



April 23, 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.

**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 minutes for the April 2, 2024, Regular City Council meeting. (City Secretary)
 - B. Consider the adoption of a Resolution re-approving the 2024 Edition of the Water Conservation Plan For Municipal Use By Retail Public Suppliers, and the Water Conservation Plan For Wholesale Public Water Suppliers. (Director of Public Works)
 - C. Consider approval of a resolution of support for appropriation requests for two (2) City projects (Director of Public Works).
 - D. Consider approval of the purchase and installation of Return Activated Sludge (RAS) Pump replacements at the Wastewater Treatment Plant from Zone Industries for a not-to-exceed amount of \$258,088.49. (Director of Public Works)

- E. Consider the approval of a service agreement with 1200.aero for an aircraft operations monitoring system for the A.L. Mangham Jr Regional Airport. (Airport Manager)
 - F. Consider approval of the purchase and installation of Ward Diesel No Smoke filtration systems for fire apparatuses for the amount of \$129,948.00. (Fire Chief)
 - G. Consider approval of the installation of a stop sign on Northgate Drive at Royal Lane. (Assistant Police Chief)
 - H. Consider approval of the installation of a 4-way stop sign at the intersection of Harvey Austin Dr., Eric Dr. and Emily Ct. (Assistant Police Chief)
 - I. Consider an Ordinance re-approving the 2024 Edition of the Drought Contingency Plan for the City of Nacogdoches. (Director of Public Works)
 - J. Consider approval of an agreement with Government Procurement and Leadership Solutions for as-needed procurement consulting services for an amount not-to-exceed \$20,000.00 (Interim Finance 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. Consider approval of an Aviation Fuel general services contract with Titan Aviation Fuels for A. L. Mangham Jr. Regional Airport. (Airport Manager)
 - B. Consider approval of an airport fuel truck lease agreement with Titan Aviation Fuels for a replacement truck used for dispensing AvGAS fuel at the A. L. Mangham Jr. Regional Airport. (Airport Manager)
 - C. Consider approval of a contract by and between the City of Nacogdoches and Kraftsman Commercial Playgrounds, in th amount of \$180,000 for design and construction of a splash pad at 1100 Martin Luther King Jr. Blvd. (Community Services Director)
 - D. Consider approval of the Fiscal Year 2023 Annual Audit. (Interim Finance Director)
7. EXECUTIVE SESSION: Executive Sessions are for City Council to receive information and deliberate on matters specified in Subchapter D of the Texas Open Meetings Act. Council may reconvene in open session to vote on the matter.
- A. Deliberation regarding Economic Development negotiations under Government Code Section 551.087 as follows:
 - 1. Discuss or deliberate regarding commercial or financial information the governmental body has received from business prospects that the

- governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and with which the governmental body is conducting economic development negotiations; and
2. Deliberate the offer of financial or other incentives to business prospects described by Subdivision 1 above.

8. ADJOURN.



Rhonda Lewis
City Secretary



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

CERTIFICATION

I certify the notice of meeting was posted in the directory outside of City Hall, 202 E. Pilar Street, Nacogdoches, Texas on April 19, 2024 at 5:00 p.m. and remained posted until the meeting convened.

Rhonda Lewis, City Secretary



City Council Meeting

Date: April 23, 2024

Agenda Item: 5.A.

PRESENTER:

ITEM/SUBJECT: Consider approval of minutes for the April 2, 2024, Regular City Council 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. CC040224 Regular Session



Regular Session
Nacogdoches City Council
April 2, 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:

Mr. Levi Stovall addressed City Council regarding Walkable Nacogdoches. He thanked Councilman Huckaby for joining the group for the walk, and the officers who provided their services as escorts. He also stated that traffic measures like lane striping would aid benefit cyclist and walkers in the City.

4. **ITEMS TO BE REMOVED FROM CONSENT AGENDA.**

There were no items removed from the consent agenda.

5. **CONSENT AGENDA:**

- A. Consider approval of a resolution of support for an appropriation request to support a feasibility study and environmental clearance to initiate the upgrade of the remaining gap on US 59 between Nacogdoches and Lufkin.
- B. Consider approval of an ordinance amending Ordinance No. 1978-09-23 appropriating various amounts in accordance with the budget adopted for the ensuing fiscal year beginning October 1, 2023, and ending September 30, 2024, for the appropriation of funds in the General Fund and Capital Projects Fund for Street Capital Expenses.
- C. Consider approval of minutes for the March 19, 2024, City Council Work Session and the March 19, 2024, City Council Regular Meeting.
- D. Consider approval of a contract between the City of Nacogdoches and the Nacogdoches Amateur Radio Club (NARC) for the installation and maintenance of its repeater radio equipment at the City's water tower, located at 2603 Park Street.
- E. Consider approval of a contract by and between the City of Nacogdoches and Drewery Construction Co., Inc. for the Park Street Paving Project for a not-to-exceed amount of \$184,903.40. (Director of Public Works)
- F. Consider approval of a contract between the City of Nacogdoches and AquaMetric/Sensus for AMI (Automated Meter Infrastructure) yearly support and maintenance agreement for \$66,247.77.
- G. Consider approval of a contract by and between the City of Nacogdoches and Terracon Consultants, Inc. for Site Characterization Services for a not-to-exceed amount of \$58,765.00.

Councilman Huckaby made a motion to approve the Consent Agenda as written. Councilman Maule duly seconded the motion, and the motion carried.

6. **REGULAR AGENDA:**

- A. Consider the purchase of a BME Model 34 Type-3 Wildland Fire Engine from Siddons-Martin Emergency Group for the amount of \$523,835.00.

Fire Chief, Michael Brown, addressed Council regarding the purchase of a Fire Engine for the amount stated above. He explained that the previous approval of the same type of Fire Engine had been sold after the approval was given by Council. In this instance, Siddons-Martin Emergency Group agreed to ensure that the engine being ordered would be available and not sold to another entity.

Minutes unofficial until approved by City Council

Councilwoman Belanger made a motion to approve Item 6.A. as written, Councilman Huckaby duly seconded the motion, and the motion carried.

B. Consider approval of a budget amendment ordinance for the purchase of Type-3 Fire Engine.

Fire Chief, Michael Brown, addressed Council stating that the approved Item 6.A. requires a budget amendment, as the purchase of the new fire engine will require additional funds.

Councilman Maule made a motion to approve the budget amendment and Councilwoman Belanger duly seconded the motion. The motion was carried.

C. Receive a report, hold a discussion and give staff direction regarding projects to include in the first phase of general obligation bonds to be sold as authorized in the Bond Election on November 7, 2023.

City Manager, Rick Beverlin, provided Council with an overview of the tranches proposed by City Staff to move forward with the general obligation bond sells. He went over the various projects and how his staff would move the projects along through to completion.

D. Consider the approval and adoption of a resolution concerning a runway paving project, and an Airport Layout Plan update project, at the A. L. Mangham Jr. Regional Airport.

Colin Smith, Airport Manager, stated that the letter of interest to TxDOT regarding these two projects was well received and he would like to move forward with the projects. He went over the funding split of 90/10 for the projects.

Councilman Maule made a motion to approve Item 6.D. as written. Councilman Huckaby duly seconded the motion, and the motion carried.

7. **EXECUTIVE SESSION:**

Mayor Johnson announced the convening of Executive Session at 6:26 p.m.

City Council reconvened in regular session at 7:31 p.m. with no action taken in executive session.

8. **ADJOURNED:** 7:31 p.m.

ATTEST:

Mayor, Randy Johnson
City Council
City of Nacogdoches

Rhonda Lewis, City Secretary



City Council Meeting

Date: April 23, 2024

Agenda Item: 5.B.

PRESENTER: Case Opperman, Director of Public Works

ITEM/SUBJECT: Consider the adoption of a Resolution re-approving the 2024 Edition of the Water Conservation Plan For Municipal Use By Retail Public Suppliers, and the Water Conservation Plan For Wholesale Public Water Suppliers. (Director of Public Works)

SUMMARY/BACKGROUND: The Texas Commission on Environmental Quality (TCEQ) requires water suppliers to update and adopt new water conservation plans for both their municipal and wholesale water users every five (5) years. These documents provide information on system capacities, water delivery and supply sources, water losses and outline five and ten year water conservation targets. The updated plan has no significant modifications. Changes to the plan primarily incorporate the continuation of our water conservation efforts already underway and identify new 5 and 10 year per capita use targets. The adoption of this Resolution is a requirement of Title 30 of the Texas Administrative Code, Chapter 288.

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

ATTACHMENTS:

1. Resolution
2. WCP for Retail
3. WCP for Wholesale

**RESOLUTION OF CITY COUNCIL OF THE CITY OF NACOGDOCHES, TEXAS,
APPROVING 2024 EDITION OF THE WATER CONSERVATION PLAN FOR
MUNICIPAL USE BY RETAIL PUBLIC SUPPLIERS AND WATER CONSERVATION
PLAN FOR WHOLESALE PUBLIC WATER SUPPLIERS IN ACCORDANCE WITH
RULES PROMULGATED BY TEXAS COMMISSION ON ENVIRONMENTAL
QUALITY.**

WHEREAS, water is a valuable renewable resource and a critical necessity for all life; and

WHEREAS, water conservation activities have both a financial and operational benefit for the City; and

WHEREAS, the City Council of the City of Nacogdoches, Texas, desires to continue to improve water conservation efforts.

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

The City of Nacogdoches, Texas, hereby adopts the 2024 edition of the Water Conservation Plan For Municipal Use By Retail Public Suppliers and the Water Conservation Plan For Wholesale Public Water Suppliers in accordance with Texas Commission on Environmental Quality Rules as set forth in Title 30 of the Texas Administrative Code, Chapter 288.

PASSED AND APPROVED, this the ____ day of _____, 2024.

CITY OF NACOGDOCHES

By: _____
Randy Johnson, Mayor

ATTEST:

Rhonda Lewis, City Secretary

APPROVED AS TO FORM:

Jerry Baker, City Attorney

APPROVED AS TO CONTENT:

Casey Opperman, Director of Public Works/City Engineer



Texas Commission on Environmental Quality

Water Availability Division

MC-160, P.O. Box 13087 Austin, Texas 78711-3087

Telephone (512) 239-4600, FAX (512) 239-2214

Utility Profile and Water Conservation Plan Requirements for Municipal Water Use by Retail Public Water Suppliers

This form is provided to assist retail public water suppliers in water conservation plan assistance in completing this form or in developing your plan, please contact the Conservation staff of the Resource Protection Team in the Water Availability Division at (512) 239-4600.

Water users can find best management practices (BMPs) at the Texas Water Development Board's website <http://www.twdb.texas.gov/conservation/BMPs/index.asp>. The practices are broken out into sectors such as Agriculture, Commercial and Institutional, Industrial, Municipal, and Wholesale. BMPs are voluntary measures that water users use to develop the required components of Title 30, Texas Administrative Code, Chapter 288. BMPs can also be implemented in addition to the rule requirements to achieve water conservation goals.

Contact Information

Name of Water Supplier:	City of Nacogdoches TX 1740003		
Address:	PO Box 635030		
Telephone Number:	(936)564-5046	Fax:	(936)569-2729
Water Right No.(s):	4864-A		
Regional Water Planning Group:	I		
Water Conservation Coordinator (or person responsible for implementing conservation program):	Bart Allen	Phone:	(936) 564-5046
Form Completed by:	Bart Allen		
Title:	Water Utilities Manager		
Signature:			Date: 4/16/24

A water conservation plan for municipal use by retail public water suppliers must include the following requirements (as detailed in 30 TAC Section 288.2). If the plan does not provide information for each requirement, you must include in the plan an explanation of why the requirement is not applicable.

Utility Profile

I. POPULATION AND CUSTOMER DATA

A. *Population and Service Area Data*

1. Attach a copy of your service-area map and, if applicable, a copy of your Certificate of Convenience and Necessity (CCN). **CNN#11182**
2. Service area size (in square miles): **35**
(Please attach a copy of service-area map)
3. Current population of service area: **36500**
4. Current population served for:
 - a. Water **36500**
 - b. Wastewater **36500**

5. Population served for previous five years:

<i>Year</i>	<i>Population</i>
<u>2019</u>	<u>37,000</u>
<u>2020</u>	<u>37,000</u>
<u>2021</u>	<u>37,000</u>
<u>2022</u>	<u>37,000</u>
<u>2023</u>	<u>36,500</u>

6. Projected population for the service area in the following decades:

<i>Year</i>	<i>Population</i>
<u>2020</u>	<u>37,000</u>
<u>2030</u>	<u>unknown</u>
<u>2040</u>	<u></u>
<u>2050</u>	<u></u>
<u>2060</u>	<u></u>

7. List source or method for the calculation of current and projected population size.

B. Customer Data

Senate Bill 181 requires that uniform consistent methodologies for calculating water use and conservation be developed and available to retail water providers and certain other water use sectors as a guide for preparation of water use reports, water conservation plans, and reports on water conservation efforts. A water system must provide the most detailed level of customer and water use data available to it, however, any new billing system purchased must be capable of reporting data for each of the sectors listed below. More guidance can be found at: <http://www.twdb.texas.gov/conservation/doc/SB181Guidance.pdf>

1. Quantified 5-year and 10-year goals for water savings:

	<i>Historic 5-year Average</i>	<i>Baseline</i>	<i>5-year goal for year 2029</i>	<i>10-year goal for year 2034</i>
Total GPCD	201		210	201
Residential GPCD	58		56	54
Water Loss GPCD	26		34	30
Water Loss Percentage	12.88		16	14

Notes:

Total GPCD = (Total Gallons in System ÷ Permanent Population) ÷ 365

Residential GPCD = (Gallons Used for Residential Use ÷ Residential Population) ÷ 365

Water Loss GPCD = (Total Water Loss ÷ Permanent Population) ÷ 365

Water Loss Percentage = (Total Water Loss ÷ Total Gallons in System) x 100; or (Water Loss GPCD ÷ Total GPCD) x 100

2. Current number of active connections. Check whether multi-family service is counted as

☒ Residential or ☐ Commercial?

<i>Treated Water Users</i>	<i>Metered</i>	<i>Non-Metered</i>	<i>Totals</i>
Residential			
Single-Family	8775	0	8775
Multi-Family	7713	0	7713
Commercial	1525	0	1525
Industrial/Mining	154	0	154
Institutional	277	1	278
Agriculture	1604	0	1604
Other/Wholesale	17		17

3. List the number of new connections per year for most recent three years.

<i>Year</i>	<i>2021</i>	<i>2022</i>	<i>2023</i>
<i>Treated Water Users</i>			
Residential			
Single-Family	39	44	30
Multi-Family	0	0	0
Commercial	5	13	11
Industrial/Mining	0	0	0
Institutional	0	0	0
Agriculture	45	47	10
Other/Wholesale	0	0	0

4. List of annual water use for the five highest volume customers.

<i>Customer</i>	<i>Use (1,000 gal/year)</i>	<i>Treated or Raw Water</i>
Pilgrim's Pride	623,150	Treated
SFA University	161,650	Treated
1411 Company LTD	21,886	Treated
Medical Center Hospital	20,312	Treated
Eaton	16,630	Treated

II. WATER USE DATA FOR SERVICE AREA

A. Water Accounting Data

1. List the amount of water use for the previous five years (in 1,000 gallons).

Indicate whether this is ☐ diverted or ☒ treated water.

<i>Year</i>	2019	2020	2021	2022	2023
<i>Month</i>					
January	147300	154843	133131	148303	160259
February	152259	151478	154518	153887	138969
March	141565	138228	148326	138686	129550
April	166183	141958	152935	153804	155006
May	162147	139813	148975	163019	154963
June	172494	177606	150645	188195	161037
July	183338	196158	172026	207389	191690
August	224103	202561	191361	240519	247299
September	244945	213419	216520	197993	250075
October	184559	225470	177396	201023	215659
November	177995	178869	171106	187039	186003
December	142941	151018	157439	156336	148201
Totals	2099836	2071427	1974384	2136196	21387173

2. Describe how the above figures were determined (e.g, from a master meter located at the point of a diversion from the source or located at a point where raw water enters the treatment plant, or from water sales).

3. Amount of water (in 1,000 gallons) delivered/sold as recorded by the following account types for the past five years.

<i>Year</i>	2019	2020	2021	2022	2023
<i>Account Types</i>					
Residential					
Single-Family	462574	474502	469117	463713	466144
Multi-Family	231265	229124	241314	236439	234493
Commercial	186324	161796	179079	187724	192450
Industrial/Mining	793388	773762	702590	725795	697702
Institutional	244078	220611	205138	243774	255706
Agriculture	180266	209414	175924	277472	290351
Other/Wholesale	42360	34863	43221	25716	20642

4. List the previous records for water loss for the past five years (the difference between water diverted or treated and water delivered or sold).

B. Projected Water Demands

1. If applicable, attach or cite projected water supply demands from the applicable Regional Water Planning Group for the next ten years using information such as population trends, historical water use, and economic growth in the service area over the next ten years and any additional water supply requirements from such growth.

III. WATER SUPPLY SYSTEM DATA

A. Water Supply Sources

1. List all current water supply sources and the amounts authorized (in acre feet) with each.

<i>Water Type</i>	<i>Source</i>	<i>Amount Authorized</i>
Surface Water	Lake Nacogdoches	22,000 annually
Groundwater	Wells 6,7,8,9,11,12,13,14,16	
Other		

B. Treatment and Distribution System (if providing treated water)

1. Design daily capacity of system (MGD): 32
2. Storage capacity (MGD):
 - a. Elevated 2.65
 - b. Ground 14.2
3. If surface water, do you recycle filter backwash to the head of the plant?

☒ Yes ☐ No If yes, approximate amount (MGD): **1.4 MGD**

IV. WASTEWATER SYSTEM DATA

A. Wastewater System Data (if applicable)

1. Design capacity of wastewater treatment plant(s) (MGD): **12.88**
2. Treated effluent is used for ☐ on-site irrigation, ☐ off-site irrigation, for ☒ plant wash-down, and/or for ☐ chlorination/dechlorination.

If yes, approximate amount (in gallons per month): **240,000**
3. Briefly describe the wastewater system(s) of the area serviced by the water utility. Describe how treated wastewater is disposed. Where applicable, identify treatment plant(s) with the TCEQ name and number, the operator, owner, and the receiving stream if wastewater is discharged.

The wastewater treatment plant and collection system are owned and operated by the City of Nacogdoches. The wastewater treatment plant is permitted for 12.88 MGD under the TPDES Permit No. WQ0010342004. Treated effluent is discharged from the plant into the La Nana Creek and then into Segment 0611 (Angelina River) in the Neches River Basin.

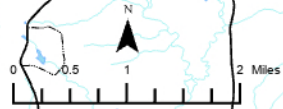
B. Wastewater Data for Service Area (if applicable)

1. Percent of water service area served by wastewater system: **95%**
2. Monthly volume treated for previous five years (in 1,000 gallons):

1.

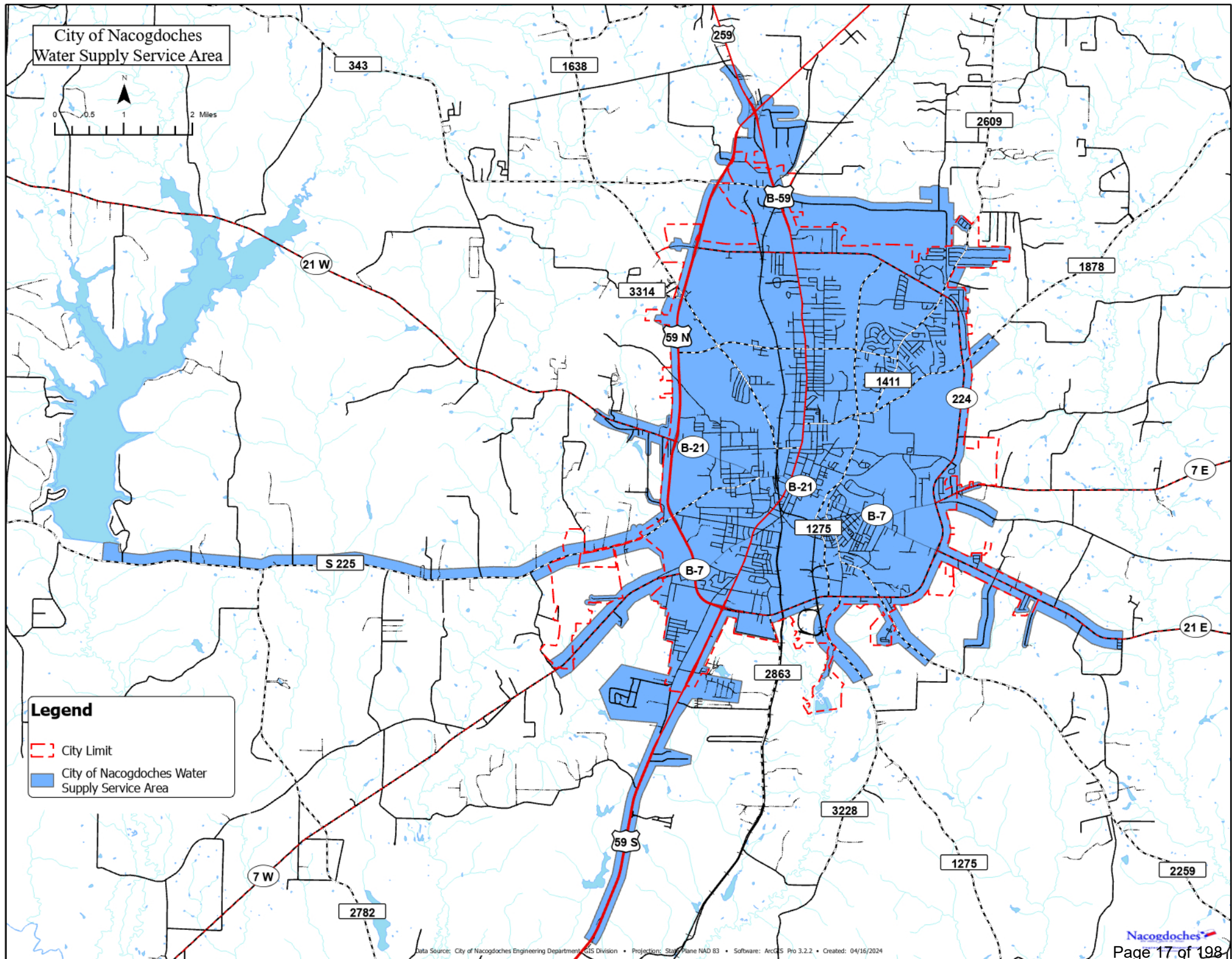
<i>Year</i>	2019	2020	2021	2022	2023
<i>Month</i>					
January	115534	140702	114333	124636	135079
February	134706	136475	137956	133177	122168
March	126491	125790	121640	120848	110403
April	142126	122845	129742	124764	126124
May	133907	118769	125303	131565	124432
June	137522	134778	128247	137098	119015
July	137783	135187	130597	127761	121520
August	149789	140631	141922	148340	139694
September	159657	148831	153737	134463	133924
October	138588	153251	133522	137104	139333
November	149029	148508	134511	140686	132022
December	130469	129949	125004	125966	121101
Totals	1655605	1635722	1576518	1586416	1524819

City of Nacogdoches
Water Supply Service Area

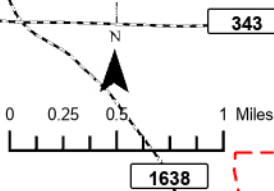


Legend

- City Limit
- City of Nacogdoches Water Supply Service Area

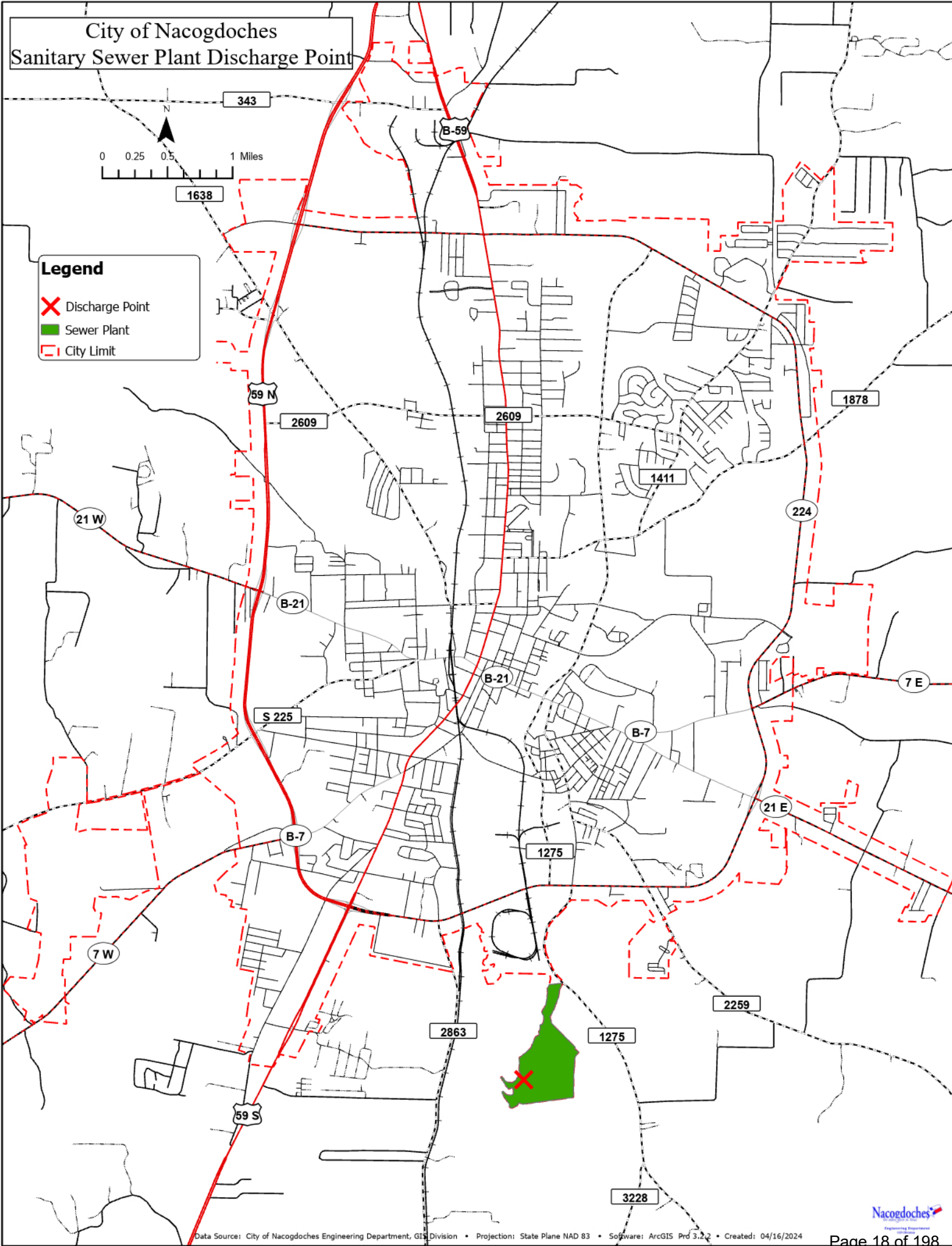


City of Nacogdoches
Sanitary Sewer Plant Discharge Point



Legend

- Discharge Point
- Sewer Plant
- City Limit





Texas Commission on Environmental Quality

Water Availability Division

MC-160, P.O. Box 13087 Austin, Texas 78711-3087

Telephone (512) 239-4600, FAX (512) 239-2214

Utility Profile and Water Conservation Plan Requirements for Wholesale Public Water Suppliers

This form is provided to assist wholesale public water suppliers in water conservation plan development. If you need assistance in completing this form or in developing your plan, please contact the Conservation staff of the Resource Protection Team in the Water Availability Division at (512) 239-4600.

Water users can find best management practices (BMPs) at the Texas Water Development Board's website <http://www.twdb.texas.gov/conservation/BMPs/index.asp>. The practices are broken out into sectors such as Agriculture, Commercial and Institutional, Industrial, Municipal, and Wholesale. BMPs are voluntary measures that water users use to develop the required components of Title 30, Texas Administrative Code, Chapter 288. BMPs can also be implemented in addition to the rule requirements to achieve water conservation goals.

Contact Information

Name: Bart Allen

Address: PO Box 635030

Telephone Number: (936)564-5046 Fax: (936) 569-2729

Water Right No. (s): 4869-A

Regional Water Planning Group: I

Person responsible for implementing conservation program: Bart Allen Phone: (936) 564-5046

Form Completed By: Bart Allen

Title: Water Utilities Manager

Signature:  Date: 4/18/24

A water conservation plan for wholesale public water suppliers must include the following requirements (as detailed in 30 TAC Section 288.5). If the plan does not provide information for each requirement, you must include in the plan an explanation of why the requirement is not applicable.

Utility Profile

I. WHOLESALE SERVICE AREA POPULATION AND CUSTOMER DATA

A. Population and Service Area Data:

1. Service area size (in square miles):

(Please attach a copy of service-area map)

35

2. Current population of service area:

Estimated 3989

3. Current population served for:

a. Water 3989

b. Wastewater 0

4. Population served for previous five years:

<i>Year</i>	<i>Population</i>
2019	3000
2020	3000
2021	3000
2022	3000
2023	3000

5. Projected population for service area in the following decades:

<i>Year</i>	<i>Population</i>
2020	3000
2030	unknown
2040	
2050	
2060	

6. List sources or methods for the calculation of current and projected population size.

Wholesale water sales are to other water suppliers that are situated adjacent to the City of Nacogdoches and are based on limited volume contracts for treated water. Sales are not based on their connection counts or population, and water delivery is limited to their maximum contract volume. Water sales have remained constant over the past five years. A population of 3000 customers is estimated. Future population projections for 40 years are unknown and will not affect present or future water volume contract amounts.

B. Customer Data

List (or attach) the names of all wholesale customers, amount of annual contract, and amount of annual use for each customer for the previous year:

<i>Wholesale Customer</i>	<i>Contracted Amount (Acre-feet)</i>	<i>Previous Year Amount of Water Delivered (acre-feet)</i>
D & M Water Supply	257.79	96.74
MUD 1	67.20	20.33
Appleby Water Supply	93.34	13.53
Melrose Water Supply	36.83	0.33
Central Heights	300	

II. WATER USE DATA FOR SERVICE AREA

A. Water Delivery

Indicate if the water provided under wholesale contracts is treated or raw water and the annual amounts for the previous five years (in acre-feet):

<i>Year</i>	<i>Treated Water</i>	<i>Raw Water</i>
2019	129.940184	
2020	106.6420245	
2021	132.5822086	
2022	78.88435583	
2023	63.3208589	
Totals	511.6696319	

B. Water Accounting Data

- Total amount of water diverted at the point of diversion(s) for the previous five years (in acre-feet) for all water uses:

<i>Year</i>	<i>2019</i>	<i>2020</i>	<i>2021</i>	<i>2022</i>	<i>2023</i>
<i>Month</i>					
January	6.69	6.73	10.18	4.31	3.09
February	9.47	7.35	10.70	3.86	2.35
March	11.05	6.72	25.10	5.34	1.69
April	13.37	6.41	16.38	5.24	2.41
May	11.75	6.06	5.60	4.39	2.87
June	13.51	8.44	6.03	4.62	3.96
July	10.54	12.9	9.15	9.56	6.63

August	14.08	12.98	10.49	13.16	14.29
September	16.75	13.02	12.70	5.10	12.55
October	7.35	9.58	6.74	9.04	6.16
November	8.12	9.47	9.37	7.55	4.78
December	7.26	7.29	10.15	6.72	2.54
Totals	129.94	106.94	132.58	78.88	63.32

2. Wholesale population served and total amount of water diverted for **municipal use** for the previous five years (in acre-feet):

<i>Year</i>	<i>Total Population Served</i>	<i>Total Annual Water Diverted for Municipal Use</i>
2019	30000	129.940184
2020	30000	106.6420245
2021	30000	132.5822086
2022	30000	78.88435583
2023	30000	63.3208589

C. Projected Water Demands

If applicable, project and attach water supply demands for the next ten years using information such as population trends, historical water use, and economic growth in the service area over the next ten years and any additional water supply requirements from such growth.

