



July 2, 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 a facility lease agreement between the City of Nacogdoches and Combat Shooting and Tactics, LLC for the use of a tactical firing range facility for weapons proficiency and training sessions for the City's Police Officers. (Chief of Police)
 - B. Consider approval of a contract between the City of Nacogdoches and A.T. Staffing/Advance's Temporaries, INC., for the provision of temporary workers for the City of Nacogdoches. (Human Resources Manager)
 - C. Consider accepting a Contract for Water Services between the City of Nacogdoches and D&M Water Supply Corporation. (Assistant City Engineer)

- D. Consider approval of minutes for the June 18, 2024, City Council Regular Meeting.
(City Secretary)

6. 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 June 27, 2024, at 6:00 p.m. and remained posted until the meeting convened.

Rhonda Lewis, City Secretary



City Council Meeting

Date: July 2, 2024

Agenda Item: 5.A.

PRESENTER: Scott Weems, Police Chief

ITEM/SUBJECT:

Consider approval of a facility lease agreement between the City of Nacogdoches and Combat Shooting and Tactics, LLC for the use of a tactical firing range facility for weapons proficiency and training sessions for the City's Police Officers. (Chief of Police)

SUMMARY/BACKGROUND: This lease agreement is made by and between Combat Shooting and Tactics, LLC, (CSAT) and the City of Nacogdoches. This lease shall be for a term of one year, with an option to renew by the City for two one-year terms. The rental amount shall be payable in two (2) installments of Twelve Thousand Five Hundred and 00/100 Dollars (\$12,500.00), equating to an estimated twenty-five (25) uses per six (6) month period.

FINANCIAL:

Item is budgeted:

Account No.: 01.15.630.90

Account Name: Other Contractual Services

Amount: \$25,000

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

Not Applicable

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

ATTACHMENTS: 1. 2024-2025 FACILITY USE AGREEMENT CSAT LLC_FINAL



**FACILITY LEASE AGREEMENT
BY AND BETWEEN
COMBAT SHOOTING AND TACTICS, LLC
AND
THE CITY OF NACOGDOCHES**

This lease agreement is made and entered into on this _____ day of _____, 20__, by and between the Combat Shooting and Tactics, LLC, a limited liability company, hereinafter “Lessor”, by and through its duly authorized agent, and the City of Nacogdoches, Texas, a Texas home rule municipality, hereinafter “Lessee”, by and through its duly authorized City Manager.

WHEREAS, the City of Nacogdoches, Texas needs an area for the police officers to qualify on weapons proficiency, and to hold training sessions; and

WHEREAS, Combat Shooting and Tactics, LLC has allowed the police to use its tactical firing range facility (the “Facility”); and

WHEREAS, the parties desire a one-year, renewable lease to allow the City to use the premises and any additional offerings of the premises as provided and agreed upon herein;

NOW, THEREFORE, for and in consideration of the payments and other consideration set out herein, the Parties agree as follows:

1. Property. The Lessor hereby leases to the Lessee use of that certain real estate generally located at 110 Red Rock Ranch Road in Nacogdoches, TX owned by Combat Shooting and Tactics, LLC.
2. Term. This lease shall be for a term of one year, with an option to renew by the City for two one-year terms, said renewal to be delivered in writing to Lessor by the date of expiration.
3. The members of the Lessee may use the parking lot, and, if otherwise accessible to them, the restroom facility.
4. Nonexclusive use of the Facility. The Police Department may use the tactical firing range upon approval of the schedule by the Facility, for rifle and carbine qualifications and for practice by the tactical team and other officers. Training sessions may be scheduled separately, with fees negotiated between the City and the Facility. Any use of other Facility offerings can be arranged separately, if at all. For purposes of this agreement, “use” of the Facility shall mean at least half a day or four (4) hours.
5. Facility Rules to be followed. Members of the Nacogdoches Police Department shall follow Facility rules while on Facility property, and specifically, the City shall not permit the use of fully automatic weapons on Facility property, including the leased area.
6. Rent. In consideration of the City’s use of the Facility during the Term of this lease agreement, the City shall pay Lessor CSAT, LLC the total sum of Twenty-Five Thousand and 00/100 Dollars (\$25,000.00), or Five Hundred and 00/100 Dollars (\$500.00) per day for fifty (50) days use of the Facility during the Term. The rental amount shall be payable in two (2) installments of Twelve Thousand Five Hundred and 00/100 Dollars (\$12,500.00) equating to an estimated twenty-five (25) uses per six (6) month period. After the first six (6) months, Lessor and City may adjust the number of uses and/or rental amount for the subsequent six (6) month period as determined and agreed to by the parties.

