS DONA PANCHA
28 · SHABBOS
29 · SHABBOS
30 · BEATRIZ ESCALANTE
31 · NAC DEMOCRATIC PARTY
32 · CHALKALOT COTTAGE
33 · SARA'S SHROOMIES & LALA AROMATHERAPY
34 · LADY BONES BAUBLES AND SMOKE & MOON CREATIONS
35 · MAYDELLE COUNTRY WINES
36 · MAMA ROSE ITALIAN ICE
37 · EL JALISCIENCE
38 · DAY CUSTOM CRAFTS
39 · DIAGNOSTIC DENTAL
40 · EMPTY
41 · EMPTY
42 · MARIANA MONTEJO
43 · MARIACHI CACTUS
44 · SMOOTHIE KING
45 · TAQUERIA MI TIERRA
46 · WILL'S CONCESSIONS
47 · VIET FUSION
48 · VIET FUSION
49 · AVILA VENEZUELAN FOOD
50 · SON DE MEXICO
51 · SON DE MEXICO
52 · SON DE MEXICO
53 · JAN JAN'S HANDMADE
54 · BECKY HELMER DESIGNS
55 · WESTMINSTER PRESBYTERIAN
56 · THE KNOTTY CAT
57 · BESOS BOUTIQUE
58 · ANTOJITOS ARCOIRIS
59 · MR. BUBBLES
60 · MR. BUBBLES
61 · JEN'S DOLLS & THINGS
62 · EMPTY
63 · ANGELINA PONCE
64 · TAMBREZ DESIGNS
65 · ADAC
66 · SFA ART ALLIANCE
67 · FASGOT FUN
68 · FASGOT FUN
69 · SASON DE CORAZON
70 · A&A GIFTS
71 · JOSELYN
72 · SCENTSY · ANALISE MACIAS
73 · PILGRIM'S NACOGDOCHES
74 · JJ DESIGNS & BOUTIQUE
75 · TREATS BY SOFIA
76 · CRYSTAL STAR CREATIONS
77 · ALESHA'S SCENTSY
78 · JOELLA VILLANUEVA
79 · SHIRL'S HANDMADE CROCHET
80 · TACO MADRE
81 · RAISING CANES
82 · CHURCH OF JESUS CHRIST
83 · EATON · VAMOS
84 · JAMIE RODRIGUES STATE FARM
85 · MIO DESIGNS
86 · AMERICAN RED CROSS
87 · PLANT PLUG
88 · CHURROS ALDAY

N PECAN ST
FREDONIA ST
E MAIN ST
E PILAR ST
Mound Street
SUSU'S POPCORN
BOUNCE HOUSE
NISD
N.A.C. LIVE PAINTING
CHIKAWA AZTEC DANCERS
COLE ART CENTER
PORTABLE RESTROOMS
VENDOR EXIT ON MOUND
PHOTO OP
STONE HOUSE KITCHEN
STRETCHER
CVB
ALTARS
FOLKLORICO PERFORMERS
LIBRARY/ INFO BOOTH
EATON PHOTO BOOTH
VENDOR ENTRANCE
FT 1
FT 2
FT 3
FT 4
FT 5
FT 6
FT 7
FT 8

Thank you for submitting your Festival and Event Permit, we will contact you if we have any questions. If you would like to have alcohol at your event, please request a Alcohol Permit by emailing shelby@visitnacogdoches.org

Festival & Event Permit

Date: 01/05/2024

Date of Event
11/2/2024

Name of Event
Dia de los Muertos

First Name
Crystal

Last Name
Hicks

Email Address
hicksc@nactx.us

Sign me up for email updates
No

Contact Person Daytime Phone:
9365592970

Desired Location of Event:
Downtown/Main Street

Organization Hosting Event:
Nacogdoches Public Library

Event Set Up Time:
12:00pm

Event Start Time:
4:00pm

Event End Time:
8:00pm

Please include general schedule information and any additional details here:
There will be performances throughout the evening, and all

Number of Expected Attendees:
2000

Will you need any streets closed?
Yes

If yes, what street(s) do you need closed?:
Main Street and the Square

Please describe your event in detail:
Annual cultural festival with food and retail vendors and performers

Will alcohol be served?
No

Please list an estimated number of vendors who will be selling items:
75

Will you need city trash receptacles to dispose of garbage onsite?
Yes

If available at your event location, will you need electricity?
Yes

Is 220 Volt needed?
Yes

Security or Police needed?
Yes

Upload Map
https://cdn.saffire.com/images.ashx?t=ig&rid=VisitNacogdoches&i=Dia_de_los_Muertos_Vendor_Map_2023_Final.png

vendors will have 10x10 booth
spaces along the sidewalks.

Yes

This form does not guarantee event approval. Once submitted, the form will be forwarded to corresponding city departments to determine if your event is feasible. You will receive a response once a decision is made, or if additional information is needed. If you have questions or concerns, please contact Shelby Lero at shelby@visitnacogdoches.org or call 936-564-7351.

If you are requesting to have alcohol at your event, please review the city ordinance on alcohol in parks **here.**

© Visit Nacogdoches
200 East Main
Nacogdoches, TX 75961
United States

info@visitnacogdoches.org
https://www.visitnacogdoches.org/

RESOLUTION NO. 1368-02-24

WHEREAS, organizers of the 2024 Juneteenth Parade of event desire to have a safe and successful event for all vendors and participants; and

WHEREAS, organizers of the Juneteenth Parade of event are requesting that the city of Nacogdoches close Main Street (SH 21) from its intersection with North Street eastward to its intersection at Mound Street as well as the TJR parade route from 9 a.m. Saturday, June 15, 2024, until 12:30 p.m. Saturday, June 15, 2024, in order to provide safety for the vendors and participants; and

WHEREAS, after duly considering such a request, it is the consent of the City Council that a resolution be adopted requesting the Texas Department of Transportation to allow the closing of Main Street for the 2024 Juneteenth Parade.

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of Nacogdoches, Texas that this resolution be adopted requesting the Texas Department of Transportation to allow the closing of Main Street (SH 21) from its intersection with North Street eastwardly to its intersection at Mound Street as well as the TJR parade route from 9 a.m. Saturday, June 15, 2024, until 12:30 p.m. Saturday, June 15, 2024, for the 2024 Juneteenth Parade.

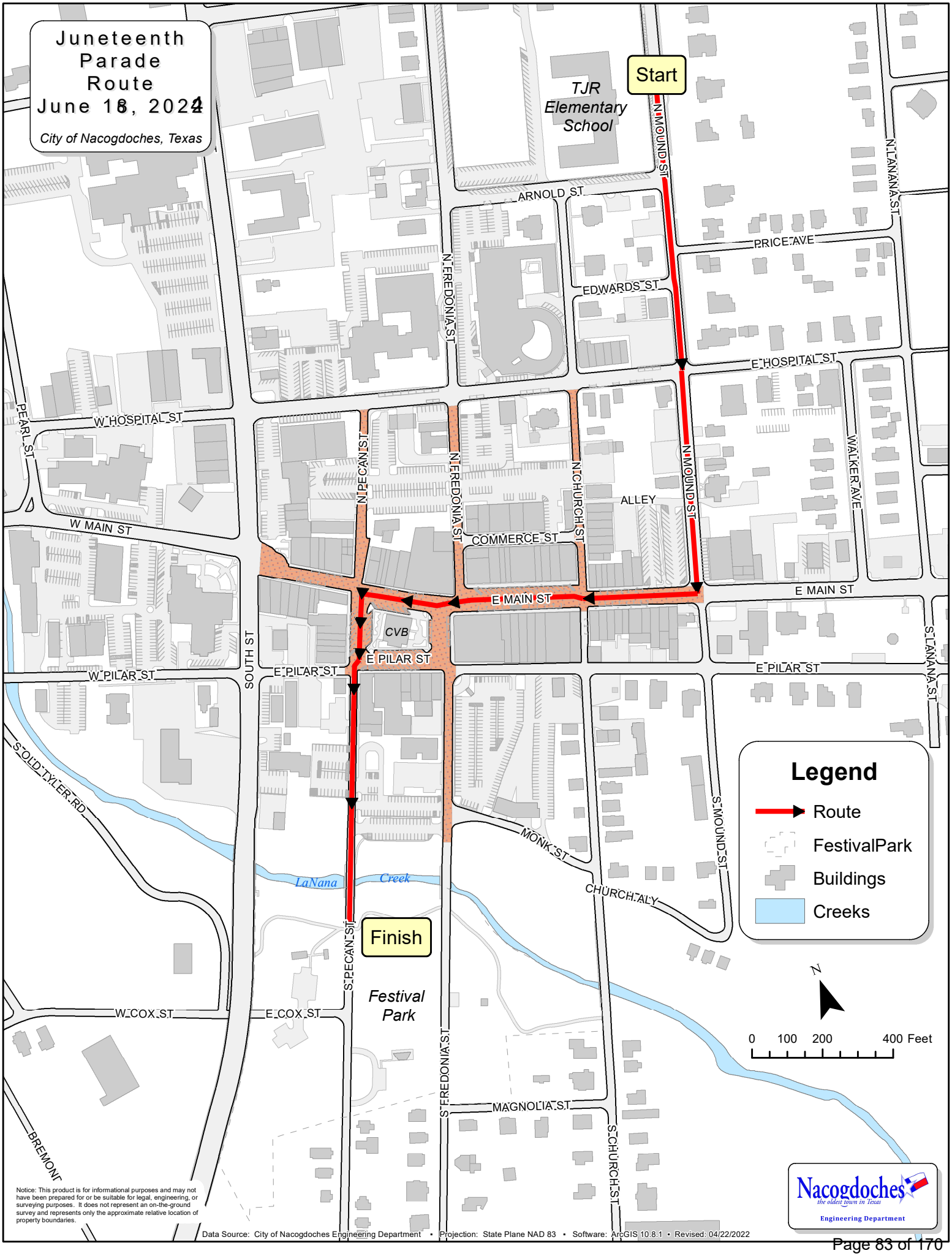
BE IT FURTHER RESOLVED that Richard B. Beverlin, City Manager, be authorized to execute an agreement with the Texas Department of Transportation for the closing of Main Street (SH 21).