III. WATER SUPPLY SYSTEM DATA

A. Projected Water Demands

List all current water supply sources and the amounts authorized (in acre feet) with each.

<i>Water Type</i>	<i>Source</i>	<i>Amount Authorized</i>
Surface Water	Lake Nacogdoches	
	Wells	
Groundwater	6,7,8,9,11,12,13,14,16	
Other		

B. Treatment and Distribution System (if providing treated water)

1. Design daily capacity of system (MGD):
32
2. Storage capacity (MGD):
 - a. Elevated **2.625**
 - b. Ground **14.2**
3. Please attach a description of the water system. Include the number of treatment plants, wells, and storage tanks

IV. WASTEWATER SYSTEM DATA

A. Wastewater System Data (if applicable)

1. Design capacity of wastewater treatment plant(s) (MGD):
N/A
2. Briefly describe the wastewater system(s) of the area serviced by the wholesale public water supplier. Describe how treated wastewater is disposed. Where applicable, identify treatment plant(s) with the TCEQ name and number, the operator, owner, and the receiving stream if wastewater is discharged.

N/A

B. Wastewater Data for Service Area (if applicable)

1. Percent of water service area served by wastewater system: **0%**
2. Monthly volume treated for previous five years (in 1,000 gallons): **0%**

<i>Year</i>	<i>2019</i>	<i>2020</i>	<i>2021</i>	<i>2022</i>	<i>2023</i>
<i>Month</i>					
January					
February					
March					
April					
May					
June					
July					
August					
September					

October					
November					
December					
Totals					

**SUPPLEMENTAL INFORMATION AND NARRATIVES
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
UTILITY PROFILE & WATER CONSERVATION PLAN REQUIREMENTS FOR
MUNICIPAL WATER USE BY PUBLIC SUPPLIERS**

**CITY OF NACOGDOCHES, TEXAS
MAY 2024**

WATER SUPPLY SYSTEM DATA

The City of Nacogdoches acquires raw water for treatment and distribution from both groundwater and surface water sources. Nine (9) active deep wells pump groundwater to the Southside Pump Station where disinfection and chemical treatments are applied. The Southside plant supplies approximately 35% of the City's normal treated water demand.

The City owned Lake Nacogdoches is a surface water reservoir with a treatment plant facility having a capacity of 29 MGD. This facility, located approximately 10 miles west of the City, pumps treated water to the City's Southwest Pump Station for storage and distribution. The surface water facility currently serves approximately 65% of the City's water demand.

The City of Nacogdoches is underway with the rehabilitation of an older inactive well (Well #4) including a local pump station, chlorination facility, and ground storage tank. The City has completed three other new wells (Wells 13, 14 and 16) These additional water sources will act as a supplement or, in the event of a drought or emergency, a minimal replacement for the surface water source.

The City's water treatment and distribution system includes:

- 4 pressure zones
- 4 pump stations
- 9 active groundwater wells
- 9 ground storage tanks
- 7 elevated tanks
- 1 local booster station
- 2 major re-pump stations
- 1 surface water treatment plant

WASTEWATER UTILITY SYSTEM

The wastewater treatment plant and collection system are owned and operated by the City of Nacogdoches. The collection system provides sewer service for the majority of the City with only a few on-site private systems operating in remote locations.

The plant is permitted for 12.88 MGD under TPDES Permit No. 10342-004. Treated effluent is discharged from the plant into La Nana Creek and then to Segment 0611 (Angelina River) in the Neches River Basin.

PREVIOUS 5- & 10-YEAR TARGETS

The Water Conservation Plan was last amended in 2014 and Drought Contingency Plan was updated in 2019 and in 2024 to address current infrastructure inventories, water use data, and conservation goals. The latest revisions to both plans did not incorporate any significant changes in the approach and actions slated for conservation efforts. Previous modifications reflected lessons learned in response to extreme drought conditions experienced in 2011 including an ascending rate schedule designed to deter high water consumption.

Previous targets for water use reduction were:

5 year (achieved by 2019): a reduction of 9.6 gpcpd to 220 gpcpd

10 year (achieved by 2024): a reduction of 19.2 gpcpd to 210.3 gpcpd

These targets were established considering several possible forces for reduction including public education, the installation of water saving fixtures, identification of unaccounted losses from leaks, and annually escalating water rates.

Actual water consumption values in 2018 were found to be 206 gpcpd, exceeding both the 5 and 10 year targets.

Actual water consumption values in 2023 were found to be 292 gpcpd, exceeding both the 5 and 10 year targets of 2019 and 2024.

WATER CONSERVATION ACTIONS

The success of the previous Water Conservation Plan since 2014 resulted in decreased consumption below previously anticipated targets. New 5-year targets in public education and the identification of unaccounted losses from leaks will be increased. The new five-year plan will focus on the continuation and perfection of these efforts.

1. Education programs will be continued with more comprehensive and sustained communication. Water conservation efforts will be distributed via social networking sites, the City website, and small group presentations. The frequency of public messaging will be increased to 12 times a year or more.
2. The continued retrofit of old plumbing fixtures with new water-saving devices is expected to have a growing impact on conservation. All local suppliers now only carry low-flow or water-saving fixtures with few exceptions. Retrofitting to new water-saving fixtures, even if repairs are not needed, will be incorporated into the educational messaging program listed above.
3. Unaccounted water losses were historically over 14% prior to the 2014 Plan and have risen to nearly 17% in 2018. The City's Automatic Meter Reading system now identifies potential leaks

on the customer side of a meter. Customers are proactively notified of a potential leak within a few days of identification by the system in an effort to reduce water waste.

4. Water system leaks within the main distribution system account for the majority of the water losses in this category. Aging distribution pipe networks and leaking appurtenances are a constant maintenance concern. A system-wide computer model is being built to allow us to help identify line segments where pressures may be below the model values. We will continue efforts to locate and repair these leaking lines.
5. A five-year escalating water rate schedule was approved by City Council in 2016. This new tiered water rate system progressively increases water rates over a 5-year period. One goal of this ordinance change was to encourage water conservation through elevated water costs for higher-volume users. Rates for irrigation uses were also increased to promote improved conservation.

FIVE- AND TEN-YEAR WATER CONSERVATION TARGETS (2029 & 2034)

New 5- and 10-year targets in public education and the identification of unaccounted losses from leaks will be enhanced and expanded on.

The new five-year plan will focus on the continuation and perfection of these efforts. Additional public messaging will be included, mostly through social media outlets.

5 YEAR WATER CONSERVATION TARGET:

Reduction of an additional 9 gallons per day per capita per day to **210 gpcpd**

10 YEAR WATER CONSERVATION TARGET:

Reduction of an additional 9 gallons per day per capita per day to **201 gpcpd**

METERING DEVICES

The City of Nacogdoches maintains all primary system supply meters at critical points including treatment plant sites, well locations and other key locations to capture both raw and treated water production figures. These meters were replaced in 2008 and currently receive annual inspections and frequent calibrations. All meters on the supply side of the system have an error of 5% or less.

UNIVERSAL METERING

The City of Nacogdoches replaced all inner-city meters in 2008 with the implementation of a new AMR system. This new system also supports remote radio reading and has eliminated reading errors, and provides near instantaneous information of any meter in the system. These new meters were calibrated prior to installation and should provide readings within less than a 5% error. Water utility staff periodically removes and replaces worn or suspect meters and performs calibrations tests as needed.

The software component of this system also has alerts for leak detection and other features to help water utility personnel identify problems in the system before a customer ever knows it exists. All water used within the City by customers and city personnel, except for emergency firefighting episodes, are metered and documented. Water volumes used in firefighting is estimated by the shift Capitan and reported to Water Utility staff to record.

UNACCOUNTED-FOR WATER USE

The City of Nacogdoches has made significant gains in controlling and reducing unaccounted-for water losses. This has been accomplished through the addition of new calibrated meters on all water outlets and an elevated program of inspecting distribution lines for leaks. The most significant contributor to leak reduction is the Sensus FlexNet System which constantly monitors all meters in the system and issues alerts when any significant or unusual variation in water use is detected. City staff is immediately dispatched to the address where a leak is suspected and notifies the owner of the problem. This software system has dramatically reduced leak volumes on the customer side of the meter.

CONTINUED PUBLIC EDUCATION & INFORMATION

The City intends to continue the momentum of public awareness resulting from the 2011 extreme drought experience, and continue efforts to encourage citizens to conserve and reduce water uses, even during non-drought periods. We feel that the heightened awareness of the need for conservation can be sustained through a continuous campaign of messages on the benefits of water conservation, and tips on how this resource can be conserved.

NON-PROMOTIONAL WATER RATE STRUCTURE

The City of Nacogdoches currently operates under a billing rate structure that is usage based, with differing charges for residential, commercial and out-of-city users. We do not offer a promotional rate nor are reductions in water costs used as an economic development incentive. The adopted 2016 water rate ordinance was crafted to encourage water conservation through elevated water costs for higher volume users. Rates for irrigation uses were also increased to promote better conservation.

RESERVOIR SYSTEMS OPERATIONS PLAN

Lake Nacogdoches is a surface water impoundment of approximately 39,500 acre-feet, operated by the City and is not shared with any other water user in the watershed. No specific coordination of reservoir usage with other entities is required. We have no requirements for pass-through releases to downstream users. Other than best management practices of the surrounding watershed, no other specific reservoir management plan is current being used.

ENFORCEMENT PROCEDURE AND PLAN ADOPTION

The City Council of Nacogdoches has adopted the 2012 Amendment to the Water Conservation Plan at their meeting on August 7, 2012. A copy of the resolution is attached.

Enforcement of the Water Conservation Plan is accomplished through the municipal court system where compliance with Ordinances can carry fines of varying amounts. The City has a dedicated full time Code Enforcement Officer that monitors and enforces any violations to any public utility related ordinance, including the issuance of fines. For water related violations, monetary fines may also be followed with a physical disconnection from the water system as a means of enforcement.

COORDINATION WITH REGIONAL WATER PLANNING GROUPS

The City of Nacogdoches is located within Region I of the East Texas Regional Water Planning Group. The City regularly attends Region I meetings and has provided water usage data and a copy of this plan to their Board.

LEAK DETECTION, REPAIR, AND WATER LOSS ACCOUNTING

The City utilizes the Sensus FlexNet System which works in conjunction with the AMR water metering system. This radio network system constantly monitors all meters in the system and issues alerts when any significant or unusual variation in water use is detected. City staff is immediately dispatched to the address where a leak is suspected and notifies the owner of the problem. This software system has dramatically reduced leak volumes on the customer side of the meter.

City water utility staff, engineering staff, street maintenance staff, and permit inspections staff are constantly on the lookout for suspect leaks within the distribution system that might not be apparent from the Sensus FlexNet leak detection monitoring at a single meter level. In addition, metering at all plant, booster pump and tank sites within the system are monitored with a newly installed SCADA system that allows overall system monitoring 24 hours a day. Tank level imbalances or constantly running pumps are detected by the system and alerts an operator to investigate.

RECORD MANAGEMENT SYSTEM

The Sensus FlexNet System monitors all metered connection points 24 hours a day. Data is collected for all water uses and catalogued by user classes including residential, commercial, industrial, internal City, institutional, and irrigation.

Water production is monitored through a combination of meters read by both the Sensus system and also by staff. Flows, tank levels, pumps and other system appurtenances are monitored constantly by a composite SCADA system. Water production data is recorded daily for easy comparison with water-sold information, to ensure loss rates are kept to a practical minimum. Records are kept in a secured server and are available to City utility staff and engineering personnel for review.

PRESENTER: Case Opperman, Director of Public Works

ITEM/SUBJECT: Consider approval of a resolution of support for appropriation requests for two (2) City projects (Director of Public Works).

SUMMARY/BACKGROUND: The United States House Appropriations Committee has invited Members of Congress to request appropriations for projects within their districts. As part of the City's efforts to obtain and utilize outside funding for needed projects, staff has proposed two (2) projects for consideration of these funds, one storm drainage improvement project in seven priority areas for an estimated \$2.6 million, and one street improvement project for approximately 3 miles of streets in the Shawnee neighborhood at an estimated \$2 million. Many of these improvements would be made in low-to-moderate income areas. Several of these projects were also included in the list of potential projects for bond funding in the November 2023 election. If one or both of these projects are funded, the burden would be removed from the bond funding of many of these improvement areas, allowing the bond funds to be used for other identified areas of need. Staff requests a resolution of support for these projects from City Council to be submitted to Congressman Pete Sessions' Office.

FINANCIAL:

No financial impact associated with this item

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. Resolution

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NACOGDOCHES, TEXAS, DESIGNATING CERTAIN OFFICIALS AS BEING RESPONSIBLE FOR, ACTING FOR, AND ON BEHALF OF THE CITY OF NACOGDOCHES IN DEALING WITH THE SUBMISSION OF REQUESTS FOR CERTAIN COMMUNITY IMPROVEMENT PROJECTS TO MEMBERS OF THE U.S. HOUSE OF REPRESENTATIVES THAT REPRESENT THE CITY OF NACOGDOCHES, FOR THE PURPOSES OF INCLUSION IN THE FISCAL YEAR 2025 APPROPRIATIONS PROCESS; AUTHORIZING THE CITY ENGINEER / DIRECTOR OF PUBLIC WORKS OF THE CITY OF NACOGDOCHES, TEXAS, TO EXECUTE AND DELIVER ALL DOCUMENTS NECESSARY RELATED TO SUCH GRANT APPLICATIONS, PROVIDING FOR THE EFFECTIVE DATE AND OTHER RELATED MATTERS.

WHEREAS, The City of Nacogdoches, a home rule municipality, finds it in the best interest of the citizens of Nacogdoches to seek funding for certain planned Capital Improvement Program projects, many of which were approved in the November 2023 general election for general obligation bonds, by applying for Federal grant funds through the U.S. House of Representatives Fiscal Year 2025 Community Project Funding Appropriations process; and

WHEREAS, the City of Nacogdoches finds Case Opperman, City Engineer and Director of Public Works, is able to act as the City of Nacogdoches's authorized official in application for and administration of received Federal grant funds on behalf of the City of Nacogdoches.

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

SECTION 1. The findings and recitations contained in the preamble of this Resolution are found and declared to be true and correct and are hereby adopted as part of this Resolution.

SECTION 2. The City of Nacogdoches approves for the submission of requests for federal grant funds for planning Capital Improvement Program projects in the Fiscal Year 2025 Community Project Funding Appropriations to the U.S. House of Representatives.

SECTION 3. The City Council designates Case Opperman, City Engineer and Director of Public Works, as the Authorized Representative to act in all matters in connection with the application for and administration of Federal grant funds through the U.S. House of Representatives Fiscal Year 2025 Community Project Funding Appropriations process with respect to certain Capital Improvement Program projects.

SECTION 4. The Authorized Representative shall apply for and/or seek such grants as are necessary to fund certain Capital Improvement Program projects and administer any grant funds received by the City of Nacogdoches.

SECTION 5. The meeting at which this resolution was approved was in all things conducted in compliance with the Texas Open Meetings Act, Texas Government Code, Chapter 551.

SECTION 6. Pursuant to the provisions of Section 1201.028, as amended, Texas Government Code, this Resolution shall be effective immediately upon adoption.

APPROVED AND ADOPTED at a regular meeting of the Nacogdoches City Council on this _____ day of _____ 2024.

CITY OF NACOGDOCHES

By: _____
Randy Johnson, Mayor

ATTEST:

APPROVED AS TO FORM:

Rhonda Lewis, City Secretary

Jerry Baker, City Attorney

PRESENTER: Case Opperman, Director of Public Works

ITEM/SUBJECT: Consider approval of the purchase and installation of Return Activated Sludge (RAS) Pump replacements at the Wastewater Treatment Plant from Zone Industries for a not-to-exceed amount of \$258,088.49. (Director of Public Works)

SUMMARY/BACKGROUND: There are seven (7) Return Activated Sludge (RAS) pumps at the Wastewater Treatment Plant that pump activated sludge, which has settled in the clarifiers back into the treatment process to the orbal and racetrack which oxidate the wastewater. Three (3) of these pumps are located by Clarifiers 1 & 2 with the remaining four (4) located by Clarifiers 3 & 4. The existing pumps are in excess of 40 years old, reaching beyond their expected operating capacity and are in need of replacement. Last year, one developed a hole in the case, and needed to be welded in order to use the pump. Replacement of these pumps has been budgeted in the current fiscal year's CIP.

Staff has procured a quote for these pump replacements including installation from Zone Industries (Precision Pump Systems), who has successfully performed pump replacements for the City in the past. They are under a BuyBoard cooperative purchasing contract which is exempt from the competitive bidding process under Texas Local Government Code Section 252.022(a)(12)(D). The total cost for Zone Industries is \$258,088.49.

FINANCIAL:

Item is budgeted:

Account No.: 30.39 680.96

Account Name: *Wastewater Treatment - Construction*

Amount: \$300,000

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. Quote
2. BuyBoard Letter

ZONE INDUSTRIES/PRECISION PUMP SYSTEMS
PO Box 73149
Houston, TX 77273
817-912-5151



QUOTATION

Order Number	
10003437	
Order Date	Page
04/03/2024 11:22:07	1 of 1

Quote Expires On: 05/03/2024

Bill To:

Nacogdoches, City of
City of Nacogdoches
PO Box 635070
Nacogdoches, TX 75963-5070

936-559-2500

Ship To:

City of Nacogdoches
2996 South FM 1275
Nacogdoches, TX 75961

Requested By: Ronnie Lyles

Customer ID: 11837

PO Number					Ship Route	Inside Sales		
WWTP GR Pump replacements 4-3						COLLIN.BROWN		
Quantities					Item ID Item Description	Pricing UOM	Unit Price	Extended Price
Ordered	Allocated	Remaining	UOM Unit Size	Disp.		Unit Size		

Order Note: Zone Industries Buy Board Contract No 672-22.

Delivery Instructions: BEST WAY PREPAID & ADD

3	0	3	EA	1.0	112D60-B	EA	47,623.03	142,869.09
					Gorman Rupp Model 112D60-B Centrifugal P	1.0		
					Gorman Rupp Model 112D60-B Centrifugal Pump			
4	0	4	EA	1.0	T10C60SC-B	EA	19,667.35	78,669.40
					Gorman Rupp Model T10C60SC-B	1.0		
					Gorman Rupp Model T10C60SC-B			
1	0	1	EA	1.0	INSTALLATION SERVICES	EA	36,550.00	36,550.00
					Installation Services	1.0		
					Cost for installation of pumps. Includes crane and labor to replace pumps with new GR pumps listed above.			

Total Lines: 3

SUB-TOTAL: 258,088.49

TAX: 0.00

AMOUNT DUE: 258,088.49

U.S. Dollars

April 21, 2023

Sent via email to: ableiler-liebman@precisionpumpsystems.com

Lecy Bleiler-Liebman
Precision Pump Systems
3303 Cypresswood Dr. Spring, Tx 77388
Spring TX 77388

Re: Water and Wastewater Pumps and Motors
BuyBoard Contract 672-22

The Local Government Purchasing Cooperative (BuyBoard) awarded your company a contract under Water and Wastewater Pumps and Motors, Contract 672-22 effective 7/1/2022 through June 30, 2023, with two possible one-year renewals. At this time the BuyBoard is renewing your contract through June 30, 2024.

All discounts, terms, and conditions of your contract will remain the same. If you agree to this renewal, there is nothing you need to do. However, if you do not agree to this renewal, you must notify me via email at contractadmin@buyboard.com prior to the start of the renewal term.

Reminder: Once a BuyBoard contract is awarded, vendors must generate a minimum of \$15,000 annually or they may not be offered a contract renewal.

If you have questions or comments concerning this renewal, please contact me as soon as possible at contractadmin@buyboard.com. We appreciate your interest in The Local Government Purchasing Cooperative.

Sincerely,

Jim Tulberg

Jim Tulberg
Vendor Contract Administrator

1st renewal v.02.13.2020

PRESENTER: Colin Smith, Airport Manager

ITEM/SUBJECT: Consider the approval of a service agreement with 1200.aero for an aircraft operations monitoring system for the A.L. Mangham Jr Regional Airport. (Airport Manager)

SUMMARY/BACKGROUND: If approved, the A.L. Mangham Jr Regional Airport plans to add an aircraft operations monitoring system utilizing hardware and software from 1200.aero. The system will track and record aircraft ground movements, landings, and takeoffs for the airport. The data is available online to City staff, and it can be exported and shared with the FAA and TxDOT Aviation for official airport operations verification purposes. The system is offered on an annual subscription basis for \$2400/year, that includes all the necessary hardware, support, and maintenance.

1200.aero is one of two companies whose systems are approved by TxDOT Aviation for operations monitoring and eligible for grant funding assistance. Currently, **90% of the costs for this system is reimbursable to the City of Nacogdoches** through TxDOT's annual Routine Airport Maintenance Program (RAMP) grant program. A committee consisting of the Airport Manager, a representative from the City's Finance department, and two Airport Advisory Board members reviewed and chose 1200.aero from the two approved vendors that recently submitted proposals for this service.

The data generated from this system will give the City, FAA, and TxDOT Aviation accurate aircraft landing and takeoff counts. These counts, along with the associated data about the aircraft, are used for planning, project justification, and seeking grant funding for the airport.

The data will be utilized for the Airport Layout Plan update that is planned for our airport. At least 36 local and regional Texas airports utilize one of the two approved operations monitoring systems, including from our area, the Lufkin Angelina County Airport, Jacksonville Cherokee County Airport, and Palestine Airport.

FINANCIAL:

Item is budgeted:

Account No.: 14-13-620.05

Account Name: *Airport Grounds Maint (RAMP GRANT)*

Amount: \$2,400

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

Infrastructure

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

- ATTACHMENTS:**
1. 1200.aero Service Agreement KOCH - DRAFT
 2. 1200.aero - Airport Features Q1 2024
 3. 1200.aero - TxDOT RAMP eligibility



SOFTWARE AS A SERVICE AGREEMENT

This Software as a Service Agreement (this “**Agreement**”) is entered into as of the last date of signature below (the “**Effective Date**”), by and between **1200.aero, Inc.** a North Carolina corporation (“**1200.aero**”) and the Client set forth below:

1200.aero		Client	
Company	1200.aero, Inc.	Client	Nacogdoches Regional Airport
Address	306 Roebling Ln.	Address	556 Terry Crawford Dr
City/State/Zip	Cary, NC 27513	City/State/Zip	Nacogdoches, TX 75964
1200.aero Principal Contact		Client Principal Contact	
Name	Ivan Vasquez	Name	Colin Smith
Title	Founder & CEO	Title	Airport Manager
Phone	919 360 6120	Phone	936-560-9567
Email	ivan@1200.aero	Email	smithcm@nactx.us

1. Scope of Service. The following Service will be provided by 1200.aero:

Live Map

- Live tracking of all ADS-B-equipped aircraft within approximately 30 nautical miles of User's airport, including VFR, IFR and ground operations.
- Automated logging of landings, takeoffs, go-arounds, overflights, ramp and gate arrivals and departures.
- Past, current and scheduled arrivals and departures based on ADS-B, Mode-S data and FAA filed flight plans.
- Searchable aircraft tracking history for up to 2 years.
- Visualization of parked aircraft and geo-fenced ramps.
- Visualization of current operations counts in near-real time.

Reports

- Operational statistics by month, year or custom date range, including daily operation counts by aircraft category, engine type, training, local vs. itinerant, runway, source / destination airport and weather conditions.
- Advanced operations search by multiple criteria, including tail number, aircraft type, operation type, used runway.
- Reports downloadable in PDF and CSV format.
- Access to the airport's raw operational data.

Notifications

- Daily and monthly operations summary notifications (landings, takeoffs, active and parked aircraft for previous day)
- Advisory safety event notifications (near mid-air collisions, potential off-airport landings, emergency transponder codes)
- Notifications delivered via email, text message or Slack (User is responsible for obtaining its own Slack account)

Airspace Replay

- Playback of all airspace activity, including ATC audio, within approximately 30 nautical miles of User's airport, for up to 2 years from present date.

Noise Complaint Research

- Search and replay of flight activity by street address, date and time.

Support

- Response to requests for customer support within 1 business day.
- Receiver maintenance.
- Unlimited number of users.

2. Term. The Initial Term of this Agreement begins on the Effective Date and continues for one (1) year.

3. Fees.

- Based on [currently available](#) average operations data at the airport, the Service fee will be **\$2,400/year**.
- The Service Fee is invoiced in advance for each year of the Agreement.

This Agreement consists of this cover page and all the provisions contained in the Terms and Conditions attached hereto and any other Schedules or Attachments attached hereto. **EACH PARTY REPRESENTS AND WARRANTS THAT IT HAS READ AND AGREES TO BE BOUND BY THIS AGREEMENT, INCLUDING THE ATTACHED TERMS AND CONDITIONS AND IS AUTHORIZED TO EXECUTE THIS AGREEMENT.**

1200.aero, Inc.

By: 

Ivan Vasquez, Founder & CEO

Print Name and Title

Date: March 19, 2024

Client:

By: _____

Print Name and Title

Date: _____

1200.AERO SAAS AGREEMENT TERMS AND CONDITIONS

1. **Introduction.** Under the terms of this Agreement, 1200.aero will provide Client on a “software as a service” basis with use of software and hardware for monitoring and measuring the operation of general aviation assets which, together with the implementation, consulting, hosting and support services provided by 1200.aero, is defined as the “**Service**.”

2. Service

(a) 1200.aero grants Client the non-exclusive, non-transferable right to use the Service during the term of this Agreement solely for Client's benefit, subject to the terms of this Agreement. Client may use and access the Service solely through a 1200.aero-designated web site (“**Site**”). Client agrees to comply with all applicable laws, rules and regulations when using the Service and associated data, and to not use the Service in support of any criminal, fraudulent, or illegal endeavors.

(b) The Service may be used and accessed for Client's own purposes and only by Client's employees and contractors while doing work for Client (“**Users**”). Client's contractors may use the Service only for the benefit of Client. Client will use reasonable efforts to protect the confidentiality of the usernames and passwords of its Users. Client is responsible for any violation of this Agreement by Users. Client agrees to promptly notify 1200.aero if Client becomes aware of any User's breach of this Agreement or of any unauthorized use of a User's account.

(c) 1200.aero will use commercially reasonable efforts to make the Service available on 24 hours a day, 7 days a week, and 365 days a year basis, subject to Section 10(f) below and excluding downtime for maintenance purposes. 1200.aero regularly changes and enhances its Service and may modify the Service from time to time without notice to Client. 1200.aero may provide or perform certain parts of the Service through third-party vendors and subcontractors, including use of a third-party hosting facility.

(d) Client shall not and shall not allow any User or third party to: (1) interfere with or disrupt the integrity or performance of the Service; (2) access or use the Service in a way that circumvents any usage limit; (3) access the Service for purposes of monitoring availability, performance or functionality, to build a competitive product or service, or for any other benchmarking or competitive purposes; or (4) attempt to gain unauthorized access to the Service.

(e) If Client obtains a limited evaluation or trial or other no-fee right to use the Service, whether separately or during the first part of the Initial Term (“**Evaluation Service**”), Client's rights shall be limited to evaluation and/or trial use. Section 8(b) below does not apply to Evaluation Service. Evaluation Service is provided “AS-IS”, without warranty of any kind.

3. Receiver

(a) The Service requires the use of a data receiver, to be provided by 1200.aero (“**Receiver**”), which includes an outdoor antenna. Client agrees to host the Receiver at its facilities. Client must provide a suitable space with internet access for the Receiver including the antenna, and an electrical outlet for the Receiver. The Receiver must be kept indoors at controlled room temperature, away from flammable materials.

(b) The Receiver remains the sole property of 1200.aero and is for use solely in support of the Service. Client agrees to return the Receiver to 1200.aero, at 1200.aero's expense, upon the request of 1200.aero. Client will keep the Receiver free from all liens and encumbrances.

(c) Unless the parties otherwise agree, Client agrees to install the Receiver including the antenna according to 1200.aero's requirements. 1200.aero will assist Client with the installation and configuration of the Receiver upon Client's request. Client will provide 1200.aero with onsite access to the Receiver for maintenance purposes upon reasonable advance notice.

(d) Client acknowledges and agrees that the data collected by the Receiver (“**Receiver Data**”) includes flight information that will be fully available for 1200.aero to use in its business, including for use and access by other 1200.aero clients. To the extent Client has any rights to Receiver Data, Client grants to 1200.aero a perpetual, irrevocable, worldwide, sublicensable, non-exclusive, and transferable right and license to use, copy, distribute, modify, aggregate, and make derivative works of such Receiver Data, for any purpose.

4. Support and Maintenance

(a) 1200.aero will reasonably assist Client with the operation and use of the Service and with failures of the Service to operate substantially in accordance with its description (“**Errors**”). 1200.aero does not warrant or represent that all Errors can and will be corrected.

(b) Client shall take reasonable steps to confirm that the issue is with the Service and not with Client's network, hardware, or facility. 1200.aero shall have reasonable access to Client's staff and Client shall provide information and perform tasks as reasonably requested by 1200.aero to aid in the resolution of problems.

(c) 1200.aero may use any feedback regarding any suggested improvements to the Service provided by Client for any purpose, including without limitation to modify, supplement, or improve the Service, without payment or compensation to Client.

5. Term; Termination

(a) This Agreement is effective beginning on the Effective Date and will continue for the Initial Term specified on the cover page. At the end of the Initial Term and each Renewal Term, this Agreement will automatically renew for successive annual renewal terms (each, a “**Renewal Term**”) unless either party gives at least sixty (60) days prior written notice to the other party of its intent to terminate this Agreement.

(b) Either party may terminate this Agreement if the other party materially breaches this Agreement, and such breach is not cured within thirty (30) days after written notice.

6. Fees

(a) Client shall pay 1200.aero the amounts set forth above. Service subscription fees are payable in advance and all invoices will be due within thirty (30) days after invoice date. Late payments will be subject to interest at the rate of twelve percent annually, or the maximum amount allowed by applicable law if lower. If a payment becomes thirty (30) days or more overdue, and has not been reasonably disputed by Client, 1200.aero may suspend Client's access to all or any part of the Service. All payments shall be made in United States dollars and are non-refundable. Client agrees to reimburse 1200.aero for reasonable out-of-pocket expenses that are pre-approved in writing by Client.

(b) If Client claims tax-exempt status, Client will provide 1200.aero upon request with a correct copy of Client's tax-exempt certification. Otherwise, Client agrees to pay all sales, use, excise, VAT, and other taxes based on this Agreement, excluding taxes based on 1200.aero's net income.