Lessor shall provide an invoice to the City dated January 1st for the first installment and June 1st for second installment. The City shall send the payments to CSAT, LLC no later than thirty (30) days from the date of the invoice at the address set out below or at any other location designated in writing by Lessor.

7. Modification. This lease may be modified by a written agreement of all the parties.
8. Representations of the parties. The parties represent that they have the right to enter into this agreement and to perform in accordance with the terms. Lessor represents that it has title to such property and /or the right to enter into a long-term lease, and to make such an assignment. Lessee represents that it can enter into such a lease, and that it will seek action by the City Council, if necessary, to approve such lease.
9. Termination of Lease. This agreement may be terminated by either party, without cause, upon ninety (90) days written notice to the other party. This agreement may also be terminated by agreement of both parties. Consideration shall be given to the status and conditions of any improvements constructed. The parties will determine if payment is to be made for improvements left available to Lessor.

Should the lease agreement be terminated prior to the expiration of the Term, Lessor shall reimburse the City for any amounts paid to Lessor for any remaining, unused days. The reimbursement amount shall be calculated using the estimated usage of fifty (50) days for the Term, as set forth in paragraph 6 above.

10. Dangerous activity. The parties acknowledge that there is a danger in the use of firearms and related activities, and the parties agree to follow the safety rules of Lessor and other safe practices designed to avoid accidents and misuse of firearms.
11. Signs. The City shall be authorized to erect appropriate signage to identify the area and to restrict entry onto the premises.
12. Taxes. Lessor shall not be responsible for taxes on the improvements or personal property of Lessee. If the property taxes are increased because of the improvements constructed by the City, the City shall pay any increased taxes caused by such improvements.
13. Indemnity. To the extent permitted by law, the City shall defend, indemnify and hold harmless the Facility, Combat Shooting and Tactics, LLC, and their owners, members, directors, officers and agents from all claims arising out of the use of both their owned and leased land and facilities by employees, agents and volunteers of the Nacogdoches Police Department.
14. Insurance. The City of Nacogdoches shall furnish Combat Shooting and Tactics, LLC current insurance certificates for General Liability, Automobile Liability and Worker's Compensation and Employers Liability insurance coverages and shall include both above named certificate holders as additional insureds on the City's General Liability and Automobile Liability Insurance Policies and shall include a Waiver of Subrogation in favor of the above named certificate holders on the City's Workers Compensation and Employers Liability Insurance Policy.
15. Notices and addresses. All notices required under this lease must be sent to the other party at the address set out below. Either party may change the address to which notice is to be sent by giving the other party written notice of the new address or responsible party.

Lessor: Combat Shooting and Tactics, LLC
Address: 298 CR 2131
Nacogdoches, TX 75965
Contact Person: Paul R. Howe

Lessee: City of Nacogdoches, Texas
Address: 312 W Main St.
Nacogdoches, TX 75961
Contact Person: Police Chief Scott Weems

16. Parties bound. This agreement shall be binding upon the parties to this lease and to their respective successors and assigns.
17. Texas Law. This agreement shall be construed under, and in accordance with, the laws of the State of Texas, and all obligations of the parties created by this lease are performable in Nacogdoches County, Texas.
18. Severability. In case any one or more of the provisions contained in this agreement shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of the agreement, and this agreement shall be construed as if the invalid, illegal, of unenforceable provision had never been included in the agreement.

[Signature Page to Follow]

Signed and effective on this _____ day of _____, 20_____.

COMBAT SHOOTING AND TACTICS, LLC, Lessor

By: _____

Printed Name: _____

Title: _____

Date: _____

CITY OF NACOGDOCHES, TEXAS, Lessee

By: _____

Printed Name: _____

Title: _____

Date: _____

APPROVED AS TO FORM:

City Attorney
City of Nacogdoches



City Council Meeting

Date: July 2, 2024

Agenda Item: 5.B.

PRESENTER:

ITEM/SUBJECT: Consider approval of a contract between the City of Nacogdoches and A.T. Staffing/Advance's Temporaries, INC., for the provision of temporary workers for the City of Nacogdoches. (Human Resources Manager)

SUMMARY/BACKGROUND: In 2021, the City of Nacogdoches entered into an agreement with A. T. Staffing to utilize them in helping fill our temporary employment positions. Our contract is set to end on July 21, 2024. We ask the City Council to approve to extend this contract another year.