PASSED AND APPROVED this 20th day of February, 2024.

_____
Mayor, Randy Johnson
City of Nacogdoches

ATTEST:

_____
Rhonda Lewis, City Secretary


Juneteenth Parade Route
June 18, 2024
City of Nacogdoches, Texas
Start
Finish
TJR Elementary School
Festival Park
CVB
ALLEY
N MOUND ST
N LANANA ST
PRICE AVE
ARNOLD ST
EDWARDS ST
N FREDONIA ST
E HOSPITAL ST
W HOSPITAL ST
PEARL ST
WALKER AVE
N PECAN ST
N CHURCH ST
COMMERCE ST
W MAIN ST
E MAIN ST
SOUTH ST
E PILAR ST
W PILAR ST
S LANANA ST
OLD TYLER RD
LaNana Creek
MONK ST
S MOUND ST
CHURCH ALY
S PECAN ST
S FREDONIA ST
MAGNOLIA ST
S CHURCH ST
W COX ST
E COX ST
BREMONT
Legend
Route
FestivalPark
Buildings
Creeks
N
0 100 200 400 Feet
Nacogdoches
the oldest town in Texas
Engineering Department
Notice: This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.
Data Source: City of Nacogdoches Engineering Department • Projection: State Plane NAD 83 • Software: ArcGIS 10.8.1 • Revised: 04/22/2022

Thank you for submitting your Festival and Event Permit, we will contact you if we have any questions. If you would like to have alcohol at your event, please request a Alcohol Permit by emailing shelby@visitnacogdoches.org

Festival & Event Permit

Date: 02/14/2024

Date of Event
6/15/2024

Name of Event
Juneteenth Celebration

First Name
Terrence

Last Name
Reeves

Email Address
treeves@co.nacogdoches.tx.us

Sign me up for email updates
No

Contact Person Daytime Phone:
936-7122144

Desired Location of Event:
Downtown Streets and Festival Park

Organization Hosting Event:
Progessive Leadership Group Collabortive

Event Set Up Time:
9am

Event Start Time:
10am

Event End Time:
6pm

Please include general schedule information and any additional details here:
Bounce Houses, Food tents, water fans, tables and chairs and tents vendor booths cooking area

Number of Expected Attendees:
300

Will you need any streets closed?
Yes

If yes, what street(s) do you need closed?:
Mound, main, s. Pecan, S Fredonia

Please describe your event in detail:
Parade downtown with events to follow in festival park

Will alcohol be served?
No

Please list an estimated number of vendors who will be selling items:
none

Will you need city trash receptacles to dispose of garbage onsite?
No

If available at your event location, will you need electricity?
Yes

Is 220 Volt needed?
yes

Security or Police needed?
Yes

Upload Map
https://cdn.saffire.com/files.ashx?t=fg&rid=VisitNacogdoches&f=Juneteenth_Parade_Map.pdf

Yes

This form does not guarantee event approval. Once submitted, the form will be forwarded to corresponding city departments to determine if your event is feasible. You will receive a response once a decision is made, or if additional information is needed. If you have questions or concerns, please contact Shelby Lero at shelby@visitnacogdoches.org or call 936-564-7351.

If you are requesting to have alcohol at your event, please review the city ordinance on alcohol in parks **here.**

© Visit Nacogdoches
200 East Main
Nacogdoches, TX 75961
United States

info@visitnacogdoches.org
https://www.visitnacogdoches.org/

RESOLUTION NO. 1364-02-24

WHEREAS, organizers of the Old Town Rig Down desire to have a safe and successful event for all vendors and participants; and

WHEREAS, organizers of the Old Town Rig Down are requesting that the City of Nacogdoches close Main Street (SH 21) from its intersection with North Street eastward to its intersection at Mound Street as well as all side streets and all streets leading in and out of Festival Park from 8:00 AM Friday September 13, 2024, until noon Sunday, September 15, 2024, in order to provide safety for the vendors and participants; and

WHEREAS, after duly considering such a request, it is the consent of the City Council that a resolution be adopted requesting the Texas Department of Transportation to allow the closing of Main Street for the Old Town Rig Down.

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of Nacogdoches, Texas that this resolution be adopted requesting the Texas Department of Transportation to allow the closing of Main Street (SH 21) from its intersection with North Street eastward to its intersection at Mound Street as well as all side streets and all streets leading in and out of Festival Park from 8:00 AM September 13, 2024, until noon September 15, 2024 in order to provide safety for the vendors and participants for the Old Town Rig Down.

BE IT FURTHER RESOLVED that Richard B. Beverlin, City Manager, be authorized to execute an agreement with the Texas Department of Transportation for the closing of Main Street (SH 21).

PASSED AND APPROVED this 20th day of February, 2024

_____

Mayor, Randy Johnson

City of Nacogdoches

ATTEST:

_____

Rhonda Lewis, City Secretary

E Hospital St
Commerce St
21
Monk St

Thank you for submitting your Festival and Event Permit, we will contact you if we have any questions. If you would like to have alcohol at your event, please request a Alcohol Permit by emailing shelby@visitnacogdoches.org

Festival & Event Permit

Date: 11/08/2023

Date of Event
9/13/2024

Name of Event
Old Town Rig Down

First Name
Jason

Last Name
Haskins

Email Address
jason.haskins@tristateoilfield.com

Sign me up for email updates
Yes

Contact Person Daytime Phone:
9366154118

Desired Location of Event:
Downtown Main Street from North to Mound and Festival Park

Organization Hosting Event:
Massey Rose Foundation

Event Set Up Time:
8:00 am

Event Start Time:
5:00 pm

Event End Time:
12:00 pm

Please include general schedule information and any additional details here:
Trucks will be entering event area during the hours of 8am-4pm on Friday, September 13th. Saturday night concert in Festival Park will be starting at 6:30pm. Stage and lighting will be set up Thursday, September 12th.

Number of Expected Attendees:
5000

Will you need any streets closed?
Yes

If yes, what street(s) do you need closed?:
CR 2094

Please describe your event in detail:
Truck show to display custom built 18 wheelers. Vendors, food, entertainment for entire family.

Will alcohol be served?
Yes

Please list an estimated number of vendors who will be selling items:
5 Food Vendors. 5-10 Merchandise Vendors

Will you need city trash receptacles to dispose of garbage onsite?
Yes

If available at your event location, will you need electricity?
Yes

Is 220 Volt needed?
Fredonia St (west side by CVB) and Festival Park (2 food trucks by North Walking Trail)

Security or Police needed?
Yes

Security or Police - Other Explained:
Event will be BYOB but will not be advertised.

Upload Map
https://cdn.saffire.com/images.ashx?t=ig&rid=VisitNacogdoches&i=Screenshot_2023-11-08_153903.png

Yes

This form does not guarantee event approval. Once submitted, the form will be forwarded to corresponding city departments to determine if your event is feasible. You will receive a response once a decision is made, or if additional information is needed. If you have questions or concerns, please contact Shelby Lero at shelby@visitnacogdoches.org or call 936-564-7351.

If you are requesting to have alcohol at your event, please review the city ordinance on alcohol in parks **here.**

© Visit Nacogdoches
200 East Main
Nacogdoches, TX 75961
United States

info@visitnacogdoches.org
https://www.visitnacogdoches.org/

RESOLUTION NO. 1366-02-24

WHEREAS, organizers of the 2024 Veterans Day Parade desire to have a safe and successful event for all vendors and participants; and

WHEREAS, organizers of the 2024 Veterans Day Parade are requesting that the city of Nacogdoches close Main Street (SH 21) from its intersection with North Street eastward to its intersection at Mound Street as well as the TJR parade route from 8:30 AM November 9, 2024 until 11:00 AM November 9, 2024, in order to provide safety for the vendors and participants; and

WHEREAS, after duly considering such a request, it is the consent of the City Council that a resolution be adopted requesting the Texas Department of Transportation to allow the closing of Main Street for the 2024 Veterans Day Parade.

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of Nacogdoches, Texas that this resolution be adopted requesting the Texas Department of Transportation to allow the closing of Main Street (SH 21) from its intersection with North Street eastward to its intersection at Mound Street as well as the TJR parade route from 8: 30 AM November 9, 2024 until 11:00 AM November 9, 2024, in order to provide safety for the vendors and participants for the 2024 Veterans Day Parade.

BE IT FURTHER RESOLVED that Richard B. Beverlin, City Manager, be authorized to execute an agreement with the Texas Department of Transportation for the closing of Main Street (SH 21).

PASSED AND APPROVED this 20th day of February, 2024.