7. Intellectual Property

(a) Client agrees that 1200.aero and its third party licensors own all right, title and interest, including all intellectual property rights, in the Service, the Receiver, all associated software, and the Site (collectively, "**1200.aero Intellectual Property**"), including but not limited to structure, organization, design, algorithms, templates, data models, screen displays, and report formats associated therewith. 1200.aero reserves all rights to 1200.aero Intellectual Property not specifically granted herein.

(b) Client will not: (i) reverse engineer, decompile or disassemble 1200.aero Intellectual Property, and will not otherwise attempt to reconstruct or discover the source code for 1200.aero Intellectual Property; (ii) provide, lease, sell or use for timesharing, service bureau or hosting purposes or otherwise use or allow others to use 1200.aero Intellectual Property for the benefit of third parties; or (iii) copy, modify, translate, distribute, disclose, sublicense, create derivative works from, transfer, display, or unbundle any 1200.aero Intellectual Property.

8. Warranties and Disclaimers.

(a) Each party warrants that it has full authority to enter into this Agreement and is not bound by any contractual or legal restrictions from fulfilling its obligations hereunder.

(b) 1200.aero warrants that the Service will substantially conform to the description provided in connection with the Service. Client's sole and exclusive remedy for breach of this warranty is for 1200.aero to use commercially reasonable efforts to cause the Service to conform.

(c) 1200.aero does not warrant that the Service will operate uninterrupted or error-free. Receiver Data and associated analytics and derivatives are provided on an "AS-IS" basis, without warranty. To the extent that data is being collected from aircraft and transmitted over the Internet or Client's network, Client acknowledges that 1200.aero has no control over the functioning of the Internet, aircraft equipment or any other non-1200.aero hardware and network resources and 1200.aero makes no representations or warranties of any kind regarding the performance of any such equipment and networks. Client is solely responsible for all decisions made using the Service.

(d) THE SERVICE IS NOT AN AIR TRAFFIC CONTROL SYSTEM AND IS NOT FOR USE IN MANAGING AIR TRAFFIC. IN NO EVENT WILL 1200.AERO OR ANY OF ITS AFFILIATES, EMPLOYEES, OFFICERS, OR DIRECTORS BE LIABLE IN ANY WAY FOR ANY AVIATION INCIDENTS OR ASSOCIATED DAMAGES OR LIABILITIES. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, 1200.AERO AND ITS SUPPLIERS MAKE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY; FITNESS FOR A PARTICULAR PURPOSE; WARRANTIES OF NON-INFRINGEMENT; OR ANY WARRANTIES ARISING AS A RESULT OF CLIENT USAGE IN THE TRADE OR BY COURSE OF DEALING.

(e) 1200.aero may from time to time provide as part of the Service interfaces to third party software, systems, databases and services (collectively, "**Third-Party Systems**"). 1200.aero reserves the right to charge additional fees for providing and supporting interfaces. Unless otherwise agreed in writing by 1200.aero, Client is solely responsible for obtaining any permissions and consents from third-party vendors necessary for 1200.aero to deliver any interfaces to Third-Party Systems that have been acquired by Client. Client acknowledges that 1200.aero has no control over Third-Party Systems and accordingly 1200.aero makes no representations or warranties of any kind regarding its interfaces to Third-Party Systems.

9. Liability; Insurance

(a) Client agrees that the aggregate liability of 1200.aero and its suppliers relating to this Agreement and the Service shall be limited to three times the amount of fees actually received by 1200.aero from Client under this Agreement during the one-year period immediately preceding the event which gave rise to the claims. In no event shall either party be liable for any special, incidental, indirect, cover, consequential, exemplary or punitive damages; any damages based on injury to person or property or death; or any lost sales, profits or data, even if such party is told that any of such damages may occur.

(b) Each party shall maintain commercially reasonable insurance to protect against claims and risks relating to this Agreement.

10. Other Provisions

(a) Neither party may assign or transfer this Agreement without the prior written consent of the other party, except that such consent shall not be necessary in connection with the sale of all or substantially all of such party's business or portion of such party's business to which this Agreement relates, so long as such acquirer is not a competitor of the other party. Any permitted assignee must agree in writing to the terms of this Agreement.

(b) The parties are independent contractors, and nothing in this Agreement shall be construed as creating a joint venture, partnership, agent or employment relationship between 1200.aero and Client.

(c) Any notice or other communication required or permitted in this Agreement shall be in writing and delivered to the addresses listed on the first page of this Agreement either: (i) by personal delivery; (ii) by certified mail; (iii) by recognized express courier, and shall be effective upon receipt, or (iv) by email, with confirmation of receipt.

(d) This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior proposals, negotiations, conversations, discussions and agreements between the parties concerning the subject matter hereof. 1200.aero will have no obligation to provide any services, software, networking, or hardware except as specifically set forth in this Agreement. This Agreement may not be modified or waived except in a written document, signed by both parties. Any additional or conflicting terms on any purchase order for any products or services covered by this Agreement shall be void and without effect unless agreed to in a separate writing signed by both parties.

(e) Choice of Law and Arbitration.

(i) This Agreement shall be governed by and interpreted in accordance with the laws of the state of Texas, without giving effect to its conflict of law provisions. The parties agree that the United Nations Convention on Contracts for the International Sales of Goods does not apply to this Agreement.

(ii) Each party shall attempt in good faith to resolve any controversy, claim or dispute of whatever nature arising out of or relating to this Agreement ("**Dispute**") promptly by negotiation between executives or managers who have authority to settle the Dispute. Each party shall provide the other with all information and documentation relied upon by the party to substantiate its position with respect to the Dispute.

(f) Neither party shall be liable for any failure or delay in the performance of its obligations (except for payment obligations hereunder) due to causes beyond its reasonable control, including but not limited to war, sabotage, insurrection, riot or other act of civil disobedience, pandemic, epidemic, act of any government affecting the terms hereof, acts of terrorism, accident, fire, explosion, flood, hurricane, severe weather or other act of God, or failure of telecommunication or internet service providers.

(g) No 1200.aero Intellectual Property, nor any direct product thereof or technical data related thereto, shall be exported or re-exported by Client in violation of any export or import regulations of the United States or any other applicable jurisdiction, including but not limited to the United States Export Administration Regulations and end-user, end-use, and country destination restrictions issued by the United States and other governments.

Airport Monitoring Features - Q1 2024

- **Automated logging of airport operations** (landings, takeoffs, go-arounds, overflights, gate/ramp arrivals and departures) for ADS-B and Mode-S* equipped aircraft.
- **Live map** featuring all VFR, IFR and ground activity within approximately 30 nautical miles.
- **Live CTAF/Tower audio** integrated into our live map, and playback of audio archives for up to a year.
- **Live statistics**, including operation totals and hour-by-hour operations.
- **Live flight plan data** for scheduled arrivals and departures, and origin/destination airport statistics.
- **Live map replay** with ATC audio, available for 12 months.
- **Flight tracking history** with 1-second resolution, available for 12 months.
- **Predictive weather**, including recent lightning strikes, lightning forecast, weather impact outlook and predictive weather layers.
- **Reports** on multiple operational subjects, analyzed by month, year or custom date ranges, including:
 - Operational statistics by month, year or custom date ranges
 - Operations by aircraft category (AAC-ADG)
 - Operations by FAA operation type (part 135, 121, 91 and military operations)
 - Operations by aircraft type
 - Operations by engine type
 - Operations by runway
 - Form 5010
 - Year-over-year statistics
 - Historical weather from AWOS/ASOS data
 - Ramp/gate utilization statistics
 - Local vs. itinerant operations
 - Training vs. non-training operations
 - IFR vs. VFR operations
 - After hours operations
 - Top origin and destination airports
 - Busiest days on record
 - Operation details, searchable by multiple search criteria
 - Statewide statistics grouped by airport operation volume
 - All reports downloadable in PDF and CSV format
- Automated discovery and tracking of **based aircraft**
- Research of **noise complaints** by street address
- **Landing / parking fee management** (in partnership with [Altaport](#))
- **Mobile app** for live tracking of **aircraft towing operations**
- Detection, notification and debriefing of **aviation safety events**

- **Tracking of FBOs and flight school fleets** (available upon request)
- **Custom analytics** and customizable BI dashboards (available upon request)
- **Integration into third party systems** via APIs.
- **Event notifications** sent via email, text or Slack™.
- **Simple, secure data feeder device**, continuously monitored for availability.
- **Single-Sign On / SAML** support for integration into enterprise environments.

* Mode-S operations logged subject to limitations.

Sole Source Statement

1200.aero is currently the only vendor in the industry that combines:

- Airport operations tracking integrating live positions, live ATC audio and flight plan data.
- Predictive weather features
- Live map replay with ATC audio
- Aviation safety monitoring
- Single-Sign On support for enterprise environments

Feature Videos

Live map and flight tracking

<https://youtu.be/YpdSiS8eje4>

Reports

<https://youtu.be/ipBa-8XlqC0>

Based aircraft

<https://youtu.be/8rTZlhYu5o8>

Noise complaints

<https://youtu.be/uLIOOwGyVSY>

ATC audio playback

<https://youtu.be/JW7C7dhmJDc>

Predictive weather

<https://youtu.be/vn0iF684whY>

Operations Timelapse (SunNFun 2023)

<https://youtu.be/goefDBFegm8>

<https://youtu.be/wS5VHOXz-As>

TxDOT RAMP eligibility requirements

1. Triangulation

Triangulation ([MLAT](#)) is used to calculate positions for aircraft using older Mode-A/C/S (i.e. non-ADS-B) transponders, which do not broadcast their position.

[1200.aero](#) receivers are triangulation-capable, and triangulation is available upon request. MLAT requires at least 3 (ideally 4 or 5) receivers to be installed on airport property.



Note: Triangulation/MLAT will not be able to track aircraft without a transponder.

As an alternative, [1200.aero](#) also counts operations for Mode-S (i.e. non-ADS-B) aircraft using a single receiver, on the basis of altitude and ground data.

Mode-S Idg	N244BM	N244BM	P28A	04/19 15:26:18	REGISTRATION P...
Mode-S t/o	N244BM	N244BM	P28A	04/19 15:24:19	REGISTRATION P...
Mode-S Idg	N244BM	N244BM	P28A	04/19 15:23:58	REGISTRATION P...
Mode-S t/o	N244BM	N244BM	P28A	04/19 15:21:39	REGISTRATION P...
T/O Rwy 16	N218MP	N218MP	----	04/19 14:14:20	SUPAIR LTD
T/O Rwy 34	N5385J	N5385J	C172	04/19 14:00:39	AEROWOOD AVIA...
Ldg Rwy 34	N5385J	N5385J	C172	04/19 13:59:56	AEROWOOD AVIA...
T/O Rwy 34	N5385J	N5385J	C172	04/19 13:56:00	AEROWOOD AVIA...

2. Noise abatement

[1200.aero](#) enables users to respond to noise complaints by searching flight activity by street address.

Noise complaints demo: <https://youtu.be/uLIOwGyVSY>

3. Aircraft tracking data for 30 days

[1200.aero](#) maintains every second of tracking data for up to 2 years, and airport operational statistics indefinitely.

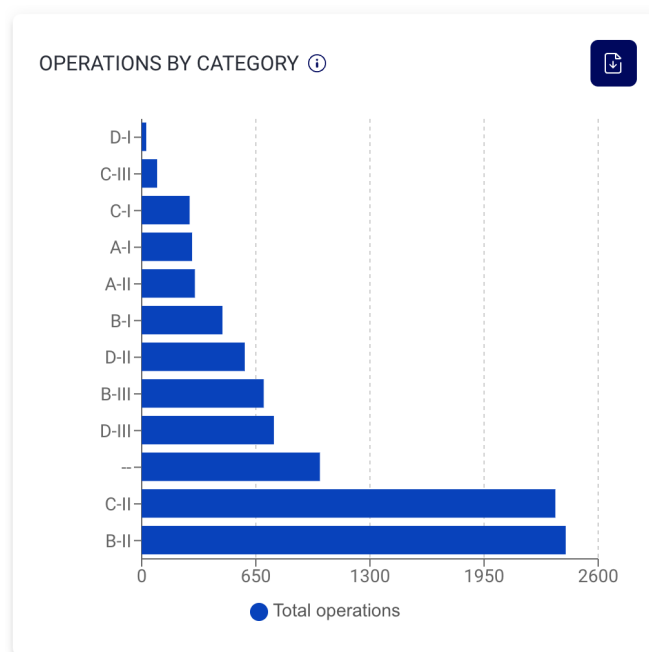
4. Direct installation without a third party

[1200.aero](#) provides its equipment (receiver, antenna and coax cable) and the airport is responsible for installing a single, 30-inch outdoor antenna following a few basic guidelines.

5. Identification of pavement utilization by airplane design group for the entire airport

[1200.aero](#) continually logs airport-wide operations by Airplane Design Group and Aircraft Approach Category, as well as many other aircraft and operational criteria. Tracking of specific taxiways is available upon request.

Reports demo: <https://youtu.be/ipBa-8XlqC0>



6. 1 second and 3 foot accuracy

[1200.aero](#) logs every second of aircraft operations on the ground, at any altitude, and within up to 50 nautical miles of the airport. Flight tracking demo: <https://youtu.be/YpdSiS8eje4>

For ADS-B equipped aircraft, location accuracy does not depend on [1200.aero](#)'s ADS-B receivers but rather the aircraft's GPS source.

7. Equal effectiveness at both towered and non-towered airports

[1200.aero](#) works seamlessly at non-towered and towered airports.

8. Tracking of military and government aircraft, including FAA blocked aircraft

[1200.aero](#) tracks all aircraft emitting an ADS-B or Mode-S signal. This includes military aircraft (identified on the basis of its transponder code) and FAA blocked aircraft (identified by emitted callsign information, rather than tail number).

B. 2. On at least a quarterly basis, the Sponsor must provide to the State all data produced and collected by the Equipment.

To simplify fulfillment of this requirement, [1200.aero](#) can grant the state direct access to all data collected for airports participating in the RAMP program.

Ivan Vasquez
Founder & CEO
Raleigh, NC
919 360-6120

PRESENTER: Michael Brown, Fire Chief

ITEM/SUBJECT: Consider approval of the purchase and installation of Ward Diesel No Smoke filtration systems for fire apparatuses for the amount of \$129,948.00. (Fire Chief)

SUMMARY/BACKGROUND: Nacogdoches Fire and Rescue seeks approval to purchase and install Ward No-Smoke exhaust filtration systems in all emergency response apparatuses that are housed and/or operated inside of fire stations. The total cost of acquisition and installation is \$129,948.00, and the system will be installed on 13 pieces of fire apparatuses. This purchase is currently budgeted and will be made through the expenditure of APRA funds. Ward No-Smoke is the sole source manufacturer, distributor, and installer of this equipment.

The purpose of this purchase is to continue our fight to reduce or eliminate firefighter exposure to carcinogens by providing an effective filtration system for our apparatuses that greatly reduces the quantity of carcinogenic substances emitted. The Ward No-Smoke system functions similarly to a catalytic converter by removing particulates from the exhaust gas of an internal combustion motor, specifically solid, predominantly carbonaceous particles contained in the exhaust gas of motors during those times that the emission of such particulates into the atmosphere is of the greatest danger to persons in the vicinity of the vehicle. The No-Smoke System is a constantly active, vehicle mounted system that functions any time the vehicle is in use. This system, particularly, was chosen over built-in, fire station mounted systems because it adds an extra layer of protection to our personnel who may be operating in the immediate vicinity of a running apparatus for extended periods of time during emergency or training operations.

FINANCIAL:

General Fund:

ARPA Project: Smoke Control Department Wide - \$130,000

Actual Cost: \$129,948.00

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

Not Applicable

CITY CONTACT: Mike Brown, Fire Chief
brownm@nactx.us
(936) 559-2541

ATTACHMENTS:

1. Ward No Smoke Quote
2. Ward Diesel_NO SMOKE Flyer
3. Ward - Sole Source Documentation
4. installation-image-3-400x284
5. installation-image-5-400x284

6. Installation-image-6-400x284
7. Installation-image-7-400x284
8. installation-image-8-400x284



NO SMOKE

Quotation

Beecher Emission Solution Technologies, LLC
dba **Ward Diesel Filter Systems**
1250 Schweizer Road
Horseheads, NY 14845
Phone: 800-845-4665
Fax: 607-739-7092

Date: April 9, 2024
Quotation #: 9917R5

To: Nacogdoches Fire & Rescue
P.O. Box 635030
Nacogdoches, TX 75963

Quotation valid until: June 8, 2024
Prepared by: DK

Attention: Michael Brown, Fire Chief

Quantity	Description	Per Unit Credit Card Price	Total Credit Card Price
13	NO SMOKE direct source diesel exhaust filtration system, installed, excluding taxes	\$10,495.80	\$136,445.40
		*CREDIT TOTAL	\$136,445.40
Quantity	Description	Per Unit Cash/Check Price	Total Cash/Check Price
13	NO SMOKE direct source diesel exhaust filtration system, installed, excluding taxes	\$9,996.00	\$129,948.00
		CASH TOTAL	\$129,948.00
	<u>Warranty:</u> One (1) year. <u>End User:</u> Nacogdoches Fire & Rescue <u>Installation Site:</u> Nacogdoches, TX <u>Terms:</u> Net 30 days on all invoices. Invoicing will be done weekly on the number of units installed for each week. Notes: All prices are in US Dollars. Proposal does not include bid and/or performance bond cost. *Effective February 11, 2024, merchants in New York State must provide clear and conspicuous disclosure of credit card surcharges to consumers.		

Dave Keefe
Regional Sales Manager

OSHA • MSHA

HAZARD ALERT

Diesel Exhaust / Diesel Particulate Matter

OSHA, in its 2013 "Hazard Alert for Diesel Exhaust/Diesel Particulate Matter," identifies short-term health effects from exposure to high concentrations of diesel exhaust and diesel particulate matter (DPM) that may include headache, dizziness, and irritation of the eye, nose and throat. OSHA also identifies prolonged diesel exhaust and DPM exposure as increasing the risks of cardiovascular, cardiopulmonary and respiratory disease, and lung cancer.

NO SMOKE

The most effective and user-friendly exhaust protection system on the market.

NO SMOKE

An apparatus-mounted, direct source capture exhaust removal system that works automatically to protect you from the dangers of breathing diesel exhaust.



NO SMOKE



WARD

FILTER SYSTEMS

warddiesel.com

info@warddiesel.com

800-845-4665

The need for diesel exhaust protection is vital for the health and safety of the men and women in your Departments. It is no secret that cancer is now the leading cause of Firefighter deaths. Ward Filter Systems is committed to protecting firefighters from the harmful effects of diesel exhaust.

The NO SMOKE Filter System is apparatus mounted, allowing for indoor protection, greater flexibility for movement of apparatus within the station, as well as protection on-scene. The NO SMOKE filtration technology provides the BEST and ONLY vehicle mounted exhaust protection available.

Ward Filter Systems has been manufacturing and installing our NO SMOKE direct source capture, apparatus-mounted automatic diesel exhaust removal systems since 1987. Our products meet and exceed standards set forth by OSHA, NIOSH and NFPA.

The original NO SMOKE system was originally designed in the 1980's and is the system needed for vehicles with engines built prior to 2007. NO SMOKE 2 was developed in 2006 to meet exhaust removal needs for vehicles with engines built with 2007 and newer EPA emission compliant components.

With thousands of installations currently operating, NO SMOKE has proven its capability and reliability to fire and rescue personnel throughout the world. We hope that you will be next to join the growing list of fire departments that have decided to protect their personnel with NO SMOKE.



info@warddiesel.com

800-845-4665

WARD DIESEL FILTER SYSTEMS

March 21, 2024

Nacogdoches Fire & Rescue
P.O. Box 63530
Nacogdoches, TX 75963

Attention: Chief Michael Brown,

Dear Chief Brown,

Ward Diesel Filter is the “sole manufacturer” and “sole distributor” of the “PATENTED” “NO SMOKE” diesel filtration system granted by the United States Government pursuant to Patent Number 4,803,838. No other company or individual has been licensed to manufacture or market an identical or similar system. Installation of the system(s) is completed by Ward Diesel service technician(s) on all new installations at the manufacturer facilities. As a retrofit assembly, the installation is completed at the fire department.

If you have any additional questions, do not hesitate to contact me.

Very truly yours,

WARD DIESEL FILTER SYSTEMS



Scott H. Beecher
President

NOTICE

WARD DIESEL FILTER SYSTEMS MARKETS THE "NO SMOKE" DIESEL EXHAUST FILTRATION SYSTEM. THIS SYSTEM IS COVERED BY U.S. PATENT NUMBER #4,803,838. NO OTHER COMPANY OR INDIVIDUAL HAS BEEN LICENSED TO MANUFACTURE OR MARKET THIS PROPRIETARY SYSTEM.



WARD DIESEL FILTER SYSTEMS

United States Patent [19]
Kaeser

[11] **Patent Number:** 4,803,838
[45] **Date of Patent:** Feb. 14, 1989

[54] **DIESEL PARTICULATE INFUSION
CONTROLLER**

[76] **Inventor:** Henry E. Kaeser, Hillcrest Rd.,
Elmira, N.Y. 14903

[21] **Appl. No.:** 137,589

[22] **Filed:** Dec. 24, 1987

[51] **Int. Cl.:** F01N 3/02

[52] **U.S. Cl.:** 60/288

[58] **Field of Search:** 60/288, 286, 274

[56] **References Cited**

U.S. PATENT DOCUMENTS

2,488,563	11/1949	Sills .	
3,938,409	2/1976	Vozumi .	74/856
3,961,478	6/1976	Lange .	
3,972,184	8/1976	Warren .	
4,450,681	5/1984	Sato et al. .	
4,485,621	12/1984	Wong et al. .	
4,509,327	4/1985	Enga .	60/311
4,538,412	9/1985	Oishi et al. .	

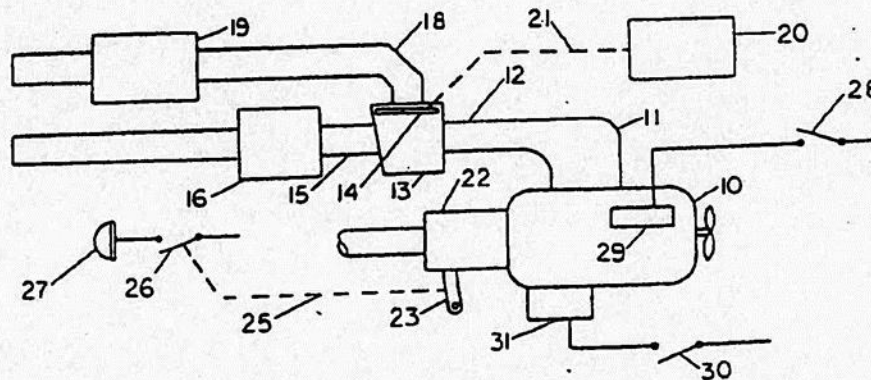
4,581,891 4/1986 Usui 60/303
4,677,823 7/1987 Hardy 60/286

Primary Examiner—Douglas Hart

[57] ABSTRACT

Disclosed is a system for removing particulates from the exhaust gas of a vehicle internal combustion engine during those times that the emission of such particulates into the atmosphere would be of greatest danger to persons in the vicinity of the vehicle. The system comprises valve means connected to the vehicle exhaust manifold for normally directing exhaust to the atmosphere when in the nonactivated condition. The valve means directs exhaust to a particulate filter when in the activated condition. Means responsive to the starting of the engine activates the valve means for a predetermined period of time. The valve means can also be activated by shifting into reverse gear.

10 Claims, 2 Drawing Sheets



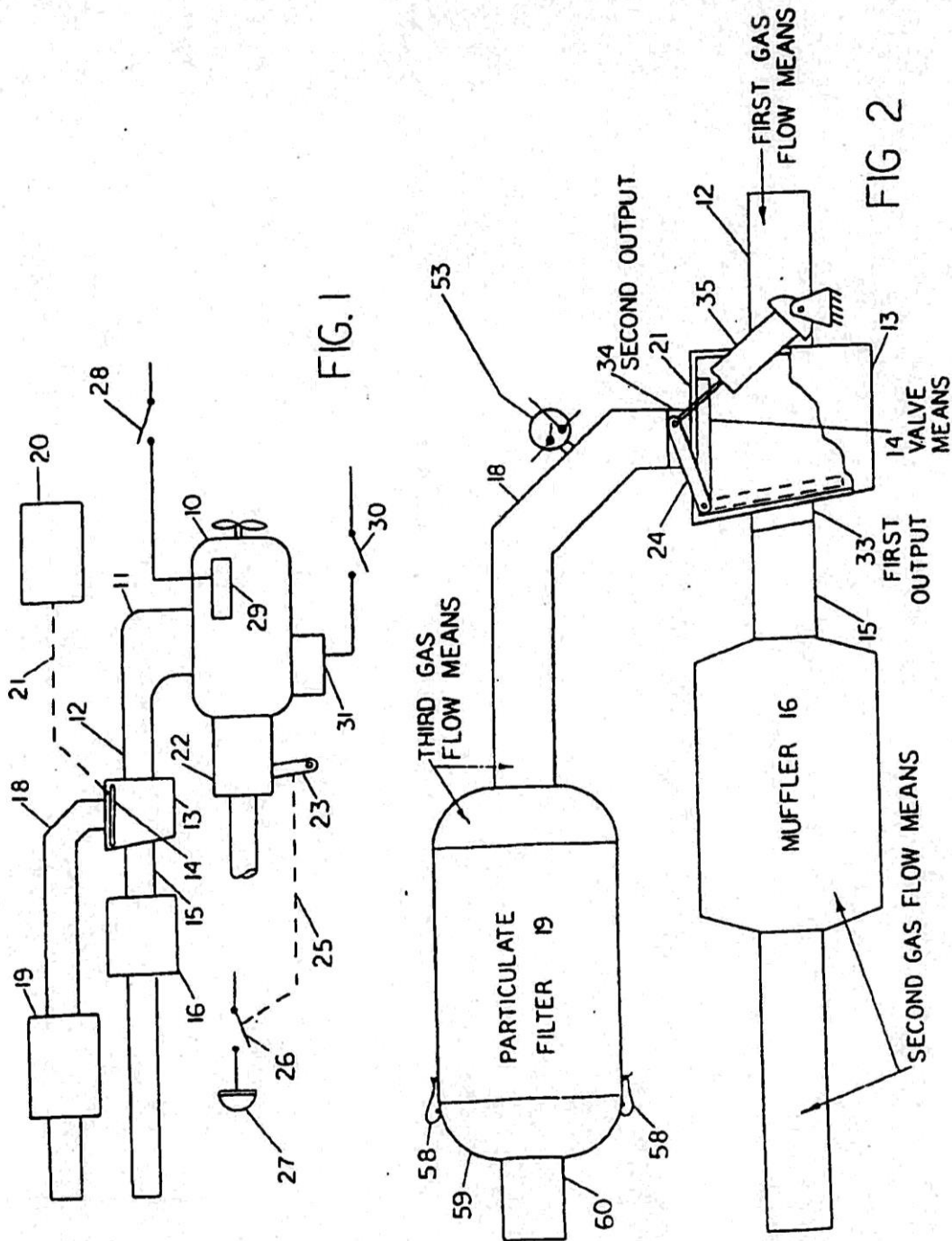
WARD DIESEL FILTER SYSTEMS

U.S. Patent

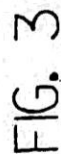
Feb. 14, 1989

Sheet 1 of 2

4,803,838



4,803,838



WARD DIESEL FILTER SYSTEMS

4,803,838

1

DIESEL PARTICULATE INFUSION CONTROLLER

BACKGROUND OF THE INVENTION

1. Field of the Invention

This invention relates to a system for removing particulates from the exhaust gas of internal combustion engines in motor vehicles. More particularly, this invention relates to a system for removing solid, predominately carbonaceous particulates contained in the exhaust gas of diesel engines only during those times that the emission of such particulates into the atmosphere would be of greatest danger to persons in the vicinity of such vehicles.

Diesel engine exhaust gas contains considerable amounts of exhaust particulates. Various kinds of filters or trapping devices have been employed for removing such particulates. However, a typical diesel engine may emit on the order of a gallon of particulate in 1,000 miles of continuous operation. After a sufficient amount of particulate has been trapped, the resultant backpressure adversely affects the operation of the engine. Vehicles which utilize filter elements for trapping exhaust particulates must therefore employ means for dealing with this problem.

2. The Prior Art

There have been proposed a number of diesel exhaust gas cleaning devices which include filter regeneration means. Disclosed in U.S. Pat. Nos. 4,450,681, 4,485,621 and 4,538,412 are filter regeneration systems comprising various means for igniting and burning the trapped exhaust particulates. Such regeneration systems conventionally include valve means for by-passing at least a portion of the exhaust gas during at least a portion of the regeneration cycle. In general, regeneration techniques have been subject to one or more of the following disadvantages which have precluded the commercial acceptance thereof: (1) there may be an inability of the filter element to undergo regeneration so as to maintain effectiveness over long periods, (2) regeneration may reduce the efficiency of the filter element, (3) regeneration may damage the filter element such as by the generation of corrosive gases, and (4) regeneration may produce excessive amounts of harmful by-products such as sulfates.

SUMMARY OF THE INVENTION

It is therefore an object of this invention to provide an exhaust particulate removal system which overcomes the disadvantages of the prior art.

Briefly, the present invention relates to a system for removing particulates from exhaust gas of a vehicle internal combustion engine. The system comprises first gas flow means connected to the exhaust of the engine, and valve means connected to the first gas flow means for normally directing exhaust to a first output when in the nonactivated condition and for directing exhaust to a second output when in the activated condition. Second gas flow means is connected to the valve means first output for exhausting particulate-containing exhaust to the atmosphere. Third gas flow means is connected to the valve means second output for removing exhaust gas particulates before delivering the exhaust gas to the atmosphere. Means responsive to the starting of the engine activates the valve means for a predetermined period of time after the engine has been started.

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Means responsive to a second condition within the vehicle also activates the valve means.

The means responsive to a second condition may comprise means activated by shifting the vehicle gear means into reverse gear for activating the valve means while the vehicle is in reverse gear, the valve means remaining activated for the predetermined period of time after the gear means has been shifted out of reverse gear. The vehicle operator can also operate the valve means by closing a switch. The means for activating the valve means can be disabled by switch means which detect the backpressure in the exhaust system.

BRIEF DESCRIPTION OF THE DRAWINGS

FIG. 1 is a schematic view of an engine provided with a system for removing exhaust gas particulates in accordance with the present invention.

FIG. 2 is a schematic view showing a preferred system for purifying exhaust gases.

FIG. 3 is a schematic diagram of a control circuit for activating the exhaust diverter valve of FIG. 1.

DESCRIPTION OF THE PREFERRED EMBODIMENT

In FIG. 1 exhaust manifold 11 of diesel engine 10 is connected to a first gas flow conduit 12. Whereas a diesel engine is specifically described herein, the present invention is also useful in connection with other engines. For example, a gasoline engine having worn rings may exhaust a sufficient amount of particulate matter to warrant use of this system. Changeover valve 14 is located in housing 13 which is connected to conduit 12. The valve normally connects exhaust gas to second exhaust gas conduit 15 in which muffler 16 is located. When in the activated condition, valve 14 switches the exhaust gas flow to third gas flow conduit 18 in which filter or particulate catching means 19 is located. Dashed line 21 indicates the mechanical connection between valve 14 and valve actuating means 20.