FINANCIAL:

No financial impact associated with this item

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

CITY CONTACT: Brittany Tucker, Human Resources Manager
tuckerb@nactx.us
(936) 559-2569

ATTACHMENTS: 1. Temporary Staffing Contract Renewal

**CITY OF NACOGDOCHES
GENERAL SERVICE CONTRACT RENEWAL**

This General Service Contract is by and between the **City of Nacogdoches**, a Texas Home-Rule Municipal Corporation (the "City"), and **A.T. Staffing/Advance'd Temporaries, INC.** (the "Contractor"), for the following work: Provision of Temporary Services as described in the Original "**Provision of Temporary Services to the City**" Contract Scope of Services signed and dated **July 21, 2021**.

This renewal confirms that both parties agree to renew the services stated in the original contract for one additional year per the Original **Provision of Temporary Services to the City** Contract.

No changes or alterations are being made to the original contract and all provisions of the contract still apply.

OR

Please replace this text with the changes or alterations being made to the original contract and all provisions of the contract that will apply.

VENDOR NAME

CITY OF NACOGDOCHES

P.O. Box 635030

Nacogdoches, Texas 75963-5030

By: Jenny McClendon

By: [Signature]

Printed Name: Jenny McClendon

City Manager

Date: 6/10/24

Title: Branch Manager - Lufkin

APPROVED AS TO CONTENT:

Date: 06-05-2024

[Signature]

Department Director

Date: 6-7-24

APPROVED AS TO FORM:

[Signature]

City Attorney

Date: 6-10-24

PRESENTER: Jason Vickery, Assistant City Engineer

ITEM/SUBJECT: Consider accepting a Contract for Water Services between the City of Nacogdoches and D&M Water Supply Corporation. (Assistant City Engineer)

SUMMARY/BACKGROUND: The City of Nacogdoches provides potable water under a wholesale agreement to a number of purveyors in Nacogdoches County, including D&M Water Supply Corporation (WSC). Nacogdoches has made treated water available to D&M WSC through a single metered connection point. D&M WSC typically uses water from this connection as an emergency interconnection when they have a loss of production within their water well network. Other purveyors that were approved at the June 18, 2024, City Council meeting included Lilly Grove SUD, Nacogdoches County MUD 1, and Woden WSC. Our current agreement with D&M WSC has expired, and they are requesting the renewal of their contract. City staff and D&M WSC took this opportunity to update the contract to reflect recent regulations and current water system needs. Some highlights of the contract include:

- Nacogdoches agrees to supply up to 242,00 gallons per day of treated water at the metered connection point.
- D&M WSC will implement their Drought Contingency Plan if requested by the City.
- Water use is billed at a rate of 1.5 times the residential rate.
- D&M WSC will maintain a backflow preventer at the connection point.
- The agreement expires June 30, 2034.

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: Jason Vickery, Assistant City Engineer
vickeryj@nactx.us
(936) 559-2518

ATTACHMENTS: 1. Water Services Contract between the City of Nacogdoches & D&M WSC

CONTRACT FOR WATER SERVICES
BETWEEN THE CITY OF NACOGDOCHES AND
D & M WATER SUPPLY CORPORATION

STATE OF TEXAS §

COUNTY OF NACOGDOCHES §

This contract and agreement is made and entered into by and between the City of Nacogdoches, a municipal corporation and home rule city, located in Nacogdoches County, Texas, acting by and through the undersigned, its duly authorized agent, hereinafter called "City" and D&M Water Supply Corporation, a nonprofit water supply corporation subject to Chapter 67 of the Texas Water Code, located in Nacogdoches County, Texas, acting by and through Gloria Montes its duly elected and authorized President, hereinafter called "DMWSC".

WHEREAS, City has provided at its own expense, and now owns, operates and maintains facilities for processing and distributing treated water, and at the present time is qualified and authorized to furnish and deliver treated water within Nacogdoches County; and,

WHEREAS, DMWSC operates and maintains facilities for processing and distributing treated water to its customers; and

WHEREAS, DMWSC may require an additional treated water supply source for daily operations or emergencies; and

WHEREAS, it is deemed to be in the best interest of both City and DMWSC that said parties do enter into a mutually satisfactory agreement by means of which DMWSC may obtain from City an agreed amount specified below of treated water at reasonable rates and terms; and

WHEREAS, by the execution of this Contract, neither City nor DMWSC will surrender any of its rights to the ownership and operation of its present water production and distribution facilities.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

That, for and in consideration of the mutual covenants, promises and agreements contained herein, City and DMWSC do hereby covenant and agree as follows:

1.