_____

Mayor, Randy Johnson

City of Nacogdoches

ATTEST:

_____

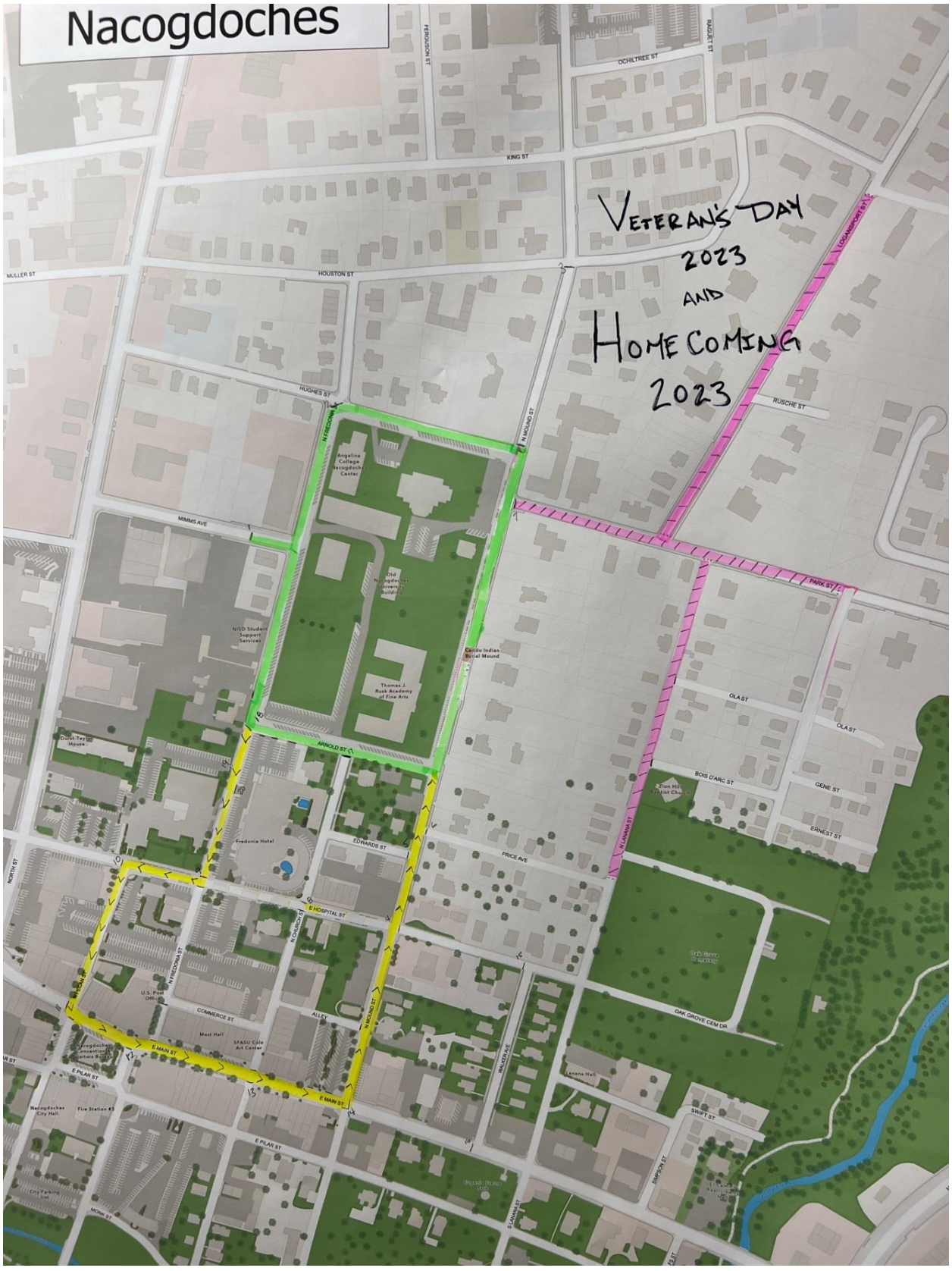
Rhonda Lewis, City Secretary

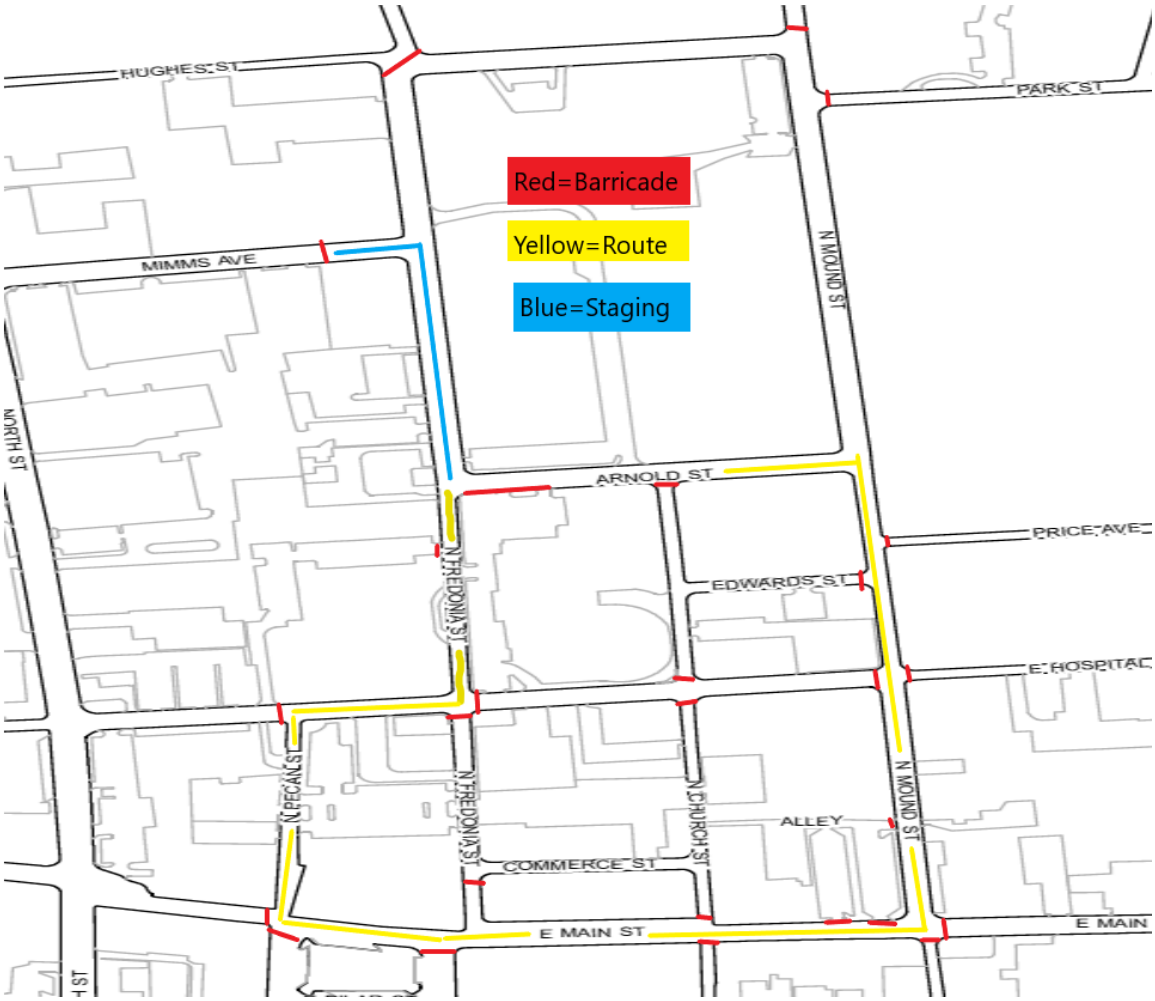
Parade Route

1. Staging Area – All parade entries will be required to check in and enter the staging area on 200 Mimms Ave. All parade entries will stage on N Fredonia St at Arnold St and will be facing south on N Fredonia St
2. Parade will travel south on N Fredonia St to E Hospital St
3. Parade will turn west onto E Hospital St and will travel west to N Pecan St
4. Parade will turn south onto N Pecan St and travel south to E Main St
5. Parade will turn east onto E Main St and then travel east to N Mound St
6. Parade will turn north onto N Mound Stand travel back to Arnold St
7. Parade will turn west onto Arnold St and this will be the float off load point

Green area is the staging area

Yellow area is the parade route


Nacogdoches
VETERAN'S DAY
2023
AND
HOMECOMING
2023
FERGUSON ST
OCHILTREE ST
RAGUET ST
KING ST
MULLER ST
HOUSTON ST
HUGHES ST
N FREDONIA
N MOUND ST
RUSCHE ST
LOOMIS ST
MIMMS AVE
PARK ST
OLA ST
BOIS D'ARC ST
GENE ST
ERNEST ST
ARNOLD ST
EDWARDS ST
PRICE AVE
HOSPITAL ST
COMMERCE ST
ALLEY
E MAIN ST
E PILAR ST
OAK GROVE CEM DR
SWIFT ST
WILSON AVE
NORTH ST
Angelina College Nacogdoches Center
Old Nacogdoches University Building
N ISD Student Support Services
Caddo Indian Burial Mound
Thomas J. Rusk Academy of Fine Arts
Durst-Tevis House
Fredonia Hotel
Zion Hill Baptist Church
U.S. Post Office
Mast Hall
SFASU Cole Art Center
Nacogdoches Convention & Visitors Bureau
Nacogdoches City Hall
Fire Station #3
City Parking
Lanana Hall


Red=Barricade
Yellow=Route
Blue=Staging
HUGHES ST
PARK ST
MIMMS AVE
N MOUND ST
NORTH ST
ARNOLD ST
PRICE AVE
N TREDONIA ST
EDWARDS ST
E HOSPITAL
N PECAN ST
N CHURCH ST
ALLEY
COMMERCE ST
E MAIN ST

Thank you for submitting your Festival and Event Permit, we will contact you if we have any questions. If you would like to have alcohol at your event, please request a Alcohol Permit by emailing shelby@visitnacogdoches.org

Festival & Event Permit

Date: 12/01/2023

Date of Event
11/9/2024

Name of Event
Veterans Parade

First Name
Kelsy

Last Name
Williams

Email Address
kwilliams@nac-sheriff.com

Sign me up for email updates
No

Contact Person Daytime Phone:
936-560-7777

Desired Location of Event:
Parade route

Organization Hosting Event:
Nacogdoches County Sheriff's Office

Event Set Up Time:
9am

Event Start Time:
10AM

Event End Time:
11AM

Please include general schedule information and any additional details here:

Number of Expected Attendees:
350

Will you need any streets closed?
Yes

If yes, what street(s) do you need closed?:
Parade route

Please describe your event in detail:
Veterans Day Parade

Will alcohol be served?
No

Please list an estimated number of vendors who will be selling items:
none

Will you need city trash receptacles to dispose of garbage onsite?
Yes

If available at your event location, will you need electricity?
No

Security or Police needed?
Yes

Upload Map
https://cdn.saffire.com/files.ashx?t=fg&rid=VisitNacogdoches&f=Parade_Route_2023.pdf

table & parade line up

Yes

This form does not guarantee event approval. Once submitted, the form will be forwarded to corresponding city departments to determine if your event is feasible. You will receive a response once a decision is made, or if additional information is needed. If you have questions or concerns, please contact Shelby Lero at shelby@visitnacogdoches.org or call 936-564-7351.

If you are requesting to have alcohol at your event, please review the city ordinance on alcohol in parks **here.**

© Visit Nacogdoches
200 East Main
Nacogdoches, TX 75961
United States

info@visitnacogdoches.org
https://www.visitnacogdoches.org/

RESOLUTION NO. 1362-02-24

WHEREAS, organizers of the 2024 Wine Swirl of event desire to have a safe and successful event for all vendors and participants and

WHEREAS, organizers of the Wine Swirl of event are requesting that the city of Nacogdoches close Main Street (SH 21) from its intersection with North Street eastward to its intersection at Mound Street from 2:00 p.m. Saturday, April 13, 2024, until 9:00 p.m. Saturday, April 13, 2024, in order to provide safety for the vendors and participants; and

WHEREAS, after duly considering such a request, it is the consent of the City Council that a resolution be adopted requesting the Texas Department of Transportation to allow the closing of Main Street for the 2024 Wine Swirl of the event.

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of Nacogdoches, Texas that this resolution be adopted requesting the Texas Department of Transportation to allow the closing of Main Street (SH 21) from its intersection with North Street eastwardly to its intersection at Mound Street from 2:00 p.m. Saturday, April 13, 2024, until 9:00 p.m. Saturday, April 13, 2024, for the 2024 Wine Swirl of event.

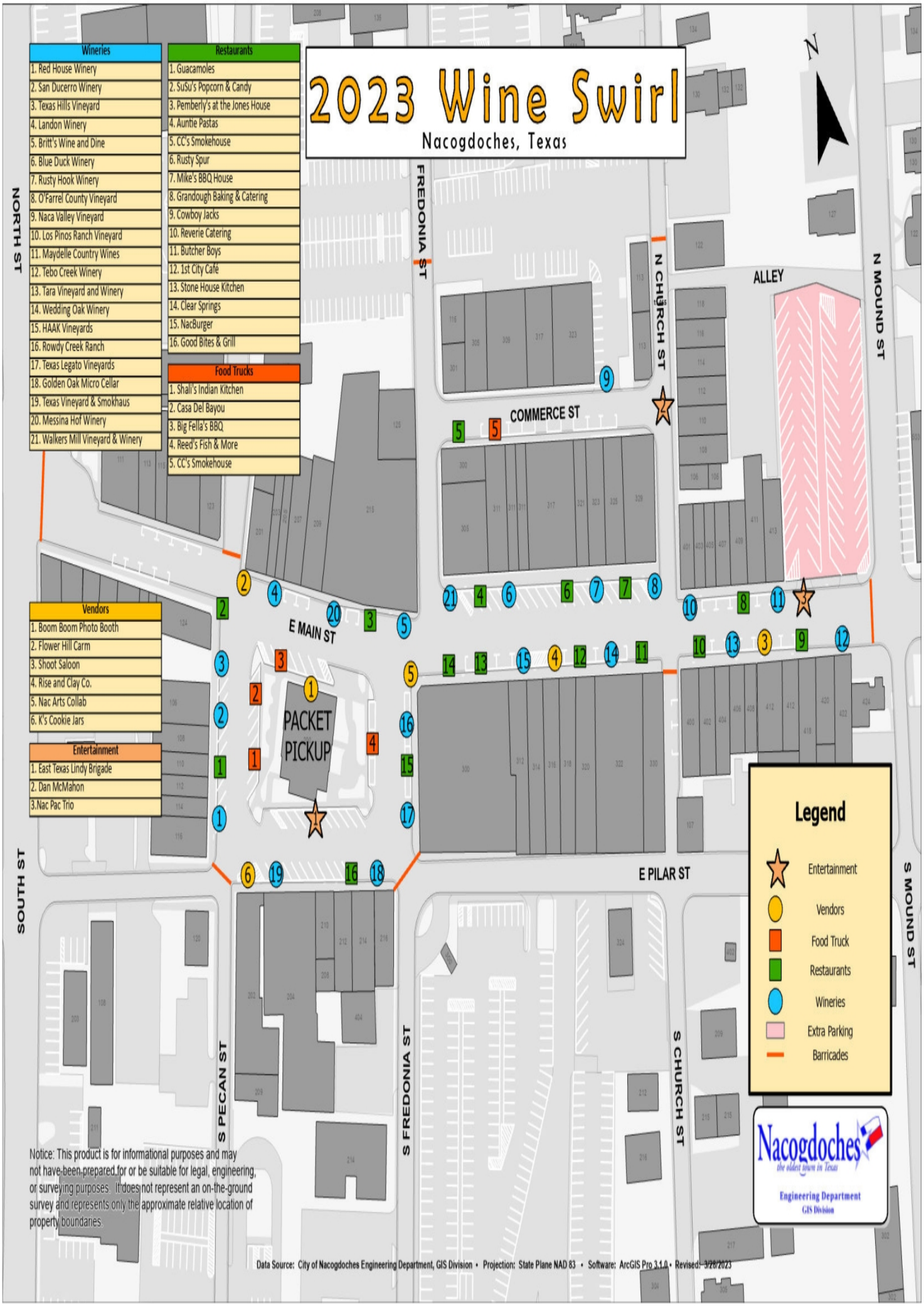
BE IT FURTHER RESOLVED that Rick Beverlin, City Manager, be authorized to execute an agreement with the Texas Department of Transportation for the closing of Main Street (SH 21).

PASSED AND APPROVED this 20th day of February, 2024

_____
Mayor, Randy Johnson
City of Nacogdoches

ATTEST:

_____
Rhonda Lewis, City Secretary


2023 Wine Swirl
Nacogdoches, Texas
N
Wineries
1. Red House Winery
2. San Ducerro Winery
3. Texas Hills Vineyard
4. Landon Winery
5. Britt's Wine and Dine
6. Blue Duck Winery
7. Rusty Hook Winery
8. O'Farrel County Vineyard
9. Naca Valley Vineyard
10. Los Pinos Ranch Vineyard
11. Maydelle Country Wines
12. Tebo Creek Winery
13. Tara Vineyard and Winery
14. Wedding Oak Winery
15. HAAK Vineyards
16. Rowdy Creek Ranch
17. Texas Legato Vineyards
18. Golden Oak Micro Cellar
19. Texas Vineyard & Smokhaus
20. Messina Hof Winery
21. Walkers Mill Vineyard & Winery
Restaurants
1. Guacamoles
2. SuSu's Popcorn & Candy
3. Pemberly's at the Jones House
4. Auntie Pastas
5. CC's Smokehouse
6. Rusty Spur
7. Mike's BBQ House
8. Grandough Baking & Catering
9. Cowboy Jacks
10. Reverie Catering
11. Butcher Boys
12. 1st City Café
13. Stone House Kitchen
14. Clear Springs
15. NacBurger
16. Good Bites & Grill
Food Trucks
1. Shali's Indian Kitchen
2. Casa Del Bayou
3. Big Fella's BBQ
4. Reed's Fish & More
5. CC's Smokehouse
Vendors
1. Boom Boom Photo Booth
2. Flower Hill Carm
3. Shoot Saloon
4. Rise and Clay Co.
5. Nac Arts Collab
6. K's Cookie Jars
Entertainment
1. East Texas Lindy Brigade
2. Dan McMahon
3.Nac Pac Trio
NORTH ST
FREDONIA ST
N CHURCH ST
ALLEY
N MOUND ST
COMMERCE ST
E MAIN ST
PACKET PICKUP
E PILAR ST
SOUTH ST
S PECAN ST
S FREDONIA ST
S CHURCH ST
S MOUND ST
Legend
Entertainment
Vendors
Food Truck
Restaurants
Wineries
Extra Parking
Barricades
Nacogdoches
the oldest town in Texas
Engineering Department
GIS Division
Notice: This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.
Data Source: City of Nacogdoches Engineering Department, GIS Division • Projection: State Plane NAD 83 • Software: ArcGIS Pro 3.1.0 • Revised: 3/28/2023

Thank you for submitting your Festival and Event Permit, we will contact you if we have any questions. If you would like to have alcohol at your event, please request a Alcohol Permit by emailing shelby@visitnacogdoches.org

Festival & Event Permit

Date: 01/10/2024

Date of Event
4/13/2024

Name of Event
Nacogdoches Wine Swirl

First Name
Tori

Last Name
Huddleston

Email Address
huddlestont@nactx.us

Sign me up for email updates
No

Contact Person Daytime Phone:
512-988-8646

Desired Location of Event:
Downtown

Organization Hosting Event:
Nacogdoches Main Street

Event Set Up Time:
2:00 p.m.

Event Start Time:
5:00 p.m.

Event End Time:
9:00 p.m.

Please include general schedule information and any additional details here:

Number of Expected Attendees:
1300

Will you need any streets closed?
Yes

If yes, what street(s) do you need closed?:
General Downtown Street Closure- Main St, Pecan, Fredonia & Church Street

Please describe your event in detail:
Annual Nacogdoches Main Street fundraiser. over 20 wineries, several food trucks and restaurants, vendors and entertainment groups will set up for people to enjoy. Attendees will be able to sample wines from wineries and purchase a glass or a bottle.

Will alcohol be served?
Yes

Please list an estimated number of vendors who will be selling items:
50

Will you need city trash receptacles to dispose of

If available at your event location, will you need electricity?
Yes

Is 220 Volt needed?
Unknown

Security or Police needed?
Yes

Upload Map
https://cdn.saffire.com/images.ashx?t=ig&rid=VisitNacogdoches&i=2023_Official_Map.png

General downtown road blocks (Same as Blueberry and previous Wine Swirls) vendors and wineries will set up tents, trashcans will be needed.	garbage onsite? Yes

Yes

This form does not guarantee event approval. Once submitted, the form will be forwarded to corresponding city departments to determine if your event is feasible. You will receive a response once a decision is made, or if additional information is needed. If you have questions or concerns, please contact Shelby Lero at shelby@visitnacogdoches.org or call 936-564-7351.

If you are requesting to have alcohol at your event, please review the city ordinance on alcohol in parks **here.**

© Visit Nacogdoches
200 East Main
Nacogdoches, TX 75961
United States

info@visitnacogdoches.org
https://www.visitnacogdoches.org/

PRESENTER: Juan Pollette, Interim City Planner

ITEM/SUBJECT: Public Hearing: Consider a Specific Use Permit to operate a Halfway House in an R-4, Multi-Family District, on Lot 8, Block 3 of the Banita Subdivision, located at 2019 Pearl Street. This request has been submitted by New Hope Communities of Texas, Inc. Case Number 2024-01. **(PLEASE NOTE THAT THIS ITEM WAS POSTPONED BY THE PLANNING AND ZONING COMMISSION ON FEBRUARY 12, 2024)** (Interim City Planner)

SUMMARY/BACKGROUND: The Planning & Zoning Commission has postponed a decision on this agenda item until the March 11, 2024, Planning & Zoning Commission meeting. Staff requests that the City Council postpone their public hearing for this item until the March 19, 2024, City Council meeting.

FINANCIAL:
N/A

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

CITY CONTACT: Juan Pollette, Interim City Planner
pollettej@nactx.us
(936) 559-2559

ATTACHMENTS:

City Council Meeting

Date: February 20, 2024

Agenda Item: 6.B.

PRESENTER: Case Opperman, Director of Public Works

ITEM/SUBJECT: Consider approval of a contract by and between the City of Nacogdoches and KSA Engineers, Inc. for professional engineering services on 2023/2024 CDBG Water Line Improvements in a not-to-exceed amount of $92,900.00. (Director of Public Works)

SUMMARY/BACKGROUND: In 2023, the City of Nacogdoches received a grant under the 2023/2024 Community Development Block Grant (CDBG) program for replacement of an 8" water line on Martin Luther King, Jr. Boulevard in the amount of $500,000. This project will replace approximately 2,600 linear feet of water line and will benefit approximately 270 residents. KSA Engineers was previously selected through the Request for Qualifications (RFQ) process as the engineer for this grant application and process. The contract for consideration is for engineering services on this project, including surveying, design, bidding and construction phase services as follows:

Preliminary Design	$ 29,600
Design Survey	$ 8,500
Final Design	$ 19,800
Bidding Phase	$ 5,000
Construction Phase	$ 30,000
Total	$ 92,900

This is a reimbursable-type grant wherein the City will pay for all associated costs and will be reimbursed under the grant. As such, a budget amendment will be required to allocate funds for this project for the upfront cost which will be presented by the Finance Department. The total cost for this project including engineering design, grant administration services and construction is estimated at $667,100. After reimbursements, the City's match for this project would be an estimated $167,100.

FINANCIAL:

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

Account No.: 30.36 680.96
Account Name: *Water Production - Construction*
Amount: $ 92,900

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

Infrastructure

CITY CONTACT: Case Opperman, Director of Public Works
oppermanc@nactx.us

(936) 559-2515

ATTACHMENTS:
1. Contract
2. PowerPoint Slide
3. Signatory Resolution_Nacogdoches CDV23-0190

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

EJCDC
ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly by

ACEC
American Council of Engineering Companies

AGC of America
The Associated General Contractors of America
Quality People. Quality Projects.

ASCE American Society of Civil Engineers

National Society of Professional Engineers
Professional Engineers in Private Practice

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

EJCDC E-500 Standard Form of Agreement Between Owner and Engineer for Professional Services.
Copyright © 2008 National Society of Professional Engineers for EJCDC. All rights reserved.

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.

Copyright © 2008 National Society of Professional Engineers
1420 King Street, Alexandria, VA 22314-2794
(703) 684-2882
www.nspe.org

American Council of Engineering Companies
1015 15th Street N.W., Washington, DC 20005
(202) 347-7474
www.acec.org

American Society of Civil Engineers
1801 Alexander Bell Drive, Reston, VA 20191-4400
(800) 548-2723
www.asce.org

Associated General Contractors of America
2300 Wilson Boulevard, Suite 400, Arlington, VA 22201-3308
(703) 548-3118
www.agc.org

The copyright for this EJCDC document is owned jointly by the four EJCDC sponsoring organizations and held in trust for their benefit by NSPE.

EJCDC

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

THIS IS AN AGREEMENT effective as of _____ ("Effective Date") between City of Nacogdoches ("Owner") and KSA Engineers, Inc. ("Engineer").

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

2023/2024 CDBG Water Line Improvements (CDBG Contract No. CDV23-0190) ("Project").

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

Provide engineering design services for water line improvements along Martin Luther King Jr Boulevard as identified in the project performance statement for CDBG Contract No. CDV23-0190).

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,

Copyright © 2008 National Society of Professional Engineers for EJCDC. All rights reserved.

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

Copyright © 2008 National Society of Professional Engineers for EJCDC. All rights reserved.

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 *Designing to Construction Cost Limit*~~

~~A. If a Construction Cost limit is established between Owner and Engineer, such Construction Cost limit and a statement of Engineer's rights and responsibilities with respect thereto will be specifically set forth in Exhibit F, "Construction Cost Limit," to this Agreement.~~

5.03 *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

Copyright © 2008 National Society of Professional Engineers for EJCDC. All rights reserved.

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. ~~provided to Engineer in writing.~~ 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 (EJCDC C-700, 2007 Edition) ~~unless both parties mutually agree to use other general conditions by specific reference in Exhibit J.~~

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

Copyright © 2008 National Society of Professional Engineers for EJCDC. All rights reserved.

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

Copyright © 2008 National Society of Professional Engineers for EJCDC. All rights reserved.

the electronic files and the hard copies, the hard copies govern. ~~If the parties agree to other electronic transmittal procedures, such are set forth in Exhibit J.~~

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 procure and maintain insurance as set forth in Exhibit G, "Insurance." Owner shall cause Engineer and its Consultants to be listed as additional insureds on any general liability policies and as loss payees on any property insurance policies carried by Owner which are applicable to the Project~~.

Copyright © 2008 National Society of Professional Engineers for EJCDC. All rights reserved.

C. 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.

D. 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.

E. ~~All policies of property insurance relating to the Project shall contain provisions to the effect that Engineer's and its Consultants' interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against Engineer or its Consultants, or any insureds, additional insureds, or loss payees thereunder~~.

F. 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 thatrenewal 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.

G. 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:

Copyright © 2008 National Society of Professional Engineers for EJCDC. All rights reserved.

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 <u>hourly</u> ~~methods and~~ rates ~~for Additional Services~~ as set forth in Exhibit C.

Copyright © 2008 National Society of Professional Engineers for EJCDC. All rights reserved.

6.06 *Controlling Law*

A. This Agreement is to be governed by the law of the state ~~or jurisdiction in which the Project is located.~~ 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.

Copyright © 2008 National Society of Professional Engineers for EJCDC. All rights reserved.

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."

Copyright © 2008 National Society of Professional Engineers for EJCDC. All rights reserved.

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.

Copyright © 2008 National Society of Professional Engineers for EJCDC. All rights reserved.

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.

Copyright © 2008 National Society of Professional Engineers for EJCDC. All rights reserved.

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.

Copyright © 2008 National Society of Professional Engineers for EJCDC. All rights reserved.

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.

Copyright © 2008 National Society of Professional Engineers for EJCDC. All rights reserved.

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, Not Included

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. Exhibt L, CDBG Terms and Conditions

M. Exhibit M,

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

Copyright © 2008 National Society of Professional Engineers for EJCDC. All rights reserved.

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.

Copyright © 2008 National Society of Professional Engineers for EJCDC. All rights reserved.

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

Owner: City of Nacogdoches	Engineer: KSA Engineers, Inc.
By:	By:
Name: Rick Beverlin	Name: Joncie H. Young, P.E.
Title: City Manager	Title: Director of Client Services
Date Signed:	Date Signed: 1/11/2024
	Engineer License or Firm's Certificate No. F-1356
	State of: Texas
Address for giving notices:	Address for giving notices:
202 East Pilar Street	140 East Tyler Street
Nacogdoches, TX 75961	Suite 600
	Longview, TX 75601
Designated Representative (Paragraph 8.03.A):	Designated Representative (Paragraph 8.03.A):
Case Opperman, P.E.	C. Daniel "Danny" Hays, P.E.
Title: Director of Public Works	Title: Project Manager
Phone Number: 936.559.2522	Phone Number: 877.572.3647 ext. 3108
Facsimile Number:	Facsimile Number: 888.224.9418
E-Mail Address: oppermanc@nactx.us	E-Mail Address: dhays@ksaeng.com

Copyright © 2008 National Society of Professional Engineers for EJCDC. All rights reserved.

This is **EXHIBIT A**, consisting of 14 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

A1.01 *Study and Report Phase*

A. Engineer shall:

Consult with Owner to define and clarify Owner's requirements for the Project and available data.

Advise Owner of any need for Owner to provide data or services of the types described in Exhibit B which are not part of Engineer's Basic Services.

Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project designed or specified by Engineer, including but not limited to mitigating measures identified in the environmental assessment.

Identify and evaluate alternate solutions available to Owner and, after consultation with Owner, recommend to Owner those solutions which in Engineer's judgment meet Owner's requirements for the Project.

Prepare a report (the "Report") which will, as appropriate, contain schematic layouts, sketches, and conceptual design criteria with appropriate exhibits to indicate the agreed-to requirements, considerations involved, and those alternate solutions available to Owner which Engineer recommends. For each recommended solution Engineer will provide the following, which will be separately itemized: opinion of probable Construction Cost; proposed allowances for contingencies; the estimated total costs of design, professional, and related services to be provided by Engineer and its Consultants; and, on the basis of information furnished by Owner, a summary of allowances for other items and services included within the definition of Total Project Costs.

Perform or provide the following additional Study and Report Phase tasks or deliverables: None

Furnish three review copies of the Report and any other deliverables to Owner ~~within ____ calendar days of the Effective Date~~ and review it with the Owner. Within fifteen calendar days of receipt, Owner shall submit to Engineer any comments regarding the Report and any other deliverables.

Copyright © 2008 National Society of Professional Engineers for EJCDC. All rights reserved.

Revise the Report and any other deliverables in response to Owner's comments.~~, as appropriate, and furnish ____ copies of the revised Report and any other deliverables to the Owner within ____ calendar days of receipt of Owner's comments.~~

B. Engineer's services under the Study and Report Phase will be considered complete on the date when the revised Report and any other deliverables have been delivered to Owner.

A1.02 *Preliminary Design Phase*

A. After acceptance by Owner of the Report and any other deliverables, selection by Owner of a recommended solution and indication of any specific modifications or changes in the scope, extent, character, or design requirements of the Project desired by Owner, and upon written authorization from Owner, Engineer shall:

Prepare Preliminary Design Phase documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Project.

~~Provide necessary field surveys and topographic and~~ Request available utility mapping for design purposes. Utility mapping will be based upon information obtained from utility owners.

Advise Owner if additional reports, data, information, or services of the types described in Exhibit B are necessary and assist Owner in obtaining such reports, data, information, or services.

Based on the information contained in the Preliminary Design Phase documents, prepare a revised opinion of probable Construction Cost, and assist Owner in collating the various cost categories which comprise Total Project Costs.

Perform or provide the following additional Preliminary Design Phase tasks or deliverables: None

Furnish three review copies of the Preliminary Design Phase documents and any other deliverables to Owner ~~within ____ calendar days of authorization to proceed with this phase,~~ and review them with Owner. Within fifteen calendar days of receipt, Owner shall submit to Engineer any comments regarding the Preliminary Design Phase documents and any other deliverables.

~~Revise the Preliminary Design Phase documents and any other deliverables in response to Owner's comments, as appropriate, and furnish to Owner _____ copies of the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables. within ____ calendar days after receipt of Owner's comments.~~

B. Engineer's services under the Preliminary Design Phase will be considered complete on the date when the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables have been delivered to Owner.

Copyright © 2008 National Society of Professional Engineers for EJCDC. All rights reserved.

A1.03 *Final Design Phase*

A. After acceptance by Owner of the Preliminary Design Phase documents, revised opinion of probable Construction Cost as determined in the Preliminary Design Phase, and any other deliverables subject to any Owner-directed modifications or changes in the scope, extent, character, or design requirements of or for the Project, and upon written authorization from Owner, Engineer shall:

Prepare final Drawings and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor.

Provide technical criteria, written descriptions, and design data for Owner's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design of the Project; assist Owner in consultations with such authorities; and revise the Drawings and Specifications in response to directives from such authorities.

Advise Owner of any adjustments to the opinion of probable Construction Cost known to Engineer.

Perform or provide the following additional Final Design Phase tasks or deliverables: None

Prepare and furnish bidding documents for review by Owner, its legal counsel, and other advisors, and assist Owner in the preparation of other related documents. Within fifteen days of receipt, Owner shall submit to Engineer any comments and~~, subject to the provisions of Paragraph 6.01.G,~~ instructions for revisions.

Revise the bidding documents in accordance with comments and instructions from the Owner, as appropriate, and submit three final copies of the bidding documents, a revised opinion of probable Construction Cost, and any other deliverables to Owner~~ within ____ calendar days after receipt of Owner's comments and instructions.~~

B. Engineer's services under the Final Design Phase will be considered complete on the date when the submittals ~~required by Paragraph A1.03.A.6~~ have been delivered to Owner.

C. In the event that the Work designed or specified by Engineer is to be performed or furnished under more than one prime contract, or if Engineer's services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast-tracking), Owner and Engineer shall, prior to commencement of the Final Design Phase, develop a schedule for performance of Engineer's services during the Final Design, Bidding or Negotiating, Construction, and Post-Construction Phases in order to sequence and coordinate properly such services as are applicable to the work under such separate prime contracts. This schedule is to be prepared and included in or become an amendment to Exhibit A whether or not the work under such contracts is to proceed concurrently.

D. The number of prime contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established under this Agreement is one (1). If more prime contracts are awarded, Engineer shall be entitled to an equitable increase in its compensation under this Agreement.

Copyright © 2008 National Society of Professional Engineers for EJCDC. All rights reserved.

A1.04 *Bidding or Negotiating Phase*

A. After acceptance by Owner of the bidding documents and the most recent opinion of probable Construction Cost as determined in the Final Design Phase, and upon written authorization by Owner to proceed, Engineer shall:

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, ~~but subject to the provisions of paragraph A2.02.A.2 of this Exhibit A.~~

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. ~~(except as may be required if Exhibit F is a part of this Agreement).~~

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.

~~*Resident Project Representative (RPR):* Provide the services of an RPR at the Site to assist the Engineer and to provide more extensive observation of Contractor's work. Duties,~~

Copyright © 2008 National Society of Professional Engineers for EJCDC. All rights reserved.

~~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.~~

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:

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

Copyright © 2008 National Society of Professional Engineers for EJCDC. All rights reserved.

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~~, but subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A.~~

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,

Copyright © 2008 National Society of Professional Engineers for EJCDC. All rights reserved.

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 ~~as provided under Paragraph A1.05.A.11,~~ and transmit the annotated record documents which are to be assembled by

Copyright © 2008 National Society of Professional Engineers for EJCDC. All rights reserved.

Contractor in accordance with the Contract Documents to obtain final payment. ~~The extent of such review by Engineer will be limited as provided in Paragraph A1.05.A.11.~~

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 ~~in the form attached hereto as Exhibit E (the "Notice of Acceptability of Work")~~ that the Work is acceptable ~~(subject to the provisions of Paragraph A1.05.A.15.b)~~ 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 Ownerduring 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.

Copyright © 2008 National Society of Professional Engineers for EJCDC. All rights reserved.

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 <u>in Attachment A-1 or in subsequent Amendments to this Agreement</u>, 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 resulting from Owner's request to evaluate additional Study and Report Phase alternative solutions beyond those identified in Paragraph A1.01.A.4.~~

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

Providing ~~renderings or models for Owner's use.~~ <u>necessary field surveys and topographic surveys for design purposes.</u>

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

Copyright © 2008 National Society of Professional Engineers for EJCDC. All rights reserved.

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.~~, except when such assistance is required by Exhibit F.~~

Providing construction surveys and staking to enable Contractor to perform its work ~~other than as required under Paragraph A1.05.A.6,~~ 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.

Copyright © 2008 National Society of Professional Engineers for EJCDC. All rights reserved.

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.

Copyright © 2008 National Society of Professional Engineers for EJCDC. All rights reserved.

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.

Copyright © 2008 National Society of Professional Engineers for EJCDC. All rights reserved.

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 KSA	0
Complete Design Survey	45
Complete Preliminary Design Phase	105
Complete Final Design Phase	165
Submit Plans & Specs for Review by Owner/Reviewing Agency	165
Approval of Plans & Specs by Owner	175
Approval of Plans & Specs by Reviewing Agency	225
Advertise for Bids (minimum 2 notices)	245
Open Bids	265
Award Bid	280
Execute Construction Contract	310
Pre-Construction Conference; Issue Notice to Proceed	325
Start Construction Phase	335
Complete Construction Phase	455
Grant Closeout	515

Note:

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

Copyright © 2008 National Society of Professional Engineers for EJCDC. All rights reserved.

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.

Copyright © 2008 National Society of Professional Engineers for EJCDC. All rights reserved.

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 Attachement 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 assessesed. 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	0.00	29,600.00	19,800.00	5,000.00	30,000.00	0.00	84,400.00	Lump Sum
Design Survey		8,500.00					8,500.00	
Subtotal	0.00	38,100.00	19,800.00	5,000.00	30,000.00	0.00	92,900.00	

								Hourly Rate and Reimbursable Expenses
Subtotal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
Total	0.00	38,100.00	19.800.00	5,000.00	30,000.00	0.00	92,900.00	

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 120 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 2 pages, referred to in and part of the **Standard Form of Agreement between Owner and Engineer for Professional Services**, dated _____.

Hourly Rate and Reimbursable Expense Schedule

Rates for hourly work and reimbursable expenses effective on the date of this Agreement are:

Principal	$280.00/hour
Senior Aviation Planner	$225.00/hour
Aviation Planner	$185.00/hour
Electrical Engineer	$190.00/hour
Electrical Design Engineer	$155.00/hour
Senior Project Manager	$250.00/hour
Project Manager	$185.00/hour
Senior Project Engineer	$180.00/hour
Project Engineer	$160.00/hour
Senior Design Engineer	$140.00/hour
Design Engineer	$120.00/hour
Senior Project Architect	$240.00/hour
Project Architect	$145.00/hour
Design Architect	$105.00/hour
Senior Engineering Technician	$210.00/hour
Engineering Technician	$115.00/hour
Senior Design Technician	$135.00/hour
Design Technician	$ 95.00/hour
Safety Manager	$135.00/hour
Safety Specialist	$100.00/hour
Regulation Compliance Specialist	$120.00/hour
Project Assistant	$ 90.00/hour
Senior CAD Technician	$ 90.00/hour
CAD Technician	$ 85.00/hour
Senior Project Representative	$120.00/hour
Project Representative	$105.00/hour
Graphic Designer	$ 80.00/hour
Administrative Assistant	$ 85.00/hour
Secretary	$ 55.00/hour
Three-Man Survey Crew	$210.00/hour
Two-Man Survey Crew	$180.00/hour
Senior Registered Surveyor	$180.00/hour
Registered Surveyor	$155.00/hour
Senior Survey Technician	$120.00/hour
Survey Technician	$100.00/hour
Mileage	$ 0.66/mile
ATV (4-Wheeler)	$100.00/day
GPS	$100.00/day
Reimbursable Expenses (Travel, Lodging, Copies, Printing)	Actual Cost
Outside Consultants	Cost + 15%

NOTE: The Standard Hourly Rates and Reimbursable Expenses Schedule shall be adjusted annually to reflect equitable changes in the compensation payable to Engineer.

This is **EXHIBIT G**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** _____.

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 –		

EJCDC E-500 Agreement Between Owner and Engineer for Professional Services.
Copyright © 2008 National Society of Professional Engineers for EJCDC. All rights reserved.

	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): _____ $_____

~~B. *Additional Insureds:*~~

~~1. Engineer and the Consultants identified in the Task Order for a Specific Project shall be listed on Owner's general liability policies of insurance as additional insureds, and on any applicable property insurance policy as loss payees, as provided in Paragraph 6.04.B.~~

EJCDC E-500 Agreement Between Owner and Engineer for Professional Services.
Copyright © 2008 National Society of Professional Engineers for EJCDC. All rights reserved.

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 ~~by *[insert name of mediator, or mediation service]*~~. 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.

Copyright © 2008 National Society of Professional Engineers for EJCDC. All rights reserved.

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 Consultantss (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:~~

3. ~~*Agreement Not to Claim for Cost of Certain Change Orders:* Owner recognizes and expects that certain Change Orders may be required to be issued as the result in whole or part of~~

Copyright © 2008 National Society of Professional Engineers for EJCDC. All rights reserved.

~~imprecision, incompleteness, errors, omissions, ambiguities, or inconsistencies in the Drawings, Specifications, and other design documentation furnished by Engineer or in the other professional services performed or furnished by Engineer under this Agreement ("Covered Change Orders"). Accordingly, Owner agrees not to sue or to make any claim directly or indirectly against Engineer on the basis of professional negligence, breach of contract, or otherwise with respect to the costs of approved Covered Change Orders unless the costs of such approved Covered Change Orders exceed _____% of Construction Cost, and then only for an amount in excess of such percentage. Any responsibility of Engineer for the costs of Covered Change Orders in excess of such percentage will be determined on the basis of applicable contractual obligations and professional liability standards. For purposes of this paragraph, the cost of Covered Change Orders will not include any costs that Owner would have incurred if the Covered Change Order work had been included originally without any imprecision, incompleteness, error, omission, ambiguity, or inconsistency in the Contract Documents and without any other error or omission of Engineer related thereto. Nothing in this provision creates a presumption that, or changes the professional liability standard for determining if, Engineer is liable for the cost of Covered Change Orders in excess of the percentage of Construction Cost stated above or for any other Change Order. Wherever used in this paragraph, the term Engineer includes Engineer's officers, directors, members, partners, agents, employees, and Consultants.~~

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.

Copyright © 2008 National Society of Professional Engineers for EJCDC. All rights reserved.

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: KSA Engineers, 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: $_____

Copyright © 2008 National Society of Professional Engineers for EJCDC. All rights reserved.

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: KSA Engineers, Inc.
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date Signed: _____	Date Signed: _____

Copyright © 2008 National Society of Professional Engineers for EJCDC. All rights reserved.

ENGINEERING CONTRACT AWARD
CDBG MLK WATER LINE IMPROVEMENTS
KSA ENGINEERS, INC.

- $500,000 reimbursable grant awarded to City
- Water Line improvements on MLK, Jr. Boulevard
- Contract for Engineering Services, previously selected by RFQ process

Engineering Services

Preliminary Design	$ 29,600
Design Survey	$ 8,500
Final Design	$ 19,800
Bidding Phase	$ 5,000
Construction Phase	$ 30,000
Total Fee	$ 92,900

Nacogdoches
the oldest town in Texas

RESOLUTION NO. 1321-01-23

A RESOLUTION OF THE CITY COUNCIL OF NACOGDOCHES, TEXAS AUTHORIZING CITY REPRESENTATIVES IN MATTERS PERTAINING TO THE CITY'S PARTICIPATION IN THE TEXAS COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM.

WHEREAS, the City Council of Nacogdoches desires to develop a viable community, including decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low-to-moderate income; and

WHEREAS, it is necessary and in the best interests of the City to participate in the Texas Community Development Block Grant Program; and

WHEREAS, the City Council of Nacogdoches is committed to compliance with federal, state, and program rules, including the current TxCDBG Project Implementation Manual; and

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

That the City Council directs and designates the following to act in all matters in connection with any grant application and the City's participation in the Texas Community Development Block Grant Program:

- The Mayor and/or City Manager shall serve as the City Chief Executive Officer and Authorized Representative to:
    - execute a grant application and any subsequent contractual documents,
    - certify environmental review documents between the Texas Department of Agriculture and the City, and
    - certify the Payment Request form and/or other forms required for requesting funds to reimburse project costs, and
    - be assigned the role of Authorized Official in the TDA-GO grant management system.

- In addition to the above designated officials, should any grant be funded, the Mayor, City Manager, or Director of Finance is authorized to:
    - certify the Payment Request form and/or other forms required for requesting funds to reimburse project costs,
    - prepare and submit other financial documentation, and
    - be assigned the role of Project Director or Payment Processor in the TDA-GO grant management system.

PASSED AND APPROVED this the 17th day of January, 2023.

CITY OF NACOGDOCHES

Jimmy Mize, MAYOR

ATTEST:

Jan Vinson, CITY SECRETARY

APPROVED AS TO FORM:

Steven Kirkland, CITY ATTORNEY

City Council Meeting

Date: February 20, 2024

Agenda Item: 6.C.

PRESENTER: Jessica Sowell, Community Services Director

ITEM/SUBJECT: Consider approval of proposed updates to Chapter 50 - Historic Preservation of the Nacogdoches Code of Ordinances. (Community Services Director and City Attorney)

SUMMARY/BACKGROUND: Chapter 50 of the Nacogdoches Code of Ordinances outlines Historic Preservation practices applied to properties under Historic Overlay zoning, the duties of the Historic Landmark Preservation Committee as well as the duties of city staff in terms of preservation.

Items highlighted in red are new additions to Chapter 50 - Historic Preservation. The intent of these updates is to codify the current Administrative Approval process, application requirements and formalize the duties and responsibilities of the Historic Preservation Officer.

These proposed changes were presented to the Historic Landmark Preservation Committee on February 5, 2024 and there were no requested changes or additions to the draft.

FINANCIAL:

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

CITY CONTACT: Jessica Sowell, Communtiy Services Director
sowellj@nactx.us
936-559-2940

ATTACHMENTS: 1. Chapter 50 - proposed updates

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF NACOGDOCHES, TEXAS, AMENDING CHAPTER 50 "HISTORIC PRESERVATION", ARTICLE II "LANDMARKS AND HISTORIC DISTRICTS", OF THE CITY OF NACOGDOCHES, TEXAS; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

RECITALS:

WHEREAS, the City Council of the City of Nacogdoches has designated and zoned certain sites, districts, areas, buildings, and lands located in the City as historic landmarks to be protected, enhanced, and preserved in the interest of culture, prosperity, education, and general welfare of the people;

WHEREAS, the City Council has adopted ordinances deemed necessary for protection, enhancement, and perpetuation of these landmarks and historic districts; and

WHEREAS, the City Council has determined the need to amend certain portions of these Historic Preservation ordinances.

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

SECTION I

All above premises are hereby found to be true and correct legislative and factual findings.

SECTION II

Chapter 50, "Historic Preservation," and specifically, ARTICLE II of the Code of Ordinances of the City of Nacogdoches, Texas, is hereby amended, as set hereafter to read as follows:

Sec. 50-31. - Ordinary maintenance.

(a) Nothing in this article shall be construed to prevent the ordinary maintenance and repair of any exterior architectural feature of a landmark or property within a historic district. which does not involve a change in design, material, or outward appearance~~.~~, including any ~~In~~in-kind replacement or repair~~ is included in this definition of ordinary maintenance~~.

(b) "Ordinary maintenance and repair" shall mean any work, the purpose and effect of which is to correct any deterioration or decay of or damage to a building, structure, object, or site, or any part thereof, and to restore the same, as nearly as may be practicable, to its condition prior to such deterioration, decay, or damage, using the same materials or those materials available which are as close as practicable to the original. The term "exterior architectural feature" shall include, but is not limited to,

the kind, color, and basic texture of all exterior building materials, and such features as windows, doors, lights, and signs.

…

Sec. 50-156. - Alteration or new construction affecting landmarks or historic districts.

(a) No person shall carry out any exterior reconstruction, alteration, restoration, rehabilitation of any historic landmark or any new construction on property within a historic district, nor shall any person make any material change in the light fixtures, signs, sidewalks, fences, steps, paving or other exterior elements visible from a public right-of-way which affect the appearance and cohesiveness of the historic landmark or any property within a historic district without first obtaining a certificate of appropriateness in accordance with this ordinance.~~from the committee.~~

(b) A certificate of appropriateness is not required to remove, relocate, or demolish a designated historic landmark. Any person wishing to remove, relocate, or demolish a designated historic landmark or structure should refer to division 6, demolition or removal, sections 50-191 through 50-201 of this chapter.

(Ord. No. 1130, art. XI, § 7, 11-3-1998; Ord. No. 1380-11-04, 11-2-2004)

…

Sec. 50-158. - Application.

(a) Prior to the commencement of any work requiring a certificate of appropriateness pursuant to this division, the owner shall file an application for such a certificate with the historic preservation officer~~historic landmark preservation committee~~. The application shall contain the following:
   (1) The name, address and telephone number of the applicant.
   (2) A detailed description of the proposed work.
   (3) Location and photographs of the property and adjacent properties.
   (4) Elevation drawings of the proposed changes, if available.
   (5) Samples of materials to be used.
   (6) If the proposal includes signs or lettering, a scale drawing showing the type of lettering to be used, all dimensions and colors, a description of materials to be used, method of illumination if any, and a plan showing the sign's location on the property.
   (7) Any other information which the committee may deem necessary in order to visualize the proposed work.

(b) The application shall not be accepted and processed until it is deemed complete by the historic preservation officer, including a sufficient description to adequately and completely convey the full effect of the work being proposed.

(c) A certificate of appropriateness may be issued by the historic preservation officer as an administrative approval, without review by the historic landmark preservation

committee, if the application is for work constituting ordinary maintenance and repair, as defined herein (Section 50-31).

(d) If the historic preservation officer determines that the applicant is seeking a certificate of appropriateness to authorize work that is not ordinary maintenance and repair, the historic preservation officer shall immediately refer the application to the historic landmark preservation committee for review.

(Ord. No. 1130, art. XI, § 9.1, 11-3-1998)

Sec. 50-159. - Certificate required before building permit.

No building permit shall be issued for such proposed work until a certificate of appropriateness has first been issued by the historic preservation officer or historic landmark preservation committee, as applicable. The certificate of appropriateness required by this division shall be in addition to and not in lieu of any building permit that may be required by any other section of this Code or city ordinance.

(Ord. No. 1130, art. XI, § 9.2, 11-3-1998)

Sec. 50-160. - Timeframe for review and decision.

(a) For applications which do not require review by the historic landmark preservation committee, the historic preservation officer shall approve, deny, or approve the application with modifications within 15 days of receipt of a completed application. The historic preservation officer shall apply the Criteria for Approval (Section 50-157) when assessing the application. All decisions of the historic landmark preservation officer shall be in writing.

(b) An applicant may appeal the historic preservation officer's decision by submitting a written request for appeal within 10 days from the date the written decision is issued. The request for appeal of the historic preservation officer's decision starts the standard certificate of appropriateness review procedure by the historic landmark preservation committee.

~~(a)~~(c) The historic landmark preservation committee shall review ~~the~~ an application for a certificate of appropriateness at a regularly scheduled meeting within 60 days from the date the application is received by the committee, at which time an opportunity will be provided for the applicant to be heard. The committee shall approve, deny, or approve the application with modifications ~~the permit~~ within 45 days after the review meeting unless the historic landmark preservation committee and the applicant mutually agree to extend the period of review. If the committee does not act within 90 days of the receipt of the application, a certificate of appropriateness ~~permit~~ may be granted.

(Ord. No. 1130, art. XI, § 9.3, 11-3-1998)

SECTION III

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

SECTION IV

Continuation. All provisions of Chapter 50 of the Code of Ordinances existing prior to the date of passage of this Ordinance remain in full force and effect.

SECTION V

Repeal. This Ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Nacogdoches, and this Ordinance shall not operate to repeal or affect any such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with provisions of this Ordinance, in which such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

SECTION VI

Effective Date. This Ordinance shall take effect ten (10) days from its passage and publication as may be required by governing law.

SECTION VII

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

SECTION VIII

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

PASSED AND APPROVED this the ___ day of _____, 2024, by a vote of ____ (ayes) to _____ (nays) of the City Council of the City of Nacogdoches.

ATTEST: **CITY OF NACOGDOCHES**

_____ BY: _____

Rhonda Lewis, Deputy City Secretary Randy Johnson, Mayor

APPROVED AS TO FORM:

_____

Jerry Baker, City Attorney

APPROVED AS TO CONTENT:

_____

Jessica Sowell, Community Services Assistant Director

City Council Meeting

Date: February 20, 2024

Agenda Item: 6.D.

PRESENTER: Scott Weems, Police Chief

ITEM/SUBJECT: Consider a proposal from Reneau Roofing & Sheet Metal to re-roof the Police Department. (Chief of Police)

SUMMARY/BACKGROUND: The Police Department roof has been leaking and causing structural damage and mold inside the building. There is damage to the breakroom and the entire lower section of the department. The damage is continuing to spread, and the proposal will cover repairing the lower section in the amount of $42,500.

FINANCIAL:

Not ApplicableItem is not budgeted *(Budget Amendment required – see attached)*
Account No.: 01.86.680.00
Account Name: *Building & Structures*
Amount:42,500.00

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

Item is not budgeted *(Budget Amendment required – see attached)*
Account No.: 01.86.680.00
Account Name: *Building & Structures*
Amount:42,500.00

CITY CONTACT: Scott Weems, Chief of Police
weemss@nactx.us
(936) 559-2619

ATTACHMENTS: 1. Police Station Roof Damage PPP

Police Station Roof Damage

- The lower section of the roof at the Police Station has been leaking for years.
- It is causing structural damage and mold inside the building.
- The damage is starting to spread to the point that if nothing is done, the City would incur significant costs to make repairs in the near future.

Damage over the Break Room

Extensive Damage for years

Damage over the entire lower section

Admin Break Room damage

Admin Break Room damage

Re-roof Proposal

- **The January 3rd proposal from Reneau Roofing & Sheet Metal, Inc. totaled $42,500 to do the following:**

- **Tear and haul off existing top layer of TPO roofing**
- **Repair or remove existing screws**
- **Repair/replace existing wood blocking where needed**
- **Install synthetic felt as a separator**
- **Install new 60MIL PVC roofing**
- **Install new PVC metal along the exterior roof area**
- **Install roof related trim where necessary**

RENEAU ROOFING & SHEET METAL, INC.
P.O. Box 100
Garrison, Texas 75946
Phone: 936-347-2369 Fax: 936-347-2075

To: **Mike Scott – City of Nacogdoches**
Project: **Re-Roofing Police Department**
Nacogdoches TX

****

We propose the following:

- **Tear and haul off existing top layer of TPO roofing**
- **Repair or remove existing screws**
- **Repair/replace existing wood blocking where needed**
- **Install synthetic felt as a seperator**
- **Install new 60MIL PVC roofing**
- **Install new PVC metal along the exterior roof area**
- **Install roof related trim where necessary**

Total Price: $ 42,500

Cameron DeBorde
1.03.2024
Date

Quality Workmanship

- Reneau Roofing is a well-known, established company that does business in the City as well as the surrounding area.
- They did the partial roof replacement for the Police Station recently and did a commendable job.
- They back their work and complete the job within a reasonable timeframe.