Attached to engine 10 is transmission 22 from which control lever 23 extends. Dashed line 25 represents a mechanical connection between lever 23 and backup switch 26 which activates backup light 27 when transmission 22 is shifted into reverse. Switch 28 connects battery voltage to engine ignition system 29, and starter switch 30 connects battery voltage to starter 31.

Referring to FIG. 2, gas conduit 12 is connected to changeover valve housing 13 having a first outlet passage 33 and a second outlet passage 34. Outlet passage 33 is connected to muffler 16 by conduit 15, and outlet passage 34 is connected to particulate filter 19 by gas conduit 18. Disposed within housing 13 is a valve 14 which is shown in its normal position, whereby gas from conduit 12 exits from outlet passage 33. Activation of air cylinder 35 pulls lever 24, thus causing valve 14 to move to its activated position shown by dashed lines, whereby gas from conduit 12 exits from outlet passage 34. It is noted that air cylinder plunger rod 21 is represented by the dashed line mechanical connection in FIG. 1.

Referring to FIG. 3, air tank 40 supplies air to solenoid valves 41 and 42 which control the flow of air to opposite ends of air cylinder 35. Valve 41 is a three way normally closed valve, and valve 42 is a three way normally open valve. Thus, air cylinder plunger rod 21 is normally extended. This places valve 14 in its normal position shown in FIG. 2. The combination of tank 40 valves 41 and 42 and cylinder 35 constitutes valve acti-

WARD DIESEL FILTER SYSTEMS

4,803,838

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vating means 20 of FIG. 1. Although an air cylinder-operated changeover valve may be advantageous on those trucks which already contain compressed air tanks, other suitable activating means such as an electrically powered system may be employed.

Also shown in FIG. 3 is the electrical control system, the output of which controls valve activating means 20. This system comprises relays 47, 48 and 49 and a timer relay 50. The following commercially available parts may be employed for the aforementioned relays: Part No. 700-HB-33Z12 for relays 47, 48 and 49 and Part No. 700-HT-22BZ12 for timing relay 50, all of which are manufactured by Allen-Bradley Company. Ignition master switch 28 connects the battery voltage to terminal 7 of relay 47 and to terminals 1 and 2 of timer relay 50. Switch 28 also connects battery voltage to override switch 52, which may be located on the dashboard, and to a backpressure switch 53, which is located in conduit 18. A dash-mounted warning light 54, which is connected to switch 53, signals the activation of that switch. When closed, switch 53 connects battery voltage to terminals A and 4 of relay 47. In its closed condition, switch 52 connects battery voltage to terminal 9 of relay 47.

In order to describe the operation of the aforementioned system, it will be assumed that the system is installed on a fire truck. As soon as an alarm is sounded, the engine is started. Some minimum amount of time is required for the firemen to get ready and get on the truck. Thus, there is a minimum predetermined time period between the starting of the truck and the time that the truck leaves the fire station. If a conventional muffler exhaust system were employed on the truck, carbon particulates and the like would exhaust into the station, thus presenting a danger to those working therein. If particulate catching means were permanently installed on the truck, it would become saturated after an average of twenty hours of operation. It is impracticable to replace the particulate trap every twenty hours of operation. Particulate traps having regeneration means suffer a number of disadvantages as discussed above. The system of FIGS. 2 and 3, as operated in the following manner, solves the aforementioned dilemma.

Timer relay 50 is programmed such that, after it is activated by either relay 48 or 49, it remains closed for the predetermined time period. When starter switch 30 is closed, current supplied to normally open relay 48 closes that relay. Terminals 4 and 7 of relay 48 close, thereby interconnecting terminals 5 and 6 of timer relay 50. Also, the normally open timer relay 50 closes, thereby connecting terminals 1 and 3. Current will now pass through the timer relay and through the normally closed relay section of relay 47 (through terminals 3 and 9 thereof) to solenoid valves 41 and 42. The solenoid valves being thus activated, air cylinder plunger rod 21 retracts, placing exhaust changeover valve 14 in its activated condition. The exhaust system is placed in the filter mode whereby exhaust gas is diverted through particulate filter 19. When starter switch 30 opens, terminals 4 and 7 of relay 48 are disconnected, thus starting the predetermined period of time during which timer relay terminals 1 and 3 are connected. At the end of said predetermined time period, timer relay 50 opens, thereby deactivating solenoid valves 41 and 42. The plunger of air cylinder 35 returns to its normal position, and valve 14 returns to the position shown in FIG. 2. The particulate-containing exhaust gas again passes

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through muffler 16 to the atmosphere. By this time, however, the truck has left the station.

When the fire truck backs into the fire station, it could again subject personnel working therein to particulate-containing exhaust gases. However, when the vehicle is placed in reverse, backup light switch 26 closes and activates relay 49. This normally open relay closes, thereby interconnecting terminals 5 and 6 of the timer relay. This closes the timer relay, connecting terminals 1 and 3 thereof, and causes current to pass through relay 47, as described above, to activate solenoid valves 41 and 42 and place the exhaust system in the filter mode. When the transmission is shifted out of reverse, switch 26 opens and the timer clock in relay 50 begins to run. The exhaust system then remains in the filtered position for the predetermined period of time. This gives some time during which the transmission may be placed in neutral or park position in case the engine is not immediately turned off.

Override switch 52 places the exhaust system in the filter mode at any time by overriding the timer relay. When closed, it connects the battery voltage directly to terminal 9 of relay 47. Switch 52 may be located on the dashboard, the control box housing the relays or in any other remote location. Switch 52 may be employed, for example, if the truck drives up to the garage and pulls in forward. As soon as the driver begins to pull into the garage, he closes switch 52.

It can be seen that particulate filter 19 accumulates relatively little particulate material per hour of total operating time. However, the filter eventually accumulates enough particulate to create a sufficient backpressure in the vehicle exhaust system to close switch 53. The resultant flow of current to terminal A causes the normally open section of relay 47 to close. This allows current to flow to terminal 7 of relay 47, through terminal 4, and back to terminal A, to apply a hold current to relay 47 after the backpressure switch opens due to a reduction in back pressure. Also, the normally closed section of relay 47 opens, thereby placing the exhaust system in muffler mode, regardless of the condition of relays 48 and 49. Since it is only infrequently that filter 19 accumulates sufficient particulate to actuate backpressure switch 53, the replacement of full traps is no longer impracticable. After the actuated warning light 54 is observed, arrangements are made to have the particulate filter replaced. In the embodiment shown in FIG. 2, this is accomplished by opening clamps 58 which are located at the outlet end of the casing of filter 19. After end portion 59 and tailpipe 60 are removed, the filter means is removed from the casing. A new or cleaned filter means is inserted, and elements 59 and 60 are reattached.

Various modifications can be made to the described embodiment without departing from the scope of the invention. For example, the override switch may be a pushbutton switch that momentarily closes and then opens when released. Such an override switch could be employed to activate the timer relay so that the valve means is activated for the predetermined time after the switch is operated. The vehicle operator would merely touch the pushbutton switch as the vehicle begins to pull into a garage. The exhaust system would be in the filter mode for the predetermined time which would be of sufficient length to permit the vehicle to be parked and the engine turned off.

I claim:



NO SMOKE

WARD DIESEL FILTER SYSTEMS

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1. A system for removing particulates from exhaust gas of a vehicle internal combustion engine comprising first gas flow means connected to the exhaust of said engine, valve means connected to said first gas flow means for normally directing exhaust to a first output when in the nonactivated condition and for directing exhaust to a second output when in the activated condition, second gas flow means connected to said valve means first output for exhausting particulate-containing exhaust to the atmosphere, third gas flow means connected to said valve means second output for removing exhaust gas particulates before delivering said exhaust gas to the atmosphere, means responsive to the starting of said engine for activating said valve means for a predetermined period of time, and means responsive to a second condition within said vehicle for activating said valve means.

2. A system in accordance with claim 1 further comprising gear means including a reverse gear connected to said engine, said means responsive to a second condition comprising means activated by shifting said gear means into reverse gear for activating said valve means, said valve means remaining activated for said predetermined period of time after said gear means has been shifted out of reverse gear.

3. A system in accordance with claim 1 wherein said means responsive to a second condition comprises an override switch and means responsive to the closing of said override switch for activating said valve means.

4. A system in accordance with claim 3 wherein said override switch comprises a switch that closes when touched and opens when released, and said means responsive to the closing of said override switch activates said valve means for said predetermined period of time after said override switch has been released.

5. A system for removing particulates from exhaust gas of a vehicle internal combustion engine comprising first gas flow means connected to the exhaust of said engine, valve means connected to said first gas flow means for normally directing exhaust to a first output when in the nonactivated condition and for directing exhaust to a second output when in the activated condition, second gas flow means connected to said valve means first output for exhausting particulate-containing exhaust to the atmosphere, third gas flow means connected to said valve means second output for removing exhaust gas particulates before delivering said exhaust gas to the atmosphere, valve activating means for changing the condition of said valve means from said nonactivated to said activated condition upon receipt of a control signal, means responsive to the starting of said engine for supplying to said valve activating means a control signal for a predetermined period of time, gear means including a reverse gear connected to said engine, means activated by shifting said gear means into reverse gear for supplying a control signal to said valve activating means, said control signal continuing for said predetermined period of time after said gear means has been shifted out of reverse gear.

6. A system for removing particulates from exhaust gas of a vehicle internal combustion engine comprising first gas flow means connected to the exhaust of said engine, valve means connected to said first gas flow means for normally directing exhaust to a first output when in the nonactivated condition and for directing exhaust to a second output when in the activated condition, second gas flow means connected to said valve means first output for exhausting particulate-containing exhaust to the atmosphere, third gas flow means connected to said valve means second output for removing exhaust gas particulates before delivering said exhaust gas to the atmosphere, valve activating means for changing the condition of said valve means from said nonactivated to said activated condition upon receipt of a control signal, gate means having an output terminal connected to said valve activating means, an input terminal and an inhibiting signal terminal, said gate means connecting a control signal from said input terminal thereof to said valve activating means except when a signal is applied to said inhibiting terminal, means responsive to the starting of said engine for supplying to said gate means input a control signal for a predetermined period of time, and means responsive to the sensing of an excessive back-pressure in said engine exhaust for applying a signal to said gate means inhibiting terminal.

7. A system in accordance with claim 6 wherein said means responsive to the starting of said engine comprises timer relay means having a first pair of terminals, said timer relay means connecting a voltage to said gate means input terminal during the time that said first pair of terminals is interconnected and for said predetermined period of time after said first pair of terminals has been disconnected, and first relay means for interconnecting said first pair of terminals in response to the starting of said engine.

8. A system in accordance with claim 7 further comprising gear means including a reverse gear connected to said engine, and means for supplying a control signal to said gate means during the time that said gear means is in reverse gear and for said predetermined period of time after said gear means has been shifted out of reverse gear.

9. A system in accordance with claim 8 wherein said means activated by shifting said gear means comprises second relay means for interconnecting said first pair of terminals during the time that said gear means is in reverse gear and for said predetermined period of time after said gear means has been shifted out of reverse gear.

10. A system in accordance with claim 6 further comprising gear means including a reverse gear connected to said engine, and means for supplying a control signal to said gate means during the time that said gear means is in reverse gear and for said predetermined period of time after said gear means has been shifted out of reverse gear.



NO SMOKE

Notice of Patent Expiration:

U.S. PATENT NUMBER #4,803,838 for the Ward Diesel NO SMOKE Filter System has expired.

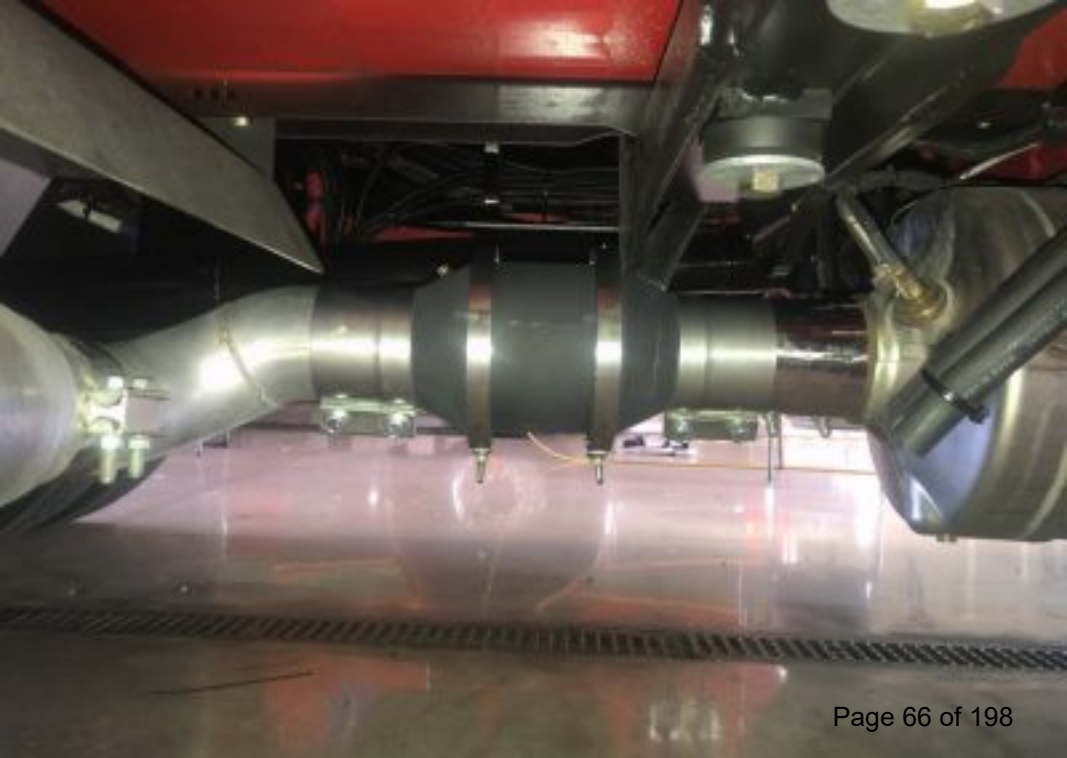
Ward Diesel has stopped identifying or marking manufactured parts and components with this patent information.











PRESENTER: Dan Taravella, Assistant Police Chief

ITEM/SUBJECT: Consider approval of the installation of a stop sign on Northgate Drive at Royal Lane. (Assistant Police Chief)

SUMMARY/BACKGROUND: Consider the approval of a new stop sign at the intersection of Northgate Dr. and Royal Ln. (in the neighborhood behind IHOP restaurant) to control the westbound traffic on Northgate Dr. Currently, this is what is known as an "open intersection" with no traffic control. Residents have asked for a traffic control device to control westbound traffic when entering Royal Ln. City staff studied the intersection and agreed the request was appropriate.

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: Dan Taravella, Assistant Police Chief
taravellad@nactx.us
936-559-2610

ATTACHMENTS: 1. Northgate stop sign

Sec. 102-123. - Authorization.

The chief of police or her/his designee is hereby authorized to implement the applicable provisions of the ordinance from which sections 102-123—102-126 derived to further protect public welfare and safety.

(Ord. No. 1580-10-11, 10-18-2011)



Traffic Committee Signage Request

Pursuant to the authority granted by Chapter 102 of the Code of Ordinances, City of Nacogdoches, Texas, I, Scott Weems, Chief of Police, do hereby approve and authorize the following signs to be placed in the following locations:

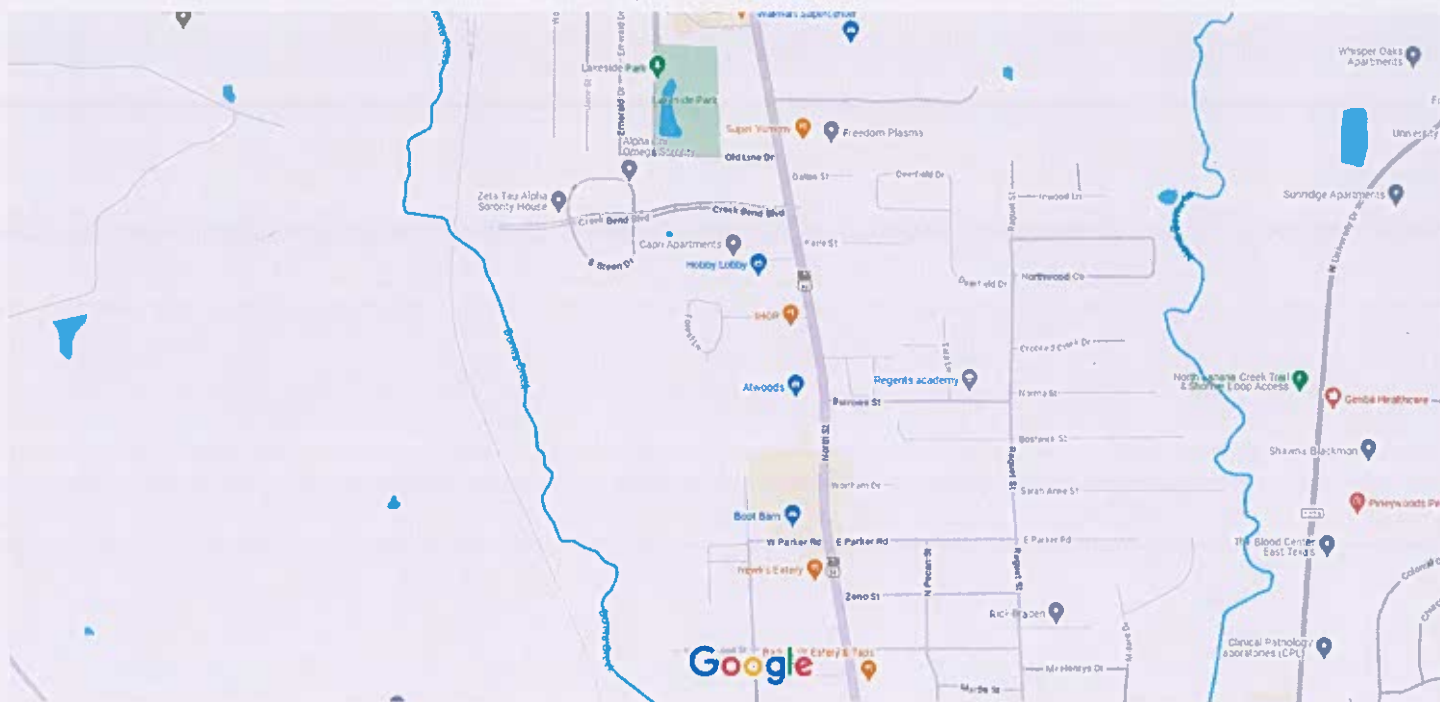
1. A Stop Sign at the intersection of Northgate Dr, and Royal Ln., controlling westbound motorists on Northgate Dr. approaching Royal Ln, (sign to be facing east).

Reference: Article III. Traffic Control Devices. Sec. 102-90. - Erection of stop signs.

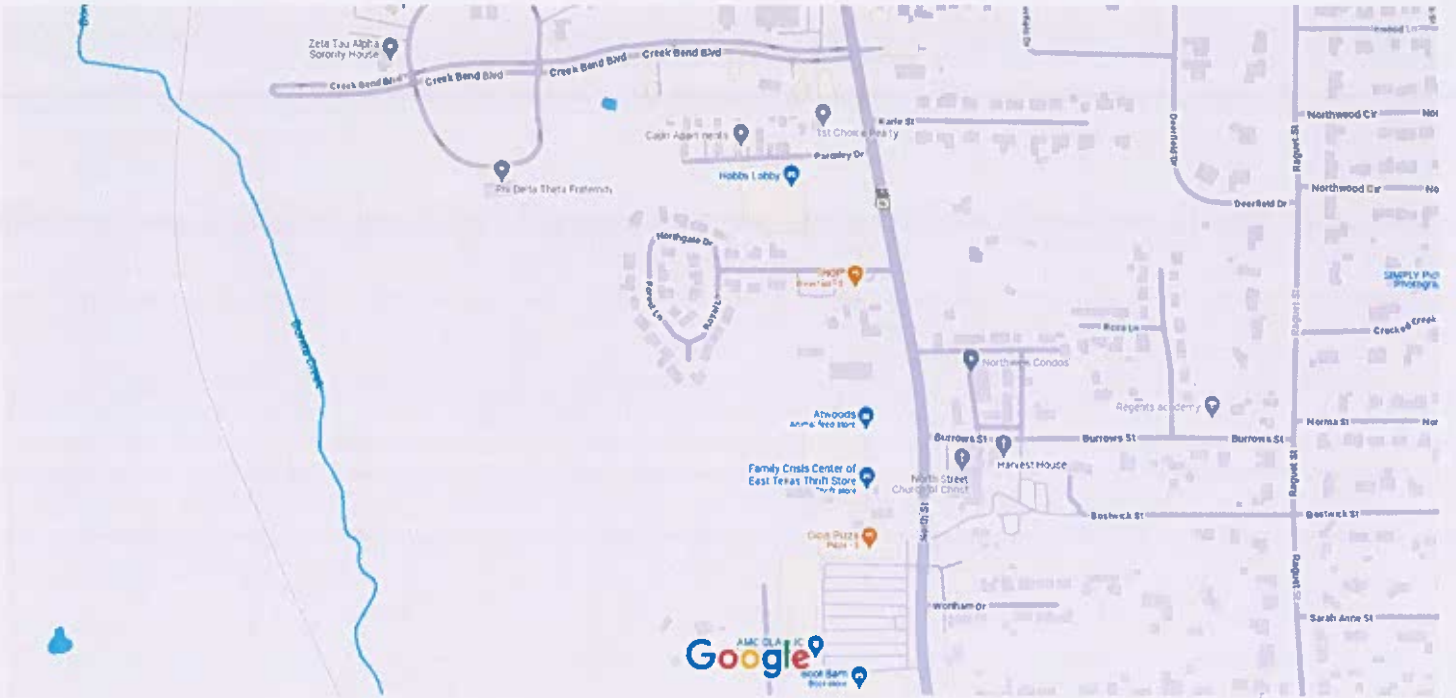
Chief of Police

Date

Nacogdoches Police Department
Protecting The Oldest Town in Texas
312 W. Main Street, Nacogdoches, TX 75961 (936) 559-2607
Home of Stephen F. Austin State University



Map data ©2024 500 ft



Map data ©2024 Google 200 ft



Imagery ©2024 Maxar Technologies, Map data ©2024 50 ft



City Council Meeting

Date: April 23, 2024

Agenda Item: 5.H.

PRESENTER: Dan Taravella, Assistant Police Chief

ITEM/SUBJECT: Consider approval of the installation of a 4-way stop sign at the intersection of Harvey Austin Dr., Eric Dr. and Emily Ct. (Assistant Police Chief)

SUMMARY/BACKGROUND: Consider the approval of the installation of a 4-way stop sign at the intersection of Harvey Austin Dr., Eric Dr. and Emily Ct., in the Harvey Austin subdivision off W. Austin St. Currently, the intersection is what is known as an "open intersection" with no traffic control. Eric Dr. and Emily Ct. are actually one continuous street with only the name changing at the intersection of Harvey Austin Dr. The stop sign would control traffic in all 4 directions. Residents asked city staff to consider the stop sign. City staff studied the intersection and the request and determined that the request was appropriate.

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: Dan Taravella, Assistant Police Chief
taravellad@nactx.us
936-559-2610

ATTACHMENTS: 1. Harvey Austin Stop Sign

Sec. 102-123. - Authorization.

The chief of police or her/his designee is hereby authorized to implement the applicable provisions of the ordinance from which sections 102-123—102-126 derived to further protect public welfare and safety.

(Ord. No. 1580-10-11, 10-18-2011)



Traffic Committee Signage Request

Pursuant to the authority granted by Chapter 102 of the Code of Ordinances, City of Nacogdoches, Texas, I, Scott Weems, Chief of Police, do hereby approve and authorize the following signs to be placed in the following locations:

1. A 4-way stop sign at the intersection of Harvey Austin Dr and Eric Dr and Emily Ct in the Harvey Austin subdivision. Eric Dr and Emily Ct are one continuous street with the name changing at the intersection of Harvey Austin. The stop sign would be a 4-way stop controlling all traffic on Harvey Austin, Eric Ln and Emily Ct

Reference: Article III. Traffic Control Devices. Sec. 102-90. - Erection of stop signs.

Chief of Police

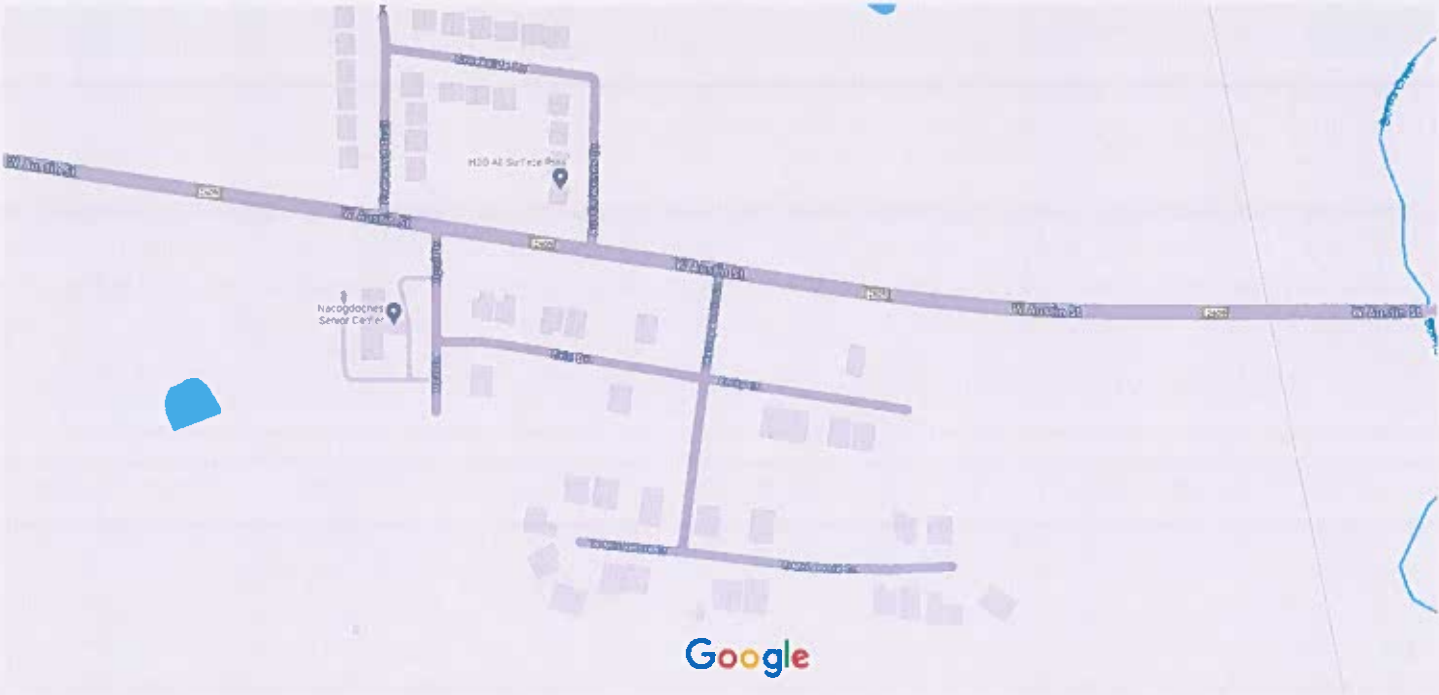
Date

Nacogdoches Police Department

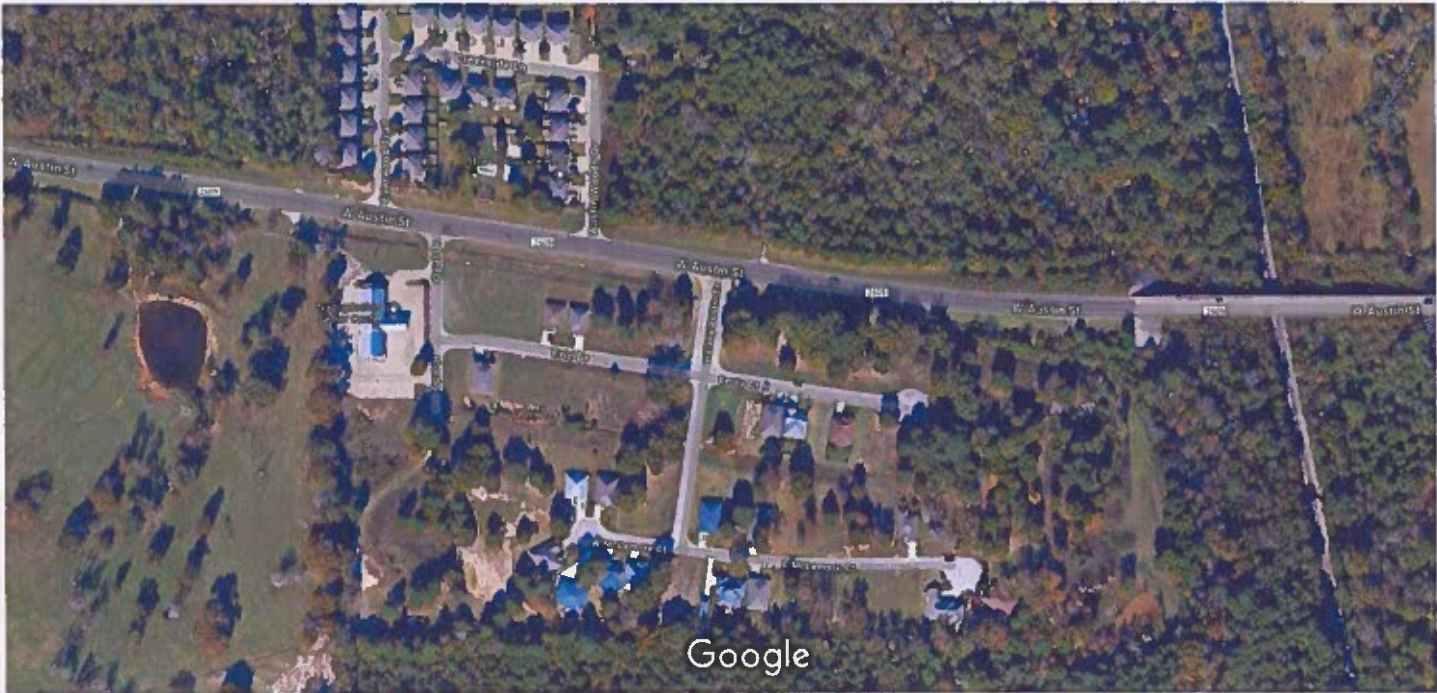
Protecting The Oldest Town in Texas

312 W. Main Street, Nacogdoches, TX 75961 (936) 559-2607

Home of Stephen F. Austin State University



Map data ©2024 Google 100 ft



Imagery ©2024 CNES / Airbus, Maxar Technologies, Map data ©2024 100 ft



City Council Meeting

Date: April 23, 2024

Agenda Item: 5.I.