TERMS AND CONDITIONS

- 1.1 City agrees to furnish and sell to DMWSC treated potable water meeting all requirements of the Safe Drinking Water Act, the Texas Commission on Environmental Quality, the Environmental Protection Agency, and other applicable regulations for water quality and delivery. Treated potable water may be from groundwater wells or a surface water source, or a mixture of both. DMWSC agrees to accept treated water as-is with all chemical or natural constituents that may be normal from a treated potable groundwater or surface water source. City agrees to furnish a volume not to exceed **242,000** gallons per day on a thirty-day average ("gpd") from **July 1, 2024 until June 30, 2034** beginning July 1, 2024 for the remainder of the term of this Contract. City shall deliver water to DMWSC at the rate of up to 450 gallons per minute and at a minimum pressure of 35 psi under normal operating conditions and 25 psi under emergency operating conditions. DMWSC agrees to accept delivery under the conditions of this Contract and to pay for the same in accordance with the terms herein. The temporary loss of pressure or supply due to supply line breaks, power failures, floods, fires, and use of water to fight fires, earthquakes or other emergencies shall excuse City from this provision for such reasonable period of time as may be necessary to restore service.

1.1.1 DMWSC will be allowed to connect and withdraw water from the designated interconnection points and will only be billed for water received through its point of delivery.

1.1.2 City will use commercially reasonable efforts to remain in position to furnish water as herein contracted to be sold to DMWSC, and at all times DMWSC will be considered by the City as a regular outside City limit water customer, even during water conservation measures as outlined in the City adopted Drought Contingency Plan.

1.2 At such times as the City decides it is necessary to limit or ration water within its system under the provisions of its Drought Contingency Plan or any other emergency action, the City shall notify DMWSC of the conservation Stage currently in effect, and DMWSC shall immediately implement all the provisions of the City's Drought Contingency Plan for any service areas that use water supplied by the City. DMWSC is not obligated to implement the provisions of City's Drought Contingency Plan to areas of their system that have alternative water supply sources. City shall provide current and updated copies of its Drought Contingency Plan to DMWSC on a periodic basis. Additionally, during the term of this Contract, DMWSC shall at all times maintain a fully implemented water conservation plan consistent with rules promulgated by the Texas Commission on Environmental Quality.

1.3 City shall use its best efforts to timely notify DMWSC of significant service interruptions.

2.

LOCATION AND MAINTENANCE OF MEASURING DEVICES

- 2.1 One or more suitable meters shall measure all water furnished under this Contact by City. City shall pay all costs associated with the operation and maintenance of said appurtenances (or meters) as necessary.
- 2.2 The point of delivery of treated water by City is designated as the meter vault(s) located at the physical point(s) of interconnection between the two water systems. All mains and distribution facilities beyond the meter vault shall be the responsibility of DMWSC. The location of each water take point and meter shall be mutually agreed upon in writing by and between the parties hereto, and the meter or meters shall not be moved or relocated except by mutual consent in writing by the parties hereto.
- 2.3 DMWSC, at its own expense, may install a secondary meter to verify the volume of water passing the master meter, provided that it is installed on the DMWSC's side of the master meter and is maintained and tested in an identical fashion to the master meter. DMWSC shall immediately notify City when discrepancies are found between the readings of the two meters.
- 2.4 DMWSC shall install, on its side of the master meter, a back-flow preventer device (double check valve configuration). DMWSC will maintain this device in good working order and have it inspected annually by a certified technician with City being furnished a copy of the results.

3.

METERS

- 3.1 All meters will be properly sealed, and the seal shall not be broken unless representatives of both parties have been notified and given a reasonable opportunity to be present.
- 3.2 Either Party at their own expense may test the meter for accuracy using a non-destructive or non-invasive testing device. Any test of such metering equipment shall be done by employees or agents of City, or other reputable approved third-party calibration agent, in the presence of representatives of DMWSC and City, if so, requested by DMWSC. Notifications of any proposed test shall be provided to the other Party at least seventy-two (72) hours prior to such testing being conducted and the other Party may observe such test, if so desired. Copies of the results of such test and all related information shall be provided to the other Party within fifteen (15) days of receipt.
- 3.3 If it is determined that the accuracy of such meter is found to be lower than ninety-five (95%) or higher than one hundred five percent (105%) of actual flow expressed as a percentage of the full scale of the meter, the registration of the flow as determined by such defective meter shall be corrected for a period extending back to the time such inaccuracy began, if such time is ascertainable. If such time is not ascertainable, then for a period extending back one-half (1/2) of the time elapsed since the date of the last calibration, but in no event farther back than a period of six (6) months. Additional payments by DMWSC or credits due DMWSC due to meter inaccuracy may be spread over six (6) months at the election of the paying or crediting party.
- 3.4 If any meter used to determine the flow of treated water to DMWSC is out of service or out of repair, so that the amount of water metered cannot be ascertained or computed from the reading thereof, the water delivered during the period such

meter is out of service or out of repair shall be estimated and agreed upon by the parties hereto upon the basis of the best data available. The basis for estimating such flow includes, but is not limited to, extrapolation of past patterns of flow for said metering station under similar conditions.

4.

METER READING AND BILLING

- 4.1 City will read all meters provided for herein at monthly intervals, and the Parties to this Contract shall have free access to read these respective meters daily, if either Party so desires. It shall be the duty of the Parties to give immediate notice each to the other should any meter be found not to be functioning properly, and upon such notice repairs to such meter shall be made promptly.
- 4.2 Meter readings will be collected electronically by City and records maintained for a minimum period of sixty (60) months. DMWSC shall have access to such records during reasonable business hours and shall be furnished with monthly readings for each point of delivery metering facility.
- 4.3 Bills for water service shall be rendered to DMWSC monthly by City. All such bills shall be due and payable by DMWSC within thirty (30) days of receipt by DMWSC. Payments received by City shall be first applied to the past due charges, if any, and thereafter to the current charges.
- 4.4 If DMWSC disputes a bill and is unable to resolve the difference informally, DMWSC shall notify the duly authorized agent of City in writing. If the duly authorized agent and DMWSC are unable to resolve the disputed bill, the bill will be submitted to the City Manager of City for review. The Parties shall make a good faith effort to settle any bill dispute. However, if the Parties fail to resolve disputed water charges, DMWSC and City shall submit it to mediation. In the event a payment is not paid as specified in this Contract, interest on the unpaid balance of

ten percent (10%) per annum will be calculated from the date which the payment was required to be made until paid. In the event that a billing adjustment in the DMWSC's favor is agreed upon or established by the City Manager of City, the amount found to be incorrect would be credited to DMWSC's account together with an interest charge of ten percent (10%) per annum on the credited amount calculated from the date payment of the disputed bill was received.

- 4.5 IN NO EVENT SHALL ANY BILLING ADJUSTMENT BE MADE, AS PROVIDED IN PARAGRAPH 4.4 ABOVE, MORE THAN ONE-HUNDRED EIGHTY (180) DAYS AFTER SUCH PAYMENT IS MADE AND RECEIVED BY THE CITY.

5.

RATES

- 5.1 The Parties to this Contract recognize that the initial rate to be charged to DMWSC for the purchase of water from City is equal to one and one half (1.5) times the residential rate charged by City to in-city customers which is agreed to be a fair and reasonable rate. Additionally, for any billing period when water is used, DMWSC shall be charged the applicable minimum flat rate fee which will be calculated according to DMWSC's meter size. Regardless whether water is used for part or all of any given billing period, DMWSC shall be charged, without proration, the applicable minimum flat rate fee for the entire billing period. The provisions of this contract pertaining to the "rates" to be paid by DMWSC to City for water are subject to modification at the same time City residents' water rates are modified. Any rate increase or decrease shall be based on system-wide rates for the residential customers of City.

5.1.1 DMWSC shall make all efforts to not exceed the maximum daily usage specified in this Contract.

5.1.2 In the event additional water is used by DMWSC and the thirty (30) day average exceeds the allocation defined in this agreement by fifteen percent (15%), the City will give written notice to DMWSC of the excess with sixty (60) days. Any subsequent billing periods with an excess of more than fifteen percent (15%) after the written notice will result in the possible closure of the interconnection point by City until a revision to this Contract has been executed by both parties and/or City may declare DMWSC to be in default under this Contract.

5.1.3 In the event an emergency causes additional usage by DMWSC to exceed DMWSC's normal monthly average by twenty-five percent (25%) or more and the bill for that month causes or will cause a financial hardship for DMWSC, DMWSC may request an installment payment plan not to exceed six (6) months. The City Manager in his or her discretion, may allow or deny such request and may require interest at commercially reasonable rates and such other terms as may be reasonably required.