PRESENTER: Case Opperman, Director of Public Works

ITEM/SUBJECT: Consider an Ordinance re-approving the 2024 Edition of the Drought Contingency Plan for the City of Nacogdoches. (Director of Public Works)

SUMMARY/BACKGROUND: The Texas Commission on Environmental Quality (TCEQ) requires water purveyors to review their Drought Contingency Plan every five (5) years. Our Plan is in the form of an ordinance that outlines the four Stages of drought response. Each Stage is focused on reducing water consumption during periods of extreme drought or an unplanned reduction in our water supply. Multipliers to water rates during drought are intended to discourage water use through user costs. No needed corrections or updates were identified in staff's review of the Plan and staff recommends re-approving the current Plan for 2024.

FINANCIAL:

No financial impact associated with this item

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

Not Applicable

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

ATTACHMENTS: 1. Ordinance



Texas Commission on Environmental Quality

Water Availability Division

MC-160, P.O. Box 13087 Austin, Texas 78711-3087

Telephone (512) 239-4600, FAX (512) 239-2214

Drought Contingency Plan for a Retail Public Water Supplier

This form is provided as a model of a drought contingency plan for a retail public water supplier. If you need assistance in completing this form or in developing your plan, please contact the Conservation Staff of the Resource Protection Team in the Water Availability Division at (512) 239-4600.

Drought Contingency Plans must be formally adopted by the governing body of the water provider and documentation of adoption must be submitted with the plan. For municipal water systems, adoption would be by the city council as an ordinance. For other types of publicly-owned water systems (example: utility districts), plan adoption would be by resolution of the entity's board of directors adopting the plan as administrative rules. For private investor-owned utilities, the drought contingency plan is to be incorporated into the utility's rate tariff. Each water supplier shall provide documentation of the formal adoption of their drought contingency plan.

Name: City of Nacogdoches

Address: PO Box 635030 Nacogdoches TX 75963

Telephone Number: (936)564-5046 Fax: (936) 569-2729

Water Right No.(s): 4864

Regional Water Planning Group: Regional Water Planning Group I

Form Completed by: Bart Allen

Title: Water Utility Manager

Person responsible for implementation: Bart Allen Phone: (936) 564-50046

Signature:  Date: 4/9/24

Chapter 106 "Utilities" be amended as follows:

DIVISION 2. WHOLESALE SUPPLIER DROUGHT CONTINGENCY PLAN

Sec. 106-591. - Declaration of policy, purpose, and intent.

In order to conserve the available water supply and/or to protect the integrity of water supply facilities, with particular regard for domestic water use, sanitation, and fire protection, and to protect and preserve public health, welfare, and safety and minimize the adverse impacts of

water supply shortage or other water supply emergency conditions, the City of Nacogdoches (hereinafter referred to as "city") adopts the following drought contingency plan (the plan) for wholesale water customers.

Sec. 106-592. - Wholesale water customer education.

The city will periodically provide wholesale water customers with information about the plan, including information about the conditions under which each stage of the plan is to be initiated or terminated and the drought response measures to be implemented in each stage. This information will be provided by means of providing copies of the plan and/or changes to the plan, and scheduled meetings to discuss the plan and any changes.

Title 30 TAC Chapter 288.30(4) states: Wholesale public water suppliers shall submit a drought contingency plan meeting the requirements of Subchapter B of this Chapter to the executive director not later than September 1, 1999, after adoption of the drought contingency plan by the governing body of the water supplier. Thereafter, any new or revised plans shall be submitted to the executive director within 90 days of adoption by the governing body of the wholesale public water supplier. Wholesale public water suppliers shall also provide a copy of the drought contingency plan to the regional water planning group for each region within which the wholesale water supplier operates.

Sec. 106-596. - Triggering criteria for initiation and termination of drought response stages.

- (a) The manager, or his/her designee, shall monitor water supply and/or demand conditions on a daily basis and shall determine when conditions warrant initiation or termination of each stage of the plan. Customer notification of the initiation or termination of drought response stage will be made directly by telephone, followed by certified mail. The news media will also be informed.
- (b) The triggering criteria described below are based on a statistical analysis of the vulnerability of the water source under drought of record conditions.
 - (1) Stage 1—Mild water shortage conditions.
 - a. Requirements for initiation—The city will recognize that a mild condition exists when total daily water demand equals or exceeds 90 percent of the daily water plant production for four consecutive days or 92 percent of the daily water plant production for a single day.
 - b. Requirement for termination—Stage 1 of the plan may be rescinded when all of the conditions listed as triggering events have ceased to exist for a period of 14 consecutive days. The city will notify its wholesale customers and the media of the termination of stage 1 in the manner described above.
 - (2) Stage 2—Moderate water shortage conditions.
 - a. Requirements for initiation—The city will recognize that a moderate water shortage condition exists when daily water demand equals or exceeds 92 percent of the daily water plant production for four consecutive days or 94 percent of the daily water plant production for a single day.
 - b. Requirements for terminations—Stage 2 of the plan may be rescinded when all of the conditions listed as triggering events have ceased to exist for a period of seven consecutive days. Upon termination of stage 2, stage 1 becomes operative. The city will notify its wholesale customers and the media of the termination of stage 2 in the manner described above.

- (3) Stage 3—Severe water shortage conditions.
 - a. Requirements for initiation—The city will recognize that a severe water shortage condition exists when total daily water demand equals or exceeds 94 percent of the daily water plant production for four consecutive days or 96 percent of the daily water plant production for a single day.
 - b. Requirements for terminations—Stage 3 of the plan may be rescinded when all of the conditions listed as triggering events have ceased to exist for a period of five consecutive days. Upon termination of stage 3, stage 2 becomes operative. The city will notify its wholesale customers and the media of the termination of stage 2 in the manner described above.
- (4) Stage 4—Emergency water shortage conditions.
 - a. Requirements for initiation—The city will recognize that an emergency water shortage condition exists, when:
 - (i) Major water line breaks, or pump or system failures occur which cause unprecedented loss of capability to provide water service; or
 - (ii) Manmade contamination of the water supply source(s) has occurred.
 - b. Requirements for termination—Stage 4 of the plan may be rescinded when all of the conditions listed as triggering events have ceased to exist for a period of 24 consecutive hours (one day). The city will notify its wholesale customers and the media of the termination of stage 4 in the manner described above.

Sec. 106-597. - Drought response stages.

The manager, or his/her designee, shall monitor water supply and/or demand conditions and, in accordance with the triggering criteria set forth in section 106-596, shall determine that mild, moderate, or severe water shortage conditions exist, or that an emergency condition exists, and shall implement the following actions:

- A. *Stage 1—Mild water shortage conditions.*
 - 1. *Goal:* Achieve a voluntary five percent reduction in total daily water use.
 - 2. *Supply management measures:*
 - (a) In order to manage a limited water supply and/or reduce water demand, the city will implement the following supply management measures:
 - (1) Reduce or discontinue flushing of water mains.
 - (2) Discontinue fire hydrant testing;
 - (3) Implement measures to return any system component to full production capability (i.e. water wells, booster pumps, etc.);
 - (4) Repair all existing main breaks.
 - (b) Demand management measures:
 - (1) The manager, or his/her designee, will contact wholesale water customer to discuss water supply and/or demand conditions and will request that wholesale water customers initiate voluntary measures to reduce water use (e.g., implement stage 1 of the customer's drought contingency plan).
 - (2) The manager, or his/her designee, will provide a weekly report to news media with information regarding current water supply and/or demand conditions, projected water supply and demand conditions if drought conditions persist, and consumer information on water conservation measures and practices.

B. *Stage 2—Moderate water shortage conditions.*

1. Goal: Achieve a seven percent reduction in total daily water use.
2. Supply management measures:
 - (a) In order to manage a limited water supply and/or reduce water demand, the city will implement the following supply management measures:
 - (1) All of the measures described for stage 1;
 - (2) Alternatively, discontinued irrigation of public landscaped areas, including parks and ball fields.
 - (b) Water use restrictions. Under threat of penalty for violation, the following water uses restrictions shall apply to all persons:
 - (1) Irrigation of landscaped areas with hose-end sprinklers or automatic irrigation systems shall be limited to Sundays and Thursdays for customers with a street address ending in an even number (0, 2, 4, 6, or 8), and Saturdays and Wednesdays for 1, 3, 5, 7, or 9). The irrigation of landscaped areas is further limited to the hours of 10:00 p.m. and 6:00 a.m. on designated watering days. However, irrigation of landscaped areas is permitted at anytime if it is by means of a hand-held hose, a faucet filled bucket or watering can of five gallons or less, or drip irrigation system.
 - (2) Use of water to wash any motor vehicle is prohibited except on designated watering days between the hours of 8:00 p.m. and 12:00 midnight. Such watering, when allowed, shall be done with a hand-held bucket or a hand-held hose equipped with a positive shutoff nozzle for quick rinses. Vehicle washing may be done at any time on the immediate premises of a commercial car wash or commercial service station. Further, such washing may be exempted from these regulations if the health, safety, and welfare of the public is contingent upon frequent vehicle cleansing, such as garbage trucks and vehicles used to transport food and perishables.
 - (3) Use of water to fill, refill, or add to any indoor or outdoor swimming pools, wading pools, or Jacuzzi-type pools is prohibited except on designated watering days between the hours of 10:00 p.m. and 6:00 a.m.
 - (4) Operation of any ornamental fountain or pond for aesthetic or scenic purposed is prohibited except where necessary to support aquatic life or where such fountains or ponds are equipped with a recirculation system.
 - (5) Use of water from fire hydrants shall be limited to fire fighting and related activities, or other activities necessary to maintain public health, safety, and welfare, except that use of water from designated fire hydrants for construction purposes may be allowed under special permit from the city.
 - (6) Use of water for the irrigation of golf course greens, tees, and fairways is prohibited except on designated watering days between the hours of 10:00 p.m. and 6:00 a.m. However, if the golf course utilizes a water source other than that provided by the city, the facility shall not be subject to these regulations.
 - (7) All restaurants are prohibited from serving water to its patrons except when requested.
 - (8) The following uses of water are defined as nonessential and are prohibited:
 - (i) Wash down of any sidewalks, walkways, driveways, parking lots, tennis courts, or other hard-surfaced areas.

- (ii) Use of water to wash down buildings or structures for purposes other than immediate fire protection;
 - (iii) Use of water for dust control;
 - (iv) Flushing gutters or permitting water to run or accumulate in any gutter or street; and
 - (v) Failure to repair a controllable leak(s) within a reasonable period after having been given notice directing the repair of such leak(s).
 - 3. Demand management measures:
 - (a) The manager, or his/her designee, will initiate weekly contact with wholesale water customers to discuss water supply and/or demand conditions and the possibility of pro rata curtailment of water diversions and/or deliveries.
 - (b) The manager, or his/her designee, will request wholesale water customers to initiate mandatory measures to reduce nonessential water use (e.g., implement the appropriate stage (usually stage 2) of the customer's drought contingency plan).
 - (c) The manager, or his/her designee, will initiate preparations for the implementation of pro rata curtailment of water diversions and/or allocation baseline for each wholesale customer according to the procedures specified in section 106-598 of the plan.
 - (d) The manager, or his/her designee, will provide a weekly report to news media with information regarding current water supply and/or demand conditions, projected water supply and demand conditions if drought persists, and consumer information on water conservation measures and practices.
- C. *Stage 3—Severe water shortage conditions.*
- 1. *Goal:* Achieve a nine percent reduction in total daily water use.
 - 2. *Supply management measures:* In order to manage a limited water supply and/or reduce water demand, the city will continue implementing all of the measures described for stage 1 and stage 2. Irrigation of public landscaped areas, included parks and ball fields shall be discontinued.
 - 3. *Demand management measures:*
 - (a) The manager, or his/her designee, will contact wholesale water customers to discuss water supply and/or demand conditions and will request that wholesale water customers initiate additional mandatory measures to reduce nonessential water use (e.g., implement the appropriate stage (usually Stage 3) of the customer's drought contingency plan).
 - (b) The manager, or his/her designee, will initiate pro rata curtailment of water diversions and/or deliveries for each wholesale customer according to the procedures specified in section 106-598 of the plan.
 - (c) The manager, or his/her designee, will provide a weekly report to news media with information regarding current water supply and/or demand conditions, projected water supply and demand conditions if drought conditions persist, and consumer information on water conservation measures and practices.

- D. *Stage 4—Emergency water shortage conditions.* Whenever emergency water shortage conditions exist as defined in section 106-596 of the plan, the manager shall;
1. Assess the severity of the problem and identify the actions needed and time required to solve the problem.
 2. Inform the utility director or other responsible official of each wholesale water customer by telephone or in-person and suggest actions, as appropriate, to alleviate problems (e.g., notification of the public to reduce water use until service is restored).
 3. If appropriate, notify city, county, and/or state emergency response officials for assistance.
 4. Undertake necessary actions, including repairs and/or clean-up as needed.
 5. Prepare a post-event assessment report on the incident and
 6. Critique of emergency response procedures and actions.

Sec. 106-598. - Pro rata water allocation.

In the event that the triggering criteria specified in section 106-596 of the plan for stage 3—Severe water shortage conditions have been met, the manager is hereby authorized to initiate allocation of water supplies on a pro-rate basis in accordance with V.T.C.A., Water Code § 11.039 and according to the following water allocation policies and procedures;

- (1) A wholesale customer's monthly allocation shall be a percentage of the customer's water usage baseline. The percentage will be set by resolution of the Nacogdoches City council based on the manager's assessment of the severity of the water shortage condition and the need to curtail water diversions and/or deliveries and may be adjusted periodically by resolution of the council as conditions warrant. Once pro rata allocation is in effect, water diversions by, or deliveries to, each wholesale customer shall be limited to the allocation established for each month.
- (2) A monthly water usage allocation shall be established by the manager, or his/her designee, for each wholesale customer. The wholesale customer's water usage baseline will be computed on the average water usage by month for the last five-year period as shown in the example given below. If the wholesale water customer's billing history is less than five years, the monthly average for the period for which there is a record shall be used for any monthly period for which no billing history exists.

Example Calculation of Monthly Allocation for a Hypothetical Wholesale Water Customer

	1994	1995	1996	1997	1998	SUM	AVE	Allocation Percentage	Monthly Allocation
Jan.									
Feb.									

March									
April									
May									
June									
July									
August									
Sept.									
Oct.									
Nov.									
Dec.									
Total									

(3) The manager shall provide notice by certified mail to each wholesale customer informing them of their monthly water usage allocations and shall notify the news media and the Executive Director of the Texas Commission on Environmental Quality upon initiation of the pro-rate water allocation.

(4) Upon request of the customer or at the initiative of the manager, the allocation may be reduced or increased if: (1) the designated period does not accurately reflect the wholesale customer's normal water usage; (2) the customer; agrees to transfer part of its allocation to another wholesale customer; or (3) other objective evidence demonstrates that the designated allocation is inaccurate under present conditions. A customer may appeal an allocation established hereunder to the Nacogdoches City Council.

Sec. 106-600. - Variances.

(a) The manager, or his/her designee, may in writing, grant a temporary variance to pro rata water allocation policies provided by this plan if it is determined that failure to grant such variance would cause an emergency condition adversely affecting the public health, welfare, or safety and if one or more of the following conditions are met:

(1) Compliance with this plan cannot be technically accomplished during the duration of the water supply shortage or other condition for which the plan is in effect.

(2) Alternative methods can be implemented which will achieve the same level of reduction in water use.

(b) Persons requesting an exemption from the provisions of this plan shall file a petition for variance with the city within five days after pro rata allocation has been invoked. All petitions for variances shall be reviewed by the manager, and shall include the following

- (1) Name and address of the petitioner(s).
- (2) Detailed statement with supporting data and information as to how the pro rata allocation for water under the policies and procedures established in the plan adversely affects the petitioner or what damage or harm will occur to the petitioner or others if petitioner complies with this division.
- (3) Description of the relief requested.
- (4) Period of time for which the variance is sought.
- (5) Alternative measures the petitioner is taking or proposes to take to meet the intent of this plan and the compliance date.
- (6) Other pertinent information.

(d) Variances granted by the city shall be subject to the following conditions unless waived or modified by the manager or its designee:

- (1) Variances granted shall include a timetable for compliance.
- (2) Variances granted shall expire when the plan is no longer in effect, unless the petitioner has failed to meet specified requirements.

(e) No variance shall be retroactive or otherwise justify any violation of this plan occurring prior to the issuance of the variance.

Sec. 106-601. - Severability and violations.

It is hereby declared to be the intention of the Nacogdoches City Council and the sections, paragraphs, sentences, clauses, and phrases of this plan are severable and, if any phrase, clause, sentence, paragraph, or section of this plan shall be declared unconstitutional by the valid judgment of decree or any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this plan, which shall remain in full force and effect, since the same would not have been enacted by the Nacogdoches City Council without the incorporation into this plan or any such unconstitutional phrase, clause, sentence, paragraph, or section.

That any person, firm, or corporation violating any of the provisions of this article shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine as provided in Ordinance No. 1252-4-01 of the Nacogdoches Code. Each day such violation shall continue, or be permitted to continue, shall be deemed a separate offense. Since this article has a penalty for violation, it shall become effective ten days after its publication.

DIVISION 3. - RETAIL SUPPLIER DROUGHT CONTINGENCY PLAN

Sec. 106-639. - Drought contingency plan water rates.

The following rates shall apply to all residential customers and all landscape irrigation meters. Water rates shall be the same as those listed in Sec. 106-321 with the following modifications:

- (a) Stage 2 residential and irrigation water use, inside and outside city limits
 - a. 10,001 – 30,000 gallons: 2 times the current rate
 - b. 30,001 – 75,000 gallons: 2.5 times the current rate
 - c. 75,001 gallons and above: 3 times the current rate
- (b) Stage 3 residential and irrigation water use, inside and outside city limits
 - a. 10,001 – 30,000 gallons: 2.5 times the current rate
 - b. 30,001 – 75,000 gallons: 3 times the current rate
 - c. 75,001 gallons and above: 4 times the current rate
- (c) Stage 4 residential and irrigation water use, inside and outside city limits
 - a. 10,001 – 30,000 gallons: 3 times the current rate
 - b. 30,001 – 75,000 gallons: 4 times the current rate
 - c. 75,001 gallons and above 5 times the current rate

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

CITY OF NACOGDOCHES

BY: _____
Randy Johnson, Mayor

ATTEST:

APPROVED AS TO FORM:

Rhonda Lewis, City Secretary

Jerry Baker, City Attorney

APPROVED AS TO CONTENT:

Casey Opperman, PE, City Engineer



PRESENTER: Todd Simoneaux

ITEM/SUBJECT: Consider approval of an agreement with Government Procurement and Leadership Solutions for as-needed procurement consulting services for an amount not-to-exceed \$20,000.00 (Interim Finance Director).

SUMMARY/BACKGROUND: The City seeks to utilize the experienced and qualified procurement consulting firm, Government Procurement and Leadership Solutions, for procurement consulting services on an as-needed basis. The consultant will assist in all requested matters pertaining to procurement of products and services. The consultant will also assist with best practice procurement consulting in a budgetary capacity as well as any and all statutory and legal requirements. Agreement term will be for the remainder of the 2024 Fiscal Year, and will be for an amount not to exceed Twenty Thousand and 00/100 (\$20,000.00) Dollars.

Government Procurement and Leadership Solutions is an award-winning firm specializing in best practices and strategic management that spans procurement, contract management, project management and more. Diane Palmer-Boeck, CPPO, PPMC, is the Founder and Principal Consultant. Diane Palmer-Boeck has amassed more than thirty years in professional procurement operations and maintains more than ten areas of expertise. More information can be found in Diane's CV (attached).

FINANCIAL:

Item is not budgeted

Amount: \$20,000.00

GL Account #: 01.05 630.71

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

Consulting Services

CITY CONTACT: Todd Simoneaux, Interim Finance Director
simoneauxt@nactx.us
(936) 559-2506

ATTACHMENTS:

1. Government Procurement and Leadership Solutions Agreement
City of Nacogdoches
2. Diane Palmer-Boeck CV

Consulting Services Agreement

This Consulting Services Agreement ("Agreement") is made effective as of the date of execution, by and between Government Procurement and Leadership Solutions, with a principal place of business located at 4653 Jones Street, Plano, Texas ("Consultant"), and the City of Nacogdoches, with a principal place of business located at 202 E Pilar St, Nacogdoches, TX ("Client").

1. Scope of Services

The Consultant agrees to provide consulting services related to public procurement ("Services") to the Client. These services will include, but are not limited to, advising on procurement strategies, developing and reviewing procurement documents, assisting in the evaluation of proposals, and providing recommendations to improve the Client's procurement processes.

2. Compensation

For the services rendered by the Consultant as required by this Agreement, the Client agrees to pay the Consultant an hourly rate of \$200. Payment shall be made within 30 days of receipt of an invoice from the Consultant. This agreement made by and between the Consultant and Client shall not exceed Twenty Thousand and 00/100 Dollars (\$20,000.00).

3. Term of Agreement

This Agreement will begin on the date of contract execution and will remain in full force and effect until September 30th, 2024 OR the not-to-exceed value has been met, unless earlier terminated as provided in this Agreement.

4. Termination

Either party may terminate this Agreement at any time by providing 30 days written notice to the other party.

5. Confidentiality

The Consultant will not disclose any information obtained in the course of providing the Services to any third party without the prior written consent of the Client.

6. Independent Contractor Status

The Consultant is an independent contractor, and nothing in this Agreement shall be deemed to create a partnership, agency, or employer-employee relationship between the Consultant and the Client.

7. Disclaimer

At no time shall the advice or services provided by the Consultant be considered as legal guidance. The Services are intended to offer assistance with public procurement based on the Consultant's expertise and experience. For legal advice, the Client should seek the services of a qualified attorney.

8. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without giving effect to any principles of conflicts of law.

9. Entire Agreement

This Agreement contains the entire agreement between the parties relating to the subject matter hereof and supersedes all prior agreements and understandings, whether oral or written, between the parties with respect to such subject matter.

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

Consultant:

Signature: *Diane Palmer-Boeck*

Name: Diane Palmer-Boeck

Date: 4/3/2024

Client: _____

Signature: _____

Name: _____

Title: _____

Date: _____

DIANE PALMER-BOECK, CPPO, PPMC

Plano, TX 75024 • Dpboeck5510@gmail.com • C: 214-293-1219

END-TO-END PROCUREMENT CONSULTANT

Director of Procurement & Project Management Operations, Team Builder & Leader ~ Portfolio and Program Manager ~

Client Engagement Manager ~ Contract Management and Administration

Collaborative, results-driven management professional with 25+ year career in overseeing the development and execution of critical procurement business operations, working directly with the C-suite team as a strategic partner and trusted advisor in devising and implementing strategic plans and financial processes that mitigate risks and position the city for future growth. Adept at identifying new opportunities, managing client projects from initial concept phase to final execution, and deploying new innovative and transformational procurement solutions that deliver game-changing business outcomes.

Areas of Expertise

- Procurement Planning & Analysis
- Strategic Cost Management
- Supply Risk Management
- Relationship Management
- Spending Management
- Opportunity Assessment
- Project Management
- Contract Negotiations
- Proposal & Bid Management
- Performance Evaluations / Analysis
- Staff Development
- Trainer / Public Speaker

Key Skill Assessments

- ✓ **Client Engagements** – managing all aspects of client engagements, including analyzing operational and financial data to identify issues and provide tailored solutions to improve productivity and achieve client’s goals.
- ✓ **Project Manager** – directing multiple concurrently running projects; interfacing with key stakeholders to define project scope, identify key drivers and create actionable plans to achieve defined objectives.
- ✓ **Strategic Problem Solver** – conducting strategic assessments, identifying gaps between ‘desired’ and ‘actual’ business performance and deploying both short and long-term transformation initiatives to overcome obstacles.
- ✓ **Relationship-BUILDER** – forging strategic partnerships with businesses and industry leaders, serving as a thought leader in implementing best practices procurement strategies and solutions
- ✓ **Data Analyst/Information Manager** – collecting and evaluating key procurement performance metrics to provide meaningful insights to the client that productivity and operational efficiency

PROFESSIONAL EXPERIENCE

GOVERNMENT PROCUREMENT AND LEADERSHIP SOLUTIONS

Founder & Principal Consultant, 4/2017 to Present

Highly sought-after industry thought leader, dedicated to the development/advancement of best practices and strategic management solutions spanning Procurement, Contracts Management, Inventory Control and Project Management operations. Adept at working closely with organization leaders to assess current operations, gather/analyze/interpret data and devise tailored on-site training solutions to support execution of continuous improvement initiatives.

Key Accomplishments:

- Develop and conduct “hands-on” training seminars that cover such topics as contract development, writing specifications, negotiating contract deliverables, evaluating bids, establishing centralized procurement operations and project management.
- Provide ongoing coaching to executives as Subject Matter Expert (SME) regarding strategic planning and implementation of PMO / Procurement best practices, ensuring adherence to procurement laws and regulations.
- Prepare and conduct regular training seminars for such organization as Government Finance Association of Texas (GFOAT), National Procurement Institute (NPI), Institute for Supply Management (ISM), and Texas Public Purchasing Association (TXPPA).
- Serve as guest lecturer and instructor on government procurement at the LBJ School of Public Affairs.

Continued...

CITY OF PLANO, Plano, TX

1/1998 - Present

Director of Procurement & Project Management, 12/2015 to Present

Built solid career of accomplishment and promotion within the city of Plano, ranked #1 as the "Best Places to Live in 2018", earning a promotion to serve as the city's first Director of Procurement, charged with overseeing and directing daily operations and activities of the Purchasing, Project Management, Contracts Management, and Inventory Control and Asset Disposal Divisions. Work closely with City Manager and department heads to plan, develop, and coordinate all purchasing strategies to support execution of citywide portfolio of projects/initiatives valued at over \$200M. Define and communicate department vision and best practices, inspiring team of six direct reports and 33 staff members to buy into the new processes and achieve key objectives. Develop and administer budgets. Establish/maintain vendor relations, monitor scorecards and source new suppliers as needed to meet forecasted material and equipment needs. Track, monitor, and report all divisional success to senior leadership team.

Key Accomplishments:

- Credited for driving the process to centralize new Project Management Office division and Contract Management division, ensuring timely integration of new legislation/laws into current procurement policies and procedures.
 - The new program streamlined purchasing and execution of citywide technology solutions and led to consolidating the contract management processes for all citywide construction contracts.
- Utilize critical thinking to offer alternate strategies due to changing conditions. Identify areas for improvement to continually drive performance and business results.
- Serve as an advisor to management team in streamlining operations and realizing significant cost savings by centralizing procurement functions and integrating fleet services with centralized parts/inventory control room.
- Increased divisional performance by proactively managing multimillion-dollar competitive bidding process for all technology purchases and acquiring various goods/services needed to support citywide portfolio of projects.
- Serve as an internal advisor to other City departments regarding project implementation and performance.
- Provide guidance to department heads on allocating resources, identifying and mitigating risks, and managing financials related to procurement, contract management, inventory control and project management functions.
- Play a key role in the City of Plano earning the "AEP" Award each year since its inception in 1995.

Chief Procurement Officer, 12/2010 to 12/2015

Excelled as Senior Operating Executive responsible for the management, administration, and supervision of the city's entire procurement and acquisition programs, including overseeing the day to day operations of the Procurement, Inventory Control and Fleet Services divisions. Provide direct leadership/guidance to the purchasing team, ensured all procurement policies and procedures adhered to all laws/legal regulations. Sourced, established, and maintained relations with suppliers and vendors. Negotiated contracts, schedules, and payments.

Key Accomplishments:

- Centralized the overall city procurement operations for citywide portfolio of project valued \$200M.
- Aggressively utilized economies of scale to negotiate the purchase of supplies and equipment at a better price.
- Instrumental in leading and developing Small, Minority, Women Owner Business Outreach Program.
- Developed and implemented SOW/SOO document procedures to ensure contracts complied /met expectations.
- Recipient of the NIGP Outstanding Agency Accreditation Award from 2008 to 2011.

ADDITIONAL EXPERIENCE**Purchasing Manager, 8/2004 to 11/ 2010**

Promoted to supervise execution of procurement and purchasing activities; coordinating the bid and award process across all departments; established strategic purchasing policies, identified processes and system improvements for sourcing new vendors and negotiating contract pricing to realize cost savings; coordinated preparation and execution of contracts, conducted price analysis and evaluated contracts regarding all large purchase agreements; worked directly with city officials to develop supplier and material forecasts.

Purchasing Agent, 1/1998 to 7/2004

Recruited to evaluate and analyze suppliers based on product/service price, quality, and speed of delivery; negotiated contracts and agreements with suppliers to acquire goods and services at the lowest cost; monitored vendor and supplier performance to ensure compliance with terms and conditions of the contract.

*Experience gained as **Purchasing Agent** for the City of Rockwall, Rockwall, TX and the U.S. Government at Fort Hood, Texas and Redstone Arsenal, Alabama (1990-1997)*

EDUCATIONAL BACKGROUND

Graduate Certificate in Public Management - UNIVERSITY OF TEXAS AT DALLAS, Richardson, TX

Bachelor of Arts in Communication - EDINBORO UNIVERSITY, Edinboro, PA

Professional Certifications:

Certified Public Procurement Officer (CPPO) - National Association of Governmental Purchasers (2009-Present)

Program & Portfolio Management Advanced Certification (PPMC)

Project Management Leadership Group (2019)

Professional Associations:

~ Founding Member of National Council for Public Procurement and Contracting (NCPPC)

~ National Institute of Governmental Purchasing • Member of the Leadership Development Committee (9/2018-Present)
• Member of the Board of Examiners/CPPO Writing Task Force (6/2010-2014) • Member of the Education Committee (7/2007-8/2009)

~ Member of National Purchasing Institute (NPI) • Recipient of the Achievement of Excellence in Procurement Award (1998-2013) • Awarded "Carlton N. Parker Award" for outstanding contributions to the public procurement profession (2016) • Served on the Board of Directors (1998-2006) Served as President (2005-2006)

PRESENTER: Colin Smith, Airport Manager

ITEM/SUBJECT: Consider approval of an Aviation Fuel general services contract with Titan Aviation Fuels for A. L. Mangham Jr. Regional Airport. (Airport Manager)

SUMMARY/BACKGROUND: The City's A. L. Mangham Jr. Regional Airport contracts with an aviation fuel distributor for the wholesale fuel it purchases for resale. The distributor not only provides fuel products, but it also provides fuel trucks for dispensing fuel at the airport, marketing assistance, and point of sale support and processing. The current contract for these services is with Titan Aviation Fuels, and that contract expires May 23, 2024.

The City of Nacogdoches issued an aviation fuel services request for proposals (RFP) due March 7, 2024. On March 19, a committee consisting of the Airport Manager, the City's Purchasing Contract Specialist, and two Airport Advisory Board members reviewed the proposals received, and then recommended to pursue a new contract with Titan Aviation Fuels.

The proposed contract is for a term of three (3) years with the option to renew for two (2) additional one (1) year terms for a total of five (5) years. The proposed contract stipulates payments for services not to exceed \$725,000 per year. The amount of wholesale fuel purchased by the City is dictated by sales of fuel at the airport, so it will only buy what it plans to resale based on current demand. The wholesale prices the City will pay for fuel will fluctuate with publicly published benchmark price references, but the distributors' markup (differential) is locked for the terms of the contract. The airport sells fuel at a markup that considers the wholesale price paid and also competing prices at other similar sized airports. Profits from fuel sales support the operating budget of the airport.

FINANCIAL:

Item is budgeted:

Account No.: 32.13.610.21

Account Name: *Aviation Fuel*

Amount: \$500,000

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. RFP 24-10-114 - Aviation Fuel Services
2. Contract 24-10-114 Aviation Fuel Services - Titan Aviation Fuels -



REQUEST FOR PROPOSALS

24-10-114

Aviation Fuel Services

Proposals must be received before:

2:00 P.M. Thursday, March 7th, 2024

CITY OF NACOGDOCHES, TEXAS

A.L. MANGHAM JR. REGIONAL AIRPORT

Refer Inquiries To:

Colin Smith
City of Nacogdoches
Airport
936-560-9567
Email: smithcm@nactx.us
With copies to: Drew Flores
Email: floresd@nactx.us

City of Nacogdoches – Airport

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I. GENERAL

The City of Nacogdoches seeks to enter into an agreement with a qualified Individual, Firm or Corporation (Proposer) with substantial and relevant experience and expertise to provide Aviation Fuel Services.

II. DEFINITIONS

A. DEFINITIONS

In order to simplify the language throughout this request for proposal, the following definitions shall apply:

Airport- The City of Nacogdoches A.L. Mangham Jr. Regional Airport

City of Nacogdoches – Same as City

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

Contract – An agreement between the City and the successful Proposer to furnish the services described herein

City – The government of the City of Nacogdoches, Texas

Firm – the successful Proposer of this request

Proposer – Respondents to this Request for Proposal

RFP – Request for Proposal

III. NOTICE to PROPOSERS

A. NOTICE

Sealed Proposals are due at **2:00 PM on Thursday, March 7th, 2024** after which time all qualified proposals will be acknowledged at 202 East Pilar Street, City Manager Conference Room, Nacogdoches, Texas 75961. Proposals received after the specified deadline will be returned unopened.

Four printed copies (1 original and 3 duplicate copies) of proposals must be provided.

Sealed proposals shall be clearly marked with the RFP number and title and addressed to the City of Nacogdoches – Airport Department. Proposals shall be delivered using one of the following:

Hand-deliver to:

City of Nacogdoches
Finance Department
202 East Pilar St. Ste 335
Nacogdoches, TX 75961

Ship to (FedEx, UPS, DHL, etc.):

City of Nacogdoches
Finance Department
202 East Pilar St. Ste 335
Nacogdoches, TX 75961

Vendors may receive notice of solicitations from the City of Nacogdoches from a variety of channels. Approved methods of dissemination include: City of Nacogdoches website, the City of Nacogdoches Airport or City of Nacogdoches Finance Department. The receipt of solicitations through any other means may result in the receipt of incomplete specifications or addenda which could ultimately render your Proposal non-compliant. City of Nacogdoches accepts no responsibility for the receipt or notification of solicitations through any other source.

B. QUESTIONS and INQUIRIES

Questions and inquiries about this Solicitation shall be submitted in writing via email to the following point of contacts:

Drew Flores
Finance Department
Email: floresd@nactx.us

Colin Smith
Airport
smithcm@nactx.us

The deadline for written questions is **March 1st, 2024, at 2:00 P.M.** This deadline has been established in order to provide adequate time for City staff to prepare responses to questions from Proposers to the best of their ability in advance of the Pre-Proposal Conference meeting, if such meeting is called and held.

Proposers shall not attempt to contact City Council members, City staff or Management directly during the pre-proposal or post-proposal period. The City intends to respond to all appropriate questions or concerns; however, the City reserves the right to decline to respond to any question or concern. All material modifications, clarifications or interpretations will be incorporated into an addendum which will be publicly posted. All addenda issued prior to the due date and time for responses are incorporated into the RFP and must be acknowledged in the Proposal response. Only written information provided shall be binding. Oral or other interpretations shall not be binding and are held without legal effect.

C. SCHEDULE of IMPORTANT DATES

The City will generally comply with the following schedule for the selection process, subject to changes necessary to ensure fairness and to accommodate unanticipated events:

Release RFP Advertisement		February 14, 2024
Second Notice Advertisement		February 21, 2024
Deadline for Questions and Inquiries	2:00 PM	March 1, 2024
Proposals Closing Date and Time	2:00 PM	March 7, 2024
City’s Review of Proposals		March 11, 2024
Earliest Award by City		April 9, 2024

D. FINALIST INTERVIEWS and/or PRESENTATIONS

Following any presentation and/or interviews, proposals will be ranked in order of preference and contract negotiations will begin with the top ranked Firm. Should negotiations with the highest ranked Firm fail to yield a contract, or if the Firm is unable to execute the City’s contract, negotiations will be formally ended and then commence with the second highest ranked Firm, etc. However, the City, may in its sole discretion, negotiate and award a contract without presentations or interviews, based solely on information supplied in the proposal responses.

IV. STANDARD TERMS and CONDITIONS

A. DISCLOSURE

At the due date and time there will be no disclosure of contents of any Proposal to competing Proposers, and all Proposals will be kept confidential during the negotiation process. Except for trade secrets and confidential information which the Firm identifies as proprietary, all Proposals will be open for public inspection after the contract award.

B. DISCLOSURE of INTERESTED PARTIES

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

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

1. The disclosure of interested parties must be performed using the [Texas Ethics Commission's electronic filing application](#) listing each interested party of which the business entity is aware on Form 1295, obtaining a certification of filing number for this form from the TEC, and printing a copy of it to submit to the City.
2. The copy of Form 1295 submitted to the City must be notarized and contain the unique certification number from the TEC. The form must be filed with the City pursuant to §2252.908 Texas Government Code, "at the time the business entity submits the signed contract" to the City.
3. The City, in turn, will submit a copy of the disclosure form to the TEC not later than the 30th day after the date the City receives the disclosure of interested parties from the business entity.

C. MANAGEMENT

Should there be a change in management after the due date and time, but before a contract is awarded, Proposers must notify the City immediately. This may result in further evaluation. Should a change in management occur after the contract is awarded, the contract shall be canceled unless a mutual agreement is reached with the new owner or manager to continue the contract. Any resulting contract is nontransferable by either party.

D. PERSONAL INTEREST

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

E. PRIORITY of DOCUMENTS

In the event there are inconsistencies between the RFP terms and conditions, scope of work or Agreement terms and conditions contained herein, the latter will take precedence.

F. RECEIPT of PROPOSALS

Proposal(s) must be received by the City prior to the time and date specified. The mere fact that the Proposal was dispatched will not be considered; the Firm must ensure that the Proposal is actually delivered. The time proposals are received shall be determined by the time clock stamp in the Finance Department.

G. REIMBURSEMENTS

There is no express or implied obligation for the City of Nacogdoches to reimburse responding Proposers for any expenses incurred in preparing Proposals in response to this request and the City of Nacogdoches will not reimburse firms for these expenses, nor will the City pay any subsequent costs associated with the provision of any additional information or presentation, or to procure a contract for these services.

H. REPRESENTATIONS and RESPONSIBILITIES

By submitting a proposal in response to this RFP, Proposer represents that it has carefully read and understands all elements of this RFP; has familiarized itself with all federal, state, and local laws, ordinances, and rules and regulations that in any manner may affect the cost, progress, or performance of the work; and has full knowledge of the scope, nature, quality and quantity of services to be performed.

By submitting a proposal in response to this RFP, the Proposer represents that it has not relied exclusively upon any technical details in place or under consideration for implementation by the City, but has supplemented this information through due diligence research and that the Proposer sufficiently understands the issues relative to the indicated requirements.

The failure or omission of Proposer to receive or examine any form, instrument, addendum, or other documents or to acquaint itself with conditions existing at the site or other details shall in no way relieve any Proposer from any obligations with respect to its proposal or to the contract.

I. STANDARD FORM of AGREEMENT

The City's Standard form of Agreement is attached as Exhibit A. The successful Firm will be required to execute this Agreement. All Proposers shall be required to thoroughly read and understand the terms, condition and provisions in this Agreement. All required Certificates of Insurance and endorsements will be required before award recommendation is taken to City Council. Any exceptions taken to the City's Standard Form of Agreement must be indicated in your Response. Failure to note any exceptions will be acknowledgement that you accept the terms and condition without modifications.

J. VENUE

Any contract awarded as a result of this RFP shall be governed by and construed in accordance with the laws of the State of Texas, and is fully performable in Nacogdoches, Texas, and venue for any action related to this contract will be Nacogdoches County, Texas.

K. WITHDRAWAL of PROPOSALS

A proposal may be modified or withdrawn by the Proposer any time prior to the time and date set for the receipt of proposals in accordance with the following guidelines.

1. Proposer shall notify the Finance Department in writing of its intention to withdraw a previously submitted proposal.
2. If a change in the proposal is requested, the modification must be worded by the Proposer as to not reveal the original amount of the proposal.
3. Proposals withdrawn and modified must be resubmitted to the Finance Department no later than the time and date set for the receipt of proposals.
4. No proposal can be withdrawn after the time set for the receipt of proposals and for a minimum of ninety (90) days thereafter.

V. BACKGROUND and CURRENT CIRCUMSTANCES

A. CITY of NACOGDOCHES

Nacogdoches is a small city in East Texas and the county seat of Nacogdoches County, Texas, United States. The 2010 U.S. Census recorded the city's population to be 32,996. The A.L. Mangham, Jr. Regional Airport, located one mile outside Loop 224 off State Highway 7 west, Nacogdoches, TX provides a wide range of professional services for the local and transient flying public. These services include aircraft fueling, flight training and maintenance. The airport is serviced by runway 18-36, which has an asphalt surface and is 5001 feet by 75 feet in length. It is equipped with a precision instrument approach and is capable of serving aircraft from the smallest single engine to larger corporate jets.

B. CURRENT CIRCUMSTANCES

The City of Nacogdoches current Aviation Fuel Contract is expiring. The City is soliciting proposals for a new Aviation Fuel Contract.

VI. SCOPE of WORK

SCOPE OF SERVICES: The scope of services, as may be modified through negotiations and/or by written addenda, shall include, but not be limited to, the following:

Major Name Branding Authority. Proposer must be a nationally known name brand that is prominent and well recognized in the business and general aviation industry. The Proposer must have extensive experience in the scope outlined herein with similar sized and fuel volume airports. The Airport is currently branded with Titan Aviation Fuels.

Credit Card and Systems Plan. To include a point of sale (POS) card reading machine for the Airport office and possible future self-service sale point if replacement is needed. This system must be compatible with QTPOD and airport office equipment and infrastructure. All major credit cards,

aviation cards, and federal government/military AIRCARD shall be accepted. The credit card system must also allow for non-fuel related airport charges. A toll-free credit card authorization service shall be included. Firm supported web-based fuel, merchandise, and airport service sales processing and tracking systems shall be provided or available for use by Airport staff in Airport sales and inventory management. Firm shall provide detailed daily reporting of sales transactions and merchant reimbursements to the City for accounting purposes, and those shall include all credit card fees, product type, aircraft tail number, date/time, and gallons purchased.

Wholesale Supply of Jet-A With Pre-blended Additive (FSII) and 100LL Aviation Fuels. Fuels shall be delivered to the Airport, 556 Terry Crawford Drive, Nacogdoches, TX 75964, by professional, certified, licensed haulers in dedicated aviation fuel tanker trailers. Fuel deliveries will be routinely accepted Monday through Friday, between the hours of 9:00 a.m. and 4:00 p.m.

The Airport currently owns and operates from:

- One (1) 12,000 gallon JetA ground tank
- One (1) 12,000 gallon 100LL AvGas ground tank
 - o both tanks are fitted with pumps and valving capable of offloading fuel deliveries.

Fuel shall be delivered free from contamination and meeting all current standard industry specifications. Each fuel delivery must be accompanied by a specification sheet for the product, a complete manifest, and bill of lading containing gross and net gallons, temperature at receipt of load, certificate of analysis, and batch API gravity. Fuel deliveries may be tested upon arrival and rejected if they fail, at the City's sole discretion. If a load is rejected, the Firm shall bear all costs of rejected loads, including freight/delivery costs.

Firm is expected to regularly deliver fuel within 48 hours from order with the exception of weekends and holidays. Weekend and holiday delivery, 24 hour rush delivery, and partial loads must be non-routine options for the City. Proposer shall name primary and back-up fuel terminals for this project. Wholesale fuel price changes shall be set and disclosed by the Firm to the City on a routine basis, weekly preferred, and the prices in the update notice shall be total delivered price per gallon (including all markup, differential, fees, freight, and taxes). The City prefers an encourages that annual fuel filter replacement and meter calibrations for truck refuelers and ground tank/self serve farms is provided by the Firm at no cost to the City for the term of the contract to bolster quality control.

The Airport makes no guarantee as to the quantity of Jet A or Avgas fuel to be purchased for resale. A history of Jet A and Avgas gallons purchased from October 1, 2021 through September 30, 2023 is provided below:

Jet A w/additive – 79,079 gallons (FY 2022-2023)
Jet A w/additive – 76,580 gallons (FY 2021-2022)
100LL Avgas – 60,613 gallons (FY 2022-2023)
100LL Avgas – 45,512 gallons (FY 2021-2022)

Refueler Lease. Firm shall provide, via a monthly lease agreement with the City, a Jet truck refueler and an Avgas truck refueler. The City currently leases a 3000-gallon Jet truck refueler and a 1000-gallon Avgas refueler from Titan Aviation Fuels and proposals shall be based on trucks of same or similar size.

If not brand new, the Jet truck refueler and Avgas refueler are required to be refurbished and fully serviced prior to delivery. Refurbished includes all wear parts restored or replaced to working order and in near new condition. Service includes new fuel dispensing system filters. All proposed refuelers shall be ready for delivery to the City on or prior to day one of the contract term unless negotiated otherwise. Proposer shall provide temporary back-up refuelers same or next day in the case of prolonged repair or to meet special needs. The City prefers and encourages that annual fuel filter replacement and meter calibrations for truck refuelers and ground tank/self-service farms is provided by the Firm at no cost to the City for the term of the contract to bolster quality control.

Marketing Support. The successful proposer will be expected to provide marketing support to the Airport. Examples of expected marketing includes lighted logo signage; co-advertising, press release, social media, industry publication programs; available pilot “points,” stamp, contract fuel, reward, or coupon programs; web-site listings; windsocks, umbrellas, employee hats and shirts; etc. Proposer shall list all costs or fees for this support, if any.

Training and Technical Support. The Firm will provide training materials (books, manuals, online content, classes, seminars, etc.) and programs to assist in the training of fuel handlers and airport personnel, including technical support in learning and resolving equipment, software, and quality control issues. Seminars and onsite airport training are preferable. Same day live phone assistance and support for fuel related troubleshooting, fuel quality control, transaction, and refueler truck equipment issues shall be included. At minimum, annual complementary pre-scheduled onsite airport visits by Firm for training, inspection, quality control, and support are expected. Said visits shall be performed by highly trained and capable technical Firm staff or sub-contractor in the areas they are training, supporting or inspecting.

VII. SUBMISSION REQUIREMENTS

The City will not accept oral proposals, or proposals received by telephone or FAX machine. Proposals must be prepared simply and economically, providing a straightforward, concise description of Proposer's ability to meet all requirements and specifications of this RFP. Emphasis should be focused on completeness, clarity of content and responsiveness to all requirements and specifications of this RFP.

The proposal must be submitted in hard copy. Proposer shall submit 1 original and 3 copies of the entire proposal.

The City of Nacogdoches requires comprehensive responses to every section within this RFP. To facilitate the review of the responses, Respondents shall follow the described format. The intent of the proposal format is to expedite review and evaluation. It is not the intent to constrain Proposers with regard to content, but to assure that the specific requirements set forth in this RFP are addressed in a uniform manner amenable to review.

TAB A FIRM BACKGROUND and CAPACITY TO PERFORM

1. Briefly introduce your Firm including the number of years in business
2. Provide a summary of the administration, organization and staffing of your Firm, including multiple offices, if applicable
3. Include the same for any associate firm or sub-consultant
4. Provide a description of your Firm's partnerships and/or relationships with fuel shipping/delivery companies for our region, fuel terminals, QTPOD, quality control laboratories, and any other entities that add value, capacity and capability to your Firm's performance in serving our airport.
5. Include a brief description of your Firm's related business offerings beyond the scope herein, if any (fueling related parts sales, fueling related service or maintenance, insurance, engineering support, etc.)
6. Include a map or list showing all regional or national Firm affiliated/branded airport locations
7. Describe your Firm's experience and all past contracts with the City of Nacogdoches.
8. Provide at least six (6) name and contact information references from different affiliated/branded airports in the region branded by and under similar contract with your Firm.

TAB B MARKETING SUPPORT, CREDIT CARD, and SYSTEM PLAN

1. Describe at least three (3) projects that are complementary in nature to this project. References for each project should be included (preferably other city, town or local governments in Texas that the proposer has provided services to).

2. Describe the experience of the Firm in the last thirty-six (36) months in performing services of similar scope and size.
3. Describe the marketing and branding strategy and/or contributions to help support and expand our business. Identify the people who will compose the marketing support team.
4. Describe in detail an implementation and startup plan that will provide a smooth transition in the case of a change from the current fuel provider with no interruption in services to the City and Airport.
5. Disclose all major credits cards, mainstream contract fuel cards, and military fuel cards (including AIRCARD) not accepted by the Proposer or compatible with the Proposer's POS equipment/software.
6. Describe the Firm's credit card and sales tracking, processing, reporting, reimbursement, and accounting systems, interfaces, compatibilities, and equipment.

TAB C TRAINING and TECHNICAL SUPPORT

1. Provide a narrative description of the Firm's plan to accomplish the work and services to be provided to the City.
2. Clearly acknowledge your understanding of the scope of work, including a detailed approach to providing these services
3. Clearly acknowledge that your services will be compatible with our existing software and infrastructure, specifically those related to QTPOD.
4. Clearly identify training seminars, materials, on-site training, and knowledge resources that the Firm will provide to the City along with this service.
5. Provide a description of the technical, quality control, and troubleshooting phone based and on-site support that will be provided and available to the City along with these services.
6. Clearly distinguish the Firm's duties and responsibilities and those of the City. Absence of this distinction shall mean the Firm is assuming full responsibility for all tasks.

TAB D COST PROPOSAL

1. Provide a detailed line-item cost proposal as specified and broken down below for the day of December 5th 2023, separately for both 100LL AvGas and JetA w/additive fuels.
 1. Platts Reference Price per gallon
 2. Proposer's Markup (Differential + Markup) price per gallon
 3. Taxes price per gallon
 4. Fees (if any and excluding freight) price per gallon
 5. Freight Fee price per gallon

Price shall be the price in effect at the time of delivery and based on the formula price using Platts, U.S. Gulf Coast pipeline mid using Monday through Friday average effective on Tuesday, plus proposer's markup per gallon, plus tax in effect. The City is exempt from state sales tax. Quote F.O.B. delivered to storage tanks, A.L. Mangham Jr. Regional Airport, Nacogdoches Texas, with delivery and unloading charges prepaid. Proposer shall bear freight charges. Proposer shall provide a published specification for each fuel in their cost proposal.

2. Refuel Truck lease fees must be estimated and submitted separately from fuel fees. Cost proposal shall include the year, make, model, tank size, and detail major equipment for each fueler proposed. Multiple proposal options of both new trucks and non-new trucks for consideration is encouraged, if available. **For consistency, proposals shall be listed in the following categories based on age of truck: New (less than one (1) year), Non-New (one (1) to six (6) years), and Non-New (six (6) plus years).** Costs for temporary refuelers in the case of prolonged repair or special need, if any, shall be described in the proposal. List in detail what refueler parts or systems, beyond engine and transmission, are included to be repaired or replaced at the Proposer's cost if they fail during normal use within the lease term. List any routine maintenance or wear parts replacement with frequency, if any, that is included in the lease. List any costs to the City for early termination of the lease, if any, should the City decide to no longer lease either the Jet truck refueler or the Avgas truck refueler. Also list separately the included incentive fee waiver periods or credits for refuelers, and temporary relief or back-up refueler fees, if any.
3. Airport sales/credit card systems and software, in office and online, set up and operating fees or subscriptions, if any, shall be submitted separately from fuel fees.
4. Describe and list the credit cards accepted and the % transaction/service fee and other fees associated with each card, including proposer's branded card and any fee differences for qualified/non-qualified transactions. Proposer shall describe all charge back stipulations in proposal and describe card reimbursement timing and method of transferring funds to the City. Card transaction/service fees will be considered in evaluating fuel price proposals as a considerable portion of Airport fuel sales are by card transaction.
5. Marketing fees to the airport, if any, shall be disclosed in the proposal.

6. The actual contract amount will be negotiated after the Firm has been selected and the scope of work finalized. After negotiations are finalized, the fuel markup shall not exceed the negotiated amount for the contract term including any renewal periods.

TAB E COMMENTS/CHANGE REQUESTS to STANDARD FORM of AGREEMENT

A copy of the City's Standard Form of Agreement is attached to the RFP. Please provide any comments or change requests to the Agreement with the proposal submittal. Failure to submit requested changes will affirm that the Firm willing to execute the Agreement without modification.

TAB F CERTIFICATION and ACKNOWLEDGEMENT PAGE

VIII. EVALUATION and SELECTION PROCESS

The City has attempted to provide a comprehensive statement of requirements through this RFP for the engagement. Written proposals must present Proposer's qualifications and understanding of the work to be performed. Proposers are asked to address each evaluation criteria and to be specific in presenting their qualifications. Proposals must be as thorough and detailed as possible so that the City may properly evaluate capabilities to provide the requested services.

Selection may be made of one or more Proposers deemed to be fully qualified and best suited among those submitting proposals. Presentations and/or interviews may be conducted by one or more Proposers selected. The City reserves the right to award based on the responses received or to negotiate with any or all of the Proposers selected. Price shall be considered, but shall not be the sole determining factor. The City shall select the Proposer which, in the City's opinion, has made the Proposal most beneficial to the City for award. Should the City determine in writing and in its sole discretion that only one Proposer is fully qualified or that one Proposer is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that Proposer. The executed Agreement will incorporate all the requirements, terms and conditions of the solicitation and the Proposer's proposal as negotiated.

The City has established specific, weighted criteria for selection. This section presents the evaluation criteria, description, and relative weight assigned to each (100 points maximum). The City will evaluate each Proposer's responses to the requirements contained in this RFP.

Clarity and Quality of Proposal

Pass/Fail

Firms must provide comprehensive responses to every section within this RFP in the described format. It is not the intent of the City to constrain Firms with regard to content, but to assure that the specific requirements set forth in this RFP are addressed in a uniform manner amenable to review and evaluation. Failure to do so may result in your Proposal being disqualified from further review and consideration.

Firm Background and Capacity to Perform

20 points

Marketing Support, CC, and System Plan

10 points

Training and Technical Support

20 points

Cost Proposal

50 points

TOTAL POINTS AVAILABLE

100 POINTS

By submission of a proposal, Proposer acknowledges acceptance of the evaluation process, the evaluation criteria, scope of work, approach and methodology, and all other terms and conditions set forth in this RFP. Further, Firms acknowledge that subjective judgements must be made by the City during this process.

The City makes no guarantees or representations that any award will be made and reserves the right to cancel this solicitation for any reason, including:

- Reject any and all proposals received as a result of this RFP.
- Waive or decline to waive any informality and any irregularities in any proposal or responses received.
- Negotiate changes in the Scope of Work or services to be provided.
- Withhold the award of contract(s).
- Select Proposer(s) it deems to be most qualified to fulfill the needs of the City. Proposer(s) with the lowest priced proposal(s) will not necessarily be selected, since a number of criteria other than price are important in the determination of the most acceptable proposal(s).
- Terminate the RFP process

IX. CERTIFICATION and ACKNOWLEDGEMENT

The undersigned, as an authorized agent of the proposer, hereby certifies:

- () The Proposer is in receipt of _____ addenda.
- () The Proposer is familiar with all instructions, terms and conditions, and specifications stated in this RFP, including the following:
 - () The Proposer has reviewed the City's Professional Services Agreement released with this RFP (Attachment A), which Agreement will form the basis of any contract for the performance of the work. **Any requests for modifications are included in the proposal by way of response included in TAB E.**
- () The Proposer is qualified to perform the work and services outlined in this RFP.
- () The proposal has been arrived at independently and submitted without collusion with any other Proposer, City staff or City contractor, and the contents of the proposal have not been communicated by the Proposer or, to the Proposer's best knowledge and belief, by any one of its employees or agents to any person not an employee or agent of the Proposer, and will not be communicated to any person prior to the City's final action on this RFP by City Council. Nothing in this paragraph shall be construed to prevent or preclude two or more companies or persons from joining together to submit a proposal for the work.
- () The offers, terms and conditions of the proposal will remain valid and effective and may be relied upon by the City for a period of ninety (90) days following the Proposal Closing Date and Time as identified in this RFP or addenda.
- () The Proposer certifies that it: i) does not boycott Israel; and ii) will not boycott Israel during the term of the Agreement subject to § 2270.002 Texas Government Code.

Signed By: _____ Title: _____

Typed Name: _____ Company Name: _____

Phone No.: _____ Fax No.: _____

Email: _____

Bid Address: _____

P.O. Box or Street City State Zip

Order Address: _____

P.O. Box or Street City State Zip

Remit Address: _____

P.O. Box or Street City State Zip

Federal Tax ID No.: _____

DUNS No.: _____

Date: _____

EXHIBIT A
STANDARD FORM OF AGREEMENT

CITY OF NACOGDOCHES
GENERAL SERVICE CONTRACT

This General Service Contract is by and between the City of Nacogdoches, a Texas Home-Rule Municipal Corporation (the “City”), and **Insert Contractor** (the “Contractor”), for the following work: **Insert Description of Work** as described in the Scope of Services attached as Exhibit “A”.

ARTICLE I
PAYMENT AND TERM

1.1 Consideration. In consideration for the services performed in the Scope of Services and Contractor’s completion of work in conformity with this Contract, the City shall pay the Contractor an amount not to exceed **XXXXXXX and XX/100 Dollars (\$00,000.00)**. In no event shall payment under this contract exceed appropriations made by City Council.

1.2 Payment Application. Within **seven (7)** calendar days of completion of the services the Contractor will submit its payment application to the City.

1.3 City’s Payment and Approval. The City will pay the Contractor as shown in **Exhibit “B”** Payment Schedule, for the services performed no later than **thirty (30)** calendar days from the date of the City’s receipt of the payment application and the City’s approval of the services.

1.4 Time is of the Essence. The Contractor must complete all the services described in the Scope of Services by the following dates: **Insert Dates**.

OR

1.4 Term. The initial term of the Contract is for one (1) year with the option to renew for two (2) additional one (1) year terms for a total of three (3) years. Any renewal must be in writing and executed by the parties. If, for any reason, funds are not appropriated to continue the contract, the contract shall become null and void and shall terminate.

1.5 Executed Contract. The “Notice to Proceed” will not be given nor shall any work commence until this Contract is fully executed and all exhibits and other attachments are completely executed and attached to the Contract.

ARTICLE II CHANGE ORDERS

2.1 Changes will not be made, nor will invoices for changes, alterations, modifications, deviations, or extra work or services be recognized or paid, except upon the prior written order from authorized personnel of the City. The Contractor will not execute change orders on behalf of the City or otherwise alter the financial scope of the services except in the event of a duly authorized change order approved by the City as provided in this Contract.

(a) City Manager Approval. When the original Contract amount plus all change orders is \$50,000 or less, the City Manager or his designee 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 of the City must approve such change order prior to commencement of the services or work; and

(b) City Council Approval. When the original contract amount plus all change orders is equal to or greater than \$50,000, the City Manager or his designee 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 amount, the City Council of the City must approve such change order prior to commencement of the services or work.

(c) Increase in Scope. Any request by the Contractor for an increase in the Scope of Services and an increase in the amount listed in Article II of this Contract shall be made and approved by the City prior to the Contractor providing such services or the right to payment for such additional services shall be waived.

(d) Dispute. If there is a dispute between the Contractor and the City respecting any service provided or to be provided hereunder by the Contractor, including a dispute as to whether such service is additional to the Scope of Services included in this Contract, the Contractor agrees to continue providing on a timely basis all services to be provided by the Contractor hereunder, including any service as to which there is a dispute.

ARTICLE III INDEPENDENT CONTRACTOR AND SUBCONTRACTORS

3.1 Independent Contractor. It is understood and agreed by the parties that the Contractor is an independent contractor retained for the services described in the Scope of Services. The City will not control the manner or the means of the Contractor's performance but shall be entitled to a work product as in the Scope of Services. The City will not be responsible for reporting or paying employment taxes or other similar levies that may be required by the United States Internal Revenue Service or other State or Federal agencies. This Contract does not create a joint venture.

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

subcontractors. Nothing contained herein shall create any contractual or employment relations between any subcontractor and the City.

ARTICLE IV INSURANCE

4.1 The Contractor 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 services performed by the Contractor, its officers, agents, volunteers, and employees.

4.2 The Contractor's insurance shall list the City of Nacogdoches, its officers, agents, volunteers, and employees as additional insureds. The Required Limits of Insurance are attached in **Exhibit "C"**. Certificates of insurance evidencing the required insurance policies are attached in **Exhibit "D"**.

ARTICLE V INDEMNIFICATION AND RELEASE

5.1 Indemnification. The Contractor shall indemnify, hold harmless, and defend the City, its officers, agents, volunteers, employees, representatives, contractors, assignees and/or designees from and against any and all claims, losses, damages, causes of action, suits, and liability of every kind, including all expenses of litigation, court costs, and attorneys' fees, for injury to or death of any person or for damage to any property arising out of or in connection with the work done by the Contractor under this Contract. Such indemnity shall apply regardless of whether the claims, losses, damages, causes of action, suits, or liability arise in whole or in part from the negligence of the City, any other party indemnified hereunder, the Contractor, or any third party.

5.2 Release. The Contractor assumes full responsibility for the work to be performed hereunder and hereby releases, relinquishes, and discharges the City, its officers, agents, volunteers, and employees from all claims, demands, and causes of action of every kind and character, including the cost of defense thereof, for any injury to or death of any person and any loss of or damage to any property that is caused by, alleged to be caused by, arising out of, or in connection with the Contractor's work to be performed hereunder. This release shall apply regardless of whether said claims, demands, and causes of action are covered in whole or in part by insurance and regardless of whether such injury, death, loss, or damage was caused in whole or in part by the negligence of the City, any other party released hereunder, the Contractor, or any third party.

5.3 Notice of Claims. If a claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Agreement, or which could have a material adverse effect on the Contractor's ability to perform thereunder, the Contractor shall give written notice to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and address of the claimant(s); the basis thereof; and the name of each person against whom such claim is asserted.

ARTICLE VI GENERAL TERMS

6.1 Performance. Contractor, its employees, associates, or subcontractors shall perform all the services described in the Scope of Services in a professional manner and be fully qualified and competent to perform those services. Contractor shall undertake the work and complete it in a timely manner.

6.2 Termination. The City may terminate the Project and this Contract, at any time, for convenience. In the event of such termination the City will notify the Contractor in writing and the Contractor shall cease work immediately. Contractor shall be compensated for the services performed. Should the City terminate this Contract for convenience, the City shall pay Contractor for the services performed and expenses incurred before the date of termination.