5.2 The Parties hereto agree that services obtained pursuant to this Contract are essential and necessary to the operation of DMWSC's retail systems and that all payments made by DMWSC hereunder shall constitute reasonable and necessary operating expenses of DMWSC's retail systems.

5.2.1 DMWSC agrees, throughout the term of this Contract to fix and collect such rates and charges for water service to be supplied to its retail DMWSC's as will produce revenues in an amount equal to at least (i) all of operation and maintenance expenses of its system, including specifically its payment under this Contract and (ii) all other amounts as required by law and the provisions of the resolutions authorizing its revenue bonds or other obligations now or hereafter outstanding, including the amounts required to pay all principal or and interest on such bonds or other obligations.

6.

TERM

- 6.1 This Contract shall become effective for all purposes on July 1, 2024 (the "Effective Date"), and except as it may be earlier terminated pursuant to Paragraph 8 hereinbelow, shall continue for a period of 10 years.

7.

ADDITIONAL PARTIES

- 7.1 City will use commercially reasonable efforts to provide an adequate water supply for all of its customers, including DMWSC.

8.

TERMINATION; DEFAULT

- 8.1 This Contract may be terminated in whole or in part by the mutual written consent of DMWSC and City. Notwithstanding anything contained herein to the contrary, any material breach by either Party hereto to perform any of the duties or the obligations assumed by such Party hereunder or to faithfully keep and perform any of the terms, conditions and provisions hereof shall be cause for termination of this Contract by either party in the manner set forth in this paragraph. The following breach, default or failure to perform a duty or obligation shall be considered to be a material breach:
- a. Failure by DMWSC to adopt and enforce any resolutions or conservation measure, restriction or rationing required by City or TCEQ to be adopted and enforced herein;
 - b. Failure by DMWSC to make any payment or any bill, charge or fee as provided for in this Contract;
 - c. Making by DMWSC any unauthorized connection to the City system at any point;

- d. Failure by DMWSC to correct any potentially hazardous connection after reasonable written notice;
 - e. Failure by DMWSC to provide City ingress and egress for purposes of operation and maintenance of any metering facility or connection point.
 - f. Breach by either party of any term of this contract
- 8.2 The Parties agree to give one other no less than thirty (30) days written notice of an alleged breach, default, or failure to perform, and an opportunity to cure the alleged breach, default, or failure to perform, prior to declaration of default. Irrespective of whether or not a breach hereof is a material breach or a nonmaterial breach and irrespective of any cure of such breach, a second breach of the same nature, within one (1) year, violating any term or condition herein shall entitle City, after two (2) months written notice provided to DMWSC and without liability whatsoever on the part of City, to declare this Contract terminated. In event of termination of this Contract, all rights, powers and privileges of DMWSC hereunder shall cease and DMWSC shall make no claim to any kind whatsoever against City, its agent or representatives, by reason of such termination or act incident thereto.
- 8.3 Any failure by a Party to so terminate this Contract or the acceptance by a Party of any benefits under this Contract for any period of time after such material breach, default or failure by the other Party shall not be determined to be a waiver by said Party of any rights to terminate this Contract for any subsequent material breach, default or failure.

10.

OWNERSHIP AND LIABILITY

- 10.1 No provision of this Contract shall be construed to create any type of joint or equity ownership of any property, any partnership or joint venture, nor shall same create any other rights or liabilities and DMWSC payments (whether past, present or

future) shall not be construed as granting DMWSC partial ownership of, pre-paid capacity in or equity in the City's System.

- 10.2 To the extent permitted by law, each Party hereto agrees to save and hold the other Party harmless from all claims, demands, and causes of action, which may be asserted by anyone on account of the quality, transportation, or delivery while water is in the control of such party. This covenant is not made for the benefit of any third party. City takes the responsibility as between Parties hereto for the proper treatment, quality, transportation, or delivery of all such water provided by it to the point of delivery.
- 10.3 Contracts made and entered into by either DMWSC or City for the construction, reconstruction or repair of the meter facility shall include the requirement that the independent contractor(s) must provide adequate insurance protecting both DMWSC and City as additional insureds. Such contract must also provide that the independent contractor(s) covenant to indemnify, to the extent allowed by law, hold harmless, and defend both DMWSC and City against any and all suits or claims for damages of any nature arising out of the performance of such contract.

11.

FORCE MAJEURE

- 11.1 If by any reason of force majeure either Party hereto shall be rendered unable, wholly or in part, to carry out its obligations under this Contract, other than the obligation of DMWSC to make payments required under the terms hereof, then if such Parties shall give notice and full particulars of such force majeure in writing to the other Party within a reasonable time after the occurrence of the event or cause relied on, the obligation of the Party giving such notice, so far as it affected by such force majeure, shall be suspended during the continuance of the inability then claimed, but for no longer period, and such Party shall endeavor to remove or overcome such inability with all reasonable dispatch.

- 11.2 The term "force majeure", as employed herein, shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of public enemy, orders of any kind of the government of the United States or the State of Texas, or any civil or military authority, insurrection, riots, epidemics, landslides, lightning, earthquake, fires, hurricanes, storms, floods, washouts; drought, arrests, restraints of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines, or canals, partial or entire failure of water supply and inability on the part of supplier to deliver water hereunder or the DMWSC to receive water hereunder on account of any other causes not reasonably in the control of the part claiming such inability.

12.

NOTICES

- 12.1 Any notice, communication, request, reply or advice herein provided or permitted to be given, made or accepted by either party to the other Party must be in writing to:

City: City of Nacogdoches
Attn: Rick Beverlin, City Manager
202 E. Pilar Street
Nacogdoches, TX 75961

DMWSC: D&M Water Supply Corporation
Attn: Donnie Babb, General Manager
111 Buck Alley
Douglass, Texas 75943

The Parties hereto shall indicate in writing any change that may occur in such respective address from time to time.

13.

INSPECTION AND AUDIT

- 13.1 Complete records and accounts required to be maintained by each Party hereto shall be kept for the longer of five (5) years or other applicable retention periods. Each party shall at all times, upon notice, have the right at reasonable times to examine and inspect said records and accounts during normal business hours; and further, if required by any law, rule or regulation, make said records and accounts available to federal and/or state auditors.
- 13.2 DMWSC shall make available to City each month the Texas Commission on Environmental Quality monthly water report for DMWSC. Likewise, City shall make available to the DMWSC each month the Texas Commission on Environmental Quality monthly water report for the City.
- 13.3 DMWSC shall also make available to City annually the Consumer Confidence Report that is required by the State of Texas.

14.

MISCELLANEOUS

- 14.1 During a temporary emergency condition created by unforeseen mechanical failure or by unprecedented high rate of water usage such as might result from a major fire or a major water main break or other emergency event or condition, it may be necessary that water be withdrawn from the City system at a rate of usage in excess of that required for the usual peak requirements of DMWSC. City agrees that all customers will share proportionately in case of shortages. It is agreed that the maximum rate of flow that would normally be applicable shall not apply for such bona fide emergency withdrawals provided that City's duly authorized agent is notified by phone of the occurrence of an emergency condition.

- 14.2 This Contract is subject to all applicable federal and state laws and any applicable permits, amendments, orders or regulations of any state or federal governmental authority having or asserting jurisdiction, but nothing contained herein shall be constructed as a waiver or any right to question or contest any such law, order, rule or regulation in any forum having jurisdiction.
- 14.3 DMWSC agrees to abide by any changes in this Contract made necessary by any new, amended, or revised state or federal statute or court action.
- 14.4 If requested by the City, DMWSC shall provide quarterly the following data:
- a. Actual number of customers accounts consuming directly or indirectly from the DMWSC's System within its service area;
 - b. Classification of domestic and non-domestic accounts within its service area by number and percentage of accounts consuming directly or indirectly from DMWSC's System within its service area;
 - c. DMWSC water usage from all sources other than City's System, including, but not limited to, ground water, other surface water and water supply agreements with other entities;
 - d. Additional data as may be required by state or federal agencies exercising jurisdiction over water supply, water usage or sewers;
 - e. Additional data which may assist City and/or DMWSC in developing methodology for cost-of-service studies, planning studies for analyzing federal grants and system access fees; provided however that neither Party shall request data that will require either Party to incur unreasonable expenses in providing such data.
- 14.5 Neither Party may assign this Contract without the prior written consent of the other Party.

- 14.6 Provisions of this Contract may be modified or altered by mutual agreement reduced to writing and both Parties signing after being properly authorized by the governing bodies of both Parties.
- 14.7 City reserves the right to have parallel facilities to serve new annexations to the City of Nacogdoches, and its extraterritorial jurisdiction.
- 14.8 No tap fees or demand charges are part of this Contract.

15.

WAIVER, REMEDY AND SEVERABILITY

- 15.1 No waiver by either Party hereto of any term or condition of this Contract shall be deemed or constructed to be a waiver of any other term or condition or subsequent waiver of the same term or condition.
- 15.2 In addition to any other remedy as may be provided by law, this Contract shall be specifically enforceable by the Parties hereto. This Contract shall be construed and governed according to the laws of the State of Texas, without giving effect to its conflict of laws provisions. Nacogdoches County, Texas shall be the sole and exclusive venue for any litigation or other proceeding between the Parties that may be brought in connection with or that arises out of this Contract.
- 15.3 It is agreed that in the event any term or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of such term or provision contained therein shall not affect any other term or provision and this Contract shall then continue as if such invalid term or provision had not been contained herein.
- 15.4 This Contract constitutes the entire Contract between the parties regarding the subject matter hereof and supersede all prior or contemporaneous discussions,

representations, correspondence and Contracts, or whether oral or written, pertaining thereto. Each Party to this Contract acknowledges that no representations, inducements, promises or Contracts, orally or otherwise, have been made by any Party or anyone acting on behalf of any Party, in relation to the subject matter of this Contract, that are not embodied in this written Contract, and that no such other Contract, statement or promise relating to the subject matter of this Contract and not set forth in this Contract has been relied upon or shall be valid or binding. This Contract may be amended or modified only by a writing duly executed by both Parties.

IN TESTIMONY WHEREOF, after proper action by the respective governing bodies of the Parties hereto, we have caused these presents to be executed in quadruplicate copies, each of which is considered to be an original and the seals of the respective Parties to be affixed on the data above written.

CITY OF NACOGDOCHES

By: _____
Rick Beverlin, City Manager

Date Signed: _____

ATTEST:

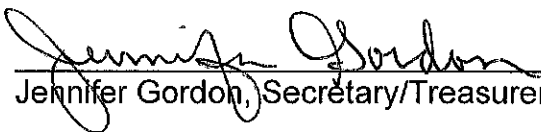
Rhonda Lewis, City Secretary

D&M WATER SUPPLY CORPORATION

By: 
Gloria Montes, President

Date Signed: 6-20-2024

ATTEST:


Jennifer Gordon, Secretary/Treasurer



City Council Meeting

Date: July 2, 2024

Agenda Item: 5.D.

PRESENTER: Rhonda Lewis, City Secretary

ITEM/SUBJECT: Consider approval of minutes for the June 18, 2024, City Council Regular Meeting. (City Secretary)

SUMMARY/BACKGROUND:

FINANCIAL:

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

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

ATTACHMENTS: 1. City Council Meeting Minutes - 06.18.24



Regular Session
Nacogdoches City Council
June 18, 2024 – 5:30 p.m.
City Council Chambers – City Hall
202 East Pilar Street

City Council present: Mayor Randy Johnson, Council Members, Chad Huckaby, Kathleen Belanger; Blane Williams; and Brad Maule

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

2. Pledge of Allegiance.

3. Open Forum:

There were no comments in Open Forum.

4. ITEMS TO BE REMOVED FROM CONSENT AGENDA.

There were no items removed from the consent agenda.

5. **CONSENT AGENDA:**

- A. Consider acceptance of National Endowment for the Arts Big Read Nacogdoches grant in the amount of \$19,440.00.
- B. Consider approval of a contract by and between the City of Nacogdoches and Medford & Associates for Drainage Easement Acquisition Services in a not-to exceed amount of \$21,250.00.
- C. Consider selection of SCS Engineers for Professional Engineering Services for Landfill Permit Amendment.
- D. Consider accepting a Contract for Water Services between the City of Nacogdoches and Woden Water Supply Corporation (WSC).
- E. Consider accepting a Contract for Water Services between the City of Nacogdoches and Nacogdoches County Municipal Utility District (MUD) 1.
- F. Consider accepting a Contract for Water Services between the City of Nacogdoches and Lilly Grove Special Utility District (SUD).
- G. Consider approval of minutes for the June 4, 2024, City Council Regular Meeting.

Councilman Huckaby made a motion to approve the Consent Agenda. Councilman Williams duly seconded the motion and motion carried.

6. **REGULAR AGENDA:**

- A. Consider appointing members to the Deep East Texas Council of Governments (DETCOG) Board of Directors.

Councilwoman Belanger moved to approve Chad Huckaby, Brad Maule, Blane Williams and Kathleen Belanger to the DETCOG Board of Directors. Councilman Huckaby duly seconded the motion and the motion carried unanimously.

7. **ADJOURNED:** 5:32 p.m.

ATTEST:

Mayor, Randy Johnson
City Council
City of Nacogdoches

Rhonda Lewis, City Secretary

DRAFT