6.3 Venue, Claims and Audit. (a) This Contract has been made under and shall be governed by the laws of the State of Texas.

(b) The parties agree that performance and all matters related thereto shall be in Nacogdoches County, Texas.

(c) Venue of any dispute will be in Nacogdoches County, Texas.

(d) 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. Contractor agrees to cooperate and must provide the City or State Auditor with access to any information the City or State Auditor considers relevant to the investigation or audit.

6.4 Amendment. This Contract may only be amended by a written instrument approved and executed by the parties.

6.5 Taxes. The City is exempt from payment of state and local sales and use taxes on labor and materials incorporated into the project. If necessary, it is the Contractor's responsibility to obtain a sales tax permit, resale certificate, and exemption certificate that shall enable the Contractor to buy any materials to be incorporated into the project and then resell the aforementioned materials to the City without paying the tax on the materials at the time of purchase.

6.6 Compliance with Laws. The Contractor will comply with all applicable federal, state, and local statutes, regulations, ordinances, and other laws, including but not limited to the following:

(a) Contractor shall be responsible for obtaining all necessary permits, certificates and/or licenses to fulfill contractual obligations to the City.

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

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

6.7 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. By signature hereon affixed, the Contractor hereby certifies that:

6.7.1 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.

6.7.2 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.

6.7.1 **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.

6.7.2 **Child Support.** Pursuant to §231.006(d), Texas Family Code, regarding child support, the Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive the specified payment and acknowledges that the contract may be terminated and payment may be withheld if this certification is inaccurate.

Furthermore, any Contractor subject to §231.006, Gov't Code, must include names and Social Security numbers of each person with at least 25% ownership of the business entity submitting the bid. This information must be provided prior to award. Enter the Name & Social Security Numbers for each person below:

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

6.7.3 **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>.

6.7.4 Convictions. Under Sections 2155.006, 2155.0061 and 2261.053 of the Texas Government Code, Respondent 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.

6.7.5 COVID Vaccinations. Respondent 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 Respondent's business.

6.7.6 Boycott. (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 Respondent 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, Respondent 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.*).

6.8 Waiver of Terms. No waiver or deferral by either party of any term or condition of this Contract shall be deemed or construed to be a waiver or deferral of any other term or condition or subsequent waiver or deferral of the same term or condition.

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

6.10 Invalid Provisions. 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.

6.11 Entire Agreement. This Contract represents the entire and integrated agreement between the City and Contractor 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.

6.12 Agree to Terms. The parties state that they have read the terms and conditions of this Contract and agree to the terms and conditions contained in this Contract.

6.13 Effective Date. This Contract will be effective when it is signed by the last party making it fully executed.

6.14 Notice. Any official notice under this Contract will be sent to the following addresses:

City of Nacogdoches	CONTRACTOR
Attn: City Manager	Attn: NAME
PO BOX 635030	123 Main Street
202 East Pilar Street	City, State Zip
Nacogdoches, TX 75961	Email@contactor.com

6.15 Severability. In the event any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect the other provisions, and in lieu of each provision that is invalid, illegal or unenforceable, there shall be added a new provision to this Contract as similar in terms to such invalid, illegal, or unenforceable provision as may be possible and yet be valid, legal and enforceable, by means of good faith negotiation by the Parties to this Contract or by reform by a court of competent jurisdiction.

6.16 Duplicate Originals. The parties may execute this Contract in duplicate originals, each of equal dignity.

6.17 Exhibits. All exhibits to this Contract are incorporated and made part of this Agreement for all purposes.

List of Exhibits

- A.** Scope of Services
- B.** Payment Schedule
- C.** Insurance Requirements
- D.** Certificates of Insurance

[NAME OF CONTRACTOR]

CITY OF NACOGDOCHES

By: _____

By: _____

City Manager

Printed Name: _____

Date: _____

Title: _____

APPROVED AS TO FORM:

Date: _____

City Attorney

Date: _____

EXHIBIT A
SCOPE OF SERVICES

The terms and conditions of this Contract shall take precedence and control over any term or provision of the Scope of Services that in any way conflicts with, differs from, or attempts to alter the terms of this Contract.

EXHIBIT B
PAYMENT SCHEDULE

The Contractor must submit *monthly* invoices to the City, accompanied by an explanation of charges, fees, services, and expenses. The City will pay such invoices in compliance with the Texas Prompt Payment Act.

-OR-

Payment is a fixed fee in the amount listed in Article II of this Contract. This amount shall be payable by the City pursuant to the schedule listed below and upon completion of the services and written acceptance by the City.

Schedule of Payment for each phase:

EXHIBIT C
INSURANCE REQUIREMENTS

Throughout the term of this Agreement the Contractor must comply with the following:

I. Standard Insurance Policies Required:

- A.** Commercial General Liability
- B.** Business Automobile Liability
- C.** Workers' Compensation

II. General Requirements Applicable to All Policies:

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

III. Commercial General Liability

- A.** General Liability insurance shall be written by a carrier rated "A:VIII" or better under the current A. M. Best Key Rating Guide.
- B.** Policies shall contain an endorsement naming the City as Additional Insured and further providing "primary and non-contributory" language with regard to self-insurance or any insurance the City may have or obtain
- C.** Limits of liability must be equal to or greater than \$1,000,000 per occurrence for bodily injury and property damage, with an annual aggregate limit of \$2,000,000. Limits shall be endorsed to be per project.
- D.** No coverage shall be excluded from the standard policy without notification of individual exclusions being submitted for the City's review and acceptance
- E.** The coverage shall include, but not be limited to the following: premises/operations with separate aggregate; independent contracts; products/completed operations; contractual liability

(insuring the indemnity provided herein) Host Liquor Liability, and Personal & Advertising Liability.

IV. Business Automobile Liability

- A.** Business Automobile Liability insurance shall be written by a carrier rated “A:VIII” or better rating under the current A. M. Best Key Rating Guide.
- B.** Policies shall contain an endorsement naming the City as Additional Insured and further providing “primary and non-contributory” language with regard to self-insurance or any insurance the City may have or obtain
- C.** Combined Single Limit of Liability not less than \$1,000,000 per occurrence for bodily injury and property damage.
- D.** The Business Auto Policy must show Symbol 1 in the Covered Autos Portion of the liability section in Item 2 of the declarations page
- E.** The coverage shall include any autos, owned autos, leased or rented autos, non-owned autos, and hired autos.

V. Workers’ Compensation Insurance

- A.** Workers compensation insurance shall include the following terms:
 - 1.** Employer’s Liability minimum limits of liability not less than \$500,000 for each accident/each disease/each employee are required
 - 2.** “Texas Waiver of Our Right to Recover From Others Endorsement, WC 42 03 04” shall be included in this policy
 - 3.** TEXAS must appear in Item 3A of the Workers’ Compensation coverage or Item 3C must contain the following: “All States except those listed in Item 3A and the States of NV, ND, OH, WA, WV, and WY”

EXHIBIT D
CERTIFICATES OF INSURANCE

CITY OF NACOGDOCHES GENERAL SERVICE CONTRACT

This General Service Contract is by and between the City of Nacogdoches, a Texas Home-Rule Municipal Corporation (the “City”), and Titan Aviation Fuels (the “Contractor”), for the following work: Aviation Fuel Services as described in the Scope of Services attached as Exhibit “A”.

ARTICLE I PAYMENT AND TERM

1.1 Consideration. In consideration for the services performed in the Scope of Services and Contractor’s completion of work in conformity with this Contract, the City shall pay the Contractor an amount not to exceed **Seven Hundred Twenty-Five Thousand and 00/100 Dollars (\$725,000.00) Per Year**. In no event shall payment under this contract exceed appropriations made by City Council.

1.2 Payment Application. Within **seven (7)** calendar days of completion of the services the Contractor will submit its payment application to the City.

1.3 City’s Payment and Approval. The City will pay the Contractor as shown in **Exhibit “B”** Payment Schedule, for the services performed no later than **thirty (30)** calendar days from the date of the City's receipt of the payment application and the City’s approval of the services.

1.4 Term. The initial term of the Contract is for three (3) years with the option to renew for two (2) additional one (1) year terms for a total of five (5) years. Any renewal must be in writing and executed by the parties. If, for any reason, funds are not appropriated to continue the contract, the contract shall become null and void and shall terminate.

1.5 Executed Contract. The “Notice to Proceed” will not be given nor shall any work commence until this Contract is fully executed and all exhibits and other attachments are completely executed and attached to the Contract.

ARTICLE II CHANGE ORDERS

2.1 Changes will not be made, nor will invoices for changes, alterations, modifications, deviations, or extra work or services be recognized or paid, except upon the prior written order from authorized personnel of the City. The Contractor will not execute change orders on behalf of the City or otherwise alter the financial scope of the services except in the event of a duly authorized change order approved by the City as provided in this Contract.

(a) City Manager Approval. When the original Contract amount plus all change orders is \$50,000 or less, the City Manager or his designee 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 of the City must approve such change order prior to commencement of the services or work; and

(b) City Council Approval. When the original contract amount plus all change orders is equal to or greater than \$50,000, the City Manager or his designee 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 amount, the City Council of the City must approve such change order prior to commencement of the services or work.

(c) Increase in Scope. Any request by the Contractor for an increase in the Scope of Services and an increase in the amount listed in Article II of this Contract shall be made and approved by the City prior to the Contractor providing such services or the right to payment for such additional services shall be waived.

(d) Dispute. If there is a dispute between the Contractor and the City respecting any service provided or to be provided hereunder by the Contractor, including a dispute as to whether such service is additional to the Scope of Services included in this Contract, the Contractor agrees to continue providing on a timely basis all services to be provided by the Contractor hereunder, including any service as to which there is a dispute.

ARTICLE III INDEPENDENT CONTRACTOR AND SUBCONTRACTORS

3.1 Independent Contractor. It is understood and agreed by the parties that the Contractor is an independent contractor retained for the services described in the Scope of Services. The City will not control the manner or the means of the Contractor's performance but shall be entitled to a work product as in the Scope of Services. The City will not be responsible for reporting or paying employment taxes or other similar levies that may be required by the United States Internal Revenue Service or other State or Federal agencies. This Contract does not create a joint venture.

3.2 Subcontractor. The term "subcontractor" shall mean and include only those hired by and having a direct contact with the Contractor for performance of work on the Project. The City shall have no responsibility to any subcontractor employed by a Contractor for performance of work on the Project, and all subcontractors shall look exclusively to the Contractor for any payments due. The Contractor shall be fully responsible to the City for the acts and omissions of its subcontractors. Nothing contained herein shall create any contractual or employment relations between any subcontractor and the City.

ARTICLE IV INSURANCE

4.1 The Contractor 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 services performed by the Contractor, its officers, agents, volunteers, and employees.

4.2 The Contractor's insurance shall list the City of Nacogdoches, its officers, agents, volunteers, and employees as additional insureds. The Required Limits of Insurance are attached in **Exhibit "C"**. Certificates of insurance evidencing the required insurance policies are attached in **Exhibit "D"**.

ARTICLE V INDEMNIFICATION AND RELEASE

5.1 Indemnification by Contractor. The Contractor shall indemnify, hold harmless, and defend the City, its officers, agents, volunteers, employees, representatives, contractors, assignees and/or designees from and against any and all claims, losses, damages, causes of action, suits, and liability of every kind, including all expenses of litigation, court costs, and attorneys' fees, for injury to or death of any person or for damage to any property arising out of or in connection with the work done by the Contractor under this Contract.

5.2 Indemnification by City. To the extent permitted by law, the City shall indemnify, hold harmless, and defend the Contractor, its officers, agents, volunteers, employees, representatives, contractors, assignees and/or designees from and against any and all claims, losses, damages, causes of action, suits, and liability of every kind, including all expenses of litigation, court costs, and attorneys' fees, for injury to or death of any person or for damage to any property arising out of or in connection with the work done by the City under this Contract.

5.3 Notice of Claims. If a claim, demand, suit, or other action is asserted against either party which arises under or concerns the Agreement, or which could have a material adverse effect on the party's ability to perform thereunder, said party shall give written notice to the other party within ten (10) calendar days after receipt of notice. Such notice shall state the date of notification of any such claim, demand, suit, or other action; the names and address of the claimant(s); the basis thereof; and the name of each person against whom such claim is asserted.

ARTICLE VI GENERAL TERMS

6.1 Performance. Contractor, its employees, associates, or subcontractors shall perform all the services described in the Scope of Services in a professional manner and be fully qualified and competent to perform those services. Contractor shall undertake the work and complete it in a timely manner.

6.2 Termination. The City or the Contractor may terminate the Project and this Contract, upon ninety (90) days written notice to the other party. In the event of such termination the City will notify the Contractor in writing and the Contractor shall cease work immediately. Contractor shall be compensated for the services performed. Should the City terminate this Contract for convenience, the City shall pay Contractor for the services performed and expenses incurred before the date of termination.

6.3 Venue, Claims and Audit. (a) This Contract has been made under and shall be governed by the laws of the State of Texas.

(b) The parties agree that performance and all matters related thereto shall be in Nacogdoches County, Texas.

(c) Venue of any dispute will be in Nacogdoches County, Texas.

(d) 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. Contractor agrees to cooperate and must provide the City or State Auditor with access to any information the City or State Auditor considers relevant to the investigation or audit.

6.4 Amendment. This Contract may only be amended by a written instrument approved and executed by the parties.

6.5 Taxes. The City is exempt from payment of state and local sales and use taxes on labor and materials incorporated into the project. If necessary, it is the Contractor's responsibility to obtain a sales tax permit, resale certificate, and exemption certificate that shall enable the Contractor to buy any materials to be incorporated into the project and then resell the aforementioned materials to the City without paying the tax on the materials at the time of purchase.

6.6 Compliance with Laws. The Contractor will comply with all applicable federal, state, and local statutes, regulations, ordinances, and other laws, including but not limited to the following:

(a) Contractor shall be responsible for obtaining all necessary permits, certificates and/or licenses, applicable to the Contractor, to fulfill contractual obligations to the City.

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

6.7 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. By signature hereon affixed, the Contractor hereby certifies that:

6.7.1 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.

6.7.2 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.

6.7.1 **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.

6.7.3 **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> .

6.7.4 **Convictions.** Under Sections 2155.006, 2155.0061 and 2261.053 of the Texas Government Code, Respondent 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.

6.7.5 COVID Vaccinations. Respondent 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 Respondent's business.

6.7.6 Boycott. (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 Respondent 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, Respondent 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.*).

6.8 Waiver of Terms. No waiver or deferral by either party of any term or condition of this Contract shall be deemed or construed to be a waiver or deferral of any other term or condition or subsequent waiver or deferral of the same term or condition.

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

6.10 Invalid Provisions. 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.

6.11 Entire Agreement. This Contract represents the entire and integrated agreement between the City and Contractor 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.

6.12 Agree to Terms. The parties state that they have read the terms and conditions of this Contract and agree to the terms and conditions contained in this Contract.

6.13 Effective Date. This Contract will be effective when it is signed by the last party making it fully executed.

6.14 Notice. Any official notice under this Contract will be sent to the following addresses:

City of Nacogdoches
Attn: City Manager
PO BOX 635030
202 East Pilar Street
Nacogdoches, TX 75961

Titan Aviation Fuels
Attn: Mike Allen
601 McCarthy Blvd
New Bern, NC 28562
Mike@titanfuels.aero

6.15 Severability. In the event any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect the other provisions, and in lieu of each provision that is invalid, illegal or unenforceable, there shall be added a new provision to this Contract as similar in terms to such invalid, illegal, or unenforceable provision as may be possible and yet be valid, legal and enforceable, by means of good faith negotiation by the Parties to this Contract or by reform by a court of competent jurisdiction.

6.16 Duplicate Originals. The parties may execute this Contract in duplicate originals, each of equal dignity.

6.17 Exhibits. All exhibits to this Contract are incorporated and made part of this Agreement for all purposes.

List of Exhibits

- A. Scope of Services
- B. Payment Schedule
- C. Insurance Requirements
- D. Certificates of Insurance

TITAN AVIATION FUELS

CITY OF NACOGDOCHES

By:_____

By:_____

Richard B, Beverlin, III - City Manager

Printed Name:_____

Date:_____

Title:_____

APPROVED AS TO FORM:

Date:_____

City Attorney

Date:_____

EXHIBIT A SCOPE OF SERVICES

The terms and conditions of this Contract shall take precedence and control over any term or provision of the Scope of Services that in any way conflicts with, differs from, or attempts to alter the terms of this Contract.

SCOPE OF SERVICES: The scope of services, as may be modified through negotiations and/or by written addenda, shall include, but not be limited to, the following:

Major Name Branding Authority. Proposer must be a nationally known name brand that is prominent and well recognized in the business and general aviation industry. The Proposer must have extensive experience in the scope outlined herein with similar sized and fuel volume airports. The Airport is currently branded with Titan Aviation Fuels.

Credit Card and Systems Plan. To include a point of sale (POS) card reading machine for the Airport office. This system must be compatible with QTPOD and airport office equipment and infrastructure. All major credit cards, aviation cards, and federal government/military AIRCARD shall be accepted. The credit card system must also allow for non-fuel related airport charges. A toll-free credit card authorization service shall be included. Firm supported web-based fuel, merchandise, and airport service sales processing. Firm shall provide detailed daily reporting of sales transactions and merchant reimbursements to the City for accounting purposes, and those shall include all credit card fees, product type, aircraft tail number, date/time, and gallons purchased.

Wholesale Supply of Jet-A With Pre-blended Additive (FSII) and 100LL Aviation Fuels. Fuels shall be delivered to the Airport, 556 Terry Crawford Drive, Nacogdoches, TX 75964, by professional, certified, licensed haulers in dedicated aviation fuel tanker trailers. Fuel deliveries will be routinely accepted Monday through Friday, between the hours of 9:00 a.m. and 4:00 p.m.

The Airport currently owns and operates from:

- One (1) 12,000 gallon JetA ground tank
- One (1) 12,000 gallon 100LL AvGas ground tank
 - both tanks are fitted with pumps and valving capable of offloading fuel deliveries.

Fuel shall be delivered free from contamination and meeting all current standard industry specifications. Each fuel delivery must be accompanied by a specification sheet for the product, a complete manifest, and bill of lading containing gross and net gallons, temperature at receipt of load, certificate of analysis, and batch API gravity. Fuel deliveries may be tested upon arrival and rejected if they fail, at the City's sole discretion. If a load is rejected because it is off spec or contaminated, the Firm shall bear all costs of rejected

loads, including freight/delivery costs.

Firm is expected to regularly deliver fuel within 48 hours from order with the exception of weekends and holidays. Weekend and holiday delivery, 24 hour rush delivery, and partial loads must be non-routine options for the City. Proposer shall name primary and back-up fuel terminals for this project. Wholesale fuel price changes shall be set and disclosed by the Firm to the City on a routine basis, weekly preferred, and the prices in the update notice shall be total delivered price per gallon (including all markup, differential, fees, freight, and taxes). The City prefers and encourages that annual fuel filter replacement for truck refuelers and ground tank/self serve farms is provided by the Firm at no cost to the City for the term of the contract to bolster quality control.

The Airport makes no guarantee as to the quantity of Jet A or Avgas fuel to be purchased for resale. A history of Jet A and Avgas gallons purchased from October 1, 2021 through September 30, 2023 is provided below:

Jet A w/additive – 79,079 gallons (FY 2022-2023)

Jet A w/additive – 76,580 gallons (FY 2021-2022)

100LL Avgas – 60,613 gallons (FY 2022-2023)

100LL Avgas – 45,512 gallons (FY 2021-2022)

Refueler Lease. Firm shall provide, via a monthly lease agreement with the City, a Jet truck refueler and an Avgas truck refueler. The City currently leases a 3000-gallon Jet truck refueler and a 1000-gallon Avgas refueler from Titan Aviation Fuels and proposals shall be based on trucks of same or similar size.

If not brand new, the Jet truck refueler and Avgas refueler are required to be refurbished and fully serviced prior to delivery. Refurbished includes all wear parts restored or replaced to working order and in near new condition. Service includes new fuel dispensing system filters. All proposed refuelers shall be ready for delivery to the City on or prior to day one of the contract term unless negotiated otherwise. Proposer shall provide temporary back-up refuelers same or next day in the case of prolonged repair or to meet special needs. The City prefers and encourages that annual fuel filter replacement and meter calibrations for truck refuelers and ground tank/self-service farms is provided by the Firm at no cost to the City for the term of the contract to bolster quality control.

Marketing Support. The successful proposer will be expected to provide marketing support to the Airport. Examples of expected marketing includes lighted logo signage; co-advertising, press release, social media, industry publication programs; available pilot “points,” stamp, contract fuel, reward, or coupon programs; web-site listings; windsocks, umbrellas, employee hats and shirts; etc. Proposer shall list all costs or fees for this support, if any.

Training and Technical Support. The Firm will provide training materials (books, manuals,

online content, classes, seminars, etc.) and programs to assist in the training of fuel handlers and airport personnel, including technical support in learning and resolving equipment, software, and quality control issues. Seminars and onsite airport training are preferable. Same day live phone assistance and support for fuel related troubleshooting, fuel quality control, transaction, and refueler truck equipment issues shall be included. At minimum, annual complementary pre-scheduled onsite airport visits by Firm for training, inspection, quality control, and support are expected. Said visits shall be performed by highly trained and capable technical Firm staff or sub-contractor in the areas they are training, supporting or inspecting.

Additional information and scope can be found in the Request For Proposals titled, “RFP 24-10-114: Aviation Fuel Services” as well as the fuel services proposal submitted by Titan Aviation Fuels dated March 5, 2024.

EXHIBIT B
PAYMENT SCHEDULE

The Contractor must submit *monthly* invoices to the City, accompanied by an explanation of charges, fees, services, and expenses. The City will pay such invoices in compliance with the Texas Prompt Payment Act.

EXHIBIT C INSURANCE REQUIREMENTS

Throughout the term of this Agreement the Contractor must comply with the following:

I. Standard Insurance Policies Required:

- A.** Commercial General Liability
- B.** Business Automobile Liability
- C.** Workers' Compensation

II. General Requirements Applicable to All Policies:

- A.** Only Insurance Carriers licensed and admitted to do business in the State of Texas will be accepted.
- B.** Deductibles shall be listed on the Certificate of Insurance and are acceptable only on a per occurrence basis for property damage only.
- C.** "Claims Made" policies are not accepted.
- D.** Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City of Nacogdoches.
- E.** Upon request, proof of all insurance policies shall be furnished to the City of Nacogdoches.

III. Commercial General Liability - City

- A.** General Liability insurance shall be written by a carrier rated "A:VIII" or better under the current A. M. Best Key Rating Guide.
- B.** Limits of liability must be equal to or greater than \$1,000,000 per occurrence for bodily injury and property damage,
- C.** The coverage shall include, but not be limited to the following: premises/operations with products/completed operations.

EXHIBIT D
CERTIFICATES OF INSURANCE

See attached.



CERTIFICATE OF COMMERCIAL LIABILITY INSURANCE

This certificate is issued for informational purposes only. It certifies that the policies listed in this document have been issued to the Named Insured. It does not grant any rights to any party nor can it be used, in any way, to modify coverage provided by such policies. alteration of this certificate does not change the terms, exclusions or conditions of such policies. Coverage is subject to the provisions of the policies, including any exclusions or conditions, regardless of the provisions of any other contract, such as between the certificate holder and the Named Insured. The limits shown below are the limits provided at the policy inception. Subsequent paid claims may reduce these limits.

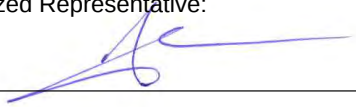
Producer: EBCO AVIATION INSURANCE, LLC 3070 FIVE FORKS TRICKUM ROAD LILBURN, GA 30047	Named Insured: EASTERN AVIATION FUELS, INC., D/B/A: TITAN AVIATION FUELS 3300 TRENT ROAD NEW BERN, NC 28561
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General Liability		
Insurer Name: Policy issued by one or more companies represented by EBCO Aviation Insurance, LLC.		
Policy Number: AP0033800404-62 & B050702AD3028700		
Policy Effective Date: September 1, 2024		Policy Expiration Date: September 1, 2025
Limits of Insurance	\$ \$5,000,000	Each Occurrence Limit
	\$ \$250,000	Damage To Premises Rented To You Limit (any one premises)
	\$ \$10,000	Medical Expense Limit (any one person)
	\$ \$5,000,000	Personal & Advertising Injury Aggregate Limit
	\$ NOT APPLICABLE	General Aggregate Limit
	\$ 50,000,0000	Excess Products Coverage per Occurrence
	N/A	Hangarkeepers Limit
	\$ N/A	Each Aircraft Limit
	\$ N/A	Each Loss Limit
\$ NOT APPLICABLE		Hangarkeepers Deductible (each aircraft)
General Aggregate Limit applies per: ☒ Policy ☐ Project ☐ Location		

Description of Operations/Locations/Endorsements/Special Provisions
ADDITIONAL INSURED(S): The excess insurance afforded under the policy is excess coverage for branded fuel related losses excluding environmental and requires One Million Dollars (\$1,000,000) of underlying coverage provided by the Certificate Holder and must include the Named Insured as an Additional Insured. The insurance afforded under the policy applies separately to each insured against whom claim is made or suit is brought.

Additional Insured Status
THIS CERTIFICATE DOES NOT GRANT ANY COVERAGE OR RIGHTS TO THE CERTIFICATE HOLDER. IF THIS CERTIFICATE INDICATES THAT THE CERTIFICATE HOLDER IS AN ADDITIONAL INSURED, THE POLICY(IES) MUST EITHER BE ENDORSED OR CONTAIN SPECIFIC LANGUAGE PROVIDING THE CERTIFICATE HOLDER WITH ADDITIONAL INSURED STATUS. THE CERTIFICATE HOLDER IS AN ADDITIONAL INSURED ONLY TO THE EXTENT INDICATED IN SUCH POLICY LANGUAGE OR ENDORSEMENT.

Cancellation
In the event of cancellation of any policy described above, the insurer will attempt to mail N/A days written notice to the certificate holder prior to the effective date of cancellation. However, failure to do so will not impose duty or liability upon the insurer, its agents or representatives, nor will it delay cancellation.

Certificate Holder: To Whom It May Concern	Certificate No. <u>240416-01</u>
Authorized Representative: 	<u>April 16, 2024</u> Date of Issue

PRESENTER: Colin Smith, Airport Manager

ITEM/SUBJECT: Consider approval of an airport fuel truck lease agreement with Titan Aviation Fuels for a replacement truck used for dispensing AvGAS fuel at the A. L. Mangham Jr. Regional Airport. (Airport Manager)

SUMMARY/BACKGROUND: The City's A. L. Mangham Jr. Regional Airport utilizes tanker trucks for dispensing fuel to aircraft that require or request full service fueling. The airport currently leases from the fuel distributor, Titan Aviation Fuels, one 3000 gallon truck used for JetA fuel and one 1000 gallon truck used for AvGAS 100LL fuel. The JetA fuel truck is a 1999 model International, and the AvGas truck is a 2002 model Ford.

If the new fuel services contract with Titan Aviation Fuels is approved, City staff recommends replacing the AvGas truck due to its advanced age, its escalating need of repairs, and the drastic increase in its use to service the SFA/HCH Aviation flight school aircraft.

Titan Aviation Fuels is offering the airport a 2024 model replacement truck in the same configuration as is currently used. The primary term of the proposed lease is three (3) years, with successive one (1) year terms thereafter until either party terminates. Titan is proposing the first six months of the lease for the replacement at no cost to the airport. The lease costs after the first six months, considering incentives for keeping the current JetA truck, will increase the airport's total annual fuel trucks lease budget by only \$1800 (\$150/month). The airport's current annual budget for fuel trucks is \$12,000, and that budget will increase to \$13,800 for FY2024-25 if approved. No budget amendment for the current FY will be needed if approved.

FINANCIAL:

Item is budgeted

No budget amendment is needed for the current FY due to no cost for the first 6 months of the lease. Item budget will be adjusted for FY2024/25 and beyond if approved

Account No.: 32.13.630.00

Account Name: *Rental of Equipment*

Amount: \$12,000 current budget, \$13,800 proposed budget

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. 2024 FUELER LEASE AGREEMENT TITAN_Final Draft

STATE OF TEXAS

COUNTY OF NACOGDOCHES

LEASE AGREEMENT

THIS AGREEMENT, made and entered into this the _____ day of _____, 2024, by and between TITAN AVIATION FUELS, a corporation existing under and by virtue of the laws of the State of North Carolina, with its principal office in New Bern, North Carolina, and hereinafter referred to as "Lessor" and CITY OF NACOGDOCHES, hereinafter referred to as "Lessee":

WITNESSETH

Lessor agrees to deliver and lease to Lessee for Lessee's use at the A.L. MANGHAM JR. REGIONAL Airport, the aviation refueling truck (hereinafter referred to as "refueling equipment") described as follows:

*2024 1000 Gallon Avgas Refueler truck

This confirms our mutual understanding that the above described refueling equipment is, as of the above date, leased to Lessee subject to the following terms and conditions:

1. For the use of said refueling equipment during the term hereof, Lessor hereby agrees to lease to Lessee the refueling equipment for a rental fee of \$750.00 per month, plus applicable sales and use tax, to commence 6 months after the truck is delivered. Lessor shall be permitted to increase said rental after the first three (3) years term while this agreement is in effect by giving Lessee at least sixty (60) days advance written notice of the effective date of said increased rental. In the event of any increase in rental, Lessee shall have the right to terminate this agreement on the effective date of said increase by giving Lessor thirty (30) days advance written notice of its intention to terminate on or before said effective date. If Lessee provides written notice of termination to Lessor in accordance herewith, the increased rental amount shall not be owed by Lessee during the 30-day notice period, but Lessee will only owe the original rental fee stated above.

2. This agreement shall remain in effect for a primary term of THREE 3 years beginning on the 1ST day of MAY 2024, and for successive ONE (1) YEAR TERMS thereafter unless either party notifies the other in writing of its desire to terminate this agreement at least ninety (90) days prior to expiration of the term; provided however, this agreement may be terminated at any time without notice on account of breach or default of the terms of this agreement. If this Agreement is terminated by Lessee, without cause, during the first sixty months, the Lessee will be responsible for the freight charges associated with the pick up of the refueling equipment.

3. Said refueling equipment shall in no way become the property of Lessee, or anyone claiming thereunder, and shall be used solely by Lessee or its representatives at A.L. MANGHAM JR. REGIONAL Airport, for handling the aviation fuels supplied by Titan Aviation Fuels.

4. To the extent applicable, Lessee shall pay all sales and property taxes, assessments, and licenses and registrations on said refueling equipment during the term of the lease, and furnish to Lessor's reasonable satisfaction, verification that payment has been made before said taxes, assessments, or fees become delinquent.

5. It is understood and agreed that Lessee will not encumber said refueling equipment or do or permit anything to prejudice the title of the owner thereto; will comply with all laws, ordinances, and regulations applicable to the refueling equipment; and, to the extent permitted by law, Lessee agrees to release, indemnify and hold the Lessor and the owner of said refueling equipment harmless from and against any and all claims, liabilities, losses, obligations and causes of action for injury or death of any and all persons, or for damage to or destruction of any or all property arising out of or resulting from the use or maintenance of such refueling equipment, including, but not limited to loss or damage to the refueling equipment, whether or not any of same shall result in whole or in part from the negligence of Lessee or those acting under it. SAID REFUELING EQUIPMENT IS LEASED "AS IS" WITHOUT WARRANTY AS TO MERCHANTABILITY, TITLE, CONDITION, OR FITNESS FOR ANY PURPOSE. It is also agreed that Lessee shall not add or remove any equipment or appurtenances to or from said equipment without the written consent of Lessor.

6. It is further understood and agreed that each party accepts the applicable responsibilities for operating and maintaining said refueling equipment listed as hereafter provided, said list being made a part hereof by reference. Lessor shall be permitted access to inspect the refueling equipment at all reasonable times.

7. Lessee agrees that it shall return said refueling equipment to Lessor at the termination of this agreement in as good condition as when Lessee received it, normal wear and tear excepted.

8. Lessee agrees to maintain adequate physical damage insurance on refueling equipment during the term of this lease with Lessor named as an additional insured party, and to furnish a copy of certificate of insurance to Lessor.

9. This agreement supersedes and takes the place of all former agreements, and amendments thereto, heretofore entered into between the parties covering the lease of refueling equipment at the location above-stated.

10. Lessee agrees that it will not use or permit the use of the vehicle leased hereunder in a negligent or improper manner or in violation of any law; or so as to avoid any insurance covering the same; or as a public or private livery; or permit the vehicle to become subject to any lien, charge or encumbrances.

11. The Lessee is responsible for:

A. Performing minor maintenance on refueler, including preventive maintenance, tune-ups, starter repair, battery replacement, alternator repair, , ground reel replacement, deadman cable & handle replacement, fuel nozzle replacement, etc. The Lessor shall be responsible for major repairs if caused by normal wear and tear (engine or transmission rebuilding, etc.)

B. Quality control inspections on the fueling equipment at regular intervals.

C. Furnishing all fuel for refueling equipment.

D. Checking and maintaining sufficient supply of lubricating oil in crankcase.

E. Checking regularly and maintaining sufficient supply of gear oil in transmission and differential.

F. Pay for all ground reel equipment and replacement of aviation refueling hose.

G. Checking battery water level weekly. Test and charge battery as necessary. Replace as needed.

H. Maintaining proper air pressure in tires, and making all necessary tire changes and repairs, including replacements.

I. Pay for all deadman cable and handle replacements.

J. Checking and maintaining adequate all-season antifreeze in radiator to protect cooling system properly. Antifreeze shall be maintained in refueling equipment throughout the year.

K. Keeping all fire extinguishers fully charged and in good working order.

L. Pay for meter calibration, if any required.

M. Inspect nozzle screens, filter, and filtering equipment daily, and clean as necessary.

N. Furnish any ladders desired by Lessee.

O. Pay for any fuel nozzle replacements.

P. Reimburse Lessor for replacement of parts or equipment lost from refueler equipment, and for all expenses incurred for repairs to, and/or replacement of parts of, the refueling equipment through carelessness, abuse, or neglect.

Q. Wash and clean refueling equipment as necessary to maintain good appearance.

R. Advise Lessor at once if operation of truck or refueling system indicates need for repairs which are Lessor's responsibility. Cost of local repairs or replacements by others will not be paid or reimbursed by Lessor unless prior

authorization is secured from Lessor.

13. ATTORNEY AND/OR COLLECTION FEES: In the event of default by the Lessee, Lessee agrees to pay the maximum amount permitted under Texas Local Government Code §271.153 in the event judgment is rendered in favor of Lessor in a court of competent jurisdiction.

14. The execution of this lease and the performance of any act pursuant to the provisions thereof shall not be deemed or constructed to have the effect of creating between Lessor and Lessee the relationship of principal or agent, or of a partnership or joint venture.

IN WITNESS WHEREOF, the parties have hereunto caused this instrument to be executed by their principals authorized to do so, attested by their Secretaries, all by order of their respective governing bodies and this instrument is executed in duplicate originals, with each party retaining a copy thereof.

TITAN AVIATION FUELS

By: _____
Robert L. Stallings, IV
President

WITNESS:

LESSEE

By: _____
Richard B. Beverlin, III
City Manager

WITNESS:

PRESENTER: Jessica Sowell, Community Services Director

ITEM/SUBJECT: Consider approval of a contract by and between the City of Nacogdoches and Kraftsman Commercial Playgrounds, in th amount of \$180,000 for design and construction of a splash pad at 1100 Martin Luther King Jr. Blvd. (Community Services Director)

SUMMARY/BACKGROUND: Temple Park, located at 1100 Martin Luther King Jr. Blvd is home to the Temple Park Spray Station. This park was originally home to the Temple Pool, which was opened to the public in the late 1950s. After many years of use, the Temple Pool was closed and the Temple Spray Station Equipment was installed circa 2000. The existing Spray Station equipment, after 24 years of use, is no longer functional, and the park is closed to the public.

The contract between the City of Nacogdoches and Kraftsman Commercial Playgrounds will allow the City to design and build a new splash pad at this location. Kraftsman Commercial Playgrounds is a BuyBoard company based out of Spring, TX.

FINANCIAL:

Item is budgeted:

Account No.: 01.86.680.40

Account Name: *General Fund Committed Reserves - Park Improvement*

Amount: \$180,000.00

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. Contract 24-10-123 - Design and Construction of Temple Spray Station Project
2. Construction Contract - Kraftsman Commercial Playgrounds PPT

CITY OF NACOGDOCHES CONSTRUCTION AGREEMENT

This Agreement is entered into by and between the **City of Nacogdoches**, a Texas home-rule municipal corporation (the "City") and Kraftsman Commercial Playgrounds, a limited liability corporation (the "Contractor"), for **Design and Construction of Temple Spray Station Project** located in Nacogdoches, Texas (the "Project").

1. DEFINITIONS

1.01. Calendar Day. A "calendar day" is any day of the week or month, no days being excepted.

1.02. City. Whenever the word "City" is used, it shall mean and be understood as referring to the City of Nacogdoches, Texas.

1.03. City's Representative. Whenever the words "City's Representative" or "Representative" are used, it shall mean and be understood as referring to the City Manager or his delegate, who shall act as City's agent. The City's Representative may inspect and issue instructions but shall not directly supervise the Contractor.

1.04. Contract Amount. The term "Contract Amount" shall mean the amount of Contractor's lump sum base bid proposal, together with all alternates, as accepted by the City in accordance with the Contractor's Proposal. In the case of a unit price contract, Contract Amount shall mean the sum of the product of all unit prices times the respective estimated final quantities of work, for all base bid and alternates, as accepted by the City.

1.05. Contract Documents. The term "Contract Documents" shall mean those documents listed in Paragraph 2.01.

1.06. Contractor. Whenever the word "Contractor" is used, it shall mean the person(s), partnership, or corporation who has agreed to perform the work embraced in this Agreement and the other Contract Documents.

1.07. Extra Work. The term "Extra Work" shall mean and include work that is **not** covered or contemplated by the Contract Documents but that may be required by City's Representative and approved by the City in writing **prior** to the work being done by the Contractor.

1.08. Final Completion. The term "Final Completion" shall mean that all the work has been completed, all final punch list items have been inspected and satisfactorily completed, all payments to materialmen and subcontractors have been made, all documentation and warranties have been submitted, and all closeout documents have been executed and approved by the City.

1.09. Interpretation of Phrases. Whenever the words "directed", "permitted", "designated", "required", "considered necessary", "prescribed", or words of like import are used, it is understood that the direction, requirement, permission, order, designation, or prescription of City's Representative is intended. Similarly, the words "approved", "acceptable", "satisfactory", or words of like import shall mean approved by, accepted by, or satisfactory to City's Representative.

1.10. Nonconforming work. The term "nonconforming work" shall mean work or any part thereof that is rejected by City's Representative as not conforming with the Contract Documents.

1.11. Parties. The "parties" are the City and the Contractor.

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

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

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

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

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

2. CONTRACT DOCUMENTS

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

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

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

2.03. The Contractor shall distribute copies of the plans and specifications to suppliers and subcontractors as necessary. The Contractor shall keep one (1) copy of the plans and specifications accessible at the work

site with the latest revisions noted thereon. For proper execution of the work contemplated by this Agreement, additional sets of drawings, plans and specifications may be purchased by the Contractor.

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

3. AWARD OF CONTRACT

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

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

3.03. **Contract Amount.** Except in the event of a duly authorized change order approved by the City as provided in this Contract, and in consideration of the Contractor’s final completion of all work in conformity with this Contract, the City shall pay the Contractor an amount not to exceed One Hundred and Eighty Thousand and 00/100 Dollars (\$180,000.00).

4. CITY'S REPRESENTATIVE

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

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

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

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

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

5. INDEPENDENT CONTRACTOR

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

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

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

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

6. DISORDERLY EMPLOYEES

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

7. HOURS OF WORK

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

8. NATURE OF THE WORK

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

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

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

9. POST-AGREEMENT AWARD MEETINGS

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

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

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

10. **PROGRESS OF WORK**

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

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

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

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

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

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

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

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

11. SITE CONDITIONS AND MANAGEMENT

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

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

11.03. Throughout the progress of the work, the Contractor shall keep the working area free from debris of all types, and remove from premises all rubbish, resulting from any work being done by him. At the

completion of the work, the Contractor shall leave the premises in a clean and finished condition. Any failure to do so may be remedied and charged back to the Contractor.

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

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

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

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

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

11.09. When two or more contractors, including Contractor, are employed on related or adjacent work or obtain materials from the same material source, or when work must be completed by one contractor before another can begin, each shall conduct his operations in such a manner as not to cause any unnecessary delay or hindrance to the other. Each contractor, including Contractor if applicable, shall be responsible to the other for all damage to work, to persons, or to property caused to the other by his operations, and for loss caused the other due to unreasonable or unjustified delays or failure to finish the work or portions thereof, or furnish materials within the time requested. Should Contractor cause damage to the work or property of any separate contractor at the Project site, or should any claim arising out of Contractor's separate contractor at the Project site, or should any claim arising out of Contractor's performance of the Work at the Project site

be made by any separate contractor against Contractor, City or other consultants, or any other person, Contractor shall promptly attempt to settle with such other contractor by agreement, or to otherwise resolve the dispute. **Contractor shall, to the fullest extent permitted by applicable laws, indemnify and hold City harmless from and against all claims, damages, losses and expenses (including, but not limited to, fees of architects, attorneys and other professionals and court costs) arising directly, indirectly or consequentially out of any action, legal or equitable, brought by any separate contractor against City to the extent based on a claim arising out of Contractor's negligence.**

12. MATERIALS

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

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

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

- (a) Upon acceptance of the materials furnished or ordered by the City, the Contractor warrants that it shall properly handle, transport, store and safeguard the materials.
- (b) Further, the Contractor shall repair, repaint or replace any and all materials or any part thereof damaged or stolen while in its possession. Such materials are considered to be in the Contractor's possession from the moment the Contractor either accepts delivery of the materials or signs a receipt accepting delivery of said materials until the Project is accepted by the City's Representative.
- (c) Before transporting any of the materials furnished or ordered by the City, the Contractor shall establish to the City's satisfaction that it has obtained insurance against losses, theft, damage, equal to or greater than the amounts spent by the City in securing said materials. It shall be incumbent upon the Contractor to verify the cost of materials.

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

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

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

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

13. ENTRY, OBSERVATION, TESTING & POSSESSION

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

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

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

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

14. REJECTED WORK

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

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

- (a) The Contractor may be required, at the City's option, after notice from City's Representative, to remedy such work so that it shall be in full compliance with this Agreement. All rejected work or materials shall be immediately replaced in order to conform with this Agreement.
- (b) If the City deems it inexpedient to correct work damaged or not done in accordance with this Agreement, an equitable deduction from the agreed sum may be made by the City at the City's sole discretion.

15. SUBCONTRACTING & SUBCONTRACTORS

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

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

16. PAYMENT

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

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

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

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

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

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

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

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

16.09. Unless otherwise provided in the Contract Documents:

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

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

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

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

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

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

17. EXTRA WORK CHARGES

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

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

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

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

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

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

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

Method A - By agreed unit prices, or

Method B - By agreed lump sum, or

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

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

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

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

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

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

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

(2) All costs must be directly and specifically shown to be caused by a proven wrong. No recovery shall be based on a comparison by planned expenditures to total actual

expenditures or on estimated losses of labor efficiency, or on a comparison of planned manloading to actual manloading, or any other analysis that is used to show damages indirectly.

- (3) Damages are limited to extra costs specifically shown to have been directly caused by a proven wrong.
- (4) The maximum daily limit on any recovery for delay shall be the amount established by the Contractor for job overhead costs, defined in the pay applications, divided by the total number of days specified for completion called for in the original Contract. Absent an overhead amount in the Schedule of Values, the amount estimated by Contractor for job overhead cost shall be used.

18. TIME OF COMPLETION

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

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

18.03. The work shall be Substantially Completed within the time bid, which shall run from the date when the notice to proceed is given by City's Representative. The Contractor has bid **_180_ calendar days** for the time within which it shall reach Substantial Completion of the Project.

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

19. SUBSTANTIAL COMPLETION

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

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

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

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

20. FINAL COMPLETION

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

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

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

21. DELAYS

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

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

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

22. EXTENSIONS OF TIME

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

- (1) an act or neglect of the City, the City's Representative, employees of the City, or other contractors employed by the City;
- (2) by changes ordered in the work, or reductions thereto approved in writing;
- (3) by "rain days" (days with rainfall in excess of one-tenth of an inch) during the term of this Agreement that exceed the average number of rain days for such term for this locality, both as determined by the Texas A&M University weather service; or

- (4) by other causes that the City and the Contractor agree may reasonably justify delay and that were beyond the Contractor's reasonable control and ability to estimate, predict, or avoid, such as delays caused by unforeseen labor disputes, fire, natural disasters, acts of war, and other rare and unpredictable events. This term does **not** include normal delays incident to the delivery of materials, tools, or labor that reasonably could have been predicted and/or accounted for in the Contractor's proposal or decision to bid.

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

23. LIQUIDATED DAMAGES

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

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

24. CHARGES FOR INJURY OR REPAIR

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

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

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

25. WARRANTY

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

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

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

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

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

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

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

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

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

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

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

26. PAYMENT OF EMPLOYEES, SUBCONTRACTORS & SUPPLIERS

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

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

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

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

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

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

27. INSURANCE

27.01. The Contractor shall procure and maintain at its sole cost and expense for the duration of this Agreement insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives,

volunteers, employees or subcontractors. The policies, coverages, limits and endorsements required are as set forth in Exhibit B.

28. BOND PROVISIONS

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

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

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

29. SURETY

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

29.01.01. The City may employ such force of men and use of instruments, machinery, equipment, tools, materials, and supplies as said the City may deem necessary to complete the work and charge the expense of

such labor, machinery, equipment, tools, materials, and supplies to said the Contractor, and the expense so charged shall be deducted and paid by the City out of such monies as may be due or that may thereafter at any time become due to the Contractor and Surety.

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

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

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

30. COMPLIANCE WITH LAW

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

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

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

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

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

31. SAFETY PRECAUTIONS

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

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

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

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

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

including, but not limited to, expenses of litigation, court costs, punitive damages and attorneys' fees, arising out of, incidental to or resulting from Contractor's failure to stop the Work.

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

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

32. TRENCH SAFETY

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

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

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

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

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

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

33. INDEMNITY

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

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

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

- (a) In the event the City is damaged due to the act, omission, mistake, fault or default of the Contractor, then the Contractor shall indemnify and hold harmless and defend the City for such damage.
- (b) The Contractor shall indemnify and hold harmless and defend the City from any claims for payment for goods or services brought by any material suppliers, mechanics, laborers, or other subcontractors.
- (c) The Contractor shall indemnify and hold harmless and defend the City from any and all injuries to or claims of adjacent property owners caused by the Contractor, its agents, employees, and representatives.
- (d) The Contractor shall be responsible for any damage to the floor, walls, etc., caused by the Contractor's personnel or equipment during installation.
- (e) The Contractor shall also be responsible for the removal of all related debris.
- (f) The Contractor shall also be responsible for subcontractors hired by it.

(g) The Contractor shall indemnify, hold harmless, and defend the City from any liability caused by the Contractor's failure to comply with applicable federal, state, or local regulations, that touch upon or concern the maintenance of a safe and protected working environment and the safe use and operation of machinery and equipment in that working environment, no matter where fault or responsibility lies.

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

33.05. It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification obligation under Paragraph 33.01, such legal limitations are made a part of the indemnification obligation and shall operate to amend the indemnification obligation to the minimum extent necessary to bring the provision into conformity with the requirements of such limitations, and as so modified, the indemnification obligation shall continue in full force and effect.

34. RELEASE

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

35. PERMITS AND LICENSES

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

36. ROYALTIES AND LICENSING FEES

The Contractor shall pay all royalties and licensing fees. The Contractor shall hold the City harmless and indemnify the City from the payment of any royalties, damages, losses or expenses including attorney's fees

for suits, claims or otherwise, growing out of infringement or alleged infringement of patents, materials and methods used in the Project. It shall defend all suits or claims for infringement of any patent rights. Further, if the Contractor has reason to believe that the design, service, process, or product specified is an infringement of a patent, it shall promptly give such information to City's Representative.

37. BREACH OF CONTRACT & DAMAGES

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

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

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

38. TERMINATION FOR CAUSE

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

38.01. If the Contractor becomes insolvent, commits any act of bankruptcy, makes a general assignment for the benefit of creditors, or becomes the subject of any proceeding commenced under any statute or law for the relief of debtors and, after notice, fails to provide adequate assurance that it can remedy all of its defaults; or

38.02. If a receiver, trustee, or liquidator of any of the property or income of the Contractor shall be appointed; or

38.03. If the Contractor shall fail to prosecute the work or any part thereof with diligence necessary to insure its progress and completion as prescribed by the time schedules; or

38.04. If the Contractor shall fail to remedy any default within ten (10) calendar days after written notice thereof from City's Representative, as City's Representative shall direct; or

38.05. If the Contractor shall fail for any reason other than the failure by City's Representative to make payments called upon when due; or

38.06. If the Contractor abandons the Work.

38.07. If the Contractor commits a substantial default under any of the terms, provisions, conditions, or covenants contained in this Agreement.

39. TERMINATION FOR CONVENIENCE

39.01. The performance of the work may be terminated at any time in whole or, from time to time, in part, by the City for its convenience. Any such termination shall be effected by delivery to the Contractor of a written notice (notice of termination) specifying the extent to which performance of the work is terminated, and the date upon which termination becomes effective.

39.02 In the event of termination for convenience, the Contractor shall only be paid the reasonable value of the Work performed prior to the effective date of the termination notice and shall be further subject to any claim the City may have against the Contractor under other provisions of this Agreement or as a matter of law. In the event of termination for convenience, Contractor Waives and Releases any claim for lost profit, other than profit on Work performed prior to the effective date of such termination.

40. RIGHT TO COMPLETE

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

41. CLOSE OUT

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

- (a) Stop the work on the date and to the extent specified in the notice of termination;
- (b) Place no further orders or subcontracts for services, equipment, or materials, except as may be necessary for completion of such portion of the work as is not terminated;
- (c) Terminate all orders and subcontracts to the extent that they relate to the performance of the work terminated by the notice of termination;

(d) Assign to City's Representative, in the manner and to the extent directed by it, all of the right, title, and interest of the Contractor under the orders or subcontracts so terminated; in which case, City's Representative shall have the right to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

(e) With the approval of City's Representative, settle all outstanding liabilities and all claims arising out of such termination, orders, and subcontracts;

(f) Deliver to City's Representative, when directed by City's Representative, all documents and all property, which if the work had been completed, Contractor would have been required to account for or deliver to City's Representative, and transfer title to such property to City's Representative to the extent not already transferred.

42. TERMINATION CONVERSION

Upon determination of Court of competent jurisdiction that termination of the Contractor pursuant to Paragraph 38 was wrongful and/or otherwise improper, such termination will be deemed converted to a termination for convenience pursuant to Paragraph 39 and Contractor's remedy for such termination shall be limited to the recovery of the payments permitted for termination for convenience as set forth in Paragraph 39.

43. HIRING

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

44. ASSIGNMENT

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

45. EFFECTIVE DATE

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

46. OTHER TERMS

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

replace the respective provision or provisions of this Agreement with legal terms and conditions approximating the original intent of the parties.

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

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

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

46.05. **Mediation.** After receipt of a Notice of Claim, the City may elect to refer the matter to the Contractor, City's Representative or another party for review. Contractor will attend meetings called to review and discuss the Claims and mitigation of the problem, and shall furnish any reasonable factual backup for the Claim requested. The City may also elect to defer consideration of the Claim until the Work is completed, in which case the same review options shall be available to the City at the completion of the Work. At any stage, the City, at its sole discretion, is entitled to refer a Claim to mediation under the Construction Industry Mediation Rules of the American Arbitration Association, and, if this referral is made, Contractor will take part in the mediation process. The filing, mediation or rejection of a Claim does not entitle Contractor to stop performance of the Work. The Contractor shall proceed diligently with performance of the Contract during the pendency of any claim, excepting termination or under City's direction to stop the Work. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. The parties shall share the Mediator's fee and any filing fees equally and the Mediation shall be held in Nacogdoches, Texas.

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

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

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

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

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

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

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

- (e) **Debarment.** Contractor certifies that Contractor and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity and that Contractor is in compliance with the State of Texas statutes and rules relating to procurement. Entities ineligible for state procurement are listed on the State of Texas Debarred Vendor List maintained by the Texas Comptroller of Public Accounts and the System for Award Management (SAM) maintained by the General Services Administration. Entities ineligible for federal procurement are listed at <http://www.sam.gov/content/exclusions>.
- (f) **Terrorism Watch List.** Contractor represents and warrants that it does not do business with Iran, Sudan or a foreign terrorist organization as prohibited by Texas Government Code 2252.152. Contractor certifies that it is not listed on the federal government's terrorism watch list as described in Executive Order 13224.
- (g) **Critical Infrastructure.** If Contractor will be granted direct or indirect access to a communication infrastructure system, cybersecurity system, electric grid, hazardous waste treatment system, or water treatment facility, Contractor certifies that neither it or its parent company, is (1) majority owned by

citizens or governmental entities of China, North Korea, Russia or any other country designated by the Governor under Government Code 2274.0103, or (2) headquartered in any of those countries.

- (h) **Convictions.** Under Sections 2155.006, 23155.0061 and 2261.053 of the Texas Government Code, Contractor certifies that it is not ineligible to receive the specified contract and may be terminated and payment withheld if this certification is inaccurate. These sections prohibit contracts that include proposed financial participation by an individual or business entity who has been convicted in the past five years of (a) violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by §418.004, Gov't Code, occurring after September 24, 2005; and (b) of any offense related to the direct support or promotion of human trafficking.
- (i) **COVID Vaccinations.** Contractor certifies that it does not require its customers to provide any documentation certifying the Customer's COVID-19 vaccination or post-transmission recovery on entry to, or to receive service from the Contractor's business.
- (j) **Boycotts.** (1) To the extent this Contract is considered a Contract for goods or services subject to § 2270.002 Texas Government Code, Contractor verifies that it: (i) does not boycott Israel; and (ii) will not boycott Israel during the term of this Contract. (2) To the extent this Contract has a value of \$100,000 or more and Contractor is an organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations, that exists to make a profit that employs 10 or more full time employees, Contractor certifies that it: (i) does not and will not boycott energy companies during the term of the contract (*See Texas Government Code 2274.002, et seq.*); and (ii) does not and will not discriminate against a firearm entity or firearm trade association (*See Texas Government Code 2274.002, et seq.*).

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

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

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

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

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

**KRAFTSMAN COMMERICAL
PLAYGROUNDS**

By: Korey Soderberg

Printed Name: Korey Soderberg

Title: COO

Date: 4.17.2024

CITY OF NACOGDOCHES

By: _____

City Manager

Date: _____

APPROVED AS TO FORM:

City Attorney

Date: _____

Exhibit A
DAVIS BACON WAGE RATES

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

Exhibit B
INSURANCE REQUIREMENTS

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

I. Standard Insurance Policies Required:

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

KS

II. General Requirements Applicable to All Policies:

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

III. Commercial General Liability

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

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

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

IV. Business Automobile Liability

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

V. Excess Liability

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

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

furnished to the City's Representative at the time of execution of this Agreement, attached hereto as Exhibit D, and approved by the City before work commences.

VII. Workers Compensation Insurance

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

"A. Definitions:

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

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

Persons providing services on the project ("subcontractors" in § 406.096 [of the Texas Labor Code]) - includes all persons or entities performing all or part of the services the Contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent Contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

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

- I. The Contractor shall contractually require each person with whom it contracts to provide services on a project, to:*
- (1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, that meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;*
 - (2) provide to the Contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;*
 - (3) provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;*
 - (4) obtain from each other person with whom it contracts, and provide to the Contractor:*
 - (a) A certificate of coverage, prior to the other person beginning work on the project; and*
 - (b) A new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;*
 - (5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;*
 - (6) notify the governmental entity in writing by certified mail or personal delivery, within 10 calendar days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and*
 - (7) Contractually require each person with whom it contracts to perform as required by paragraphs (a) - (g), with the certificates of coverage to be provided to the person for whom they are providing services.*
- J. By signing this contract, or providing, or causing to be provided a certificate of coverage, the Contractor is representing to the governmental entity that all employees of the Contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project; that the coverage will be based on proper reporting of classification codes and payroll amounts; and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the Commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.*
- K. The Contractor's failure to comply with any of these provisions is a breach of contract by the*

Contractor that entitles the governmental entity to declare the contract void if the Contractor does not remedy the breach within ten calendar days after receipt of notice of breach from the governmental entity.”

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

Exhibit C
PERFORMANCE AND PAYMENT BONDS

PERFORMANCE BOND

Project No. _____

THE STATE OF TEXAS

§
§

KNOW ALL MEN BY THESE PRESENTS:

THE COUNTY OF NACOGDOCHES

§

THAT WE, _____, as Principal, hereinafter called "Contractor" and the other subscriber hereto _____, as Surety, do hereby acknowledge ourselves to be held and firmly bound to the City of Nacogdoches, a municipal corporation, in the sum of _____ **and xx/100 (\$xxx,xxx.xx)** for the payment of which sum, well and truly to be made to the City of Nacogdoches and its successors, the said Contractor and Surety do bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

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

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

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

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

It is further expressly agreed and understood that the Contractor and Surety will fully indemnify and hold harmless the City of Nacogdoches from any liability, loss, cost, expense, or damage arising out of or in connection with the work done by the Contractor under the Contract. In the event that the City of Nacogdoches shall bring any suit or other proceeding at law on the Contract or this bond or both, the Contractor and Surety agree to pay to the City the actual amounts of attorneys' fees incurred by the city in connection with such suit.

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

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

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

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

(Name of Contractor)

By: _____
Name:
Title:

By: _____
Name:
Title:
Date:

ATTEST/WITNESS (SEAL)

(Full Name of Surety)

By: _____
Name:
Title:
Date:

(Address of Surety for Notice)

By: _____
Name:
Title:
Date:

REVIEWED:

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

City Attorney's Office

City Manager

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

TEXAS STATUTORY PAYMENT BOND

Project No. _____

THE STATE OF TEXAS

§
§

KNOW ALL MEN BY THESE PRESENTS:

THE COUNTY OF NACOGDOCHES

§

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

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

WHEREAS, Principal has entered into a certain contract with the City of Nacogdoches, dated the _____ day of _____, 20____, for **Construction Services for Temple Spray Station Project** which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

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

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

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

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

(Name of Contractor)

By: _____
Name:
Title:

By: _____
Name:
Title:
Date:

ATTEST/WITNESS (SEAL)

(Full Name of Surety)

By: _____
Name:
Title:
Date:

(Address of Surety for Notice)

By: _____
Name:
Title:
Date:

REVIEWED:

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

City Attorney's Office

City Manager

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

Exhibit D
CERTIFICATES OF INSURANCE AND ENDORSEMENTS

Exhibit E
FINAL AFFIDAVIT OF ALL BILLS PAID
FINAL BILLS PAID AFFIDAVIT
BY CONTRACTOR

BEFORE ME, the undersigned authority, personally appeared as _____, known to me to be a credible person, and after
(Name)
being by me duly sworn, upon oath stated and affirmed that: “My name is
_____ and I am the _____
(Name) (Title)
of _____”, hereafter referred to in this affidavit as
(Firm)
“Contractor”. Contractor’s business address is _____,
(Address)
Texas, _____. The undersigned Contractor has personal knowledge of the facts
(Zip)
stated herein and has full authority to make the agreements in this affidavit on behalf of
Contractor.

Pursuant to and in accordance with a written contract between Contractor and
_____, collectively referred to as Owner, Contractor furnished
(Owner)
materials and labor for the construction, renovation, installation or repair of certain
improvements (the “Improvements”), being City of Nacogdoches contract for

Design and Construction of Temple Spray Station Project.
(Project Name)

All work provided for under said written construction contract, together with all changes and supplements thereto, has been fully completed in accordance with the terms and provisions of said contract.

Contractor has paid each of its subcontractors, laborers, suppliers and materialmen in full for all labor and materials provided to Contractor for or in connection with the construction, renovation or repair of the Improvements.

Contractor is not aware of any unpaid bills, claims, demands or causes of action by any of its subcontractors, laborers, manufacturers, suppliers or materialmen for or in connection with the furnishing of labor materials, or both, for the construction, renovation or repair of the Improvements.

Contractor further understands that this Final Bills Paid Affidavit is being given pursuant to and in accordance with Section 53.085 of the Texas Property Code and that the

intentional, knowing or reckless making of a false or misleading statement in this Affidavit constitutes an offense under said Section and is a Class A misdemeanor.

Contractor hereby indemnifies and holds harmless the City of Nacogdoches from any and all claims, demands or causes of action, and any costs, expenses and attorney's fees incurred in connection therewith, arising from or connected with, the statements and representations contained herein.

EXECUTED this ____ day of _____, 20____.

CONTRACTOR:

By: _____

Name: _____

Title: _____

Notary's Acknowledgement

Before me, the undersigned authority, on this day personally appeared _____, who first being duly sworn by me to be the person whose name is subscribed to the foregoing Final Bills Paid Affidavit, acknowledged that he/she has the authority to make this Final Bills Paid Affidavit, and further acknowledged to me that he/she executed the same for the purpose and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the ____ day of _____, 20____.

Exhibit F
PLANS, SPECIFICATIONS AND DRAWINGS

Construction Contract

Temple Park Splash Pad

Kraftsman Commercial Construction

Project Overview

Kraftsman Commercial Playgrounds (BuyBoard Company)

- Contract includes design and build of a new splash pad not to exceed **\$180,000**

Similar projects by Kraftsman Commercial Playgrounds:

- Memorial Park - Amarillo, TX
- Sawmill Splash Park - Woodlands, TX
- Parr Park Sprayground - Grapevine, TX

Existing Spray Station Equipment





City Council Meeting

Date: April 23, 2024

Agenda Item: 6.D.

PRESENTER:

ITEM/SUBJECT: Consider approval of the Fiscal Year 2023 Annual Audit. (Interim Finance Director)

SUMMARY/BACKGROUND:

FINANCIAL:

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

CITY CONTACT: Todd Simoneaux, Interim Finance Director
simoneauxt@nactx.us
(936) 559-2506

ATTACHMENTS: