# CITY OF TEXARKANA

## CITY COUNCIL

## MINUTES ● FEBRUARY 27, 2023

**Council Chambers** | **Regular Meeting** | **6:00 PM**

**220 TEXAS BLVD., TEXARKANA, TX 75501**

## I. CALL TO ORDER, ROLL CALL, ESTABLISHMENT OF QUORUM

| Attendee Name | Title | Status | Arrived |
|---|---|---|---|
| Bob Bruggeman | Mayor | Present | |
| Jean H. Matlock | Ward 1 | Present | |
| Mary Hart | Ward 2 | Present | |
| Betty Williams | Ward 3 | Present | |
| Christie Page | Ward 4 | Present | |
| Libby White | Ward 5 | Present | |
| Jay Davis | Ward 6 | Present | |

**Staff Present:** City Manager David Orr, Jennifer Evans, Jonathan Wade, Kristin Peeples, Sherry Jackson Hawkins, J.W. Bramlett, Brooke Stone, Karey Parker, Vashil Fernandez, Gary Smith, Chris Black, Chiquita Burks, Lisa Thompson, and Daphnea Ryan.

**Legal Counsel**: Jeff Lewis.

## II. INVOCATION AND PLEDGE LED BY COUNCIL MEMBER BETTY WILLIAMS

## III. MAYOR'S REMARKS AND ITEMS OF COMMUNITY INTEREST

**Upcoming City Council Meetings:**

Monday, March 13, 2023 at 6:00 p.m.
Monday, March 27, 2023 at 6:00 p.m.

**Keep Texarkana Beautiful:**

The 9th annual Arbor Day tree giveaway will begin at 9:00 a.m., Saturday, March 4th at Spring Lake Park across from the splash pad. While supplies last, volunteers will bring the seedlings to each vehicle as this event will be a drive-thru only.

**Parks & Recreation Activities - Save the Date:**

March 7th NFC Outdoor Fitness Court Ribbon Cutting Spring Lake Park

The ribbon cutting will be held at 2:00 p.m., near the pond, at the south end of the park.

Additional Parks & Recreation information can be found on the city's website at <http://www.texarkanatexas.gov>

Partnership for the Pathways hosted this year's **Run the Line** event on Sunday, February 19th. It was well supported with over 630 people in attendance representing 20 states.

Mayor Bruggeman thanked Parks, Recreation and Public Works staff for ensuring the safety of participants at various intersections.

## IV. OPEN FORUM: COMMENTS FROM THE PUBLIC

Per Council rules, comment time is limited to five minutes, or ten minutes if using a translator. Before comments are made, a speaker must complete an information sheet and give to the City Secretary. If your comment pertains to an agenda item with a scheduled public hearing or public comment, the Council requires that you make your comment at that time; you do not need to complete an information sheet.

Mary Bruce asked for an update on the paving of Capp Street around to Findley Street. She said this was discussed several years ago and the area is growing and congested.

Council Member Matlock said she remembers this street project was put in the budget. City Manager Orr confirmed it is on the project list and he will check to see where it falls in line with other projects.

## V. APPOINTMENTS TO BOARDS, COMMISSIONS, AND COMMITTEES

The Council made no appointments to any board, commission, or committee.

## VI. ITEMS FOR CONSIDERATION

### *Consent Items*

(6:15 p.m.)

| | |
|---|---|
| **RESULT:** | **ADOPTED [UNANIMOUS]** |
| **MOVER:** | Betty Williams, Ward 3 |
| **SECONDER:** | Mary Hart, Ward 2 |
| **AYES:** | Matlock, Hart, Williams, Page, White, Davis |
| **EXCUSED:** | Bruggeman |

1. Consider approval of the minutes of the Regular Meeting of the City Council held on February 13, 2023 at 6:00 PM.

2. Resolution No. 2023-024 authorizing the City Manager to execute a contract with Stan Excavating of Texarkana, Texas, with funds not to exceed budgeted funds in the fiscal year 2023 Major Street Maintenance Fund (Fund 120) and 2022 Bond Fund (Fund 425), for concrete replacement services used for city streets for the purpose of making roadway repairs and improvements.

Public Hearing:
Council Vote: February 27, 2023

3. Resolution No. 2023-025 authorizing the City Manager to execute a contract with Stan Excavating of Texarkana, Texas, for the City's street reconstruction services for asphalt streets, with funds not to exceed budgeted funds in the fiscal year 2023 Major Street Maintenance Fund (Fund 120) and 2022 Bond Fund (Fund 425), to reconstruct city streets.

   Public Hearing:
   Council Vote: February 27, 2023

4. Resolution No. 2023-027 authorizing the City Manager to execute a contract with Plummer Associates, Inc. of Fort Worth, Texas, for the development of a hydraulic analysis of the water distribution system and a water distribution system master plan, in an amount not to exceed $301,458.00, with the Texas portion not to exceed $188,592.12. Funds are available in the Utility's 2022-2023 budget in the Texas Capital Improvement Fund.

   Public Hearing:
   Council Vote: February 27, 2023

5. Resolution No. 2023-028 authorizing the City Manager to execute a contract with Springbrook Software of Portland, Oregon, for the purchase of financial software in the amount of $150,357.50, with the Texas portion not to exceed $94,063.65. Funds are available in the Utility's 2022-2023 budget in the Texas Technology Fund.

   Public Hearing:
   Council Vote: February 27, 2023

6. Resolution No. 2023-029 authorizing the City Manager to execute a contract with the HGAC Buy Board to purchase one M2-106 Conventional Cab in a total amount not to exceed $145,995.05, with the Texas portion not to exceed $91,334.50. Funds are available in the Utility's 2022-2023 budget in the Equipment Acquisition Fund.

   Public Hearing:
   Council Vote: February 27, 2023

***Action Items***

7. Ordinance No. 2023-016 amending the budget for a One Million Dollar EPA Revolving Loan Fund Grant and establishing Fund 245.

   Public Hearing:
   Council Vote: February 27, 2023

   Camisha Scott, EPA Region 6 Project Officer, commended the city for receiving a One Million Dollar EPA Revolving Loan Fund grant. Receiving this highly competitive grant allowed the city to reach a milestone. Meeting EPA's spending and threshold requirements, now permit the city to apply for future funding without any competition during a fifteen-year period.

   She said it's been a pleasure working with city staff for the last decade. She especially thanked City Manager Orr and Daphnea Ryan, who made her job much easier.

   Council and staff took a photo with Ms. Scott presenting the "check" to the city.
   (6:23 p.m.)

| | |
|---|---|
| **RESULT:** | **ADOPTED [UNANIMOUS]** |
| **MOVER:** | Jean H. Matlock, Ward 1 |
| **SECONDER:** | Mary Hart, Ward 2 |
| **AYES:** | Matlock, Hart, Williams, Page, White, Davis |
| **EXCUSED:** | Bruggeman |

## VII. FIRST BRIEFINGS

1. Ordinance No. 2023-026 amending Chapter 130, "Streets and Sidewalks" of the Land Development Code and amending the Master Fee List for Chapter 130 License and Permit Fees.

   Public Hearing: March 13, 2023
   Council Vote: March 13, 2023

   Jonathan Wade briefed this agenda item.

| | | |
|---|---|---|
| **RESULT:** | **MOVED FORWARD** | **Next: 3/13/2023 6:00 PM** |

## VIII. PUBLIC HEARINGS

1. Resolution No. 2023-020 adopting legislative priorities for the City of Texarkana.

   Public Hearing: February 27, 2023
   Council Vote: February 27, 2023

   There were no public comments made at this hearing.

(6:30 p.m.)

| | |
|---|---|
| **RESULT:** | **ADOPTED [UNANIMOUS]** |
| **MOVER:** | Christie Page, Ward 4 |
| **SECONDER:** | Jay Davis, Ward 6 |
| **AYES:** | Matlock, Hart, Williams, Page, White, Davis |
| **EXCUSED:** | Bruggeman |

2. Resolution No. 2023-021 authorizing a written services agreement for provision of city services to RaceTrac, Inc., site [US 59 & S. Kings Hwy] in the event the City Council adopts an ordinance for full-purpose annexation of the tract.

Public Hearing: February 27, 2023
Council Vote: February 27, 2023

There were no public comments made at this hearing. Mayor Bruggeman thanked Scott Griffin, engineer for Race Trac Inc., for joining the council meeting.
(6:31 p.m.)

| | |
|---|---|
| **RESULT:** | **ADOPTED [UNANIMOUS]** |
| **MOVER:** | Mary Hart, Ward 2 |
| **SECONDER:** | Betty Williams, Ward 3 |
| **AYES:** | Matlock, Hart, Williams, Page, White, Davis |
| **EXCUSED:** | Bruggeman |

## IX. CITY MANAGER'S REPORT

**FY 2021 & FY 2022 Audit Updates**
The FY 2021 audit is now in final review with Forvis, LLC. Staff anticipates it will be presented at the March 13th council meeting. This audit is the last step to complete the post cyber-attack recovery efforts of the city's financial system.

Staff is currently working to finalize all FY 2022 audit workpapers now and has tentatively scheduled Forvis, LLC to be on site the week of March 13th to begin the FY 2022 audit fieldwork. The goal is to have the FY 2022 audit complete in May 2023.

## X. ADMINISTRATIVE COMMENTS

1. City Council

   Council had no administrative comments for staff.

2. City Staff

   Staff had no administrative comments for council.

## XI. CLOSED SESSION

The City Council convened into closed session pursuant to Texas Government Code Section 551.071 (Consultation with the City Attorney) and Section 551.074 (Personnel Matters).

## XII. RECONVENED INTO OPEN SESSION

## XIII. ADJOURNMENT

A motion was made to adjourn the meeting.
(7:33 p.m.)

| | |
|---|---|
| **RESULT:** | **ADOPTED [UNANIMOUS]** |
| **MOVER:** | Betty Williams, Ward 3 |
| **SECONDER:** | Jay Davis, Ward 6 |
| **AYES:** | Matlock, Hart, Williams, Page, White, Davis |
| **EXCUSED:** | Bruggeman |

Jennifer Evans
City Secretary

Bob Bruggeman
Mayor

# CITY OF TEXARKANA

## CITY COUNCIL

## MINUTES ● FEBRUARY 13, 2023

**Council Chambers** | **Regular Meeting** | **6:00 PM**

**220 TEXAS BLVD., TEXARKANA, TX 75501**

## I. CALL TO ORDER, ROLL CALL, ESTABLISHMENT OF QUORUM

| Attendee Name | Title | Status | Arrived |
|---|---|---|---|
| Bob Bruggeman | Mayor | Present | |
| Jean H. Matlock | Ward 1 | Present | |
| Mary Hart | Ward 2 | Present | |
| Betty Williams | Ward 3 | Present | |
| Christie Page | Ward 4 | Present | |
| Libby White | Ward 5 | Present | |
| Jay Davis | Ward 6 | Present | |

**Staff Present**: City Manager David Orr, Jennifer Evans, Kristin Peeples, Chuck Weerts, Chris Black, Gary Smith, Dusty Henslee, Brooke Stone, Karey Parker, Kevin Schutte, J.W. Bramlett, Daphnea Ryan, Vashil Fernandez, Michael Clark, Justin Anderson, Keith Jansen, Jordan Liles, Brad McKinnon, Zach Flanagan, Dustin Newman, Mike Norwood, Danny Douglas, Parker Showalter, and Hayden Knight.

**Legal Counsel**: Jeff Lewis.

## II. INVOCATION AND PLEDGE LED BY MAYOR BOB BRUGGEMAN

## III. CITIZENS MERITORIOUS SERVICE AWARD - TISD STUDENT

Texarkana Independent School District student, Abel Hendrix, was recognized and honored for his quick, brave, and decisive action regarding a house fire on February 2, 2023. Mayor Bruggeman related the incident and said in part: ".....Mr. Abel Hendrix, a 12-year-old young man, who lives in the Beverly Addition saw the fire and reported it. Abel was getting off the bus when he saw smoke in the area and went to investigate. He found that Mrs. Karen's house was on fire and asked a friend to call 911. The friend said it was not his problem and walked away. Abel ran two blocks to his grandmother and told her about the fire. He then took her phone to call 911. He gave the dispatcher all the correct information and that Mrs. Karen was in the house. After speaking with Abel's grandmother, he not only showed great situational awareness but also showed good citizenship on a regular basis by giving help to the elderly on his street. That's how he made a relationship with Mrs. Karen. **This young man is in 7th grade at Texas Middle School and showed more initiative and courage during this event than most adults can even imagine".**

Minutes Acceptance: Minutes of Feb 13, 2023 6:00 PM (Consent Items)

Abel received a Citizens Meritorious Service Award, city lapel pin, genuine fire department badge worn by staff, and T-shirt from interim Fire Chief Chris Black. He also received a thank you card from the council and staff and a personal gift card from Mayor Bruggeman.




Abel was accompanied by his grandmother, Brenda Petty, younger sister, Extasia, and great aunt, Lisa Sanders.

Also joining in this recognition was the fire crew on duty at the time of Abel's call and from TISD, Superintendent Dr. Doug Brubaker, Todd Marshall, and Abel's teacher Marla Barlow.

## IV. MAYOR'S REMARKS AND ITEMS OF COMMUNITY INTEREST

**Upcoming City Council Meetings:**

Monday, February 27, 2023 at 6:00 p.m.
Monday, March 13, 2023 at 6:00 p.m.
Monday, March 27, 2023 at 6:00 p.m.

**Parks & Recreation Activities:**

| | | |
|---|---|---|
| February 23rd & 24th | Annual ADA Fishing Derby | Spring Lake Park |

Additional Parks & Recreation information can be found on the city's website at **texarkanatexas.gov** or by contacting staff at (903) 798-3978.

## V. OPEN FORUM: COMMENTS FROM THE PUBLIC

Per Council rules, comment time is limited to five minutes, or ten minutes if using a translator. Before comments are made, a speaker must complete an information sheet and give to the City Secretary. If your comment pertains to an agenda item with a scheduled public hearing or public comment, the Council requires that you make your comment at that time; you do not need to complete an information sheet.

There were no public comments made at Open Forum.

Minutes Acceptance: Minutes of Feb 13, 2023 6:00 PM (Consent Items)

## VI. APPOINTMENTS TO BOARDS, COMMISSIONS, AND COMMITTEES

Council Member Matlock asked, with the resignation of David Watkins from the Community Healthcore board, was not the other applicant qualified to be appointed in this open position.

City Manager Orr said he spoke with Community Healthcore and they were going to contact Ms. Hooks to see if she was interested, but at this point, she has not shown interest.

## VII. ITEMS FOR CONSIDERATION

### *Consent Items*

(6:16 p.m.)

| | |
|---|---|
| **RESULT:** | **ADOPTED [UNANIMOUS]** |
| **MOVER:** | Libby White, Ward 5 |
| **SECONDER:** | Mary Hart, Ward 2 |
| **AYES:** | Matlock, Hart, Williams, Page, White, Davis |
| **EXCUSED:** | Bruggeman |

1. Consider approval of the minutes of the Regular Meeting of the City Council held on January 23, 2023 at 6:00 PM.

2. Ordinance No. 2023-017 deleting Section 11 of Ordinance No. 2023-004 as surplusage.

   Public Hearing:
   Council Vote: February 13, 2023

3. Resolution No. 2023-018 acknowledging receipt of the Police Department's 2022 Racial Profiling Report as statutorily required.

   Public Hearing:
   Council Vote: February 13, 2023

4. Ordinance No. 2023-022 amending budgeted revenues and expenditures for the Metropolitan Planning Organization Fund (Fund 220) in the amount of Fifty Thousand Dollars ($50,000) for fiscal year ending September 30, 2023.

   Public Hearing:
   Council Vote: February 13, 2023

Minutes Acceptance: Minutes of Feb 13, 2023 6:00 PM (Consent Items)

5. Ordinance No. 2023-023 amending budgeted expenditures for the Public Safety Equipment Fund (Fund 108) in the amount of Twenty-eight Thousand Nine Hundred Eighty-five Dollars ($28,985) for fiscal year ending September 30, 2023, for unspent funds from the preceding fiscal year.

   Public Hearing:
   Council Vote: February 13, 2023

***Action Items***

6. Joint Resolution No. 2023-019, with the Board of Directors of the City of Texarkana, Arkansas, supporting the fiscal year 2023 RAISE grant application for State Line corridor improvements.

   Public Hearing:
   Council Vote: February 13, 2023

   Vashil Fernandez briefed this agenda item.
   (6:20 p.m.)

| | |
|---|---|
| **RESULT:** | **ADOPTED [UNANIMOUS]** |
| **MOVER:** | Mary Hart, Ward 2 |
| **SECONDER:** | Betty Williams, Ward 3 |
| **AYES:** | Matlock, Hart, Williams, Page, White, Davis |
| **EXCUSED:** | Bruggeman |

## VIII. FIRST BRIEFINGS

1. Ordinance No. 2023-016 amending the budget for a One Million Dollar EPA Revolving Loan Fund Grant and establishing Fund 245.

   Public Hearing:
   Council Vote: February 27, 2023

   Daphnea Ryan briefed this agenda item.

| | | |
|---|---|---|
| **RESULT:** | **MOVED FORWARD** | **Next: 2/27/2023 6:00 PM** |

2. Resolution No. 2023-020 adopting legislative priorities for the City of Texarkana.

   Public Hearing: February 27, 2023
   Council Vote: February 27, 2023

Minutes Acceptance: Minutes of Feb 13, 2023 6:00 PM (Consent Items)

City Manager Orr briefed this agenda item.

| | | |
|---|---|---|
| **RESULT:** | **MOVED FORWARD** | **Next: 2/27/2023 6:00 PM** |

3. Resolution No. 2023-021 authorizing a written services agreement for provision of city services to RaceTrac, Inc., site [US 59 & S. Kings Hwy] in the event the City Council adopts an ordinance for full-purpose annexation of the tract.

Public Hearing: February 27, 2023
Council Vote: February 27, 2023

Jeff Lewis briefed this agenda item.

| | | |
|---|---|---|
| **RESULT:** | **MOVED FORWARD** | **Next: 2/27/2023 6:00 PM** |

## IX. PUBLIC HEARINGS

1. Ordinance No. 2023-015 rezoning on an approximate 2.999-acre tract of land (being Tract 71B), Thomas Price HRS, A-466, located at 530 Sowell Lane from Planned Development-Office to Commercial. Wes Haley, representing Haley's Body Shop, owner.

Public Hearing: February 13, 2023
Council Vote: February 13, 2023

There were no public comments made at this hearing.
(6:30 p.m.)

| | |
|---|---|
| **RESULT:** | **ADOPTED [UNANIMOUS]** |
| **MOVER:** | Christie Page, Ward 4 |
| **SECONDER:** | Mary Hart, Ward 2 |
| **AYES:** | Matlock, Hart, Williams, Page, White, Davis |
| **EXCUSED:** | Bruggeman |

## X. CITY MANAGER'S REPORT

**EPA Brownfields Check Presentation & Public Workshop - February 27th**
Representatives from the EPA Brownfields Program will be in town on Monday, February 27th for a public presentation at 2pm at the Texarkana Convention Center, followed by a check presentation at the council meeting later that night.

**Parks and Recreation Guide 2023**
The city's Parks and Recreation Department has created a new recreation guide for 2023. With 14 different facilities including sports fields, lakes, hiking and mountain bike trail

Minutes Acceptance: Minutes of Feb 13, 2023 6:00 PM (Consent Items)

systems, skate park and a new outdoor fitness center, there is something for everyone. Many thanks goes to the Parks & Recreation team for putting together this new digital parks guide.

**<https://texarkanatexas.gov/DocumentCenter/View/9521/Parks-and-Recreation-Guide-2023>**

**Save the Date: TAMU-T Big Event - Saturday, April 1st**
This is a day that students, faculty, and staff from Texas A&M University - Texarkana volunteer to join various service projects throughout the community. The call for service projects from non-profits, neighborhood associations, and other organizations is now open at www.tamut.edu/bigevent <http://www.tamut.edu/bigevent>.

The city normally hosts numerous project sites. Any council member interested in submitting an event, should contact Vashil Fernandez Vashil.Fernandez@txkusa.org <mailto:Vashil.Fernandez@txkusa.org>.

## XI. ADMINISTRATIVE COMMENTS

1. City Council

   Mayor Bruggeman said the Liberty Eylau ISD Community Breakfast will be held at 7am on Friday, March 3rd, at the LE Middle School campus.

   He once again thanked Abel Hendrix for his outstanding bravery shown in regards to the recent house fire in his neighborhood.

2. City Staff

   Staff had no administrative comments for council.

## XII. ADJOURNMENT

A motion was made to adjourn the meeting.
(6:33 p.m.)

| | |
|---|---|
| **RESULT:** | **ADOPTED [UNANIMOUS]** |
| **MOVER:** | Libby White, Ward 5 |
| **SECONDER:** | Jean H. Matlock, Ward 1 |
| **AYES:** | Matlock, Hart, Williams, Page, White, Davis |
| **EXCUSED:** | Bruggeman |

Jennifer Evans
City Secretary

Bob Bruggeman
Mayor

Minutes Acceptance: Minutes of Feb 13, 2023 6:00 PM (Consent Items)

**City of Texarkana, Texas**

Version: A

# Briefing Sheet

**Update Date:** 2/22/2023 7:50 AM

**Lead Department:** Public Works Department **Action Officer:** Amanda Freeland,

**Subject:** Resolution No. 2023-024 authorizing the City Manager to execute a contract with Stan Excavating of Texarkana, Texas, with funds not to exceed budgeted funds in the fiscal year 2023 Major Street Maintenance Fund (Fund 120) and 2022 Bond Fund (Fund 425), for concrete replacement services used for city streets for the purpose of making roadway repairs and improvements.

**Briefing:** 2/27/2023 **Public Hearing:** **Council Vote:** 2/27/2023

**Item Schedule**

Schedule 3: No briefing required (one week)

**Updates/History of Briefing:**

NOT APPLICABLE

**Executive Summary and Background Information:**

Date of Invitation for Bid (IFB 23-1901-06) posted on website: January 27, 2023
Dates published in Texarkana Gazette: January 29, 2023, and February 5, 2023
Opened Bids: February 9, 2023
Bids received: Stan Excavating, SBM Earthmoving, and Texarkana Concrete
Lowest Responsive Bidder: Stan Excavating; See EXH "A"
Budget: FY23 Major Maintenance Fund
Policy Exceptions: None
Scope of Work: Providing Concrete Replacement Services for City Streets for purpose of making roadway repairs and improvements. (1) one-year renewal up to (5) five years.

**Potential Options:**

- Approve CM to enter into Contract
- Not Approve CM to enter into Contract

**Fiscal Implications:**

FY 23 Major Maintenance Fund

**Staff Recommendation:**

Staff recommends approval

**Advisory Board/Committee Review:**

NONE

**Board/Committee Recommendation:**

NONE

**City of Texarkana, Texas**

## Advisory Board/Committee Meeting Date and Minutes:

NOT APPLICABLE

## Attachments

a. 2023-024 EXH 'A' Stan Excavating (PDF)
b. 2023-024 Goals & Perspectives (DOCX)
c. 2023-024 RES Concrete Replacement Contract (DOCX)
d. 2023-024 RES Concrete Repl. Contract signed (PDF)

## Staff Coordination

| | | | | |
|---|---|---|---|---|
| Public Works Department 02/22/2023 11:10 AM | Amanda Freeland | Reviewer | Completed | |
| Public Works Department 02/22/2023 11:15 AM | Dusty Henslee | Review | Completed | |
| Finance Department 5:07 PM | Kristin Peeples | Review | Completed | 02/22/2023 |
| City Manager 6:00 PM | Jennifer Evans | City Manager Review | Skipped | 02/27/2023 |
| City Council 6:00 PM | Jennifer Evans | Meeting | Completed | 02/27/2023 |

## Meeting History

| | |
|---|---|
| ***SUBMIT BID TO:***<br>CITY OF TEXARKANA, TEXAS<br>PUBLIC WORKS AND CONTRACTS DEPARTMENT<br><br>MAIL ADDRESS:<br>220 TEXAS BLVD, 4TH FLOOR<br>TEXARKANA, TEXAS 75501 | *CITY OF TEXARKANA, TEXAS*<br>**INVITATION FOR BID** |
| CONTACT PERSON:<br>**Amanda Freeland**<br>TEL: 903–798-3948<br>amanda.freeland@txkusa.org | |

| | | |
|---|---|---|
| ***TITLE:***<br>**CONCRETE REPLACEMENT CONTRACT** | IFB NUMBER:<br>**23-1901-06** | SUBMITTAL DEADLINE:<br>**Thursday, February 9th, 2023 @ 10:00 AM** |
| PRE-BID DATE, TIME, AND LOCATION:<br>**None** | | **BID F.O.B. DESTINATION** |

***Enter Business Name:***
Stan Excavating

***Enter Respondent Name:***
***David Hagood***

***Enter Mailing Address:***

699 Heritage Oaks Texarkana, Tx 75503

***Enter the following information:***

***Telephone Number:*** ( 903 ) 748 - 8732

***Fax Number:*** ( ) _____ - _____

***Email Address:*** david@stanexcavating.com

IN COMPLIANCE WITH THIS SOLICITATION, THE UNDERSIGNED BIDDER HAVING EXAMINED THE INVITATION FOR BID AND SPECIFICATIONS, AND BEING FAMILIAR WITH THE CONDITIONS TO BE MET, HEREBY SUBMITS THE FOLLOWING BID FOR FURNISHING THE MATERIAL, EQUIPMENT, LABOR AND EVERYTHING NECESSARY FOR PROVIDING THE ITEMS LISTED ON THE ATTACHED BID FORM AND AGREES TO DELIVER SAID ITEMS AT THE LOCATIONS AND FOR THE PRICES SET FORTH ON THE BID FORM. AN INDIVIDUAL AUTHORIZED TO BIND THE COMPANY MUST SIGN THE FOLLOWING SECTION. FAILURE TO EXECUTE AND SIGN THIS PORTION MAY RESULT IN BID REJECTION.

Authorized Signature

PM
Title

David Hagood
Print/Type Name

9-6-2023
Date

**THIS FORM MUST BE COMPLETED AND RETURNED WITH YOUR RESPONSE. ELECTRONIC RESPONSES SHALL NOT BE ACCEPTED.**



Attachment: 2023-024 EXH 'A' Stan Excavating (3931 : 2023-024 RES Concrete Replacement Contract)

# PART I
# BID FORM
## THIS FORM MUST BE COMPLETED AND RETURNED WITH YOUR RESPONSE

** Successful bidder shall provide on an as needed basis the necessary labor, materials, and equipment for the removal of existing concrete, required excavation, haul off, setting of forms and placement of concrete to successfully replace selected concrete sections on city streets which includes finishing, brooming, sealing, saw cutting, etc.
All work shall conform to the specifications set forth in TXDOT's latest edition of STANDARD SPECIFICATIONS FOR CONSTRUCTION AND MAINTENANCE OF HIGHWAY, STREETS, & BRIDGES.
Contractor will be responsible for a one-year (1) Maintenance Agreement from date of acceptance. **

| | Description | Unit of Measure | Pricing Per Unit of Measure |
|---|---|---|---|
| 1 | 6" Reinforced Street Pavement including curb. Class "P" Concrete. Concrete shall be reinforced with #4 rebar, 24' O.C.E.W. | SQUARE YARD | 500 SY-1000 SY $ 77.10<br>OVER 1000 SY $ 73.20 |
| 2 | 7" Reinforced Street Pavement including curb. Class "P" Concrete. Concrete shall be reinforced with #4 rebar, 24' O.C.E.W. | SQUARE YARD | 500 SY-1000 SY $ 84.60<br>OVER 1000 SY $ 80.70 |
| 3 | 8" Reinforced Street Pavement including curb. Class "P" Concrete. Concrete shall be reinforced with #4 rebar, 24' O.C.E.W. | SQUARE YARD | 500 SY-1000 SY $ 93.10<br>OVER 1000 SY $ 89.20 |
| 4 | 9" Reinforced Street Pavement including curb. Class "P" Concrete. Concrete shall be reinforced with #4 rebar, 24' O.C.E.W. | SQUARE YARD | 500 SY-1000 SY $ 101.10<br>OVER 1000 SY $ 98.50 |
| 5 | 4" Reinforced Sidewalk. Class "A" Concrete. | SQUARE YARD | $ 79.50 |
| 6 | Standard 24" Curb and Gutter. Class "A" Concrete. | LINEAR FOOT | $ 52.00 |



Attachment: 2023-024 EXH 'A' Stan Excavating (3931 : 2023-024 RES Concrete Replacement Contract)

**City of Texarkana, TX**
**Chapter 2270 Prohibition on Contracts with Companies Boycotting Israel**

House Bill 89, adopted by the 85th Legislature, created §2270.001, Texas Government Code, Section Subtitle F, Title 10, requires a company entering to a contract with a governmental entity or state agency to verify that the company: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. (Effective September 1, 2017)
I, the undersigned agent for the company named below, certify that the Company does not boycott Israel and will not boycott Israel during the term of the contract.

COMPANY NAME: Stan Excavating

Signature of Company Official: 

Date Signed: 2-6-23

Printed name of company official signing above: David Haywood.

Attachment: 2023-024 EXH 'A' Stan Excavating (3931 : 2023-024 RES Concrete Replacement Contract)

## Bid Tabulation
## for
## Concrete Replacement

**2/9/2023**
**10:00 AM**
**23-1901-06**

| Item # | Description | | Stan Excavating Txk, TX | | SBM Earthmoving Txk, TX | | Txk Concrete Txk, TX | |
|---|---|---|---|---|---|---|---|---|
| | | | 500 SY-1000 SY | Over 1000 SY | 500 SY-1000 SY | Over 1000 SY | 500 SY-1000 SY | Over 1000 SY |
| 1 | 6" Reinforced Street Pavement including curb. Class "P" Concrete. Concrete shall be reinforced with #4 rebar, 24' O.C.E.W. | Square Yard | **$77.10** | **$73.20** | $112.31 | $102.10 | $180.00 | $180.00 |
| 2 | 7" Reinforced Street Pavement including curb. Class "P" Concrete. Concrete shall be reinforced with #4 rebar, 24' O.C.E.W. | Square Yard | **$84.60** | **$80.70** | $127.16 | $115.60 | $185.40 | $184.00 |
| 3 | 8" Reinforced Street Pavement including curb. Class "P" Concrete. Concrete shall be reinforced with #4 rebar, 24' O.C.E.W. | Square Yard | **$93.10** | **$89.20** | $142.01 | $129.10 | $190.80 | $188.00 |
| 4 | 9" Reinforced Street Pavement including curb. Class "P" Concrete. Concrete shall be reinforced with #4 rebar, 24' O.C.E.W. | Square Yard | **$101.10** | **$98.50** | $158.86 | $142.60 | $196.20 | $195.00 |
| 5 | 4" Reinforced Sidewalk. Class "A" Concrete. | Square Yard | **$79.50** | | $92.50 | | $225.00 | |
| 6 | Standard 24" Curb and Gutter. Class "A" Concrete. | Linear Foot | **$52.00** | | $80.00 | | $48.00 | |

Attachment: 2023-024 EXH 'A' Stan Excavating (3931 : 2023-024 RES Concrete Replacement Contract)

# City of Texarkana, Texas

## Developing Perspectives and Goals Pending Approval by the City Council:

| Perspectives | | Goals |
|---|---|---|
| Serve the Community | ☑ | Promote an Environmentally Sensitive & Livable Community |
| | ☑ | Provide a Safe Community |
| | ☑ | Deliver Quality Services |
| | ☑ | Foster a Healthy Community |
| Run the Operations | ☑ | Enhance Community Preparedness & Responsiveness |
| | ☑ | Maximize Partnership Opportunities |
| | ☑ | Provide Courteous & Responsive Customer Service |
| | ☑ | Model a Positive City Image |
| | ☑ | Deliver Efficient Services |
| | ☑ | Cultivate Community Involvement & Access |
| Manage the Resources | ☑ | Maintain Fiscal Strength |
| | ☑ | Maximize Utilization & Resources |
| | ☑ | Invest in Infrastructure & Transportation |
| Develop Personnel | ☐ | Develop a Skilled & Diverse Workforce |
| | ☐ | Create a Positive & Rewarding Work Culture |

**Perspectives and Goals Additional Comments:**

NONE

**Resource Impact:**

| | |
|---|---|
| Staff time required if item is approved: | Low |

**Other Potential Impacts:**

NONE APPLICABLE

**Public Information Plan:**

| | | | |
|---|---|---|---|
| ☐ | Newspaper Notice (Required by Statute) | ☐ | Public Hearing (Required by Statute) |
| ☐ | Public Forum/Input Session | ☐ | Press Release |
| ☐ | E-News Distribution | ☐ | Website Notice |
| ☐ | Social Media (Twitter, Facebook, etc.) | ☐ | Special Mailing |
| ☐ | Flyers Posted | ☐ | Banners Posted |
| ☐ | Survey | ☐ | Automated Phone Call |
| ☑ | None Required | ☐ | |

Other:

Attachment: 2023-024 Goals & Perspectives (3931 : 2023-024 RES Concrete Replacement Contract)

**RESOLUTION NO. 2023-024**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEXARKANA, TEXAS, AUTHORIZING THE CITY MANAGER TO ENTER INTO A ONE (1) YEAR CONTRACT WITH FOUR (4) ADDITIONAL ONE (1) YEAR RENEWAL OPTIONS WITH STAN EXCAVATING, OF TEXARKANA, TEXAS, FOR THE CITY'S CONCRETE REPLACEMENT SERVICES CONTRACT, TO BE PAID FROM THE MAJOR MAINTENANCE FUND BUDGET FOR FISCAL YEAR 2023; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, the City Council authorized the issuance of certificates of obligation, which included street reconstruction projects; and

**WHEREAS**, these maintenance operations require various amounts of concrete work on a varied schedule, the City announced a request for bid for unit pricing of different concrete work to be replaced on the City's roadways; and

**WHEREAS**, on February 9, 2023, three (3) bids were received and Stan Excavating of Texarkana, Texas, submitted the lowest and most responsible bid summarized on the bid tabulation sheet, and proposal, as **Exhibit "A"**; and

**WHEREAS**, the bidder met the specifications for a one (1) year contract with four (4) additional one (1) year renewal options; and

**WHEREAS**, funds are available through the FY 2023 budget in the Major Maintenance Fund.

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

**SECTION 1:** The lowest most responsible bidder for concrete replacement for the City is hereby declared to be Stan Excavating of Texarkana, Texas.

**SECTION 2:** The City Manager be and is hereby authorized to execute a one (1) year contract with four (4) additional one (1) year renewal options with Stan Excavating of Texarkana, Texas.

**SECTION 3:** This resolution shall be in full force and in effect from and after its passage and approval.

**PASSED AND APPROVED** in Regular Council Session on this the **27th day of February, 2023**.

ATTEST:

_____ _____

JENNIFER EVANS, CITY SECRETARY BOB BRUGGEMAN, MAYOR

Attachment: 2023-024 RES Concrete Replacement Contract [Revision 1] (3931 : 2023-024 RES Concrete Replacement Contract)

**RESOLUTION NO. 2023-024**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEXARKANA, TEXAS, AUTHORIZING THE CITY MANAGER TO ENTER INTO A ONE (1) YEAR CONTRACT WITH FOUR (4) ADDITIONAL ONE (1) YEAR RENEWAL OPTIONS WITH STAN EXCAVATING, OF TEXARKANA, TEXAS, FOR THE CITY'S CONCRETE REPLACEMENT SERVICES CONTRACT, TO BE PAID FROM THE MAJOR MAINTENANCE FUND BUDGET FOR FISCAL YEAR 2023; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, the City Council authorized the issuance of certificates of obligation, which included street reconstruction projects; and

**WHEREAS**, these maintenance operations require various amounts of concrete work on a varied schedule, the City announced a request for bid for unit pricing of different concrete work to be replaced on the City's roadways; and

**WHEREAS**, on February 9, 2023, three (3) bids were received and Stan Excavating of Texarkana, Texas, submitted the lowest and most responsible bid summarized on the bid tabulation sheet, and proposal, as **Exhibit "A"**; and

**WHEREAS**, the bidder met the specifications for a one (1) year contract with four (4) additional one (1) year renewal options; and

**WHEREAS**, funds are available through the FY 2023 budget in the Major Maintenance Fund.

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

**SECTION 1:** The lowest most responsible bidder for concrete replacement for the City is hereby declared to be Stan Excavating of Texarkana, Texas.

**SECTION 2:** The City Manager be and is hereby authorized to execute a one (1) year contract with four (4) additional one (1) year renewal options with Stan Excavating of Texarkana, Texas.

**SECTION 3:** This resolution shall be in full force and in effect from and after its passage and approval.

**PASSED AND APPROVED** in Regular Council Session on this the **27th day of February, 2023**.

ATTEST:

JENNIFER EVANS, CITY SECRETARY

BOB BRUGGEMAN, MAYOR

6:15 p.m.

Attachment: 2023-024 RES Concrete Repl. Contract signed (3931 : 2023-024 RES Concrete Replacement Contract)

#23-1901-06 Concrete Replacement Contract

| | |
|---|---|
| ***SUBMIT BID TO:***<br>CITY OF TEXARKANA, TEXAS<br>PUBLIC WORKS AND CONTRACTS DEPARTMENT<br><br>MAIL ADDRESS:<br>220 TEXAS BLVD, 4TH FLOOR<br>TEXARKANA, TEXAS 75501 | *CITY OF TEXARKANA, TEXAS*<br>**INVITATION FOR BID** |
| CONTACT PERSON:<br>**Amanda Freeland**<br>TEL: 903–798-3948<br>amanda.freeland@txkusa.org | |

| | | |
|---|---|---|
| ***TITLE:***<br>**CONCRETE REPLACEMENT CONTRACT** | IFB NUMBER:<br>**23-1901-06** | SUBMITTAL DEADLINE:<br>**Thursday, February 9th, 2023 @ 10:00 AM** |
| PRE-BID DATE, TIME, AND LOCATION:<br>**None** | | **BID F.O.B. DESTINATION** |

***Enter Business Name:***
Stan Excavating

***Enter Respondent Name:***
***David Hagood***

***Enter Mailing Address:***

699 Heritage Oaks Texarkana, Tx 75503

***Enter the following information:***

***Telephone Number:*** ( 903 ) 748 - 8732

***Fax Number:*** ( ) _____ - _____

***Email Address:*** david@stanexcavating.com

IN COMPLIANCE WITH THIS SOLICITATION, THE UNDERSIGNED BIDDER HAVING EXAMINED THE INVITATION FOR BID AND SPECIFICATIONS, AND BEING FAMILIAR WITH THE CONDITIONS TO BE MET, HEREBY SUBMITS THE FOLLOWING BID FOR FURNISHING THE MATERIAL, EQUIPMENT, LABOR AND EVERYTHING NECESSARY FOR PROVIDING THE ITEMS LISTED ON THE ATTACHED BID FORM AND AGREES TO DELIVER SAID ITEMS AT THE LOCATIONS AND FOR THE PRICES SET FORTH ON THE BID FORM. AN INDIVIDUAL AUTHORIZED TO BIND THE COMPANY MUST SIGN THE FOLLOWING SECTION. FAILURE TO EXECUTE AND SIGN THIS PORTION MAY RESULT IN BID REJECTION.

Authorized Signature

PM
Title

David Hagood
Print/Type Name

9-6-2023
Date

**THIS FORM MUST BE COMPLETED AND RETURNED WITH YOUR RESPONSE. ELECTRONIC RESPONSES SHALL NOT BE ACCEPTED.**



Attachment: 2023-024 RES Concrete Repl. Contract signed (3931 : 2023-024 RES Concrete Replacement Contract)

# PART I
# BID FORM
## THIS FORM MUST BE COMPLETED AND RETURNED WITH YOUR RESPONSE

** Successful bidder shall provide on an as needed basis the necessary labor, materials, and equipment for the removal of existing concrete, required excavation, haul off, setting of forms and placement of concrete to successfully replace selected concrete sections on city streets which includes finishing, brooming, sealing, saw cutting, etc.
All work shall conform to the specifications set forth in TXDOT's latest edition of STANDARD SPECIFICATIONS FOR CONSTRUCTION AND MAINTENANCE OF HIGHWAY, STREETS, & BRIDGES.
Contractor will be responsible for a one-year (1) Maintenance Agreement from date of acceptance. **

| | Description | Unit of Measure | Pricing Per Unit of Measure |
|---|---|---|---|
| 1 | 6" Reinforced Street Pavement including curb. Class "P" Concrete. Concrete shall be reinforced with #4 rebar, 24' O.C.E.W. | SQUARE YARD | 500 SY-1000 SY $ 77.10<br>OVER 1000 SY $ 73.20 |
| 2 | 7" Reinforced Street Pavement including curb. Class "P" Concrete. Concrete shall be reinforced with #4 rebar, 24' O.C.E.W. | SQUARE YARD | 500 SY-1000 SY $ 84.60<br>OVER 1000 SY $ 80.70 |
| 3 | 8" Reinforced Street Pavement including curb. Class "P" Concrete. Concrete shall be reinforced with #4 rebar, 24' O.C.E.W. | SQUARE YARD | 500 SY-1000 SY $ 93.10<br>OVER 1000 SY $ 89.20 |
| 4 | 9" Reinforced Street Pavement including curb. Class "P" Concrete. Concrete shall be reinforced with #4 rebar, 24' O.C.E.W. | SQUARE YARD | 500 SY-1000 SY $ 101.10<br>OVER 1000 SY $ 98.50 |
| 5 | 4" Reinforced Sidewalk. Class "A" Concrete. | SQUARE YARD | $ 79.50 |
| 6 | Standard 24" Curb and Gutter. Class "A" Concrete. | LINEAR FOOT | $ 52.00 |



Attachment: 2023-024 RES Concrete Repl. Contract signed (3931 : 2023-024 RES Concrete Replacement Contract)

**City of Texarkana, TX**
**Chapter 2270 Prohibition on Contracts with Companies Boycotting Israel**

House Bill 89, adopted by the 85th Legislature, created §2270.001, Texas Government Code, Section Subtitle F, Title 10, requires a company entering to a contract with a governmental entity or state agency to verify that the company: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. (Effective September 1, 2017)
I, the undersigned agent for the company named below, certify that the Company does not boycott Israel and will not boycott Israel during the term of the contract.

COMPANY NAME: Stam Excavating

Signature of Company Official: 

Date Signed: 2-6-23

Printed name of company official signing above: David Hagood

Attachment: 2023-024 RES Concrete Repl. Contract signed (3931 : 2023-024 RES Concrete Replacement Contract)

# Bid Tabulation
# for
# Concrete Replacement

| | 2/9/2023<br>10:00 AM<br>23-1901-06 | | Stan Excavating<br>Txk, TX | | SBM Earthmoving<br>Txk, TX | | Txk Concrete<br>Txk, TX | |
|---|---|---|---|---|---|---|---|---|
| Item # | Description | | 500 SY-1000 SY | Over 1000 SY | 500 SY-1000 SY | Over 1000 SY | 500 SY-1000 SY | Over 1000 SY |
| 1 | 6" Reinforced Street Pavement including curb. Class "P" Concrete. Concrete shall be reinforced with #4 rebar, 24' O.C.E.W. | Square Yard | **$77.10** | **$73.20** | $112.31 | $102.10 | $180.00 | $180.00 |
| 2 | 7" Reinforced Street Pavement including curb. Class "P" Concrete. Concrete shall be reinforced with #4 rebar, 24' O.C.E.W. | Square Yard | **$84.60** | **$80.70** | $127.16 | $115.60 | $185.40 | $184.00 |
| 3 | 8" Reinforced Street Pavement including curb. Class "P" Concrete. Concrete shall be reinforced with #4 rebar, 24' O.C.E.W. | Square Yard | **$93.10** | **$89.20** | $142.01 | $129.10 | $190.80 | $188.00 |
| 4 | 9" Reinforced Street Pavement including curb. Class "P" Concrete. Concrete shall be reinforced with #4 rebar, 24' O.C.E.W. | Square Yard | **$101.10** | **$98.50** | $158.86 | $142.60 | $196.20 | $195.00 |
| 5 | 4" Reinforced Sidewalk. Class "A" Concrete. | Square Yard | **$79.50** | | $92.50 | | $225.00 | |
| 6 | Standard 24" Curb and Gutter. Class "A" Concrete. | Linear Foot | **$52.00** | | $80.00 | | $48.00 | |

Attachment: 2023-024 RES Concrete Repl. Contract signed (3931 : 2023-024 RES Concrete Replacement Contract)

**City of Texarkana, Texas**

Version: A

# Briefing Sheet

**Update Date:** 2/22/2023 7:48 AM

**Lead Department:** Public Works Department **Action Officer:** Amanda Freeland,

**Subject:** Resolution No. 2023-025 authorizing the City Manager to execute a contract with Stan Excavating of Texarkana, Texas, for the City's street reconstruction services for asphalt streets, with funds not to exceed budgeted funds in the fiscal year 2023 Major Street Maintenance Fund (Fund 120) and 2022 Bond Fund (Fund 425), to reconstruct city streets.

**Briefing:** 2/27/2023 **Public Hearing:** **Council Vote:** 2/27/2023

| Item Schedule |
| --- |
| Schedule 3: No briefing required (one week) |

**Updates/History of Briefing:**

NOT APPLICABLE

**Executive Summary and Background Information:**

Date of Invitation for Bid (IFB 23-1901-07) posted on website: January 27, 2023
Dates published in Texarkana Gazette: January 29, 2023, and February 5, 2023
Opened Bids: February 9, 2023
Bids received: SBM Earthmoving, Stan Excavating, Tatum Excavating Co., Inc (TEC), and Sid & Sons
Lowest Responsive Bidder: Stan Excavating; See EXH "A"
Budget: FY23 Major Maintenance Fund
Policy Exceptions: None
Scope of Work: Providing Street Reconstruction for City Streets for purpose of making roadway repairs and improvements. (1) one-year renewal up to (5) five years.

**Potential Options:**

- Approve CM to enter into Contract
- Not Approve CM to enter into Contract

**Fiscal Implications:**

FY 23 Major Maintenance Fund

**Staff Recommendation:**

Staff recommends approval

**Advisory Board/Committee Review:**

NONE

**Board/Committee Recommendation:**

NONE

**City of Texarkana, Texas**

## Advisory Board/Committee Meeting Date and Minutes:

NOT APPLICABLE

## Attachments

a. 2023-025 EXH 'A' Stan Excavating (PDF)
b. 2023-025 Goals & Perspectives (DOCX)
c. 2023-025 RES Street Reconstruction Contract (DOCX)
d. 2023-025 RES Street Reconstr. Contract signed (PDF)

## Staff Coordination

| | | | | |
|---|---|---|---|---|
| Public Works Department | | Amanda Freeland | Reviewer | Completed |
| 02/22/2023 11:11 AM | | | | |
| Public Works Department | | Dusty Henslee | Review | Completed |
| 02/22/2023 11:15 AM | | | | |
| Finance Department | Kristin Peeples | Review | Completed | 02/22/2023 |
| 5:08 PM | | | | |
| City Manager | Jennifer Evans | City Manager Review | Skipped | 02/27/2023 |
| 6:00 PM | | | | |
| City Council | Jennifer Evans | Meeting | Completed | 02/27/2023 |
| 6:00 PM | | | | |

## Meeting History

| | |
|---|---|
| ***SUBMIT BID TO:***<br>CITY OF TEXARKANA, TEXAS<br>PUBLIC WORKS AND CONTRACTS DEPARMENT<br><br>MAIL ADDRESS:<br>220 TEXAS BLVD, FL 4<br>TEXARKANA, TEXAS 75501 | *CITY OF TEXARKANA, TEXAS*<br><br>**INVITATION FOR BID** |
| CONTACT PERSON:<br>**Amanda Freeland**<br>TEL: 903–798-3948<br>amanda.freeland@txkusa.org | |

| | | |
|---|---|---|
| TITLE:<br>**Street Reconstruction Contract** | IFB NUMBER:<br>**23-1901-07** | SUBMITTAL DEADLINE:<br>**Thursday, February 9th, 2023 @ 2:00 PM** |
| PRE-BID DATE, TIME, AND LOCATION:<br>**None** | | **BID F.O.B. DESTINATION** |

***Enter Business Name:***
Stan Excavating

***Enter Respondent Name:***
David Hagood

***Enter Mailing Address:***
699 Heritage Oaks Texarkana, TX 75503

***Enter the following information:***

***Telephone Number:*** ( 903 )___748___ - __8732_____

***Fax Number:*** ( )_____ - _____

***Email Address:*** _david@stanexcavating.com_____

IN COMPLIANCE WITH THIS SOLICITATION, THE UNDERSIGNED BIDDER HAVING EXAMINED THE INVITATION FOR BID AND SPECIFICATIONS, AND BEING FAMILIAR WITH THE CONDITIONS TO BE MET, HEREBY SUBMITS THE FOLLOWING BID FOR FURNISHING THE MATERIAL, EQUIPMENT, LABOR AND EVERYTHING NECESSARY FOR PROVIDING THE ITEMS LISTED ON THE ATTACHED BID FORM AND AGREES TO DELIVER SAID ITEMS AT THE LOCATIONS AND FOR THE PRICES SET FORTH ON THE BID FORM. AN INDIVIDUAL AUTHORIZED TO BIND THE COMPANY MUST SIGN THE FOLLOWING SECTION. FAILURE TO EXECUTE AND SIGN THIS PORTION MAY RESULT IN BID REJECTION.

Authorized Signature

PM
Title

David Hagood
Print/Type Name

2-9-23
Date

**THIS FORM MUST BE COMPLETED AND RETURNED WITH YOUR RESPONSE.**
**ELECTRONIC RESPONSES SHALL NOT BE ACCEPTED.**

Attachment: 2023-025 EXH 'A' Stan Excavating (3932 : 2023-025 RES Street Reconstruction Contract)

# PART I
# BID FORM

**THIS FORM MUST BE COMPLETED AND RETURNED WITH YOUR RESPONSE**

** Successful bidder shall provide on an as needed basis the necessary labor, materials, and equipment for the removal of existing concrete, required excavation, haul off, setting of forms and placement of concrete to successfully replace selected concrete sections on city streets which includes finishing, brooming, sealing, saw cutting, etc.
All work shall conform to the specifications set forth in TXDOT's latest edition of STANDARD SPECIFICATIONS FOR CONSTRUCTION AND MAINTENANCE OF HIGHWAY, STREETS, & BRIDGES.
Contractor will be responsible for a one-year (1) Maintenance Agreement from date of acceptance. **

| | Description | Unit of Measure | Pricing Per Unit of Measure |
|---|---|---|---|
| 1 | Full Depth Street Reconstruction as per specifications | SQUARE YARD | 500 SY-1000 SY $ 14.00<br>OVER 1000 SY $ 12.50 |
| 2 | ADDITIVE ALTERNATE: 2" Asphalt Type "C" Asphalt Pavement | SQUARE YARD | 500 SY-1000 SY $ 18.40<br>OVER 1000 SY $ 17.50 |



Attachment: 2023-025 EXH 'A' Stan Excavating (3932 : 2023-025 RES Street Reconstruction Contract)

**City of Texarkana, TX**
**Chapter 2270 Prohibition on Contracts with Companies Boycotting Israel**

House Bill 89, adopted by the 85th Legislature, created §2270.001, Texas Government Code, Section Subtitle F, Title 10, requires a company entering to a contract with a governmental entity or state agency to verify that the company: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. (Effective September 1, 2017)
I, the undersigned agent for the company named below, certify that the Company does not boycott Israel and will not boycott Israel during the term of the contract.

COMPANY NAME: Stan Excavating

Signature of Company Official: [signature]

Date Signed: 2-9-23

Printed name of company official signing above: David Hagood

Attachment: 2023-025 EXH 'A' Stan Excavating (3932 : 2023-025 RES Street Reconstruction Contract)

# ADDENDUM
## No. 1

January 31st, 2023

**TO BIDDERS:** Street Reconstruction Contract IFB #23-1901-07

**BID DATE:** February 9TH, 2023 @ 10AM

**CORRECTIONS TO:** "Page #2, Line Item #2"(ADDITIVE ALTERNATE: 2" Asphalt)

The City will allow for "Type D" Asphalt Pavement upon request.

Amanda Freeland

Amanda Freeland, Public Works & Contracts Department

**IN THE SUBMISSION OF THE BID, BIDDER MUST ACKNOWLEDGE RECEIPT OF THIS ADDENDUM; OTHERWISE THE BID MAY NOT BE GIVEN CONSIDERATION. BIDDER MAY ACKNOWLEDGE RECEIPT ON FACE OF BID OR BY RETURNING ONE COPY OF THIS NOTICE.**

Signature of Bidder

Stan Excavating

Name of Company

Attachment: 2023-025 EXH 'A' Stan Excavating (3932 : 2023-025 RES Street Reconstruction Contract)

**Bid Tabulation for Street Reconstruction**

| | 2/9/2023 2:00 PM 23-1901-07 | | SBM Earthmoving Txk, TX | | Stan Excavating Txk, TX | | TEC Txk, TX | | Sid & Son Txk, AR | |
|---|---|---|---|---|---|---|---|---|---|---|
| Item # | Description | | 500 SY-1000 SY | Over 1000 SY | 500 SY-1000 SY | Over 1000 SY | 500 SY-1000 SY | Over 1000 SY | 500 SY-1000 SY | Over 1000 SY |
| 1 | Full Depth Street Reconstruction as per specifications. | Square Yard | $29.75 | $28.50 | $14.00 | $12.80 | $210.00 | $26.00 | $200.00 | $60.00 |
| 2 | ADDITIVE ALTERNATE: 2" Asphalt Type "C" Asphalt Pavement. | Square Yard | $25.24 | $23.79 | $18.40 | $17.80 | $43.50 | $22.50 | $150.00 | $30.00 |

Attachment: 2023-025 EXH 'A' Stan Excavating (3932 : 2023-025 RES Street Reconstruction Contract)

# City of Texarkana, Texas

## Developing Perspectives and Goals Pending Approval by the City Council:

| Perspectives | Goals |
|---|---|
| Serve the Community | ☑ Promote an Environmentally Sensitive & Livable Community<br>☑ Provide a Safe Community<br>☑ Deliver Quality Services<br>☑ Foster a Healthy Community |
| Run the Operations | ☑ Enhance Community Preparedness & Responsiveness<br>☑ Maximize Partnership Opportunities<br>☑ Provide Courteous & Responsive Customer Service<br>☑ Model a Positive City Image<br>☑ Deliver Efficient Services<br>☑ Cultivate Community Involvement & Access |
| Manage the Resources | ☑ Maintain Fiscal Strength<br>☑ Maximize Utilization & Resources<br>☑ Invest in Infrastructure & Transportation |
| Develop Personnel | ☐ Develop a Skilled & Diverse Workforce<br>☐ Create a Positive & Rewarding Work Culture |

**Perspectives and Goals Additional Comments:**

NONE

**Resource Impact:**

| | |
|---|---|
| Staff time required if item is approved: | Low |

**Other Potential Impacts:**

NONE APPLICABLE

**Public Information Plan:**

| | | | |
|---|---|---|---|
| ☐ | Newspaper Notice (Required by Statute) | ☐ | Public Hearing (Required by Statute) |
| ☐ | Public Forum/Input Session | ☐ | Press Release |
| ☐ | E-News Distribution | ☐ | Website Notice |
| ☐ | Social Media (Twitter, Facebook, etc.) | ☐ | Special Mailing |
| ☐ | Flyers Posted | ☐ | Banners Posted |
| ☐ | Survey | ☐ | Automated Phone Call |
| ☑ | None Required | ☐ | |

Other:

Attachment: 2023-025 Goals & Perspectives (3932 : 2023-025 RES Street Reconstruction Contract)

**RESOLUTION NO. 2023-025**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEXARKANA, TEXAS, AUTHORIZING THE CITY MANAGER TO ENTER INTO A ONE (1) YEAR CONTRACT WITH FOUR (4) ADDITIONAL ONE (1) YEAR RENEWAL OPTIONS WITH STAN EXCAVATING, OF TEXARKANA, TEXAS, FOR THE CITY'S STREET RECONSTRUCTION SERVICES CONTRACT AS NEEDED BY THE PUBLIC WORKS AND STREET DEPARTMENT; TO BE PAID FROM THE MAJOR MAINTENANCE FUND BUDGET FOR FISCAL YEAR 2023; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, the City Council authorized the issuance of certificates of obligation, which included street reconstruction projects; and

**WHEREAS**, these maintenance operations require various amounts of street improvement work on a varied schedule, the City announced a request for bid for unit pricing of different street reconstruction work to be replaced on the City's roadways; and

**WHEREAS**, on February 9, 2023, four (4) bids were received and Stan Excavating of Texarkana, Texas, submitted the lowest and most responsible bid summarized on the bid tabulation sheet, and proposal, as **Exhibit "A"**; and

**WHEREAS**, the bidder met the specifications for a one (1) year contract with four (4) additional one (1) year renewal options; and

**WHEREAS**, funds are available through the FY 2023 budget in the Major Maintenance Fund.

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

**SECTION 1:** The lowest most responsible bidder for street reconstruction for the City is hereby declared to be Stan Excavating of Texarkana, Texas.

**SECTION 2:** The City Manager be and is hereby authorized to execute a one (1) year contract with four (4) additional one (1) year renewal options with Stan Excavating of Texarkana, Texas.

**SECTION 3:** This resolution shall be in full force and in effect from and after its passage and approval.

**PASSED AND APPROVED** in Regular Council Session on this the **27th day of February, 2023**.

ATTEST:

_____ _____

JENNIFER EVANS, CITY SECRETARY BOB BRUGGEMAN, MAYOR

Attachment: 2023-025 RES Street Reconstruction Contract [Revision 1] (3932 : 2023-025 RES Street Reconstruction Contract)

# RESOLUTION NO. 2023-025

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEXARKANA, TEXAS, AUTHORIZING THE CITY MANAGER TO ENTER INTO A ONE (1) YEAR CONTRACT WITH FOUR (4) ADDITIONAL ONE (1) YEAR RENEWAL OPTIONS WITH STAN EXCAVATING, OF TEXARKANA, TEXAS, FOR THE CITY'S STREET RECONSTRUCTION SERVICES CONTRACT AS NEEDED BY THE PUBLIC WORKS AND STREET DEPARTMENT; TO BE PAID FROM THE MAJOR MAINTENANCE FUND BUDGET FOR FISCAL YEAR 2023; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, the City Council authorized the issuance of certificates of obligation, which included street reconstruction projects; and

**WHEREAS**, these maintenance operations require various amounts of street improvement work on a varied schedule, the City announced a request for bid for unit pricing of different street reconstruction work to be replaced on the City's roadways; and

**WHEREAS**, on February 9, 2023, four (4) bids were received and Stan Excavating of Texarkana, Texas, submitted the lowest and most responsible bid summarized on the bid tabulation sheet, and proposal, as **Exhibit "A"**; and

**WHEREAS**, the bidder met the specifications for a one (1) year contract with four (4) additional one (1) year renewal options; and

**WHEREAS**, funds are available through the FY 2023 budget in the Major Maintenance Fund.

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

**SECTION 1:** The lowest most responsible bidder for street reconstruction for the City is hereby declared to be Stan Excavating of Texarkana, Texas.

**SECTION 2:** The City Manager be and is hereby authorized to execute a one (1) year contract with four (4) additional one (1) year renewal options with Stan Excavating of Texarkana, Texas.

**SECTION 3:** This resolution shall be in full force and in effect from and after its passage and approval.

**PASSED AND APPROVED** in Regular Council Session on this the **27th day of February, 2023**.

ATTEST:

JENNIFER EVANS, CITY SECRETARY

BOB BRUGGEMAN, MAYOR

6:15p.m.

Attachment: 2023-025 RES Street Reconstr. Contract signed (3932 : 2023-025 RES Street Reconstruction Contract)

| | |
|---|---|
| ***SUBMIT BID TO:***<br>CITY OF TEXARKANA, TEXAS<br>PUBLIC WORKS AND CONTRACTS DEPARMENT<br><br>MAIL ADDRESS:<br>220 TEXAS BLVD, FL 4<br>TEXARKANA, TEXAS 75501 | *CITY OF TEXARKANA, TEXAS*<br><br>**INVITATION FOR BID** |
| CONTACT PERSON:<br>**Amanda Freeland**<br>TEL: 903-798-3948<br>amanda.freeland@txkusa.org | |

| | | |
|---|---|---|
| TITLE:<br>**Street Reconstruction Contract** | IFB NUMBER:<br>**23-1901-07** | SUBMITTAL DEADLINE:<br>**Thursday, February 9th, 2023 @ 2:00 PM** |
| PRE-BID DATE, TIME, AND LOCATION:<br>**None** | | **BID F.O.B. DESTINATION** |

***Enter Business Name:***
Stan Excavating

***Enter Respondent Name:***

David Hagood

***Enter Mailing Address:***
699 Heritage Oaks Texarkana, TX 75503

***Enter the following information:***

***Telephone Number:*** ( 903 )___748___ - ___8732_____

***Fax Number:*** ( )_____ - _____

***Email Address:*** _david@stanexcavating.com_____

IN COMPLIANCE WITH THIS SOLICITATION, THE UNDERSIGNED BIDDER HAVING EXAMINED THE INVITATION FOR BID AND SPECIFICATIONS, AND BEING FAMILIAR WITH THE CONDITIONS TO BE MET, HEREBY SUBMITS THE FOLLOWING BID FOR FURNISHING THE MATERIAL, EQUIPMENT, LABOR AND EVERYTHING NECESSARY FOR PROVIDING THE ITEMS LISTED ON THE ATTACHED BID FORM AND AGREES TO DELIVER SAID ITEMS AT THE LOCATIONS AND FOR THE PRICES SET FORTH ON THE BID FORM. AN INDIVIDUAL AUTHORIZED TO BIND THE COMPANY MUST SIGN THE FOLLOWING SECTION. FAILURE TO EXECUTE AND SIGN THIS PORTION MAY RESULT IN BID REJECTION.

Authorized Signature

PM
Title

David Hagood
Print/Type Name

2-9-23
Date

**THIS FORM MUST BE COMPLETED AND RETURNED WITH YOUR RESPONSE.**
**ELECTRONIC RESPONSES SHALL NOT BE ACCEPTED.**



Attachment: 2023-025 RES Street Reconstr. Contract signed (3932 : 2023-025 RES Street Reconstruction Contract)

# PART I
# BID FORM

**THIS FORM MUST BE COMPLETED AND RETURNED WITH YOUR RESPONSE**

** Successful bidder shall provide on an as needed basis the necessary labor, materials, and equipment for the removal of existing concrete, required excavation, haul off, setting of forms and placement of concrete to successfully replace selected concrete sections on city streets which includes finishing, brooming, sealing, saw cutting, etc.
All work shall conform to the specifications set forth in TXDOT's latest edition of STANDARD SPECIFICATIONS FOR CONSTRUCTION AND MAINTENANCE OF HIGHWAY, STREETS, & BRIDGES.
Contractor will be responsible for a one-year (1) Maintenance Agreement from date of acceptance. **

| | Description | Unit of Measure | Pricing Per Unit of Measure |
|---|---|---|---|
| 1 | Full Depth Street Reconstruction as per specifications | SQUARE YARD | 500 SY-1000 SY $ 14.00<br>OVER 1000 SY $ 12.50 |
| 2 | ADDITIVE ALTERNATE: 2" Asphalt Type "C" Asphalt Pavement | SQUARE YARD | 500 SY-1000 SY $ 18.40<br>OVER 1000 SY $ 17.50 |



Attachment: 2023-025 RES Street Reconstr. Contract signed (3932 : 2023-025 RES Street Reconstruction Contract)

**City of Texarkana, TX**
**Chapter 2270 Prohibition on Contracts with Companies Boycotting Israel**

House Bill 89, adopted by the 85th Legislature, created §2270.001, Texas Government Code, Section Subtitle F, Title 10, requires a company entering to a contract with a governmental entity or state agency to verify that the company: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. (Effective September 1, 2017)
I, the undersigned agent for the company named below, certify that the Company does not boycott Israel and will not boycott Israel during the term of the contract.

COMPANY NAME: Stan Excavating

Signature of Company Official: [signature]

Date Signed: 2-9-23

Printed name of company official signing above: David Hagood

Attachment: 2023-025 RES Street Reconstr. Contract signed (3932 : 2023-025 RES Street Reconstruction Contract)

# ADDENDUM
## No. 1

January 31st, 2023

**TO BIDDERS:** Street Reconstruction Contract IFB #23-1901-07

**BID DATE:** February 9TH, 2023 @ 10AM

**CORRECTIONS TO:** "Page #2, Line Item #2"(ADDITIVE ALTERNATE: 2" Asphalt)

The City will allow for "Type D" Asphalt Pavement upon request.

Amanda Freeland
Amanda Freeland, Public Works & Contracts Department

**IN THE SUBMISSION OF THE BID, BIDDER MUST ACKNOWLEDGE RECEIPT OF THIS ADDENDUM; OTHERWISE THE BID MAY NOT BE GIVEN CONSIDERATION. BIDDER MAY ACKNOWLEDGE RECEIPT ON FACE OF BID OR BY RETURNING ONE COPY OF THIS NOTICE.**

Signature of Bidder

Stan Excavating
Name of Company

Attachment: 2023-025 RES Street Reconstr. Contract signed (3932 : 2023-025 RES Street Reconstruction Contract)

**Bid Tabulation**
**for**
**Street Reconstruction**

| | 2/9/2023 | | SBM Earthmoving | | Stan Excavating | | TEC | | Sid & Son | |
|---|---|---|---|---|---|---|---|---|---|---|
| | 2:00 PM | | Txk, TX | | Txk, TX | | Txk, TX | | Txk, AR | |
| | 23-1901-07 | | | | | | | | | |
| Item # | Description | | 500 SY-1000 SY | Over 1000 SY | 500 SY-1000 SY | Over 1000 SY | 500 SY-1000 SY | Over 1000 SY | 500 SY-1000 SY | Over 1000 SY |
| 1 | Full Depth Street Reconstruction as per specifications. | Square Yard | $29.75 | $28.50 | $14.00 | $12.00 | $210.00 | $26.00 | $200.00 | $60.00 |
| 2 | ADDITIVE ALTERNATE: 2" Asphalt Type "C" Asphalt Pavement. | Square Yard | $25.24 | $23.79 | $18.40 | $17.50 | $43.50 | $22.50 | $150.00 | $30.00 |

Attachment: 2023-025 RES Street Reconstr. Contract signed (3932 : 2023-025 RES Street Reconstruction Contract)

**City of Texarkana, Texas**

Version: A

# Briefing Sheet

**Update Date:** 2/23/2023 2:01 PM

**Lead Department:** Water Utilities **Action Officer:** Pam White,

**Subject:** Resolution No. 2023-027 authorizing the City Manager to execute a contract with Plummer Associates, Inc. of Fort Worth, Texas, for the development of a hydraulic analysis of the water distribution system and a water distribution system master plan, in an amount not to exceed $301,458.00, with the Texas portion not to exceed $188,592.12. Funds are available in the Utility's 2022-2023 budget in the Texas Capital Improvement Fund.

**Briefing:** 2/27/2023 **Public Hearing:** **Council Vote:** 2/27/2023

**Item Schedule**

Schedule 3: No briefing required (one week)

**Updates/History of Briefing:**

NOT APPLICABLE

**Executive Summary and Background Information:**

Consider resolution authorizing the City Manager to enter into a contract with Plummer Associates, Inc. to develop a Master Plan of the water distribution system serving the Cities of Texarkana, Texas and Texarkana, Arkansas in an amount not to exceed $301,458.00 with the Texas portion of the project not to exceed $188,592.12. Texarkana Water Utilities annually advertises a request for statements of qualifications and performance (SOQ) data for engineering, architectural, land surveying, geographic information system and related services and did so this fiscal year on January 16, 2023. Firms submitting in the prior year were given the chance to renew their statement of qualification from the previous year's request and new firms were invited to submit. Thirteen (13) firms responded to the request for annual statements. Nine (9) engineering, one (1) surveying, one (1) soils laboratory, one (1) Engineering/Architectural and one (1) geographic information system responded to this year's annual request. Plummer Associates, Inc. were chosen from this group. A Master Plan is an excellent tool for long term planning for drinking water services, firefighting capabilities, and economic development. Utility staff believes Plummer Associates, Inc. to be the best suited to perform this work of those submitting SOQ's. This firm uses the current modeling software owned by the Utility and performed the last Master Plan for the Utility in 2008. Engineering staff has reviewed the engineering fees and has determined that they are within the acceptable engineering fee range for a Master Plan Project.

**Potential Options:**

- None

**Fiscal Implications:**

Funds were placed in the current budget to perform a Master Plan of water distribution system. Funds are available in the Utility's 2022-2023 Budget in the Texas Capital Improvement Fund.

**Staff Recommendation:**

The Utility staff recommends approval.

**Advisory Board/Committee Review:**

NONE

**Board/Committee Recommendation:**

NOT APPLICABLE

**Advisory Board/Committee Meeting Date and Minutes:**

NOT APPLICABLE

**Attachments**

a. 2023-027 RES Water Distribution System Master Plan (DOCX)
b. 2023-027 Goals & Perspectives (DOCX)
c. 2023-027 RES Water Distr. System Plan signed (PDF)

**Staff Coordination**

| | | | | |
|---|---|---|---|---|
| Water Utilities | Gary Smith | Department Head Review | Completed | 02/16/2023 4:21 PM |
| TWU Administration | Kenny Icenhower | Review | Completed | 02/16/2023 4:26 PM |
| TWU Finance | Tricia Briggs | Review | Completed | 02/16/2023 4:43 PM |
| City Manager | Jennifer Evans | City Manager Review | Skipped | 02/27/2023 6:00 PM |
| City Council | Jennifer Evans | Meeting | Completed | 02/27/2023 6:00 PM |

**Meeting History**

# RESOLUTION NO. 2023-027

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEXARKANA, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH PLUMMER ASSOCIATES, INC. OF FORT WORTH, TEXAS, FOR THE DEVELOPMENT OF A HYDRAULIC ANALYSIS OF THE WATER DISTRIBUTION SYSTEM AND A WATER DISTRIBUTION SYSTEM MASTER PLAN FOR THE CITIES OF TEXARKANA, TEXAS AND TEXARKANA, ARKANSAS IN AN AMOUNT NOT TO EXCEED $301,458.00, OF WHICH THE TEXARKANA, TEXAS, PORTION WILL BE IN AN AMOUNT NOT TO EXCEED $188,592.12; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS,** the existing Water Distribution System Master Plan for the Texarkana Water Utilities is over 15 years old and requires updating. The Cities of Texarkana, Texas and Texarkana, Arkansas require a new computerized model for their combined water distribution system and a water distribution system master plan would provide an excellent tool for long term planning for drinking water services, firefighting capabilities, and economic development; and

**WHEREAS,** the procurement of engineering services needed to produce the necessary computerized model for the water distribution system and to develop the desired water distribution system master plan for long term planning is governed by the provisions of Texas Government Code Chapter 2254 “Professional and Consulting Services;” and

**WHEREAS,** in keeping with the engineering services selection requirements, the Texarkana Water Utilities Department published a request for statements of qualifications and demonstrated competence performance data for engineering services, in response to which nine (9) engineering firms responded; and

**WHEREAS**, the Texarkana Water Utilities staff considered the qualifications of those responding in terms of exhibited skills, training and experience in dealing with projects of similar complexity and the demonstrated competence shown in having satisfactorily completed similar projects in terms of scope and difficulty and based on those considerations, found that Plummer Associates, Inc. of Fort Worth, Texas, is most highly qualified to provide the necessary engineering services for this project; and

**WHEREAS,** Plummer Associates, Inc. has proposed a fee of $301,458.00 with the Texas portion of the project not to exceed $188,592.12 for engineering services necessary for the development of a computerized model of the combined water distribution system of the Cities of Texarkana, Texas, and Texarkana, Arkansas, and a water distribution system master plan for the Cities of Texarkana, Texas, and Texarkana, Arkansas; and

**WHEREAS,** funds are currently budgeted in the Texarkana Water Utilities 2022-2023 Budget in the Texas Capital Improvement Fund in the amount of $188,592.12.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF**

Attachment: 2023-027 RES Water Distribution System Master Plan [Revision 2] (3934 : 2023-027 RES Master Plan of the Water Distribution

**TEXARKANA, TEXAS:**

**SECTION 1:** That Plummer Associates, Inc. of Fort Worth, Texas being an engineering firm capable of developing a computerized model of the combined water distribution system of the Cities of Texarkana, Texas, and Texarkana, Arkansas, and a water distribution system master plan for the Cities of Texarkana, Texas, and Texarkana, Arkansas, be contracted to provide engineering services in an amount not to exceed $301,458.00 with the Texarkana, Texas portion not to exceed $188,592.12.

**SECTION 2:** The City Manager be and is authorized to contract with Plummer Associates, Inc. of Fort Worth, Texas for the above-described services.

**SECTION 3:** This resolution shall be in full force and effect from and after its passage and approval.

**PASSED AND APPROVED** in Regular Council Session on this the **27th day of February, 2023.**

ATTEST:

_____ _____

JENNIFER EVANS, CITY SECRETARY BOB BRUGGEMAN, MAYOR

Attachment: 2023-027 RES Water Distribution System Master Plan [Revision 2] (3934 : 2023-027 RES Master Plan of the Water Distribution

# City of Texarkana, Texas

| Developing Perspectives and Goals Pending Approval by the City Council: | |
|---|---|
| **Perspectives** | **Goals** |
| Serve the Community | ☐ Promote an Environmentally Sensitive & Livable Community<br>☐ Provide a Safe Community<br>☑ Deliver Quality Services<br>☐ Foster a Healthy Community |
| Run the Operations | ☐ Enhance Community Preparedness & Responsiveness<br>☐ Maximize Partnership Opportunities<br>☐ Provide Courteous & Responsive Customer Service<br>☐ Model a Positive City Image<br>☑ Deliver Efficient Services<br>☐ Cultivate Community Involvement & Access |
| Manage the Resources | ☐ Maintain Fiscal Strength<br>☐ Maximize Utilization & Resources<br>☑ Invest in Infrastructure & Transportation |
| Develop Personnel | ☐ Develop a Skilled & Diverse Workforce<br>☐ Create a Positive & Rewarding Work Culture |
| **Perspectives and Goals Additional Comments:** | |

| Resource Impact: | |
|---|---|
| Staff time required if item is approved: | No Additional |
| **Other Potential Impacts:** | |

| Public Information Plan: | | | |
|---|---|---|---|
| ☐ | Newspaper Notice (Required by Statute) | ☐ | Public Hearing (Required by Statute) |
| ☐ | Public Forum/Input Session | ☐ | Press Release |
| ☐ | E-News Distribution | ☐ | Website Notice |
| ☐ | Social Media (Twitter, Facebook, etc.) | ☑ | Special Mailing |
| ☐ | Flyers Posted | ☐ | Banners Posted |
| ☐ | Survey | ☐ | Automated Phone Call |
| ☐ | None Required | ☐ | |
| Other: | | | |

Attachment: 2023-027 Goals & Perspectives (3934 : 2023-027 RES Master Plan of the Water Distribution System)

# RESOLUTION NO. 2023-027

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEXARKANA, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH PLUMMER ASSOCIATES, INC. OF FORT WORTH, TEXAS, FOR THE DEVELOPMENT OF A HYDRAULIC ANALYSIS OF THE WATER DISTRIBUTION SYSTEM AND A WATER DISTRIBUTION SYSTEM MASTER PLAN FOR THE CITIES OF TEXARKANA, TEXAS AND TEXARKANA, ARKANSAS IN AN AMOUNT NOT TO EXCEED $301,458.00, OF WHICH THE TEXARKANA, TEXAS, PORTION WILL BE IN AN AMOUNT NOT TO EXCEED $188,592.12; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS,** the existing Water Distribution System Master Plan for the Texarkana Water Utilities is over 15 years old and requires updating. The Cities of Texarkana, Texas and Texarkana, Arkansas require a new computerized model for their combined water distribution system and a water distribution system master plan would provide an excellent tool for long term planning for drinking water services, firefighting capabilities, and economic development; and

**WHEREAS,** the procurement of engineering services needed to produce the necessary computerized model for the water distribution system and to develop the desired water distribution system master plan for long term planning is governed by the provisions of Texas Government Code Chapter 2254 "Professional and Consulting Services;" and

**WHEREAS,** in keeping with the engineering services selection requirements, the Texarkana Water Utilities Department published a request for statements of qualifications and demonstrated competence performance data for engineering services, in response to which nine (9) engineering firms responded; and

**WHEREAS**, the Texarkana Water Utilities staff considered the qualifications of those responding in terms of exhibited skills, training and experience in dealing with projects of similar complexity and the demonstrated competence shown in having satisfactorily completed similar projects in terms of scope and difficulty and based on those considerations, found that Plummer Associates, Inc. of Fort Worth, Texas, is most highly qualified to provide the necessary engineering services for this project; and

**WHEREAS,** Plummer Associates, Inc. has proposed a fee of $301,458.00 with the Texas portion of the project not to exceed $188,592.12 for engineering services necessary for the development of a computerized model of the combined water distribution system of the Cities of Texarkana, Texas, and Texarkana, Arkansas, and a water distribution system master plan for the Cities of Texarkana, Texas, and Texarkana, Arkansas; and

**WHEREAS,** funds are currently budgeted in the Texarkana Water Utilities 2022-2023 Budget in the Texas Capital Improvement Fund in the amount of $188,592.12.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF**

Attachment: 2023-027 RES Water Distr. System Plan signed (3934 : 2023-027 RES Master Plan of the Water Distribution System)

**TEXARKANA, TEXAS:**

**SECTION 1:** That Plummer Associates, Inc. of Fort Worth, Texas being an engineering firm capable of developing a computerized model of the combined water distribution system of the Cities of Texarkana, Texas, and Texarkana, Arkansas, and a water distribution system master plan for the Cities of Texarkana, Texas, and Texarkana, Arkansas, be contracted to provide engineering services in an amount not to exceed $301,458.00 with the Texarkana, Texas portion not to exceed $188,592.12.

**SECTION 2:** The City Manager be and is authorized to contract with Plummer Associates, Inc. of Fort Worth, Texas for the above-described services.

**SECTION 3:** This resolution shall be in full force and effect from and after its passage and approval.

**PASSED AND APPROVED** in Regular Council Session on this the **27th day of February, 2023.**

ATTEST:

JENNIFER EVANS, CITY SECRETARY

BOB BRUGGEMAN, MAYOR

6:15 p.m.

Attachment: 2023-027 RES Water Distr. System Plan signed (3934 : 2023-027 RES Master Plan of the Water Distribution System)

**City of Texarkana, Texas**

# Briefing Sheet

Version:
**Update Date:** 2/23/2023 2:00 PM

**Lead Department:** Water Utilities **Action Officer:** Pam White,

**Subject:** Resolution No. 2023-028 authorizing the City Manager to execute a contract with Springbrook Software of Portland, Oregon, for the purchase of financial software in the amount of $150,357.50, with the Texas portion not to exceed $94,063.65. Funds are available in the Utility's 2022-2023 budget in the Texas Technology Fund.

**Briefing:** 2/27/2023 **Public Hearing:** **Council Vote:** 2/27/2023

**Item Schedule**

Schedule 3: No briefing required (one week)

**Updates/History of Briefing:**

NOT APPLICABLE

**Executive Summary and Background Information:**

Consider resolution authorizing the City Manager to enter into a contract with Springbrook Software to purchase new Finance software in an amount not to exceed $150,357.50 with the Texas portion not to exceed $94,063.65. Bids were not required as the software is an extension to the system used by the City of Texarkana, Texas and therefore considered sole source. Texarkana Water Utilities (TWU) staff has been in consultation with Springbrook Software and conducted extensive research to determine the effectiveness of the Springbrook product with regard to the TWU's requests.

**Potential Options:**

- None

**Fiscal Implications:**

Funds are available in the Utility's 2022-2023 budget in the Texas Technology Fund.

**Staff Recommendation:**

The Utility staff recommends approval.

**Advisory Board/Committee Review:**

NONE

**Board/Committee Recommendation:**

NOT APPLICABLE

**Advisory Board/Committee Meeting Date and Minutes:**

NOT APPLICABLE

**Attachments**

a. 2023-028 RES Finance Software - Springbrook (DOCX)

b. 2023-028 ATTH 01 Springbrook Proposal (PDF)
c. 2023-028 Goals & Perspectives (DOCX)
d. 2023-028 RES TWU SB Finance Software signed (PDF)

## Staff Coordination

| | | | | |
|---|---|---|---|---|
| Water Utilities | Gary Smith 02/17/2023 3:20 PM | Department Head Review | Completed | |
| TWU Finance | Tricia Briggs | Review | Completed | 02/17/2023 3:52 PM |
| City Manager | David Orr | City Manager Review | Completed | 03/08/2023 9:56 AM |
| City Council | | Review | Pending | |

## Meeting History

**RESOLUTION NO. 2023-028**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEXARKANA, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH SPRINGBROOK SOFTWARE OF PORTLAND, OREGON, FOR THE PURCHASE OF FINANCIAL SOFTWARE, INSTALLATION, DATA CONVERSION AND TRAINING, IN A TOTAL AMOUNT NOT TO EXCEED $150,357.50, WITH THE TEXAS PORTION NOT TO EXCEED $94,063.65; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS,** the Texarkana Water Utilities (TWU) existing financial software is over 26 years old and requires updating; and

**WHEREAS,** bids were not required; the procurement of new software will be an extension of the City of Texarkana, Texas, current system and therefore considered sole source; and

**WHEREAS**, TWU staff has been in consultation with Springbrook Software and have conducted extensive research to determine the effectiveness of the Springbrook product with regard to TWU requests; and

**WHEREAS,** TWU staff recommends Springbrook Software, as an experienced, respected, professional software services company, be selected as the software provider for the TWU software, maintenance and licensing service, Order Form Number Q-10667-1, as described in attached **ATTH 01;** and

**WHEREAS,** funds are currently budgeted in the TWU 2022-2023 budget in the Texas Technology Fund in the amount of $150,357.50.

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

**SECTION 1:** The Order details, Software Maintenance and Software License Agreement, Order Form Number Q-10667-1, between the Texarkana Water Utilities, Texarkana, Texas and Springbrook Software to provide professional computer software services for the Texarkana Water Utilities, a copy of which is attached hereto as **ATTH 01**, is hereby approved.

**SECTION 2:** The City Manager is hereby authorized to execute the agreement, software maintenance, and software license to provide services as herein described above.

**SECTION 3:** This Resolution shall be in full force and effect from and after its passage and approval.

**PASSED AND APPROVED** in Regular Council Session on this the **27th day of February, 2023.**

ATTEST:

_____ _____

JENNIFER EVANS, CITY SECRETARY BOB BRUGGEMAN, MAYOR

Attachment: 2023-028 RES Finance Software - Springbrook (3935 : 2023-028 RES Contract with Springbrook Software for Finance)

**Order Form:** Q-10667-1
**Date:** 1/12/2023, 9:46 AM
**Expires On:** 4/12/2023

**Phone:** (866) 777-0069
**Email:** info@sprbrk.com

RES 2023-028
ATTH 01

**Ship To:**
Gary Smith
Texarkana Water Utilities
801 Wood Street
Texarkana, Arkansas 75501
gsmith@txkusa.org

**Bill To:**
Tricia Briggs
Texarkana Water Utilities
801 Wood Street
Texarkana, Arkansas 75501
eisley@txkusa.org

| Account Manager | E-mail | Phone Number | Payment Terms |
|---|---|---|---|
| Bea Williams | bea.williams@sprbrk.com | (503) 820-6272 | Net 30 |

## Annual Product Pricing

| PRODUCT | RATE | QTY | DISC (%) | NET PRICE |
|---|---|---|---|---|
| Accounts Receivable Subscription | USD 5,950.00 | 1 | 15.000 | USD 5,057.50 |
| Cloud Database Backup Subscription | USD 3,700.00 | 1 | 15.000 | USD 3,145.00 |
| Project Management Subscription | USD 7,100.00 | 1 | 15.000 | USD 6,035.00 |
| Purchase Orders Subscription | USD 6,750.00 | 1 | 15.000 | USD 5,737.50 |
| Finance Suite Subscription | USD 26,500.00 | 1 | 15.000 | USD 22,525.00 |
| Employee Self Services Lite Subscription | USD 3,300.00 | 1 | 15.000 | USD 2,805.00 |
| Payroll Subscription | USD 9,900.00 | 1 | 15.000 | USD 8,415.00 |
| Inventory Control Subscription | USD 7,150.00 | 1 | 15.000 | USD 6,077.50 |
| | | | **Annual Product Pricing Total:** | USD 59,797.50 |

## Estimated Professional Services

| PRODUCT | DESCRIPTION | LIST PRICE | NET PRICE | QTY | DISC % | NET PRICE |
|---|---|---|---|---|---|---|
| Standard Professional Services | Standard Professional Services - Accts Receivable | USD 189.00 | USD 160.00 | 15 | 15.344 | USD 2,400.00 |
| Standard Professional Services | Standard Professional Services - Proj Management | USD 189.00 | USD 160.00 | 22 | 15.344 | USD 3,520.00 |
| Standard Professional Services | Standard Professional Services - Purchase Orders | USD 189.00 | USD 160.00 | 15 | 15.344 | USD 2,400.00 |
| Standard Professional Services | Standard Professional Services - Finance Suite | USD 189.00 | USD 160.00 | 190 | 15.344 | USD 30,400.00 |
| Standard Professional Services | Standard Professional Services - ESS Lite | USD 189.00 | USD 160.00 | 14 | 15.344 | USD 2,240.00 |

Attachment: 2023-028 ATTH 01 Springbrook Proposal (3935 : 2023-028 RES Contract with Springbrook Software for Finance)

| PRODUCT | DESCRIPTION | LIST PRICE | NET PRICE | QTY | DISC % | NET PRICE |
|---|---|---|---|---|---|---|
| Standard Professional Services | Standard Professional Services - Payroll | USD 189.00 | USD 160.00 | 250 | 15.344 | USD 40,000.00 |
| Standard Professional Services | Standard Professional Services | USD 189.00 | USD 160.00 | 60 | 15.344 | USD 9,600.00 |
| | | | | | **Estimated Professional Services Total:** | USD 90,560.00 |

**Grand Total: USD 150,357.50**

* excludes applicable sales tax

Attachment: 2023-028 ATTH 01 Springbrook Proposal (3935 : 2023-028 RES Contract with Springbrook Software for Finance)

## Order Details

| | |
|---|---|
| Customer Name: | Texarkana Water Utilities |
| Customer Contact: | Gary Smith, P.E.<br>Executive Director |
| Governing Agreement(s): | This Order Form is governed by the applicable terms found at:<br>MSA: https://sprbrk.app.box.com/v/sprbrk-saas-terms<br>MLA: https://sprbrk.app.box.com/v/sprbrk-onpremise-terms<br>Professional Services: https://sprbrk.app.box.com/v/sprbrk-svcs-terms |
| Term(s): | 3 Years |

## Order Terms

In the event of an inconsistency between this Order Form, any governing agreement, purchase order, or invoice, the Order Form shall govern as it pertains to this transaction.

- This Order Form shall become effective as of the last date of signature (the "Effective Date").
- Order Start Date: Software Licenses, Subscriptions, Maintenance, and Hosting commence upon the earlier of a) date of delivery* or log-in to hosted software to Customer; or b) 60 days after Order Form Effective Date.
- Subscriptions, Maintenance, Hosting, and Support (“Recurring Services”) continue from the Order Start Date through the term listed in this Order Form (or if not listed, one (1) year).
- Orders for Recurring Services auto-renew unless the Customer or Springbrook provides a written notice of non-renewal at least sixty (60) days before the end of the Order Term.
- Subscription Service fees and any Recurring Services will be subject to an automatic annual increase by not more than five percent (5%) of the prior year’s Subscription Service fees ("Standard Annual Price Increase").
- Any Software Licenses or Hardware are one-time non-refundable purchases.
- CivicPay Online Subscription fee and CivicPay IVR Subscription fee are subject to increase at per account rate, based on actual accounts.
- CivicPay IVR Message Block Subscriptions expire upon the earlier exhaustion of the Message Block or twelve (12) months from the Order Start Date. Upon expiration, Message Blocks automatically renew.

** The date of delivery of software to the Customer is the date the software is made available to the Customer, either by delivery of software or delivery of first log-in to a hosted environment, which may be either a test or production environment. This date of delivery is frequently earlier than the dates professional services are completed, the Customer completes user acceptance testing, the Customer distributes additional logins to end-users, and the Customer go-live in a production environment.*

Attachment: 2023-028 ATTH 01 Springbrook Proposal (3935 : 2023-028 RES Contract with Springbrook Software for Finance)

## Invoice Timing and Delivery

Invoices are delivered electronically via e-mail to the billing contact on file for the Customer. Customer invoices are issued for the full amount of software and services purchased as follows:

| Products Ordered | Invoice Timing |
|---|---|
| Estimated Professional Services, On-Site Professional Services, and Travel Expenses*: | Monthly, in arrears for services in the prior month unless specified in Special Terms. |
| Fixed Fee Professional Services: | The Effective Date of this Order Form unless specified in Special Terms. |
| Print Services and Transaction Fees: | Monthly, in arrears for transactions in the prior month. |
| Hardware and One-Time Licenses: | Upon the Effective Date of this Order Form. |
| Software Licenses, Subscriptions, Maintenance, and Hosting (New): | Annually in advance upon Order Start Date. |
| Software Licenses, Subscriptions, Maintenance, and Hosting (Renewal): | Sixty (60) days in advance of the Order Start Date. |
| Software Subscriptions, Maintenance, and Hosting (Add-Ons): | Upon delivery of the product, order will be pro-rated to sync with the existing anniversary billing date and will renew annually thereafter. |
| Software Subscriptions (Migrations): | Upon delivery of the product, order will be synced with the existing anniversary billing date and will renew annually thereafter unless specified in the Special Order Terms. This order replaces and supersedes any previously executed order as it relates to the products listed within this order. Upon delivery of new product, customer will receive a prorated credit for any prepaid, unused maintenance fees that will be applied to the customer's first invoice. |

** Professional Services pricing is based on expected hours using Springbrook's standard implementation methodology. Actual hours and billings may vary from this estimate. Please note that only when project costs exceed $5,000 of this estimate, a signed change order will be required to continue work. Changes under $5,000 will continue to be delivered and billed accordingly. On-site Professional Services will be subject to a daily minimum rate irrespective of hours on-site. All travel costs associated with on-site travel will be billed as incurred.*

## Special Order Terms

Special Order Terms (if any):

Attachment: 2023-028 ATTH 01 Springbrook Proposal (3935 : 2023-028 RES Contract with Springbrook Software for Finance)

**By signing, both parties agree to the terms and conditions set forth in this agreement.**

* If the Customer requires a PO number on invoices, the Customer must provide Springbrook with the PO number and a copy of the PO prior to invoice issuance. If a PO number is not provided prior to the invoice issuance date, invoices issued on this Order Form will be valid without a PO reference.

| **Springbrook Holding Company, LLC** | **Texarkana Water Utilities** |
|---|---|
| Signature:_____ | Signature:_____ |
| Name (Print):_____ | Name (Print):_GARY SMITH, P.E._____ |
| Title:_____ | Title:_EXECUTIVE DIRECTOR_____ |
| Date:_____ | Date:_____ |

Purchase Order # (if required)_____

Attachment: 2023-028 ATTH 01 Springbrook Proposal (3935 : 2023-028 RES Contract with Springbrook Software for Finance)

# City of Texarkana, Texas

## Developing Perspectives and Goals Pending Approval by the City Council:

| Perspectives | Goals |
|---|---|
| Serve the Community | ☐ Promote an Environmentally Sensitive & Livable Community<br>☐ Provide a Safe Community<br>☑ Deliver Quality Services<br>☐ Foster a Healthy Community |
| Run the Operations | ☐ Enhance Community Preparedness & Responsiveness<br>☐ Maximize Partnership Opportunities<br>☑ Provide Courteous & Responsive Customer Service<br>☐ Model a Positive City Image<br>☑ Deliver Efficient Services<br>☐ Cultivate Community Involvement & Access |
| Manage the Resources | ☐ Maintain Fiscal Strength<br>☐ Maximize Utilization & Resources<br>☐ Invest in Infrastructure & Transportation |
| Develop Personnel | ☐ Develop a Skilled & Diverse Workforce<br>☐ Create a Positive & Rewarding Work Culture |

**Perspectives and Goals Additional Comments:**

## Resource Impact:

| | |
|---|---|
| Staff time required if item is approved: | No Additional |

**Other Potential Impacts:**

## Public Information Plan:

| | | | |
|---|---|---|---|
| ☐ | Newspaper Notice (Required by Statute) | ☐ | Public Hearing (Required by Statute) |
| ☐ | Public Forum/Input Session | ☐ | Press Release |
| ☐ | E-News Distribution | ☐ | Website Notice |
| ☐ | Social Media (Twitter, Facebook, etc.) | ☐ | Special Mailing |
| ☐ | Flyers Posted | ☐ | Banners Posted |
| ☐ | Survey | ☐ | Automated Phone Call |
| ☑ | None Required | ☐ | |

Other:

Attachment: 2023-028 Goals & Perspectives (3935 : 2023-028 RES Contract with Springbrook Software for Finance)

# RESOLUTION NO. 2023-028

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEXARKANA, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH SPRINGBROOK SOFTWARE OF PORTLAND, OREGON, FOR THE PURCHASE OF FINANCIAL SOFTWARE, INSTALLATION, DATA CONVERSION AND TRAINING, IN A TOTAL AMOUNT NOT TO EXCEED $150,357.50, WITH THE TEXAS PORTION NOT TO EXCEED $94,063.65; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS,** the Texarkana Water Utilities (TWU) existing financial software is over 26 years old and requires updating; and

**WHEREAS,** bids were not required; the procurement of new software will be an extension of the City of Texarkana, Texas, current system and therefore considered sole source; and

**WHEREAS**, TWU staff has been in consultation with Springbrook Software and have conducted extensive research to determine the effectiveness of the Springbrook product with regard to TWU requests; and

**WHEREAS,** TWU staff recommends Springbrook Software, as an experienced, respected, professional software services company, be selected as the software provider for the TWU software, maintenance and licensing service, Order Form Number Q-10667-1, as described in attached **ATTH 01;** and

**WHEREAS,** funds are currently budgeted in the TWU 2022-2023 budget in the Texas Technology Fund in the amount of $150,357.50.

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

**SECTION 1:** The Order details, Software Maintenance and Software License Agreement, Order Form Number Q-10667-1, between the Texarkana Water Utilities, Texarkana, Texas and Springbrook Software to provide professional computer software services for the Texarkana Water Utilities, a copy of which is attached hereto as **ATTH 01**, is hereby approved.

**SECTION 2:** The City Manager is hereby authorized to execute the agreement, software maintenance, and software license to provide services as herein described above.

**SECTION 3:** This Resolution shall be in full force and effect from and after its passage and approval.

**PASSED AND APPROVED** in Regular Council Session on this the **27th day of February, 2023.**

ATTEST:

JENNIFER EVANS, CITY SECRETARY

BOB BRUGGEMAN, MAYOR

6:15 p.m.

Attachment: 2023-028 RES TWU SB Finance Software signed (3935 : 2023-028 RES Contract with Springbrook Software for Finance)

**Order Form:** Q-10667-1
**Date:** 1/12/2023, 9:46 AM
**Expires On:** 4/12/2023




**Phone:** (866) 777-0069
**Email:** info@sprbrk.com

RES 2023-028
ATTH 01

**Ship To:**
Gary Smith
Texarkana Water Utilities
801 Wood Street
Texarkana, Arkansas 75501
gsmith@txkusa.org

**Bill To:**
Tricia Briggs
Texarkana Water Utilities
801 Wood Street
Texarkana, Arkansas 75501
eisley@txkusa.org

| Account Manager | E-mail | Phone Number | Payment Terms |
|---|---|---|---|
| Bea Williams | bea.williams@sprbrk.com | (503) 820-6272 | Net 30 |

## Annual Product Pricing

| PRODUCT | RATE | QTY | DISC (%) | NET PRICE |
|---|---|---|---|---|
| Accounts Receivable Subscription | USD 5,950.00 | 1 | 15.000 | USD 5,057.50 |
| Cloud Database Backup Subscription | USD 3,700.00 | 1 | 15.000 | USD 3,145.00 |
| Project Management Subscription | USD 7,100.00 | 1 | 15.000 | USD 6,035.00 |
| Purchase Orders Subscription | USD 6,750.00 | 1 | 15.000 | USD 5,737.50 |
| Finance Suite Subscription | USD 26,500.00 | 1 | 15.000 | USD 22,525.00 |
| Employee Self Services Lite Subscription | USD 3,300.00 | 1 | 15.000 | USD 2,805.00 |
| Payroll Subscription | USD 9,900.00 | 1 | 15.000 | USD 8,415.00 |
| Inventory Control Subscription | USD 7,150.00 | 1 | 15.000 | USD 6,077.50 |
| | | | **Annual Product Pricing Total:** | USD 59,797.50 |

## Estimated Professional Services

| PRODUCT | DESCRIPTION | LIST PRICE | NET PRICE | QTY | DISC % | NET PRICE |
|---|---|---|---|---|---|---|
| Standard Professional Services | Standard Professional Services - Accts Receivable | USD 189.00 | USD 160.00 | 15 | 15.344 | USD 2,400.00 |
| Standard Professional Services | Standard Professional Services - Proj Management | USD 189.00 | USD 160.00 | 22 | 15.344 | USD 3,520.00 |
| Standard Professional Services | Standard Professional Services - Purchase Orders | USD 189.00 | USD 160.00 | 15 | 15.344 | USD 2,400.00 |
| Standard Professional Services | Standard Professional Services - Finance Suite | USD 189.00 | USD 160.00 | 190 | 15.344 | USD 30,400.00 |
| Standard Professional Services | Standard Professional Services - ESS Lite | USD 189.00 | USD 160.00 | 14 | 15.344 | USD 2,240.00 |



Attachment: 2023-028 RES TWU SB Finance Software signed (3935 : 2023-028 RES Contract with Springbrook Software for Finance)

| PRODUCT | DESCRIPTION | LIST PRICE | NET PRICE | QTY | DISC % | NET PRICE |
|---|---|---|---|---|---|---|
| Standard Professional Services | Standard Professional Services - Payroll | USD 189.00 | USD 160.00 | 250 | 15.344 | USD 40,000.00 |
| Standard Professional Services | Standard Professional Services | USD 189.00 | USD 160.00 | 60 | 15.344 | USD 9,600.00 |
| | | | | | **Estimated Professional Services Total:** | USD 90,560.00 |

**Grand Total: USD 150,357.50**

* excludes applicable sales tax

Attachment: 2023-028 RES TWU SB Finance Software signed (3935 : 2023-028 RES Contract with Springbrook Software for Finance)

## Order Details

| | |
|---|---|
| Customer Name: | Texarkana Water Utilities |
| Customer Contact: | Gary Smith, P.E.<br>Executive Director |
| Governing Agreement(s): | This Order Form is governed by the applicable terms found at:<br>MSA: https://sprbrk.app.box.com/v/sprbrk-saas-terms<br>MLA: https://sprbrk.app.box.com/v/sprbrk-onpremise-terms<br>Professional Services: https://sprbrk.app.box.com/v/sprbrk-svcs-terms |
| Term(s): | 3 Years |

## Order Terms

In the event of an inconsistency between this Order Form, any governing agreement, purchase order, or invoice, the Order Form shall govern as it pertains to this transaction.

- This Order Form shall become effective as of the last date of signature (the "Effective Date").
- Order Start Date: Software Licenses, Subscriptions, Maintenance, and Hosting commence upon the earlier of a) date of delivery* or log-in to hosted software to Customer; or b) 60 days after Order Form Effective Date.
- Subscriptions, Maintenance, Hosting, and Support (“Recurring Services”) continue from the Order Start Date through the term listed in this Order Form (or if not listed, one (1) year).
- Orders for Recurring Services auto-renew unless the Customer or Springbrook provides a written notice of non-renewal at least sixty (60) days before the end of the Order Term.
- Subscription Service fees and any Recurring Services will be subject to an automatic annual increase by not more than five percent (5%) of the prior year’s Subscription Service fees ("Standard Annual Price Increase").
- Any Software Licenses or Hardware are one-time non-refundable purchases.
- CivicPay Online Subscription fee and CivicPay IVR Subscription fee are subject to increase at per account rate, based on actual accounts.
- CivicPay IVR Message Block Subscriptions expire upon the earlier exhaustion of the Message Block or twelve (12) months from the Order Start Date. Upon expiration, Message Blocks automatically renew.

** The date of delivery of software to the Customer is the date the software is made available to the Customer, either by delivery of software or delivery of first log-in to a hosted environment, which may be either a test or production environment. This date of delivery is frequently earlier than the dates professional services are completed, the Customer completes user acceptance testing, the Customer distributes additional logins to end-users, and the Customer go-live in a production environment.*

Attachment: 2023-028 RES TWU SB Finance Software signed (3935 : 2023-028 RES Contract with Springbrook Software for Finance)

## Invoice Timing and Delivery

Invoices are delivered electronically via e-mail to the billing contact on file for the Customer. Customer invoices are issued for the full amount of software and services purchased as follows:

| Products Ordered | Invoice Timing |
|---|---|
| Estimated Professional Services, On-Site Professional Services, and Travel Expenses*: | Monthly, in arrears for services in the prior month unless specified in Special Terms. |
| Fixed Fee Professional Services: | The Effective Date of this Order Form unless specified in Special Terms. |
| Print Services and Transaction Fees: | Monthly, in arrears for transactions in the prior month. |
| Hardware and One-Time Licenses: | Upon the Effective Date of this Order Form. |
| Software Licenses, Subscriptions, Maintenance, and Hosting (New): | Annually in advance upon Order Start Date. |
| Software Licenses, Subscriptions, Maintenance, and Hosting (Renewal): | Sixty (60) days in advance of the Order Start Date. |
| Software Subscriptions, Maintenance, and Hosting (Add-Ons): | Upon delivery of the product, order will be pro-rated to sync with the existing anniversary billing date and will renew annually thereafter. |
| Software Subscriptions (Migrations): | Upon delivery of the product, order will be synced with the existing anniversary billing date and will renew annually thereafter unless specified in the Special Order Terms. This order replaces and supersedes any previously executed order as it relates to the products listed within this order. Upon delivery of new product, customer will receive a prorated credit for any prepaid, unused maintenance fees that will be applied to the customer's first invoice. |

** Professional Services pricing is based on expected hours using Springbrook's standard implementation methodology. Actual hours and billings may vary from this estimate. Please note that only when project costs exceed $5,000 of this estimate, a signed change order will be required to continue work. Changes under $5,000 will continue to be delivered and billed accordingly. On-site Professional Services will be subject to a daily minimum rate irrespective of hours on-site. All travel costs associated with on-site travel will be billed as incurred.*

## Special Order Terms

Special Order Terms (if any):

Attachment: 2023-028 RES TWU SB Finance Software signed (3935 : 2023-028 RES Contract with Springbrook Software for Finance)

**By signing, both parties agree to the terms and conditions set forth in this agreement.**

* If the Customer requires a PO number on invoices, the Customer must provide Springbrook with the PO number and a copy of the PO prior to invoice issuance. If a PO number is not provided prior to the invoice issuance date, invoices issued on this Order Form will be valid without a PO reference.

| **Springbrook Holding Company, LLC** | **Texarkana Water Utilities** |
|---|---|
| Signature: DocuSigned by: Ryan James F537715CDDDE486... | Signature: |
| Name (Print): Ryan James | Name (Print): GARY SMITH, P.E. |
| Title: Senior Vice President of Sales | Title: EXECUTIVE DIRECTOR |
| Date: 3/7/2023 | Date: 3-7-2023 |

Purchase Order # (if required)_____



Attachment: 2023-028 RES TWU SB Finance Software signed (3935 : 2023-028 RES Contract with Springbrook Software for Finance)

City of Texarkana, Texas

# Briefing Sheet

Version:
**Update Date:** 2/23/2023 12:04 PM

**Lead Department:** Water Utilities **Action Officer:** Pam White,

**Subject:** Resolution No. 2023-029 authorizing the City Manager to execute a contract with the HGAC Buy Board to purchase one M2-106 Conventional Cab in a total amount not to exceed $145,995.05, with the Texas portion not to exceed $91,334.50. Funds are available in the Utility's 2022-2023 budget in the Equipment Acquisition Fund.

**Briefing:** 2/27/2023 **Public Hearing:** **Council Vote:** 2/27/2023

**Item Schedule**

Schedule 3: No briefing required (one week)

**Updates/History of Briefing:**

NOT APPLICABLE

**Executive Summary and Background Information:**

Texarkana Water Utilities needs to urgently replace a 2000 International Dump truck. It was determined that the most cost-effective option is to purchase one (1) M2-106 Freightliner Conventional Cab through the HGAC Buy Board in an amount not to exceed $145,995.05 with the Texas portion being $91,334.50. This price includes the Buy Board applicable fees. HGAC is a self-funded government organization, that partner with government entities. Purchase from the Buy Board meets all bidding requirements.

**Potential Options:**

- None

**Fiscal Implications:**

The vehicle is budgeted in the Utility's 2022-2023 Budget in the Equipment Acquisition Fund for $105,000.00; the balance of $40,995.50 is available in the Equipment Acquisition Fund.

**Staff Recommendation:**

The Utility staff recommends approval.

**Advisory Board/Committee Review:**

NONE

**Board/Committee Recommendation:**

NOT APPLICABLE

**Advisory Board/Committee Meeting Date and Minutes:**

NOT APPLICABLE

**City of Texarkana, Texas**

## Attachments

a. 2023-029 RES M2-106 Freightliner Conventional Cab (DOCX)
b. 2023-029 ATTH 01 Contract Pricing Worksheet (PDF)
c. 2023-029 Goals & Perspectives (DOCX)
d. 2023-029 RES TWU Freighlinter Cab purch. signed (PDF)

## Staff Coordination

| | | | | |
|---|---|---|---|---|
| Water Utilities | Gary Smith | Department Head Review | Completed | 02/23/2023 11:06 AM |
| TWU Administration | Kenny Icenhower | Review | Completed | 02/23/2023 11:08 AM |
| TWU Finance | Tricia Briggs | Review | Completed | 02/23/2023 11:11 AM |
| City Manager | Jennifer Evans | City Manager Review | Skipped | 02/27/2023 6:00 PM |
| City Council | Jennifer Evans | Meeting | Completed | 02/27/2023 6:00 PM |

## Meeting History

**RESOLUTION NO. 2023-029**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEXARKANA, TEXAS, AUTHORIZING THE CITY MANAGER TO PURCHASE ONE (1) M2-106 FREIGHTLINER CONVENTIONAL CAB IN A TOTAL AMOUNT NOT TO EXCEED $145,995.05, WITH THE TEXAS PORTION NOT TO EXCEED $91,334.50; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS,** Texarkana Water Utilities reviewed pricing options to purchase one (1) M2-106 Freightliner Conventional Cab; and

**WHEREAS,** it was determined the most cost-effective option is to purchase one (1) M2-106 Freightliner Conventional Cab from the HGAC Buy Board (**ATTH 01**). Purchase from the Buy Board meets all bidding requirements; and

**WHEREAS,** budgeted funds are available in the Utility's 2022-2023 budget in the Equipment Acquisition Fund for $105,000.00; the balance of $40,995.50 is also available in the Equipment Acquisition Fund.

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

**SECTION 1:** The most cost-effective purchase would be to utilize the HGAC Buy Board in a total amount not to exceed $145,995.05, with the Texas portion not to exceed $91,334.50.

**SECTION 2:** The City Manager be and is hereby authorized to issue a purchase order for one (1) M2-106 Freightliner Conventional Cab through the HGAC Buy Board.

**SECTION 3:** This Resolution shall be in full force and effect from and after its passage and approval.

**PASSED AND APPROVED** in Regular Council Session on this the **27th day of February, 2023**.

ATTEST:

_____ _____

JENNIFER EVANS, CITY SECRETARY BOB BRUGGEMAN, MAYOR

Attachment: 2023-029 RES M2-106 Freightliner Conventional Cab [Revision 2] (3936 : 2023-029 RES Purchase Freightliner Conventional Cab)

# CONTRACT PRICING WORKSHEET
For MOTOR VEHICLES Only

| Contract No.: | HT06-20 | Date Prepared: | 2/17/202 |
|---|---|---|---|

**This Worksheet is prepared by Contractor and given to End User. If a PO is issued, both document MUST be faxed to H-GAC @ 713-993-4548. Therefore please type or print legibly.**

| | | | |
|---|---|---|---|
| Buying Agency: | TEXARKANA WATER UTILITIES | Contractor: | Houston Freightliner |
| Contact Person: | | Prepared By: | Adam Neuse |
| Phone: | | Phone: | 713-580-8148 |
| Fax: | | Fax: | |
| Email: | | Email: | adam.neuse@houstonfreightliner.com |

| Product Code: | D6 | Description: | M2-106, Conventional Cab, SBFA, TRA (PRL-20M) |
|---|---|---|---|

**A. Product Item Base Unit Price Per Contractor's H-GAC Contract:** 79

**B. Published Options - Itemize below - Attach additional sheet(s) if necessary - Include Option Code in description if applicable.**
(Note: Published Options are options which were submitted and priced in Contractor's bid.)

| Description | Cost | Description | Cost |
|---|---|---|---|
| 252" Wheelbase | 1034 | LH/RH Electric Door Locks | |
| DD8 350 HP 1050 LB FT TQ ENGINE | 10482 | Basic High Back Air Driver Seat | |
| 3000 RDS AUTOMATIC TRANSMISSION | 5089 | Battery Disconnect MTD LH of Driver Seat | |
| DA-F-18.0-5 18,000 LB FRONT AXLE | 1665 | Positive and Negative Jump Starts Mtd on Frame Next to Starte | |
| 18,000 LB TAPERLEAF FRONT SUSPENSION | 1071 | Compression Brake | 1 |
| MT-40-14X 40,000 LB REAR AXLES | 442 | AM/FM/WB Radio with Bluetooth | |
| 40,000 LB AIRLINER REAR SUSPENSION | 954 | | |
| 4S/4M ABS with Traction Control with Hill Start | 795 | | |
| Dual West Coast Bright Finish Heated Mirrors | 105 | | |
| LH/RH 8" Bright Convex Fender Mirrors | 104 | Special LEDWELL 12_14 YD Box Dump | 32778 |
| Adjustable Steering Column | 359 | Subtotal From Additional Sheet(s): | |
| LH/RH Electric Windows | 164 | Subtotal B: | 57792 |

**C. Unpublished Options - Itemize below / attach additional sheet(s) if necessary.**
(Note: Unpublished options are items which were not submitted and priced in Contractor's bid.)

| Description | Cost | Description | Cost |
|---|---|---|---|
| LH 90 Gallon Fuel Tank | 284 | | |
| Michelin X Works Z 315/80R22.5 20 Ply Radial Front Tires | 708 | Subtotal From Additional Sheet(s): | |
| | | Subtotal C: | |

**Check:** Total cost of Unpublished Options (C) cannot exceed 25% of the total of the Base Unit Price plus Published Options (A+B). **For this transaction the percentage is:**

**D. Total Cost Before Any Applicable Trade-In / Other Allowances / Discounts (A+B+C)**

| Quantity Ordered: | 1 | X Subtotal of A + B + C: | 137870.05 | = | Subtotal D: | 137870 |
|---|---|---|---|---|---|---|

**E. H-GAC Order Processing Charge (Amount Per Current Policy)** Subtotal E: 1

**F. Trade-Ins / Special Discounts / Other Allowances / Freight / Installation / Miscellaneous Charges**

| Description | Cost | Description | Cost |
|---|---|---|---|
| Standard Destination Charge | 3375 | | |
| 23MY/22CY Priductoin Surcharge | 3750 | | |
| | | Subtotal F: | 7 |

**Delivery Date:** **G. Total Purchase Price (D+E+F):** 14599

HGACBuy THE SMART PURCHASING SOLUTION

Attachment: 2023-029 ATTH 01 Contract Pricing Worksheet (3936 : 2023-029 RES Purchase Freightliner Conventional Cab)

# City of Texarkana, Texas

## Developing Perspectives and Goals Pending Approval by the City Council:

| Perspectives | Goals |
|---|---|
| Serve the Community | ☐ Promote an Environmentally Sensitive & Livable Community<br>☐ Provide a Safe Community<br>☑ Deliver Quality Services<br>☐ Foster a Healthy Community |
| Run the Operations | ☐ Enhance Community Preparedness & Responsiveness<br>☐ Maximize Partnership Opportunities<br>☐ Provide Courteous & Responsive Customer Service<br>☐ Model a Positive City Image<br>☑ Deliver Efficient Services<br>☐ Cultivate Community Involvement & Access |
| Manage the Resources | ☐ Maintain Fiscal Strength<br>☐ Maximize Utilization & Resources<br>☑ Invest in Infrastructure & Transportation |
| Develop Personnel | ☐ Develop a Skilled & Diverse Workforce<br>☐ Create a Positive & Rewarding Work Culture |

**Perspectives and Goals Additional Comments:**

## Resource Impact:

| | |
|---|---|
| Staff time required if item is approved: | No Additional |

**Other Potential Impacts:**

## Public Information Plan:

| | | | |
|---|---|---|---|
| ☐ | Newspaper Notice (Required by Statute) | ☐ | Public Hearing (Required by Statute) |
| ☐ | Public Forum/Input Session | ☐ | Press Release |
| ☐ | E-News Distribution | ☐ | Website Notice |
| ☐ | Social Media (Twitter, Facebook, etc.) | ☐ | Special Mailing |
| ☐ | Flyers Posted | ☐ | Banners Posted |
| ☐ | Survey | ☐ | Automated Phone Call |
| ☑ | None Required | ☐ | |

Other:

Attachment: 2023-029 Goals & Perspectives (3936 : 2023-029 RES Purchase Freightliner Conventional Cab)

**RESOLUTION NO. 2023-029**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEXARKANA, TEXAS, AUTHORIZING THE CITY MANAGER TO PURCHASE ONE (1) M2-106 FREIGHTLINER CONVENTIONAL CAB IN A TOTAL AMOUNT NOT TO EXCEED $145,995.05, WITH THE TEXAS PORTION NOT TO EXCEED $91,334.50; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS,** Texarkana Water Utilities reviewed pricing options to purchase one (1) M2-106 Freightliner Conventional Cab; and

**WHEREAS,** it was determined the most cost-effective option is to purchase one (1) M2-106 Freightliner Conventional Cab from the HGAC Buy Board (**ATTH 01**). Purchase from the Buy Board meets all bidding requirements; and

**WHEREAS,** budgeted funds are available in the Utility's 2022-2023 budget in the Equipment Acquisition Fund for $105,000.00; the balance of $40,995.50 is also available in the Equipment Acquisition Fund.

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

**SECTION 1:** The most cost-effective purchase would be to utilize the HGAC Buy Board in a total amount not to exceed $145,995.05, with the Texas portion not to exceed $91,334.50.

**SECTION 2:** The City Manager be and is hereby authorized to issue a purchase order for one (1) M2-106 Freightliner Conventional Cab through the HGAC Buy Board.

**SECTION 3:** This Resolution shall be in full force and effect from and after its passage and approval.

**PASSED AND APPROVED** in Regular Council Session on this the **27th day of February, 2023**.

ATTEST:

JENNIFER EVANS, CITY SECRETARY

BOB BRUGGEMAN, MAYOR

6:15 p.m.

Attachment: 2023-029 RES TWU Freighlinter Cab purch. signed (3936 : 2023-029 RES Purchase Freightliner Conventional Cab)

# HGACBuy CONTRACT PRICING WORKSHEET
For MOTOR VEHICLES Only

| Contract No.: | HT06-20 | Date Prepared: | 2/17/202 |
|---|---|---|---|

**This Worksheet is prepared by Contractor and given to End User. If a PO is issued, both document MUST be faxed to H-GAC @ 713-993-4548. Therefore please type or print legibly.**

| | | | |
|---|---|---|---|
| Buying Agency: | TEXARKANA WATER UTILITIES | Contractor: | Houston Freightliner |
| Contact Person: | | Prepared By: | Adam Neuse |
| Phone: | | Phone: | 713-580-8148 |
| Fax: | | Fax: | |
| Email: | | Email: | adam.neuse@houstonfreightliner.com |

| Product Code: | D6 | Description: | M2-106, Conventional Cab, SBFA, TRA (PRL-20M) |
|---|---|---|---|

**A. Product Item Base Unit Price Per Contractor's H-GAC Contract:** 79

**B. Published Options - Itemize below - Attach additional sheet(s) if necessary - Include Option Code in description if applicable.**
(Note: Published Options are options which were submitted and priced in Contractor's bid.)

| Description | Cost | Description | Cost |
|---|---|---|---|
| 252" Wheelbase | 1034 | LH/RH Electric Door Locks | |
| DD8 350 HP 1050 LB FT TQ ENGINE | 10482 | Basic High Back Air Driver Seat | |
| 3000 RDS AUTOMATIC TRANSMISSION | 5089 | Battery Disconnect MTD LH of Driver Seat | |
| DA-F-18.0-5 18,000 LB FRONT AXLE | 1665 | Positive and Negative Jump Starts Mtd on Frame Next to Starte | |
| 18,000 LB TAPERLEAF FRONT SUSPENSION | 1071 | Compression Brake | 1 |
| MT-40-14X 40,000 LB REAR AXLES | 442 | AM/FM/WB Radio with Bluetooth | |
| 40,000 LB AIRLINER REAR SUSPENSION | 954 | | |
| 4S/4M ABS with Traction Control with Hill Start | 795 | | |
| Dual West Coast Bright Finish Heated Mirrors | 105 | | |
| LH/RH 8" Bright Convex Fender Mirrors | 104 | Special LEDWELL 12_14 YD Box Dump | 32778 |
| Adjustable Steering Column | 359 | Subtotal From Additional Sheet(s): | |
| LH/RH Electric Windows | 164 | Subtotal B: | 57792 |

**C. Unpublished Options - Itemize below / attach additional sheet(s) if necessary.**
(Note: Unpublished options are items which were not submitted and priced in Contractor's bid.)

| Description | Cost | Description | Cost |
|---|---|---|---|
| LH 90 Gallon Fuel Tank | 284 | | |
| Michelin X Works Z 315/80R22.5 20 Ply Radial Front Tires | 708 | Subtotal From Additional Sheet(s): | |
| | | Subtotal C: | |

**Check:** Total cost of Unpublished Options (C) cannot exceed 25% of the total of the Base Unit Price plus Published Options (A+B). **For this transaction the percentage is:**

**D. Total Cost Before Any Applicable Trade-In / Other Allowances / Discounts (A+B+C)**

| Quantity Ordered: | 1 | X Subtotal of A + B + C: | 137870.05 | = | Subtotal D: | 137870 |
|---|---|---|---|---|---|---|

**E. H-GAC Order Processing Charge (Amount Per Current Policy)** Subtotal E: 1

**F. Trade-Ins / Special Discounts / Other Allowances / Freight / Installation / Miscellaneous Charges**

| Description | Cost | Description | Cost |
|---|---|---|---|
| Standard Destination Charge | 3375 | | |
| 23MY/22CY Priductoin Surcharge | 3750 | | |
| | | Subtotal F: | 7 |

| Delivery Date: | G. Total Purchase Price (D+E+F): | 145995 |
|---|---|---|

HGACBuy THE SMART PURCHASING SOLUTION

Attachment: 2023-029 RES TWU Freighlinter Cab purch. signed (3936 : 2023-029 RES Purchase Freightliner Conventional Cab)

City of Texarkana, Texas

# Briefing Sheet

Version:
**Update Date:** 2/7/2023 11:12 AM

**Lead Department:** Planning and Community Development **Action Officer:** Daphnea Ryan,

**Subject:** Ordinance No. 2023-016 amending the budget for a One Million Dollar EPA Revolving Loan Fund Grant and establishing Fund 245.

**Briefing:** 2/27/2023 **Public Hearing:** **Council Vote:** 2/27/2023

**Item Schedule**

Schedule 2: Brief once - vote once (two weeks)

**Updates/History of Briefing:**

**Executive Summary and Background Information:**

In 2012, the City received our first EPA Brownfields Revolving Loan Fund Grant from the US EPA in the amount of $1,080.00. Each year since 2019, the City has applied for and received Supplemental Funding for the original Revolving Loan Fund. In 2022 the City completed an application for Supplemental funding and was awarded $1,000,000.00. The US EPA funded the 2022 Supplemental Revolving Loan Fund grants through funding US EPA received as a result of the Bipartisan Infrastructure Law (BIL Funding). This requires US EPA to track this funding separate from their normal federal allocation; therefore, it was awarded as a new cooperative agreement that will require us to establish a new fund for tracking expenditures and future program income derived from repayment of loans.

To date, the City has executed three loans for environmental abatement using the EPA Brownfields RLF Program. Target areas for this new funding include loans for environmental cleanup of properties downtown, along the New Boston Road Corridor, and the State Line Corridor; although, funding can be utilized anywhere within the City limits of Texarkana, Texas.

**Potential Options:**

- Approve
- Deny

**Fiscal Implications:**

There is no match obligation for this funding; therefore, there are no direct fiscal implications. Staff time for managing the program is already funded through the General Fund.

**Staff Recommendation:**

Staff recommends approval

**Advisory Board/Committee Review:**

None

**Board/Committee Recommendation:**

Not Applicable

**Advisory Board/Committee Meeting Date and Minutes:**

Not Applicable

**Attachments**

a. 2023-016 ORD Amending Budget for EPA Brownfields RLF BIL Funding (DOC)
b. 2023-016 ATTH 01 Cooperative Agreement 2022 4B 02F19201-0 (PDF)
c. 2023-016 Goals & Perspectives (DOCX)
d. 2023-016 ORD EPA RLF BIL Funding signed (PDF)

**Staff Coordination**

| | | | | |
|---|---|---|---|---|
| Planning and Community Development | Vashil Fernandez | Department Head Review | Completed | 01/27/2023 12:53 PM |
| City Manager | David Orr | City Manager Review | Completed | 01/27/2023 3:09 PM |
| City Council | Jennifer Evans | Meeting | Completed | 02/13/2023 6:00 PM |

**Meeting History**

| | | | |
|---|---|---|---|
| 02/13/23 | City Council | MOVED FORWARD | Next: 02/27/23 |

# ORDINANCE NO. 2023-016

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEXARKANA, TEXAS, ESTABLISHING THE EPA BROWNFIELDS BIL REVOLVING LOAN FUND (FUND 245) AND AMENDING BUDGETED REVENUE AND EXPENDITURES FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2023, TO INCLUDE THE 2022 EPA BROWNFIELDS REVOLVING LOAN FUND IN THE AMOUNT OF ONE MILLION DOLLARS ($1,000,000); AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS,** the City applies yearly for supplemental funding of its EPA Brownfields Revolving Loan Fund; and

**WHEREAS,** the City was awarded $1,000,000 from its FY22 supplemental application that is funded by EPA through the Bipartisan Infrastructure Law (BIL Funding) and awarded as a new Brownfields Revolving Loan Fund Cooperative Agreement with a grant period of October 1, 2022 to September 30, 2027; and

**WHEREAS,** City staff recommends amending the budget estimate of the City's revenues and expenditures for the fiscal year beginning October 1, 2022, and ending September 30, 2023, by adding the amount of **ONE MILLION DOLLARS ($1,000,000)** to Fund 245.

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

**SECTION 1:** The budget estimate of the revenue and expenditures of the City of Texarkana, Texas, as prepared by the City Manager and appropriated by the City Council for the fiscal year beginning October 1, 2022, and ending September 30, 2023, be amended to reflect additional revenue and expenditures appropriated of **ONE MILLION DOLLARS ($1,000,000)** added to the Planning and Community Development EPA Brownfields Revolving Loan BIL Program Fund (Fund 245).

**SECTION 2:** This Ordinance shall be in full force and effect from and after its passage and approval.

**PASSED AND APPROVED** in Regular Council Session on this the **27th day of February, 2023**.

ATTEST:

JENNIFER EVANS, CITY SECRETARY

BOB BRUGGEMAN, MAYOR

Attachment: 2023-016 ORD Amending Budget for EPA Brownfields RLF BIL Funding (3919 : 2023-016 ORD Amend Budget for New EPA RLF)

# U.S. ENVIRONMENTAL PROTECTION AGENCY

## Cooperative Agreement

| | |
|---|---|
| GRANT NUMBER (FAIN): 02F19201<br>MODIFICATION NUMBER: 0<br>PROGRAM CODE: 4B | DATE OF AWARD<br>09/13/2022 |
| TYPE OF ACTION<br>New | MAILING DATE<br>09/16/2022 |
| PAYMENT METHOD:<br>ASAP | ACH#<br>67020 |

**RECIPIENT TYPE:**
Municipal

**Send Payment Request to:**
Contact EPA RTPFC at: rtpfc-grants@epa.gov

**RECIPIENT:**
City of Texarkana
220 Texas Blvd.
Texarkana, TX 75501
**EIN:** 75-6000689

**PAYEE:**
City of Texarkana
220 Texas Blvd.
Texarkana, TX 75501

| PROJECT MANAGER | EPA PROJECT OFFICER | EPA GRANT SPECIALIST |
|---|---|---|
| Daphnea Ryan<br>P.O. Box 1967<br>220 Texas Blvd.<br>Texarkana, TX 75504<br>**Email:** dryan@txkusa.org<br>**Phone:** 903-748-5031 | Camisha Scott<br>1201 Elm Street, Suite 500, LCRRB<br>Dallas, TX 75207<br>**Email:** Scott.Camisha@epa.gov<br>**Phone:** 214-665-6755 | Lisa Kapsh<br>Mission Support Division, MSDCA<br>1201 Elm Street, Suite 500<br><br>Dallas, TX 75270-2102<br>**Email:** Kapsh.Lisa@epa.gov<br>**Phone:** 214-665-7335 |

**PROJECT TITLE AND DESCRIPTION**

City of Texarkana, Texas BIL RLF Cooperative Agreement

See Attachment 1 for project description.

| BUDGET PERIOD | PROJECT PERIOD | TOTAL BUDGET PERIOD COST | TOTAL PROJECT PERIOD COST |
|---|---|---|---|
| 10/01/2022 - 09/30/2027 | 10/01/2022 - 09/30/2027 | $1,000,000.00 | $1,000,000.00 |

## NOTICE OF AWARD

Based on your Application dated 06/15/2022 including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA) hereby awards $1,000,000.00. EPA agrees to cost-share 100.00% of all approved budget period costs incurred, up to and not exceeding total federal funding of $1,000,000.00. Recipient's signature is not required on this agreement. The recipient demonstrates its commitment to carry out this award by either: 1) drawing down funds within 21 days after the EPA award or amendment mailing date; or 2) not filing a notice of disagreement with the award terms and conditions within 21 days after the EPA award or amendment mailing date. If the recipient disagrees with the terms and conditions specified in this award, the authorized representative of the recipient must furnish a notice of disagreement to the EPA Award Official within 21 days after the EPA award or amendment mailing date. In case of disagreement, and until the disagreement is resolved, the recipient should not draw down on the funds provided by this award/amendment, and any costs incurred by the recipient are at its own risk. This agreement is subject to applicable EPA regulatory and statutory provisions, all terms and conditions of this agreement and any attachments.

| ISSUING OFFICE (GRANTS MANAGEMENT OFFICE) | AWARD APPROVAL OFFICE |
|---|---|
| ORGANIZATION / ADDRESS | ORGANIZATION / ADDRESS |
| U.S. EPA, Region 6 , Acquisition and Assistance Section<br>1201 Elm Street, Suite 500<br>Dallas, TX 75270-2102 | U.S. EPA, Region 6, Land, Chemical Redevelopment Division<br>R6 - Region 6<br>1201 Elm Street, Suite 500<br>Dallas, TX 75270-2102 |

**THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY**

| | |
|---|---|
| **Digital signature applied by EPA Award Official** Christopher Watkins - Grant Management Officer | **DATE**<br>09/13/2022 |

Attachment: 2023-016 ATTH 01 Cooperative Agreement 2022 4B 02F19201-0 (3919 : 2023-016 ORD Amend Budget for New EPA RLF)

# EPA Funding Information

| FUNDS | FORMER AWARD | THIS ACTION | AMENDED TOT |
|---|---|---|---|
| EPA Amount This Action | $0 | $1,000,000 | $1,000,0 |
| EPA In-Kind Amount | $0 | $0 | |
| Unexpended Prior Year Balance | $0 | $0 | |
| Other Federal Funds | $0 | $0 | |
| Recipient Contribution | $0 | $0 | |
| State Contribution | $0 | $0 | |
| Local Contribution | $0 | $0 | |
| Other Contribution | $0 | $0 | |
| Allowable Project Cost | $0 | $1,000,000 | $1,000,0 |

| Assistance Program (CFDA) | Statutory Authority | Regulatory Authority |
|---|---|---|
| 66.818 - Brownfields Multipurpose, Assessment, Revolving Loan Fund, and Cleanup Cooperative Agreements | CERCLA: Secs. 104(k)(3) & 104(k)(5)(E) & 104(k)(10)(B)(iii) & Infrastructure Investment and Jobs Act (IIJA) (PL 117-58) | 2 CFR 200, 2 CFR 1500 and 40 CFR 33 |

| Fiscal | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| Site Name | Req No | FY | Approp. Code | Budget Oganization | PRC | Object Class | Site/Project | Cost Organization | Obligation / Deobligatio |
| TEXARKANA | 2206BBR029 | 22 | E4SD | 06B5AG7 | 000D79X89 | 4114 | - | - | $1,000,0 |
| | | | | | | | | | $1,000,0 |

Attachment: 2023-016 ATTH 01 Cooperative Agreement 2022 4B 02F19201-0 (3919 : 2023-016 ORD Amend Budget for New EPA RLF)

Budget Summary Page

| Table A - Object Class Category (Non-Construction) | Total Approved Allowable Budget Period Cost |
|---|---|
| 1. Personnel | $ |
| 2. Fringe Benefits | $ |
| 3. Travel | $20,0 |
| 4. Equipment | $ |
| 5. Supplies | $4 |
| 6. Contractual | $80,0 |
| 7. Construction | $ |
| 8. Other | $899,5 |
| 9. Total Direct Charges | $1,000,0 |
| 10. Indirect Costs: 0.00 % Base | $ |
| 11. Total (Share: Recipient 0.00 % Federal 100.00 %) | $1,000,0 |
| 12. Total Approved Assistance Amount | $1,000,0 |
| 13. Program Income | $650,0 |
| 14. Total EPA Amount Awarded This Action | $1,000,0 |
| 15. Total EPA Amount Awarded To Date | $1,000,0 |

Attachment: 2023-016 ATTH 01 Cooperative Agreement 2022 4B 02F19201-0 (3919 : 2023-016 ORD Amend Budget for New EPA RLF)

# *Attachment 1 - Project Description*

Brownfields are real property, the expansion, development or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. This agreement will provide funding under the Infrastructure Investment and Jobs Act for the City of Texarkana to re-capitalize a revolving loan fund as authorized by CERCLA 104(k)(5)(A)(ii) in the City of Texarkana, Texas.

This agreement will provide funding for the recipient to re-capitalize a revolving loan fund from which to make loans and subgrants to clean up brownfield site(s) and conduct other necessary activities to prudently manage the RLF. Additionally, the recipient will competitively procure (as needed) and direct a Qualified Environmental Professional to oversee the environmental site activities and will create a community involvement plan and administrative record for each site that is remediated. The recipient will report on program income,

interim progress, and final accomplishments by completing and submitting relevant portions of the Property Profile Form and Brownfields RLF Form using EPA's Assessment, Cleanup and Redevelopment Exchange System (ACRES). The recipient will issue approximately 4 loans to remediate 4 brownfield site(s); anticipates holding 3 community meetings, finalizing 4 Analysis of Brownfield Cleanup Alternatives, and submitting 20 quarterly reports. Work conducted under this agreement will benefit the residents, business owners, and stakeholders in and near the City of Texarkana, Texas. No subawards are included in this assistance agreement.

Attachment: 2023-016 ATTH 01 Cooperative Agreement 2022 4B 02F19201-0 (3919 : 2023-016 ORD Amend Budget for New EPA RLF)

# *Administrative Conditions*

## National Administrative Terms and Conditions

### General Terms and Conditions

The recipient agrees to comply with the current EPA general terms and conditions available at: https://www.epa.gov/grants/epa-general-terms-and-conditions-effective-october-1-2021-or-later.

These terms and conditions are in addition to the assurances and certifications made as a part of the award and the terms, conditions, or restrictions cited throughout the award.

The EPA repository for the general terms and conditions by year can be found at: https://www.epa.gov/grants/grant-terms-and-conditions#general

### A. Correspondence Condition

The terms and conditions of this agreement require the submittal of reports, specific requests for approval, or notifications to EPA. Unless otherwise noted, all such correspondence should be sent to the following email addresses:

- Federal Financial Reports (SF-425): rtpfc-grants@epa.gov and Lisa Kapsh, Grant Management Specialist at: Kapsh.Lisa@epa.gov and Local Email at: R6_EPA_Grants_Programs@epa.gov.
- MBE/WBE reports (EPA Form 5700-52A): Debora Bradford, DBE Coordinator at: Bradford.Debora@epa.gov and Lisa Kapsh, Grant Management Specialist at: Kapsh.Lisa@epa.gov and Local Email at: R6_EPA_Grants_Programs@epa.gov.
- All other forms/certifications/assurances, Indirect Cost Rate Agreements, Requests for Extensions of the Budget and Project Period, Amendment Requests, Requests for other Prior Approvals, updates to recipient information (including email addresses, changes in contact information or changes in authorized representatives) and other notifications: Camisha Scott, Project Officer at: Scott.Camisha@epa.gov and Lisa Kapsh, Grant Management Specialist at: Kapsh.Lisa@epa.gov and Local Email at: R6_EPA_Grants_Programs@epa.gov.
- Payment requests (if applicable): Camisha Scott, Project Officer at: Scott.Camisha@epa.gov and Lisa Kapsh, Grant Management Specialist at: Kapsh.Lisa@epa.gov and Local Email at: R6_EPA_Grants_Programs@epa.gov.
- Quality Assurance documents, workplan revisions, equipment lists, programmatic reports and deliverables: Camisha Scott, Project Officer at: Scott.Camisha@epa.gov.

# *Programmatic Conditions*

## FY22 Revolving Loan Fund (RLF) Cooperative Agreement

Attachment: 2023-016 ATTH 01 Cooperative Agreement 2022 4B 02F19201-0 (3919 : 2023-016 ORD Amend Budget for New EPA RLF)

## Terms and Conditions

## Infrastructure Investment and Jobs Act Funds

Please note that these Terms and Conditions (T&Cs) apply to Brownfields RLF capitalization cooperative agreements awarded under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) § 104(k), agreements that transitioned to § 104(k), or agreements which have been amended after 12/24/14.

### I. GENERAL FEDERAL REQUIREMENTS

Note: For the purposes of complying with certain provisions of the Uniform Grant Guidance (UGG), 2 CFR Part 200, loans made by RLF recipients are *Subawards* as that term is defined at 2 CFR § 200.1. The term subaward also encompasses "grants" made by the RLF recipient under CERCLA § 104(k)(3)(B)(ii). The UGG requirements for subawards in the form of loans and subawards in the form of grants are different. For clarity, these T&Cs refer to "loans" to describe subawards that generate program income from repayments of principal, interest charges and loan processing fees paid by "borrowers". The T&Cs refer to "subgrants" to describe subawards the RLF recipient provides to an eligible entity or nonprofit organization ("subgrantees") under terms that do not require repayment.

### A. Federal Policy and Guidance

1. Cooperative Agreement Recipients: By awarding this cooperative agreement, the Environmental Protection Agency (EPA) has approved the application for the Cooperative Agreement Recipient (CAR). These T&Cs are effective for activities occurring after the date of award of this cooperative agreement.

2. In implementing this agreement, the CAR shall comply with and require that work done by borrowers and subgrantees with cooperative agreement funds comply with the requirements of CERCLA § 104(k). The CAR shall also ensure that cleanup activities supported with cooperative agreement funding comply with all applicable federal and state laws and regulations. The CAR must ensure cleanups are protective of human health and the environment.

3. The CAR must consider whether it is required to have borrowers or subgrantees

Attachment: 2023-016 ATTH 01 Cooperative Agreement 2022 4B 02F19201-0 (3919 : 2023-016 ORD Amend Budget for New EPA RLF)

conduct cleanups through a State or Tribal response program. If the CAR chooses not to require borrowers and subgrantees to participate in a State or Tribal response program, then the CAR is required to consult with the EPA Project Officer on each loan or subgrant to ensure the proposed cleanup is protective of human health and the environment.

4. A term and condition or other legally binding provision shall be included in all loan and subgrant agreements entered into with the funds awarded under this agreement, or when funds awarded under this agreement are used in combination with non-federal sources of funds, to ensure that the CAR complies with all applicable federal and state laws and requirements. In addition to CERCLA § 104(k), federal applicable laws and requirements include 2 CFR Part 200.

5. The CAR must comply with federal cross-cutting requirements. These requirements include, but are not limited to, DBE requirements found at 40 CFR Part 33; OSHA Worker Health & Safety Standard 29 CFR § 1910.120; Uniform Relocation Act (40 USC § 61); National Historic Preservation Act (16 USC § 470); Endangered Species Act (P.L. 93-205); Permits required by Section 404 of the Clean Water Act; Executive Order 11246, Equal Employment Opportunity, and implementing regulations at 41 CFR § 60-4; Contract Work Hours and Safety Standards Act, as amended (40 USC §§ 327-333); the Anti-Kickback Act (40 USC § 276c); and Section 504 of the Rehabilitation Act of 1973 as implemented by Executive Orders 11914 and 11250. For additional information on cross-cutting requirements visit https://www.epa.gov/grants/epa-subaward-cross-cutter-requirements.

6. The CAR must comply with Davis-Bacon Act prevailing wage requirements and associated U.S. Department of Labor (DOL) regulations for all construction, alteration, and repair contracts and subcontracts awarded with funds provided under this agreement by operation of CERCLA § 104(g). For more detailed information on complying with Davis-Bacon please see the Davis-Bacon Addendum to these terms and conditions. See attachment.

7. Refer to the General Term & Conditions for Buy America Sourcing requirements under the Build America, Buy America provisions of the Infrastructure Investment and Jobs Act (IIJA) (P.L. 117-58, §§70911-70917).

8. This is an interim term and condition for management of funding provided under the IIJA. EPA's Award Official or Grants Management Officer may amend this agreement to

Attachment: 2023-016 ATTH 01 Cooperative Agreement 2022 4B 02F19201-0 (3919 : 2023-016 ORD Amend Budget for New EPA RLF)

specify additional requirements applicable to IIJA funding as information becomes available. In the interim, the recipient agrees to have financial management and programmatic management systems in place to:

a. Track and report on expenditures of IIJA funds.

b. Track and report outputs and outcomes achieved with IIJA funds.

9. RLF supplemental funding is generally awarded on an annual basis to high-performing CARs who meet specific criteria. The CAR can find additional information on the timing and procedures for supplemental funding requests on the EPA Brownfields Program website (https://www.epa.gov/brownfields/brownfields-revolving-loan-fund-rlf-grants).

## II. SITE/BORROWER/SUBGRANTEE ELIGIBILITY REQUIREMENTS

### A. Brownfield Site Eligibility

1. All brownfield sites that will be addressed using RLF funds (EPA funds and/or program income) must be located within the geographic area described in the scope of work for this cooperative agreement (i.e., the EPA-approved workplan). The CAR must provide information to the EPA Project Officer about site-specific work prior to incurring any costs under this cooperative agreement for sites that have not already been pre-approved in the CAR's workplan by EPA. The information that must be provided includes whether the site meets the definition of a brownfield site as defined in § 101(39) of CERCLA and whether the CAR is the potentially responsible party under CERCLA § 107, is exempt from CERCLA liability, or has defenses to CERCLA liability.

2. If the site is excluded from the general definition of a brownfield site but is eligible for a property-specific funding determination, then the CAR may request a property-specific funding determination from the EPA Project Officer. In its request, the CAR must provide information sufficient for EPA to make a property-specific funding determination on how financial assistance will protect human health and the environment, and either promote economic development or enable the creation of, preservation of, or addition to parks, greenways, undeveloped property, other recreational property, or other property used for nonprofit purposes. The CAR must not incur costs for cleaning up sites requiring a property-specific funding determination by EPA until the EPA Project Officer has advised the CAR that EPA has determined that the property is eligible.

Attachment: 2023-016 ATTH 01 Cooperative Agreement 2022 4B 02F19201-0 (3919 : 2023-016 ORD Amend Budget for New EPA RLF)

3. Brownfield Sites Contaminated with Petroleum

a. For any petroleum-contaminated brownfield site that is not included in the CAR's EPA-approved workplan, the CAR shall provide sufficient documentation to EPA prior to incurring costs under this cooperative agreement which documents that:

i. the State determines there is "no viable responsible party" for the site;

ii. the State determines that the person assessing, investigating, or cleaning up the site is a person who is not potentially liable for cleaning up the site; and

iii. the site is not subject to any order issued under Section 9003(h) of the Solid Waste Disposal Act.

This documentation must be prepared by the CAR or the State, following contact and discussion with the appropriate state petroleum program official. Please contact the EPA Project Officer for additional information.

b. Documentation must include:

i. the identity of the State program official contacted;

ii. the State official's telephone number;

iii. the date of the contact; and

iv. a summary of the discussion relating to the State's determination that there is no viable responsible party and that the person assessing, investigating, or cleaning up the site is not potentially liable for cleaning up the site.

Other documentation provided by a State to the recipient relevant to any of the determinations by the State must also be provided to the EPA Project Officer.

c. If the State chooses not to make the determinations described in Section II.A.3. above, the CAR must contact the EPA Project Officer and provide the information necessary for EPA to make the requisite determinations.

Attachment: 2023-016 ATTH 01 Cooperative Agreement 2022 4B 02F19201-0 (3919 : 2023-016 ORD Amend Budget for New EPA RLF)

d. EPA will make all determinations on the eligibility of petroleum-contaminated brownfield sites located on tribal lands (i.e., reservation lands or lands otherwise in Indian country, as defined at 18 U.S.C. § 1151). Before incurring costs for these sites, the CAR must contact the EPA Project Officer and provide the information necessary for EPA to make the determinations.

B. Borrower and Subgrantee Eligibility

1. The CAR may provide loans to an eligible entity, a site owner, a site developer, or another person without regard to whether the borrower is a for-profit organization. Borrowers do not have to own the property throughout the term of the loan unless ownership is required for the purpose of securing collateral or the CAR otherwise determines that borrower site ownership is necessary.

2. The CAR may only provide cleanup subgrants to an eligible entity or nonprofit organization to clean up sites owned by the eligible entity or nonprofit organization at the time of the award of the subgrant. Eligible subgrantees include eligible entities as defined under CERCLA § 104(k)(1), which includes nonprofit organizations exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, and other nonprofit organizations as defined at 2 CFR § 200.70. Nonprofit institutions of higher education as defined at 2 CFR § 200.55 are also eligible for cleanup subgrants. Nonprofit organizations described in Section 501(c)(4) of the Internal Revenue Code that engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act of 1995 are not eligible for subgrants.

3. The subgrantee must retain ownership of the site throughout the period of performance of the subgrant. The subgrantee must consult with the CAR, who in turn must consult with the EPA Project Officer prior to transferring title or otherwise conveying the real property comprising the site during the period of performance of the subgrant. Once the subgrant ends, the statutory ownership requirement is extinguished. For the purposes of this agreement, the term “owns” means fee simple title unless EPA Project Officer approves a different ownership arrangement.

4. The CAR shall not provide a subgrant to itself or another component of its own unit of government or organization.

Attachment: 2023-016 ATTH 01 Cooperative Agreement 2022 4B 02F19201-0 (3919 : 2023-016 ORD Amend Budget for New EPA RLF)

5. The CAR may discount loans, also referred to as the practice of forgiving a portion of loan principal. For an individual loan, the amount of principal discounted may be any percentage of the total loan amount up to 50%, provided that the total amount of the principal forgiven for that loan shall not exceed $500,000 of total award funds (EPA funds). Eligible entities and nonprofit organizations described in Section II.B.1. are eligible for discounted loans. **Private, for-profit entities are not eligible for discounted loans.** In addition to these terms, a discounted loan shall not be used in combination with a subgrant at the same site. The discounted amount in a discounted loan shall apply towards subgrants in the loan to subgrant ratio described in Section IV.B.3. (i.e., the discounted amount cannot apply towards the 50% of EPA funds that must be spent on loans and associated eligible programmatic expenses). The CAR may request a waiver of the discounted amount, discounted percentage, or the minimum 50% loan to subgrant ratio by consulting with the EPA Project Officer for the waiver process.

6. The CAR shall not loan or subgrant funds that will be used to pay for cleanup activities at a site for which a borrower or subgrantee is potentially liable under CERCLA § 107. In addition, the borrower or subgrantee may not be affiliated with a potentially liable person as described in CERCLA §§ 101(40)(H) and 107(q)(1)(A)(ii). The CAR may rely on its own investigation which can include an opinion from the borrower's or subgrantee's counsel. However, the CAR must advise the borrower or subgrantee that the investigation and/or opinion of its subgrantee counsel is not binding on the Federal Government.

7. For approved eligible petroleum-contaminated brownfield sites, the borrower or subgrantee cleaning up the site must not be potentially liable for cleaning up the site. For brownfield grant purposes, an entity generally will not be considered potentially liable for petroleum contamination if it has not dispensed or disposed of petroleum or petroleumproduct at the site, has not exacerbated the contamination at the site, and taken reasonable steps with regard to the contamination at the site.

8. The CAR shall maintain sufficient documentation supporting and demonstrating the eligibility of the sites, borrowers, and subgrantees.

9. A borrower or subgrantee must submit information regarding its overall environmental compliance history including any penalties resulting from environmental non-compliance at the site subject to the loan or subgrant. The CAR, in consultation with EPA, must consider this history in its analysis of the borrower or subgrantee as a cleanup and business risk.

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10. An entity that is currently suspended, debarred, or otherwise declared ineligible cannot be a borrower or subgrantee.

C. Obligations for CARs, Borrowers, or Subgrantees

1. CARs, borrowers, or subgrantees who are eligible, or seek to become eligible, to receive a loan or subgrant must provide information indicating that cooperative agreement funds will not be used to pay for a response cost at a site for which the CAR, borrower, or subgrantee is potentially liable under CERCLA § 107. The CAR, borrower, or subgrantee must demonstrate that it meets the requirements for one of the Landowner Liability Protections as either a Bona Fide Prospective Purchaser (BFPP), Contiguous Property Owner (CPO), or Innocent Landowner (ILO). These requirements include certain threshold criteria and continuing obligations that must be met in order for the CAR, borrower, or subgrantee to maintain its eligible status. If the CAR, borrower, or subgrantee fails to meet these obligations, EPA may disallow the costs incurred under this cooperative agreement for cleaning up the site under CERCLA § 104(k)(8)(C). The Landowner Liability Protection requirements include:

a. Performing “all appropriate inquiries” into the previous ownership and uses of the property before acquiring the property.

b. Not being potentially liable or affiliated with any other person who is potentially liable for response costs at the site through: any direct or indirect familial relationship, any contractual, corporate, or financial relationships, or through the result of a reorganized business entity that was potentially liable.

While not necessary to obtain ILO protection, the CAR, borrower, or subgrantee must still establish by a preponderance of the evidence that the act or omission that caused the release or threat of release of hazardous substances and any resulting damages were caused by a third party with whom the person does not have an employment, agency, or contractual relationship.

c. Demonstrate that no disposal of hazardous substances occurred at the facility after acquisition by the landowner (does not specifically apply for the CPO protection).

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d. Taking “reasonable steps” with respect to hazardous substance releases by stopping any continuing releases, preventing any threatened future releases, and preventing or limiting human, environmental, or natural resource exposure to any previously released hazardous substance.

e. Complying with any land use restrictions established or relied on in connection with the response action at the site and not impeding the effectiveness or integrity of institutional controls employed in connection with the response action.

f. Providing full cooperation, assistance, and access to persons that are authorized to conduct response actions or natural resource restoration at the site from which there has been a release or threatened release.

g. Complying with information requests and administrative subpoenas (does not specifically apply for the ILO protection).

h. Providing all legally required notices with respect to the discovery or release of any hazardous substances at the site (does not specifically apply for the ILO protection).

Notwithstanding the CAR’s, borrower’s, and subgrantee’s continuing obligations under this agreement, the CAR, borrower, and subgrantee are subject to the applicable liability provisions of CERCLA governing its status as a BFPP, CPO, or ILO. CERCLA requires additional obligations to maintain liability limitations for BFPP, CPO, and ILO; the relevant provisions for these obligations include §§ 101(35), 101(40), 107(b), 107(q) and 107(r).

CARs, borrowers, and subgrantees that are exempt from CERCLA liability or do not have to meet the requirements for asserting an affirmative defense to CERCLA liability must also comply with continuing obligation items c.-h.

## III. GENERAL COOPERATIVE AGREEMENT ADMINISTRATIVE REQUIREMENTS

### A. Sufficient Progress

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1. This condition supplements the requirements of the Termination and Sufficient Progress Conditions in the General Terms and Conditions. EPA's Project Officer will assess whether the recipient is making sufficient progress in implementing its cooperative agreement 2 years from the date of award and on an annual basis thereafter . If EPA determines that the CAR has not made sufficient progress in implementing its cooperative agreement, the CAR, if directed to do so, must implement a corrective action plan concurred on by the EPA Project Officer and approved by the Award Official or Grants Management Officer. Alternatively, EPA may terminate this agreement under 2 CFR § 200.340. for material non-compliance with its terms, or with the consent of the CAR as provided at 2 CFR § 200.340, depending on the circumstances. Sufficient progress at 2 years and annually thereafter is indicated by the CAR having made a loan(s) and/or grant(s), but may also be demonstrated by a combination of all the following: hiring of all key personnel, the establishment and advertisement of the RLF, the development of one or more potential loans/subgrants, or other documented activities that demonstrate to EPA's satisfaction that the CAR will successfully perform the cooperative agreement.

2. Partial termination can occur if a CAR fails to complete the initial round of lending in the time schedule provided in the cooperative agreement. In this situation, as provided at 2 CFR §§ 200.340(a)(1) and (5) or 2 CFR § 200.340(a)(3), as appropriate, the agreement may be partially terminated and the following actions may occur:

a. Unused cooperative agreement funds will be deobligated by EPA;

b. The cooperative agreement award may be amended to reflect the reduced amount of the cooperative agreement;

c. EPA may determine whether sufficient funds remain to permit effective RLF operation; or

d. EPA may terminate the agreement and recover the federal share of its assets if it determines that the purpose of the cooperative agreement cannot be met.

B. Substantial Involvement

1. The EPA Project Officer will be substantially involved in overseeing and monitoring this cooperative agreement. Substantial involvement, includes, but is not limited to:

a. Close monitoring of the CAR's performance to verify compliance with the EPA-approved workplan and achievement of environmental results.

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b. Participation in periodic telephone conference calls to share ideas, project successes and challenges, etc., with EPA.

c. Reviewing and commenting on quarterly and annual reports prepared under the cooperative agreement (the final decision on the content of reports rests with the recipient or subrecipients receiving pass-through awards).

d. Verifying sites meet applicable site eligibility criteria (including property-specific funding determinations described in Section II.A.2.) and when the CAR awards a subaward. The CAR must obtain technical assistance from the EPA Project Officer, or his/her designee, on which sites qualify as a brownfield site and determine whether the statutory prohibitions found in CERCLA § 104(k)(5)(B)(i)-(iv) apply. (Note, the prohibition does not allow a subrecipient to use EPA cooperative agreement funds to assess a site for which the subrecipient is potentially liable under CERCLA § 107.)

e. Reviewing and approving Quality Assurance Project Plans and related documents or verifying that appropriate Quality Assurance requirements have been met where quality assurance activities are being conducted pursuant to an EPA-approved Quality Assurance Management Plan.

f. Monitoring the use of program income after the cooperative agreement project period ends.

Substantial involvement may also include, depending on the direction of the EPA Project Officer:

a. Collaboration during the performance of the scope of work including participation in project activities, to the extent permissible under EPA policies. Examples of collaboration include:

i. Consultation between EPA staff and the CAR on effective methods of carrying out the scope of work provided the CAR makes the final decision on how to perform authorized activities.

ii. Advice from EPA staff on how to access publicly available information on EPA or other federal agency websites.

iii. With the consent of the CAR, EPA staff may provide technical advice to the CAR's contractors or subrecipients provided the CAR approves any expenditures of funds necessary to follow advice from EPA staff. (The CAR remains accountable for performing contract and subaward management as specified in 2 CFR § 200.318 and 2 CFR § 200.332 as well as the terms of the EPA cooperative agreement.)

iv. EPA staff participation in meetings, webinars, and similar events upon the request of the CAR or in connection with a co-sponsorship agreement.

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b. Reviewing proposed procurements in accordance with 2 CFR § 200.325, as well as the substantive terms of proposed contracts or subawards as appropriate.

c. Reviewing the qualifications of key personnel (EPA does not have the authority to select employees or contractors, including consultants, employed by the award CAR or subrecipients receiving pass-through awards).

d. Reviewing all costs incurred by the CAR and/or its contractor(s) if needed to ensure appropriate expenditure of grant funds.

EPA may waive any of the provisions in Section III.B.1., except for property-specific funding determinations. The EPA Project Officer will provide waivers to provisions a. – f. in Section III.B.1 in writing.

2. Effects of EPA's substantial involvement include:

a. EPA's review of any project phase, document, or cost incurred under this cooperative agreement will not have any effect upon CERCLA § 128 *Eligible Response Site* determinations or rights, authorities, and actions under CERCLA or any federal statute.

b. The CAR remains responsible for ensuring that all cleanups are protective of human health and the environment and comply with all applicable federal and state laws. If changes to the expected cleanup become necessary based on public comment or other reasons, the CAR must consult with the EPA Project Officer and the State.

c. The CAR and its subrecipients remain responsible for ensuring costs are allowable under 2 CFR Part 200, Subpart E.

C. Cooperative Agreement Recipient Roles and Responsibilities

1. CARs, other than state entities, that procure a contractor(s) (including consultants) where the contract will be more than the micro-purchase threshold in 2 CFR § 200.320(a)(1) ($10,000 for most CARs) must select the contractor(s) in compliance with the fair and open competition requirements in 2 CFR Part 200 and 2 CFR Part 1500. CARs may procure multiple contractors to ensure the appropriate expertise is in place to perform work under the agreement (e.g., expertise to provide oversight on site cleanup activities vs. community engagement) and to allow the ability for work be performed concurrently in multiple target areas and/or at sites.

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2. The CAR is responsible for establishing an RLF team that will implement the program and assign a Program Manager for coordinating the team's activities as outlined below.

3. The CAR must acquire the services of a Qualified Environmental Professional(s) as defined in 40 CFR § 312.10, if it does not have such a professional on staff, to provide technical assistance, advice, and expertise to the CAR while the borrower or subgrantee and their cleanup contractor direct the cleanup at a given site.

4. The CAR shall act as or appoint a qualified "fund manager" to carry out responsibilities that relate to financial management of the loan and/or subgrant program. However, the CAR remains accountable to EPA for the proper expenditure of cooperative agreement funds. Any funding arrangements between the CAR and the fund manager must be consistent with 2 CFR Parts 200 and 1500 and EPA's Subaward Policy . Additional information is available in EPA's Best Practice Guide for Procuring Services, Supplies, and Equipment Under EPA Assistance Agreements.

5. The CAR shall appoint appropriate legal counsel if counsel is not already available. Counsel must review all loan/subgrant agreements prior to execution unless the EPA Project Officer waives this requirement.

6. The CAR is responsible for ensuring that borrowers and subgrantees comply with the terms of their agreements with the CAR, and that agreements between the CAR and borrowers and subgrantees are consistent with the terms and conditions of this agreement.

7. When the CAR makes loans and subgrants under this agreement, they become a pass-through entity for the purposes of the subrecipient oversight and management requirements of 2 CFR §§ 200.331 through 200.332. Requirements for oversight and management of subgrantees are supplemented in EPA's National Term and Condition for Subawards which is included in the General Terms and Conditions of this Cooperative Agreement.

8. The following requirements apply when a pass-through entity (CAR) makes loans. These requirements apply to loans and borrowers in lieu of those specified in EPA's National Term and Condition for Subawards.

a. Pass-through entities must establish and follow a system that ensures all loan

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agreements are in writing and contain all of the elements required by 2 CFR § 200.332(a) with the exception of the indirect cost provision of 2 CFR § 200.332(a)(4). EPA has developed an optional template for subaward agreements that is available in Appendix D of EPA's Subaward Policy which may also be used for loan agreements.

b. Borrowers must comply with the internal control requirements specified at 2 CFR § 200.303 and are subject to the 2 CFR Part 200, Subpart F, *Audit Requirements*. The pass-through entity (CAR) must include a condition in all loans that requires borrowers to comply with this requirement. No other provisions of the Uniform Grant Guidance, including the Procurement Standards, apply directly to borrowers.

c. Prior to making loans or subgrants, the pass-through entity (CAR) must ensure that each borrower or subgrantee has a "unique entity identifier." This identifier is required for registering in the System for Award Management (SAM) and by 2 CFR Part 25 and 2 CFR § 200.332(a)(1). The unique entity identifier (UEI) is generated when an entity registers in SAM. Information on registering in SAM and obtaining a UEI is available in the General Condition of the pass-through entity's (CAR's) agreement with EPA entitled *"System for Award Management and Universal Identifier Requirements."*

d. The pass-through entity (CAR) must ensure that the terms of all loan agreements and subgrants require that borrowers and subgrantees comply with 2 CFR Part 170, *Reporting Subaward and Executive Compensation* under Federal Funding Accountability and Transparency Act (FFATA) set forth in the General Condition of the pass-through entity's (CAR's) agreement with EPA entitled *"Reporting Subawards and Executive Compensation."*

e. In addition to other prudent lending practices described, in Section VI. below, pass-through entities (CARs) must comply with EPA's General T&Cs (Establishing and Managing Subawards).

9. As the pass-through entity, the CAR must report to EPA on its borrower and subgrantee monitoring activities under 2 CFR § 200.332(d), including the following information as part of the CAR's quarterly performance reporting:

a. Summaries of results of reviews of financial and programmatic reports;

b. Summaries of findings from site visits and/or desk reviews to ensure effective borrower or subgrantee performance;

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c. Environmental results the borrower or subgrantee achieved;

d. Summaries of audit findings and related pass-through entity management decisions, if any; and

e. Actions the pass-through entity has taken to correct any deficiencies such as those specified at 2 CFR § 200.332(e), 2 CFR § 200.208, *Specific conditions*, and the 2 CFR § 200.339, *Remedies for Noncompliance*.

10. The CAR agrees to provide the proposed leveraged funding, including any voluntary cost-share contribution or overmatch, that is described in its workplan. If the proposed leveraging does not materialize during the period of award performance, and the CAR does not provide a satisfactory explanation, EPA may consider this factor in evaluating future applications from the CAR. In addition, if the proposed leveraging does not materialize during the period of award performance, then EPA may reconsider the legitimacy of the award. If EPA determines that the CAR knowingly or recklessly provided inaccurate information regarding the leveraged funding in its FY22 application, EPA may take action as authorized by 2 CFR Parts 200 and 1500, and/or 2 CFR Part 180 as applicable.

11. Cybersecurity – The recipient agrees that when collecting and managing environmental data under this cooperative agreement, it will protect the data by following all applicable State law cybersecurity requirements.

a. EPA must ensure that any connections between the recipient's network or information system and EPA networks used by the recipient to transfer data under this agreement are secure. For purposes of this section, a connection is defined as a dedicated persistent interface between an Agency IT system and an external IT system for the purpose of transferring information. Transitory, user-controlled connections such as website browsing are excluded from this definition.

If the recipient's connections as defined above do not go through the Environmental Information Exchange Network or EPA's Central Data Exchange, the recipient agrees to contact the EPA Project Officer no later than 90 days after the date of this award and work with the designated Regional/ Headquarters Information Security Officer to ensure that the connections meet EPA security requirements, including entering into Interconnection Service Agreements as appropriate. This condition does not apply to manual entry of data by the recipient into systems operated and used by EPA's regulatory programs for the submission of reporting and/or compliance data.

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b. The recipient agrees that any subawards it makes under this agreement will

require the subrecipient to comply with the requirements in Cybersecurity Section a. above if the subrecipient's network or information system is connected to EPA networks to transfer data to the Agency using systems other than the Environmental Information Exchange Network or EPA's Central Data Exchange. The recipient will be in compliance with this condition: by including this requirement in subaward agreements; and during subrecipient monitoring deemed necessary by the recipient under 2 CFR § 200.332(d), by inquiring whether the subrecipient has contacted the EPA Project Officer. Nothing in this condition requires the recipient to contact the EPA Project Officer on behalf of a subrecipient or to be involved in the negotiation of an Interconnection Service Agreement between the subrecipient and EPA.

12. All geospatial data created must be consistent with Federal Geographic Data Committee (FGDC) endorsed standards. Information on these standards may be found at www.fgdc.gov.

D. Quarterly Progress Reports

1. In accordance with EPA regulations 2 CFR Parts 200 and 1500 (specifically, § 200.329, *Monitoring and Reporting Program Performance*), the CAR agrees to submit quarterly progress reports to the EPA Project Officer within 30 days after each reporting period. The reporting periods are October 1 – December 31 (1st quarter); January 1 – March 31 (2nd quarter); April 1 – June 30 (3rd quarter); and July 1 – September 30 (4th quarter).

These reports shall cover work status, work progress, difficulties encountered, preliminary data results and a statement of activity anticipated during the subsequent reporting period, including a description of equipment, techniques, and materials to be used or evaluated. A discussion of expenditures and financial status for each workplan task, along with a comparison of the percentage of the project completed to the project schedule and an explanation of significant discrepancies shall be included in the report. The report shall also include any changes of key personnel concerned with the project.

1. The CAR must submit progress reports on a quarterly basis to the EPA project officer through email. Quarterly progress reports must include:

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a. A summary that clearly differentiates between activities completed with EPA funds provided under the Brownfield RLF cooperative agreement, and related activities completed with other sources of leveraged funding.

b. A summary and status of approved activities performed during the reporting quarter; a summary of the performance outputs/outcomes achieved during the reporting quarter; and a description of problems encountered during the reporting quarter that may affect the project schedule.

c. A comparison of actual accomplishments to the anticipated outputs/outcomes specified in the EPA-approved workplan and reasons why anticipated outputs/outcomes were not met.

d. An update on project schedules and milestones, including an explanation of any discrepancies from the EPA-approved workplan.

e. A list of the loans and/or subgrants during the reporting quarter.

f. A budget summary table with the following information: current approved project budget; EPA funds drawn down during the reporting quarter; costs drawn down to date (cumulative expenditures); program income generated and used; and total remaining funds. The CAR should include an explanation of any discrepancies in the budget from the EPA-approved workplan, cost overruns or high unit costs, and other pertinent information. Program income accounting records must differentiate program income generated from interest and fees, versus program income generated from principal repayments.

g. For local governments that are using RLF funding for health monitoring, the quarterly report must also include the specific budget, the quarterly expenditure, and cumulative expenditures to demonstrate that 10% of federal funding is not exceeded.

Note: Each property where cleanup activities were performed and/or completed must have its corresponding information updated in ACRES (or via the Property Profile Form with prior approval from the EPA Project Officer) prior to submitting the quarterly progress report (see Section III.E. below).

3. For the loans executed by the CAR under this agreement, the CAR must also report on the following items as part of the CAR's quarterly performance reporting:

a. Summaries of results of reviews of borrower financial and programmatic reports.

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b. Environmental results achieved by the borrower.

4. The CAR must maintain records that will enable it to report to EPA on the amount of funds (direct EPA funding and program income) disbursed by the CAR to clean up specific properties under this cooperative agreement.

5. In accordance with 2 CFR § 200.329(e)(1) the CAR agrees to inform EPA as soon as problems, delays, or adverse conditions become known which will materially impair the ability to meet the outputs/outcomes specified in the EPA-approved workplan.

E. ACRES Data Submission

1. Property Profile Form: The CAR must report on interim progress (i.e., loan signed, clean up started) and any final accomplishments (i.e., clean up completed, contaminants removed, institutional controls, engineering controls) by completing and submitting relevant portions of the Property Profile Form using the Assessment, Cleanup and Redevelopment Exchange System (ACRES). The CAR must enter the data in ACRES as soon as the interim action or final accomplishment has occurred, or within 30 days after the end of each reporting quarter. The CAR must enter any new data into ACRES prior to submitting the quarterly progress report to the EPA Project Officer. The CAR must utilize ACRES unless approval is obtained from the EPA Project Officer to utilize the hardcopy version of the Property Profile Form.

2. Brownfields RLF Form: Additionally, the CAR must also report program income details on the Brownfields RLF Form, which is located on the CAR's RLF cooperative agreement homepage in ACRES.

F. Final Technical Cooperative Agreement Report with Environmental Results

1. In accordance with EPA regulations 2 CFR Parts 200 and 1500 (specifically, § 200.329 *Monitoring and Reporting Program Performance* and 2 CFR § 200.344(a), *Closeout*), the CAR agrees to submit to the EPA Project Officer within 120 days after the expiration or termination of the approved project period a final technical report on the cooperative agreement via email, unless the EPA Project Officer agrees to accept a paper copy of the report. The final technical report shall document project activities over the entire project period and shall include brief information on each of the following

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areas:

a. a comparison of actual accomplishments with the anticipated outputs/outcomes specified in the EPA-approved workplan;

b. reasons why anticipated outputs/outcomes were not met; and

c. other pertinent information, including when appropriate, analysis and explanation of cost overruns or high unit costs.

## Iv. FINANCIAL ADMINISTRATION REQUIREMENTS

### A. Cost Share Requirement

1. As provided in IIJA, no cost share is required for this agreement.

### B. Eligible Uses of the Funds for the Cooperative Agreement Recipient, Borrower, and/or Subgrantee

1. To the extent allowable under the EPA-approved workplan, the CAR may use cooperative agreement funds to capitalize a revolving loan fund to be used for loans or subgrants for cleanup and for eligible programmatic expenses. Eligible programmatic expenses may include activities described in Section V. of these Terms and Conditions. In addition, eligible programmatic expenses may include:

a. Determining whether RLF cleanup activities at a particular site are authorized by CERCLA § 104(k).

b. Ensuring that an RLF cleanup complies with applicable requirements under federal and state laws, as required by CERCLA § 104(k).

c. Limited site characterization to confirm the effectiveness of the proposed cleanup design or the effectiveness of a cleanup once an action has been completed.

d. Preparing and updating an Analysis of Brownfield Cleanup Alternatives (ABCA) which will include information about the site and contamination issues, cleanup standards, applicable laws, alternatives considered, and the proposed cleanup.

e. Ensuring that public participation requirements are met. This includes

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preparing a Community Involvement Plan (previously known as a Community Relations Plan) which will include reasonable notice, opportunity for public involvement and comment on the proposed cleanup, and response to comments.

f. Establishing an Administrative Record for each site.

g. Developing a Quality Assurance Project Plan (QAPP) as required by 2 CFR § 1500.12. The specific requirement for a QAPP is outlined in Implementation of Quality Assurance Requirements for Organizations Receiving EPA Financial Assistance available at https://www.epa.gov/grants/implementation-quality-assurance-requirements-organizations-receiving-epa-financial.

h. Ensuring the adequacy of each RLF cleanup as it is implemented, including overseeing the borrowers and/or subgrantees activities to ensure compliance with applicable federal and state environmental requirements.

i. Ensuring that the site is secure if a borrower or subgrantee is unable or unwilling to complete a brownfield site cleanup.

j. Using a portion of a loan or subgrant to purchase environmental insurance for the site. [The loan or subgrant shall not be used to purchase insurance intended to provide coverage for any of the ineligible uses under Section IV., *Ineligible Uses of the Funds for the Cooperative Agreement Recipient, Borrower, and/or Subgrantees*.]

k. Any other eligible programmatic costs, including costs incurred by the recipient in making and managing a loan or subgrant; obtaining RLF fund manager services; quarterly reporting to EPA including preparation of Property Profiles; awarding, managing and monitoring loans and subgrants as required by the terms of this agreement implementing 2 CFR § 200.332 and the “Establishing and Managing Subawards” General Term and Condition; and carrying out outreach pertaining to the loan and subgrant program to potential borrowers and subgrantees.

l. Borrower and subgrantee progress reporting to the CAR.

2. The CAR must maintain records that will enable it to report to EPA on the amount of costs incurred by the CAR, borrowers, or subgrantees at brownfield sites.

3. At least 50% of the total award amount (i.e., funds EPA awards directly to the CAR) must be used by the CAR to provide loans for the cleanup of eligible brownfield sites and associated eligible programmatic costs. The remaining EPA funding may be used for eligible programmatic costs, including issuing and managing subgrants to clean up

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eligible brownfield sites. Note: cleanup subgrants are limited to $500,000 of total award funds (EPA funds) per site. The CAR may request a waiver of the $500,000 subgrant limit or the minimum 50% loan to subgrant ratio by consulting with the EPA Project Officer for the waiver process. However, a waiver is not required for either requirement when only program income is used, since subgrants that are funded with 100% program income are not limited in amount and do not contribute to this 50% limitation. A waiver is also not required for the discounted amount of a loan if the loan is funded with 100% program income.

4. To determine whether a cleanup subgrant is appropriate, the CAR must consider the following as required by CERCLA § 104(k)(3)(C):

a. The extent to which the subgrant will facilitate the creation of, preservation of, or addition to a park, greenway, undeveloped property, recreational property, or other property used for nonprofit purposes;

b. The extent to which the subgrant will meet the needs of a community that has the inability to draw on other sources of funding for environmental remediation and subsequent redevelopment of the area in which a brownfield site is located because of the small population or low income of the community;

c. The extent to which the subgrant will facilitate the use or reuse of existing infrastructure; and

d. The benefit of promoting the long-term availability of funds from a revolving loan fund for brownfield remediation.

**The CAR must maintain sufficient records to support and document these determinations.**

5. **Local Governments Only.** If authorized in the EPA-approved workplan and budget narrative, up to 10% of the funds awarded by this agreement may be used by the CAR itself as a programmatic cost for Brownfield Program development and implementation of monitoring health conditions and institutional controls. The health monitoring activities must be associated with brownfield sites at which at least a Phase II environmental site assessment is conducted, and the assessment indicates that the sites are contaminated with hazardous substances. The CAR must maintain records on funds that will be used to carry out this task to ensure compliance with this requirement.

6. If the CAR makes a subgrant to a local government that includes an amount (not to exceed 10% of the subgrant) for Brownfields Program development and implementation, the terms and conditions of that agreement must include a provision that ensures that the local government subgrantee maintains records adequate to ensure compliance with the

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limits on the amount of subgrant funds that may be expended for this purpose.

7. Under CERCLA § 104(k)(5)(E), CARs and subgrantees may use up to 5% of the direct EPA funding for this cooperative agreement for administrative costs, including indirect costs under 2 CFR § 200.414. The limit on administrative costs for the CAR under this agreement is $50,000.00**.** The total amount of indirect costs and any direct costs for cooperative agreement administration by the CAR paid for by EPA under the cooperative agreement shall not exceed this amount. Note that additional administrative costs may be allowed when using program income received under this cooperative agreement (see Section IV.D.2.). Subgrantees and borrowers may use up to 5% of the amount of Federal funds in their subawards for administrative costs. As required by 2 CFR § 200.403(d), the CAR and subgrantees must classify administrative costs as direct or indirect consistently and shall not classify the same types of costs in both categories. [Note, borrowers cannot charge indirect costs.]

The term “administrative costs” does not include:

a. Investigation and identification of the extent of contamination of a brownfield site;

b. Design and performance of a response action; or

c. Monitoring of a natural resource.

Eligible cooperative agreement and subgrant administrative costs subject to the 5% limitation include direct costs for:

a. Costs incurred to comply with the following provisions of the *Uniform Administrative Requirements for Cost Principles and Audit Requirements for Federal Awards* at 2 CFR Parts 200 and 1500 other than those identified as programmatic.

i. Record-keeping associated with equipment purchases required under 2 CFR § 200.313;

ii. Preparing revisions and changes in the budgets, scopes of work, program plans and other activities required under 2 CFR § 200.308;

iii. Maintaining and operating financial management systems required under 2 CFR § 200.302;

iv. Preparing payment requests and handling payments under 2 CFR § 200.305;

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v. Financial reporting under 2 CFR § 200.328;

vi. Non-federal audits required under 2 CFR Part 200, Subpart F; and

vii. Closeout under 2 CFR § 200.344 with the exception of preparing the recipient's final performance report. Costs for preparing this report are programmatic and are not subject to the 5% limitation on direct administrative costs.

b. Pre-award costs for preparation of the proposal and application for this cooperative agreement (including the final workplan) or applications for subgrants are not allowable as direct costs but may be included in the CAR's or subrecipient's indirect cost pool to the extent authorized by 2 CFR § 200.460.

c. Borrowers may use up to 5% of the amount of the Federal funds in the loan for loan administration costs. Eligible administrative costs for borrowers include direct costs for:

i. Salaries, benefits, and other compensation for persons who are not directly engaged in the cleanup of the site (e.g., marketing and human resource personnel), but only to the extent to which these persons activities support the cleanup and subsequent re-use of the site;

ii. Facility costs such as depreciation, utilities, and rent on the borrower's administrative offices; and

iii. Supplies and equipment not used directly for cleanup at the site.

d. Eligible direct costs for loan administration include expenses for:

i. Preparing revisions and changes in the budget, workplans, and other documents required under the loan agreement;

ii. Maintaining and operating financial management and personnel systems;

iii. Preparing payment requests and handling payments; and

iv. Audits including non-federal audits required under 2 CFR Part 200, Subpart F.

e. Borrowers shall not use loan funds for indirect costs even if the borrower has an indirect cost rate approved by a cognizant Federal agency.

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C. Ineligible Uses of the Funds for the Cooperative Agreement Recipient, Borrower, and/or Subgrantee

1. Cooperative agreement funds shall not be used by the CAR, borrower and/or subgrantee for any of the following activities:

a. Pre-cleanup Phase I and Phase II environmental site assessment activities with the exception of site monitoring activities that are reasonable and necessary during the cleanup process, including determination of the effectiveness of a cleanup;

b. Monitoring and data collection necessary to apply for, or comply with, environmental permits under other federal and state laws, unless such a permit is required as a component of the cleanup action;

c. Construction, demolition, and site development activities that are not cleanup actions (e.g., marketing of property (activities or products created specifically to attract buyers or investors), construction of a new facility, or addressing public or private drinking water supplies that have deteriorated through ordinary use);

d. Job training activities unrelated to performing a specific cleanup at a site covered by a loan or subgrant;

e. To pay for a penalty or fine;

f. To pay a federal cost share requirement (e.g., a cost share required by another federal grant) unless there is specific statutory authority;

g. To pay for a response cost at a brownfield site for which the CAR or recipient of the subgrant or loan is potentially liable under CERCLA § 107;

h. To pay a cost of compliance with any federal law, excluding the cost of compliance with laws applicable to the cleanup; and

i. Unallowable costs (e.g., lobbying and purchases of alcoholic beverages) under 2 CFR Part 200, Subpart E.

2. Cooperative agreement funds shall not be used for any of the following properties:

a. Facilities listed, or proposed for listing, on the National Priorities List (NPL);

b. Facilities subject to unilateral administrative orders, court orders, and administrative orders on consent or judicial consent decree issued to or entered by parties under CERCLA;

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c. Facilities that are subject to the jurisdiction, custody, or control of the United States government except for land held in trust by the United States government for an Indian tribe; or

d. A site excluded from the definition of a brownfield site for which EPA has not made a property-specific funding determination.

D. Use of Program Income – During the Performance Period

1. Program income for the RLF shall be defined as the gross income received by the recipient, directly generated by the cooperative agreement award or earned during the period of the award. Program income shall include principal repayments, interest earned on outstanding loan principal, interest earned on accounts holding RLF program income not needed for immediate lending, all loan fees and loan-related charges received from borrowers and other income generated from RLF operations including proceeds from the sale, collection, or liquidations of assets acquired through defaults of loans.

2. In accordance with 2 CFR § 200.307 and 2 CFR § 1500.8, during the performance period of the cooperative agreement the CAR is authorized to add program income to the funds awarded by EPA and use the program income under the same terms and conditions of this agreement unless otherwise specified (e.g., Section IV.B.3 regarding use of 50% of the funds for loans). Accordingly, program income may be used for administrative costs, including any applicable indirect costs, provided that the total amount of funds used for administrative costs does not exceed 5% of the sum of direct EPA funding and program income the CAR generates. CARs that intend to use program income for cost share for other Brownfield Grants under 2 CFR § 200.307(e)(3) must obtain prior approval from EPA's Grant Management Officer or Award Official unless the cost share method for using program income was approved at time of award. Note that repayments of principal for loans made all or in part with cooperative agreement funds shall not be used for cost share for other Brownfield Grants. These repayments of principal must be returned to the CAR's Brownfields Revolving Loan Fund.

3. In accordance with 2 CFR § 1500.8(c), to continue the mission of the Brownfields Revolving Loan Fund, recipients may use cooperative agreement funding prior to using program income funds generated by the revolving loan fund.

4. The CAR that elects to use program income to cover all or part of an RLF's programmatic costs shall maintain adequate accounting records and source documentation to substantiate the amount and percent of program income expended for eligible RLF programmatic costs, and comply with OMB cost principles at 2 CFR Part

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200, Subpart E when charging costs against program income. For any cost determined by EPA to have been an ineligible or unallowable use of program income, the recipient shall reimburse the RLF or refund the amount to EPA as directed by EPA's Action Official in its disallowance determination. EPA will notify the recipient of the time period allowed for reimbursement or refund.

5. Loans or subgrants made with a combination of program income and direct funding from EPA are subject to the same terms and conditions as those applicable to this agreement. Loans and subgrants made with direct funding from EPA in combination with non-federal sources of funds are also subject to the same terms and conditions of this agreement.

6. The CAR must obtain EPA approval of the substantive terms of loans and subgrants made entirely with program income unless this requirement is waived by the EPA Project Officer.

E. Interest-Bearing Accounts

1. The CAR must deposit advances of cooperative agreement funds (as described in Section VII.A., *Methods of Disbursement*) and program income (as defined earlier) in an interest-bearing account unique to this cooperative agreement [i.e., separate from post-closeout program income governed under a Closeout Agreement (COA) since separate reporting of funds is required under a COA].

2. Advances of EPA funds (and other Federal funds as well) must also be placed in interest bearing accounts as provided in 2 CFR § 200.305(b)(8) for CARs other than states which are subject to applicable Treasury regulations. Advances of EPA funds must be maintained in an account that is separate from the program income in the RLF. While interest earned by CARs on advances of EPA funds should be minimal given the regulatory and T&C requirements for prompt disbursement of drawn down funds, any interest the CAR does earn on advanced Federal funds is subject to 2 CFR § 200.305(b)(9). This regulation generally requires that interest on advanced Federal funds in excess of $500 must be transmitted annually to the U.S. Department of Health and Human Services.

3. Interest earned on program income is considered additional program income.

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F. Closeout Agreement and Use of Post Cooperative Agreement (i.e., Post-Closeout) Program Income

1. As provided at 2 CFR § 200.307(f) and 2 CFR § 1500.8(c) after the end of the period of performance of the cooperative agreement, the CAR may keep and use program income at the end of the cooperative agreement (retained program income) and use program income earned after the cooperative agreement period of performance (post-closeout program income) in accordance with terms of a COA. At the end of the cooperative agreement period of performance, the CAR shall comply with the attached COA. This award is contingent upon the CAR signing and returning the attached COA to the EPA Project Officer no later than 30 days of award. The COA goes into effect for this assistance agreement number the day after the cooperative agreement period of performance ends unless otherwise designated by EPA's Award Official or Grants Management Officer. The period of performance is identified as the project period in the Notice of Award.

2. This COA is based on the FY22 RLF COA template. EPA plans to modify RLF COA templates every five years. EPA reserves the right to renegotiate the terms of this RLF COA every five years, in conjunction with the template change (e.g., next change will be in FY27). If the CAR agrees to continue to operate the RLF under a COA past FY27, the CAR shall work with EPA's Project Officer to update to the latest COA template. Otherwise, the Project Officer and CAR will negotiate a mutually acceptable disposition of unused program income, and an Authorized EPA Official (e.g., Award Official or Grants Management Officer) will modify the COA accordingly.

V. RLF REQUIREMENTS

A. Authorized RLF Cleanup Activities

1. The CAR, or borrower/subgrantee with CAR concurrence, shall prepare an ABCA, or equivalent state Brownfields program document, which will include information about the site and contamination issues (i.e., exposure pathways, identification of contaminant sources, etc.); cleanup standards; applicable laws; alternatives considered; and the proposed cleanup. The evaluation of alternatives must include effectiveness, ability to implement, and the cost of the response proposed. The evaluation of alternatives must

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also consider the resilience of the remedial options to address potential adverse impacts caused by extreme weather events (e.g., sea level rise, increased frequency and intensity of flooding, etc.). The alternatives may additionally consider the degree to which they reduce greenhouse gas discharges, reduce energy use or employ alternative energy sources, reduce volume of wastewater generated/disposed of, reduce volume of materials taken to landfills, and recycle and re-use materials generated during the cleanup process to the maximum extent practicable. The evaluation will include an analysis of reasonable alternatives including no action. The cleanup method chosen must be based on this analysis and documented in a decision document upon completion of the public comment period. The CAR, or borrower/subgrantee with CAR concurrence, must consult with the relevant state program (or EPA if there is not a state program that covers the site) to determine if the selected cleanup requires formal modification based on public comments or new information.

2. Prior to conducting or engaging in any on-site activity with the potential to impact historic properties (such as invasive sampling or cleanup), the CAR shall consult with the EPA Project Officer regarding potential applicability of the National Historic Preservation Act (NHPA) (16 USC § 470) and, if applicable, shall assist EPA in complying with any requirements of the NHPA and implementing regulations.

B. Quality Assurance (QA) Requirements

1. If environmental data are to be collected as part of the brownfield cleanup (e.g., cleanup verification sampling, post-cleanup confirmation sampling), the CAR shall comply with 2 CFR § 1500.12 requirements to develop and implement quality assurance practices sufficient to produce data adequate to meet project objectives and to minimize data loss. State law may impose additional QA requirements. Recipients implementing environmental programs within the scope of the assistance agreement must submit to the EPA Project Officer an approvable Quality Assurance Project Plan (QAPP) at least 30 days prior to the initiating of data collection or data compilation. The Quality Assurance Project Plan (QAPP) is the document that provides comprehensive details about the quality assurance, quality control, and technical activities that must be implemented to ensure that project objectives are met. Environmental programs include direct measurements or data generation, environmental modeling, compilation of data from literature or electronic media, and data supporting the design, construction, and operation of environmental technology.

The QAPP should be prepared in accordance with EPA QA/R-5: EPA Requirements for Quality Assurance Project Plans. No environmental data collection or data compilation

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may occur until the QAPP is approved by the EPA Project Officer and Quality Assurance Regional Manager. Additional information on the requirements can be found at the EPA Office of Grants and Debarment website at https://www.epa.gov/grants/implementation-quality-assurance-requirements-organizations-receiving-epa-financial.

2. **Competency of Organizations Generating Environmental Measurement Data:** In accordance with Agency Policy Directive Number FEM-2012-02, *Policy to Assure the Competency of Organizations Generating Environmental Measurement Data under Agency-Funded Assistance Agreements*, the CAR agrees, by entering into this agreement, that it has demonstrated competency prior to award, or alternatively, where a pre-award demonstration of competency is not practicable, the CAR agrees to demonstrate competency prior to carrying out any activities under the award involving the generation or use of environmental data. The CAR shall maintain competency for the duration of the project period of this agreement and this will be documented during the annual reporting process. A copy of the Policy is available online at http://www.epa.gov/fem/lab_comp.htm or a copy may also be requested by contacting the EPA Project Officer for this award.

C. Public Involvement and Community Outreach in RLF Cleanup Activities

1. All RLF loan and subgrant cleanup activities require a site-specific Community Involvement Plan that includes providing reasonable notice, and the opportunity for public involvement and comment on the proposed cleanup options under consideration for the site. All information, including responses to public comments and administrative records, may be made available to the public to the extent consistent with 2 CFR § 200.338 and applicable state, tribal, or local law.

2. The CAR agrees to clearly reference EPA investments in the project during all phases of community outreach outlined in the EPA-approved workplan which may include the development of any post-project summary or success materials that highlight achievements to which this project contributed.

a. If any documents, fact sheets, and/or web materials are developed as part of this cooperative agreement, then they shall comply with the *Acknowledgement Requirements for Non-ORD Assistance Agreements* in the General Terms and Conditions of this agreement.

b. If a sign is developed as part of a project funded by this cooperative agreement, then the sign shall include either a statement (e.g., this project has been funded, wholly or in part, by EPA) and/or EPA's logo acknowledging that

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EPA is a source of funding for the project. The EPA logo may be used on project signage when the sign can be placed in a visible location with a direct linkage to site activities. Use of the EPA logo must follow the sign specifications available at https://www.epa.gov/grants/epa-logo-seal-specifications-signage-produced-epa-assistance-agreement-recipients.

3. The CAR agrees to notify the EPA Project Officer of public or media events publicizing the

accomplishment of significant events related to construction and/or site reuse projects as a result of this agreement, and provide the opportunity for attendance and participation by federal representatives with at least ten (10) working days' notice.

4. To increase public awareness of projects serving communities where English is not the predominant language, CARs are encouraged to include in their outreach strategies communication in non-English languages. Translation costs for this purpose are allowable, provided the costs are reasonable.

5. All public awareness activities conducted with EPA funding are subject to the provisions in the General Terms and Conditions on compliance with section 504 of the Americans with Disabilities Act.

D. Administrative Record

1. The CAR shall establish an Administrative Record that contains the documents that form the basis for the selection of a cleanup plan. Documents in the Administrative Record shall include the ABCA; site investigation reports; the cleanup plan; cleanup standards used; responses to public comments; and verification that shows that cleanups are complete. The CAR shall keep the Administrative Record available at a location convenient to the public and make it available for inspection. The Administrative Record must be retained for three (3) years after the termination of the cooperative agreement subject to any requirements for maintaining records of site cleanups ongoing at the time of termination contained in the CAR's COA.

E. Implementation of RLF Cleanup Activities

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1. The CAR shall ensure the adequacy of each RLF cleanup in protecting human health and the environment as it is implemented. Each loan and subgrant agreement shall contain terms and conditions, subject to any required approvals by the state or tribal regulatory oversight authority, that allow the CAR to change cleanup activities as necessary based on comments from the public or any new information acquired.

2. If the borrower or subgrantee is unable or unwilling to complete the RLF cleanup, the CAR shall ensure that the site is secure. The CAR shall notify the appropriate state agency and EPA to ensure an orderly transition should additional activities become necessary.

F. Completion of RLF Cleanup Activities

1. The CAR shall ensure that the successful completion of an RLF cleanup is properly documented. This must be done through a final report or letter from a Qualified Environmental Professional, or other documentation provided by a State or Tribe that shows cleanups are complete (including No Further Action letters, institutional controls, etc.). This documentation must be included as part of the Administrative Record.

## VI. REVOLVING LOAN FUND REQUIREMENTS

A. Prudent Lending and Subgranting Practices

1. The CAR is expected to establish economically sound structures and day-to-day management and processing procedures to maintain the RLF and meet longterm brownfield cleanup lending/subgranting objectives. These include establishing: underwriting principles that can include the establishment of interest rates, repayment terms, fee structure, and collateral requirements sufficient to recover, as a minimum, the principal amount of the loan less any repayment discounts; and, lending/subgranting practices that can include loan/subgrant processing, documentation, approval, servicing, administrative procedures, collection, and recovery actions.

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2. The CAR shall not incur costs under this cooperative agreement for loans subgrants or other eligible costs until an RLF cooperative agreement workplan has been submitted to and approved by the EPA Project Officer or program manager. “Though the workplan must identify tasks and milestones for establishing and operating the RLF, more detailed information may be submitted in supplemental documents, e.g., an “implementation plan.” The CAR shall ensure that the objectives of the workplan are met through its or the fund manager’s selection and structuring of individual loans/subgrants and lending/subgranting practices. These activities shall include, but not be limited to the following:

a. Considering awarding subgrants on a competitive basis. If the CAR decides not to award any such subgrants competitively, it must document the basis for that decision and inform the EPA Project Officer in the first quarterly performance report. The CAR must inform the EPA Project Officer if the CAR subsequently decides to award subgrants competitively in the quarterly performance report immediately following the decision.

b. Establishing appropriate project selection criteria consistent with federal and state requirements, the intent of the RLF program, and the cooperative agreement entered into with EPA.

c. Establishing threshold eligibility requirements whereby only eligible borrowers or subgrantees receive RLF financing.

d. Developing a formal protocol for potential borrowers or subgrantees to demonstrate eligibility, based on the procedures described in the initial RLF application proposal and cooperative agreement application. Such a protocol shall include descriptions of projects that will be funded, how loan monies will be used, and qualifications of the borrower or subgrantee to make legitimate use of the funds. Additionally, CARs shall ask borrowers or subgrantees for an explanation of how a project, if selected, would be consistent with RLF program objectives, statutory requirements and limitations, and protect human health and the environment.

e. Requiring that borrowers or subgrantees submit information describing the borrower’s or subgrantee’s environmental compliance history. The CAR shall consider this history in an analysis of the borrower or subgrant recipient as a cleanup and business risk.

f. Establishing procedures for handling the day-to-day management and processing of loans and repayments.

g. Establishing standardized procedures for the disbursement of funds to the borrower or subgrantee.

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B. Inclusion of Additional Terms and Conditions in RLF Loan and Subgrant Documents

1. All loans and subgrants must include the information required by 2 CFR § 200.332(a). EPA has developed an optional template to use in creating this agreement that is available on EPA's Subaward Policy internet page. EPA does not require CARs to use the template.

2. The CAR shall ensure that the borrower or subgrantee meets the cleanup and other program requirements of the RLF cooperative agreement by including the following special terms and conditions in RLF loan agreements and subgrants:

a. Borrowers or subgrantees shall use funds only for eligible activities and in compliance with the requirements of CERCLA § 104(k) and applicable federal and state laws and regulations. (See Section I.A.2. and Section II.)

b. Borrowers or subgrantees shall ensure that the cleanup protects human health and the environment.

c. Borrowers or subgrantees shall document how funds are used.

d. Borrowers or subgrantees shall maintain records for a minimum of three (3) years following completion of the cleanup financed all or in part with RLF funds unless one of the conditions described at 2 CFR § 200.334 is present. Borrowers or subgrantees shall obtain written approval from the CAR prior to disposing of records, so that the CAR can maintain the records, if necessary, for complying with the CAR's obligations under 2 CFR § 200.334. CARs shall also require that the borrower or subgrantee provide access to records relating to loans and subgrants supported with RLF funds to authorized representatives of the federal government. As stated in the attached COA, records related to the COA must be retained by the CAR for the duration of the COA and retained for a period of three (3) years following termination or discontinuation of the COA.

e. Borrowers or subgrantees shall certify that they are not currently, nor have they been, subject to any penalties resulting from environmental noncompliance at the site subject to the loan or subgrant.

f. Borrowers or subgrantees shall certify that they are not potentially liable under CERCLA § 107 for the site or that, if they are, they qualify for a limitation or defense to liability under CERCLA. If asserting a limitation or defense to liability, the borrower or subgrantee must state the basis for that assertion. When using cooperative agreement funds for petroleum-contaminated brownfield sites, borrowers or subgrantees shall certify that they are not a viable responsible party or potentially liable for the petroleum contamination at the site. The CAR may

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consult with EPA for assistance with this matter.

g. Borrowers or subgrantees shall conduct cleanup activities as required by the CAR.

h. Subgrantees, other than borrowers, shall comply with all applicable EPA assistance regulations (2 CFR Parts 200 and 1500). All procurements conducted with subgrant funds, but not loans, must comply with Procurement Standards of 2 CFR §§ 200.317 through 200.327, as applicable.

i. Borrowers must comply with the internal control requirements specified at 2 CFR § 200.303 and are subject to the 2 CFR Part 200, Subpart F, *Audit Requirements*. The CAR must oversee and manage loans as required by 2 CFR §§ 200.330 through 200.332. No other provisions of the Uniform Grant Guidance apply directly to borrowers.

j. A term and condition or other legally binding provision shall be included in all loans and subgrants entered into with the funds under this agreement, or when funds awarded under this agreement are used in combination with non-federal sources of funds, to ensure that borrowers and subgrantees comply with all applicable federal and state laws and requirements. In addition to CERCLA § 104(k), federal applicable laws and requirements include 2 CFR Parts 200 and 1500.

k. EPA provides general information on statutes, regulations and Executive Orders that apply to EPA grants on the Grants internet site at www.epa.gov/grants. Many federal requirements are agreement or program specific and EPA encourages CARs to review the terms of their cooperative agreement carefully and consult with their EPA Project Officer for advice if necessary.

C. Default

1. In the event of a loan default, the CAR shall make reasonable efforts to enforce the terms of the loan agreement including proceeding against the assets pledged as collateral to cover losses to the loan. If the cleanup is not complete at the time of default, the CAR is responsible for:

a. documenting the nexus between the amount paid to the borrower (bank or other financial institution) and the cleanup that took place prior to the default; and

b. securing the site (e.g., ensuring public safety) and informing the EPA Project Officer and the State.

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D. Conflict of Interest

1. The CAR shall establish and enforce conflict of interest provisions that prevent the award of subawards that create real or apparent personal conflicts of interest, or the CAR's appearance of lack of impartiality. Such situations include, but are not limited to, situations in which an employee, official, consultant, contractor, or other individual associated with the CAR (affected party) approves or administers a grant or subaward to a subaward recipient in which the affected party has a financial or other interest. Such a conflict of interest or appearance of lack of impartiality may arise when:

a. The affected party,

b. Any member of his immediate family,

c. His or her partner, or

d. An organization which employs, or is about to employ, any of the above, has a financial or other interest in the subrecipient.

Affected employees will neither solicit nor accept gratuities, favors, or anything of monetary value from subrecipients. Recipients may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards of conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by affected parties.

VII. DISBURSEMENT, PAYMENT, AND CLOSEOUT

For the purposes of these Terms and Conditions, the following definitions apply: "payment" is

EPA's transfer of funds to the CAR; the CAR incurs an "obligation" when it enters into an agreement with a borrower or a subgrantee; "disbursement" is the transfer of funds from the CAR to the borrower or subgrantee. The CAR may also disburse funds to a contractor or to pay an allowable cost (e.g. personnel compensation) as provided in 2 CFR § 200.305(b)(1). "Closeout" refers to the process EPA follows to both ensure that all administrative actions and work required under the cooperative agreement have been completed and to establish a COA to govern the use of program income.

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A. Methods of Disbursement

1. The CAR may choose to disburse funds to the borrower or subgrantee by means of 'actual expense' or 'schedule.' If the schedule method is used, the recipient must ensure that the schedule is designed to reasonably approximate the borrower's or subgrantee's incurred costs.

a. An 'actual expense' disbursement approach requires the borrower or subgrantee to submit documentation of the borrower's or subgrantee's expenditures (e.g., invoices) to the CAR prior to requesting payment from EPA.

b. A 'schedule' disbursement is one in which all, or an agreed upon portion, of the obligated funds are disbursed to the borrower or subgrantee on the basis of an agreed upon schedule (e.g., progress payments) provided the schedule minimizes the time elapsing between disbursement by the CAR and the borrower or subgrantee's payment of costs incurred in carrying out the loan/subgrant. In unusual circumstances, disbursement may occur upon execution of the loan or subgrant. The CAR shall submit documentation of disbursement schedules to EPA.

c. If the disbursement schedule of the loan/subgrant agreement calls for disbursement of the entire amount of the loan/subgrant upon execution, the CAR shall demonstrate to the EPA Project Officer that this method of disbursement is necessary for purposes of cleaning up the site covered by the loan/subgrant. Further, the CAR shall include an appropriate provision in the loan/subgrant agreement which ensures that the borrower/subgrantee uses funds promptly for costs incurred in connection with the cleanup and that interest accumulated on schedule disbursements is applied to the cleanup.

B. Schedule for Closeout

1. There are two fundamental criteria for closeout:

a. Final payment of funds from EPA to the CAR following the end date for the cooperative agreement or prior to the end date when the CAR has disbursed all of the EPA funding of the funds awarded; and

b. Completion of all cleanup activities funded completely, or in part, by direct EPA funding from the amount of the award.

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2. The first criterion of cooperative agreement closeout is met when the CAR receives all payments from EPA. The second closeout criterion is met when all cleanup activities funded by the cooperative agreement are complete.

3. The CAR must follow the attached COA for any retained and future program income generated after closeout. Eligible uses include continuing to operate an RLF for brownfield site cleanup and/or other brownfield site activities as identified in the attached COA.

C. Compliance with Closeout Schedule

1. If the CAR fails to comply with the closeout schedule, any funds attributable to the cooperative agreement, including retained program income not obligated under loan agreement to a borrower or subgrantee, may be subject to federal recovery.

D. Final Requirements

1. The CAR must submit the following documentation:

a. The Final Technical Cooperative Agreement Report as described in Section III.E. of these Terms and Conditions.

b. Administrative and Financial Reports as described in the General Terms and Conditions of this agreement.

2. The CAR must ensure that all appropriate data have been entered into ACRES or all hardcopy Property Profile Forms are submitted to the EPA Project Officer.

E. Recovery of RLF Assets

1. In case of termination, the CAR shall return to EPA its fair share of the value of the RLF assets consisting of cash, receivables, personal and real property, and notes or other financial instruments developed through use of the funds. EPA's fair share is the amount computed by applying the percentage of EPA participation in the total

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capitalization of the RLF to the current fair market value of the assets thereof. EPA also has remedies under *Remedies for Noncompliance* at 2 CFR §§ 200.339 through 200.342 and CERCLA § 104(k) when EPA determines that the value of such assets has been reduced by improper/illegal use of cooperative agreement funding. In such instances, the CAR may be required to compensate EPA over and above the EPA's share of the current fair market value of the assets. Nothing in this agreement limits EPA's authorities under CERCLA to recover response costs from a potentially responsible party.

F. Loan Guarantees

1. If the CAR chooses to use the RLF funds to support a loan guarantee approach, the following terms and conditions apply:

a. The CAR shall:

i. Document the relationship between the expenditure of CERCLA § 104(k) funds and cleanup activities;

ii. Maintain an escrow account expressly for the purpose of guaranteeing loans, by following the payment requirement described under the Escrow Requirements term and condition below; and

iii. Ensure that cleanup activities guaranteed by RLF funds are carried out in accordance with CERCLA § 104(k), CERCLA § 104(g) relating to compliance with the Davis-Bacon Act, and applicable federal and state laws and will protect human health and the environment.

b. Payment of funds to a CAR shall not be made until a guaranteed loan has been issued by a participating financial institution. Loans guaranteed with RLF funds shall be made available as needed for specified cleanup activities on an "actual expense" or "schedule" basis to the borrower. (See Section VII.A., *Methods of Disbursement*). The CAR's escrow arrangement shall be structured to ensure that the CERCLA § 104(k) funds are properly "disbursed" by the recipient for the purposes of the cooperative agreement as required by 2 CFR § 200.305. If the funds are not properly disbursed, the CERCLA § 104(k) funds that the recipient places in an escrow account will be subject to the interest recovery provisions of 2 CFR § 200.305.

c. To ensure that funds transferred to the CAR are disbursements of assisted funds, the escrow account shall be structured to ensure that:

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i. The recipient does not retain the funds;

ii. The recipient does not have access to the escrow funds on demand;

iii. The funds remain in escrow unless there is a default of a guaranteed loan;

iv. The organization holding the escrow (i.e., the escrow agency), shall be a bank or similar financial institution that is independent of the recipient; and

v. There must be an agreement with the financial institution participating in the guaranteed loan program which documents that the financial institution has made a guaranteed loan to clean up a brownfield site in exchange for access to funds held in escrow in the event of a default by the borrower or subgrantee.

d. Federal Obligation to the Loan Guarantee Program - Any obligations that the CAR incurs for loan guarantees in excess of the amount awarded under the cooperative agreement are the CAR's responsibility. This limitation on the extent of the Federal Government's financial commitment to the CAR's loan guarantee program shall be communicated to all participating banks and borrower or subgrantee.

e. Repayment of Guaranteed Loans - Upon repayment of a guaranteed loan and release of the escrow amount by the participating financial institution, the CAR shall return the cooperative agreement funds placed in escrow to EPA based on disposition instructions provided by the EPA Project Officer. Alternatively, the CAR may, with EPA approval:

i. Guarantee additional loans under the terms and conditions of the agreement; or

ii. Amend the terms and conditions of the agreement to provide for another disposition of funds that will redirect the funds for other brownfield sites' related activities authorized by the terms of the cooperative agreement or, if applicable, a COA.

Attachment: 2023-016 ATTH 01 Cooperative Agreement 2022 4B 02F19201-0 (3919 : 2023-016 ORD Amend Budget for New EPA RLF)

# City of Texarkana, Texas

## Developing Perspectives and Goals Pending Approval by the City Council:

| Perspectives | | Goals |
|---|---|---|
| Serve the Community | ☑ | Promote an Environmentally Sensitive & Livable Community |
| | ☑ | Provide a Safe Community |
| | ☑ | Deliver Quality Services |
| | ☑ | Foster a Healthy Community |
| Run the Operations | ☑ | Enhance Community Preparedness & Responsiveness |
| | ☐ | Maximize Partnership Opportunities |
| | ☐ | Provide Courteous & Responsive Customer Service |
| | ☑ | Model a Positive City Image |
| | ☐ | Deliver Efficient Services |
| | ☑ | Cultivate Community Involvement & Access |
| Manage the Resources | ☐ | Maintain Fiscal Strength |
| | ☑ | Maximize Utilization & Resources |
| | ☑ | Invest in Infrastructure & Transportation |
| Develop Personnel | ☐ | Develop a Skilled & Diverse Workforce |
| | ☐ | Create a Positive & Rewarding Work Culture |

**Perspectives and Goals Additional Comments:**

## Resource Impact:

| | |
|---|---|
| Staff time required if item is approved: | No Additional |

**Other Potential Impacts:**

## Public Information Plan:

| | | | |
|---|---|---|---|
| ☐ | Newspaper Notice (Required by Statute) | ☐ | Public Hearing (Required by Statute) |
| ☐ | Public Forum/Input Session | ☐ | Press Release |
| ☐ | E-News Distribution | ☐ | Website Notice |
| ☐ | Social Media (Twitter, Facebook, etc.) | ☐ | Special Mailing |
| ☐ | Flyers Posted | ☐ | Banners Posted |
| ☐ | Survey | ☐ | Automated Phone Call |
| ☑ | None Required | ☐ | |

Other:

Attachment: 2023-016 Goals & Perspectives (3919 : 2023-016 ORD Amend Budget for New EPA RLF)

# ORDINANCE NO. 2023-016

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEXARKANA, TEXAS, ESTABLISHING THE EPA BROWNFIELDS BIL REVOLVING LOAN FUND (FUND 245) AND AMENDING BUDGETED REVENUE AND EXPENDITURES FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2023, TO INCLUDE THE 2022 EPA BROWNFIELDS REVOLVING LOAN FUND IN THE AMOUNT OF ONE MILLION DOLLARS ($1,000,000); AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS,** the City applies yearly for supplemental funding of its EPA Brownfields Revolving Loan Fund; and

**WHEREAS,** the City was awarded $1,000,000 from its FY22 supplemental application that is funded by EPA through the Bipartisan Infrastructure Law (BIL Funding) and awarded as a new Brownfields Revolving Loan Fund Cooperative Agreement with a grant period of October 1, 2022 to September 30, 2027; and

**WHEREAS,** City staff recommends amending the budget estimate of the City's revenues and expenditures for the fiscal year beginning October 1, 2022, and ending September 30, 2023, by adding the amount of **ONE MILLION DOLLARS ($1,000,000)** to Fund 245.

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

**SECTION 1:** The budget estimate of the revenue and expenditures of the City of Texarkana, Texas, as prepared by the City Manager and appropriated by the City Council for the fiscal year beginning October 1, 2022, and ending September 30, 2023, be amended to reflect additional revenue and expenditures appropriated of **ONE MILLION DOLLARS ($1,000,000)** added to the Planning and Community Development EPA Brownfields Revolving Loan BIL Program Fund (Fund 245).

**SECTION 2:** This Ordinance shall be in full force and effect from and after its passage and approval.

**PASSED AND APPROVED** in Regular Council Session on this the **27th day of February, 2023**.

ATTEST:

JENNIFER EVANS, CITY SECRETARY

BOB BRUGGEMAN, MAYOR

6:23p.m.

Attachment: 2023-016 ORD EPA RLF BIL Funding signed (3919 : 2023-016 ORD Amend Budget for New EPA RLF)

**City of Texarkana, Texas**

Version: B

# Briefing Sheet

**Update Date:** 2/23/2023 11:18 AM

**Lead Department:** Public Works Department **Action Officer:** Dusty Henslee,

**Subject:** Ordinance No. 2023-026 amending Chapter 130, "Streets and Sidewalks" of the Land Development Code and amending the Master Fee List for Chapter 130 License and Permit Fees.

**Briefing:** 3/13/2023 **Public Hearing:** 3/13/2023 **Council Vote:** 3/13/2023

**Item Schedule**

Schedule 1: Brief twice - vote once (six weeks)

**Updates/History of Briefing:**

NOT APPLICABLE

**Executive Summary and Background Information:**

Staff has reviewed Ch 130, "Streets and Sidewalks" of the code of ordinances and has determined it is necessary and in the best interest of the City to revise and update Chapter 130. Included for review:

ATTH 01 – clean version of proposed Chapter 130 as revised
ATTH 02 – fees to be added/revised to Master Fee List
ATTH 03 – a summary of the major changes made to the respective sections of Ch. 130
ATTH 04 – Word-generated redline comparing existing Ch. 130 to the proposed revision
ATTH 05 – Letter of Support from Waggoner Creek Crossing
ATTH 06 – Letter of Support from Partnership for the Pathways

A primary goal for the revision is to start requiring pedestrian facilities to be constructed as properties develop, update the City's street design standards to meet current industry standards, update fees provided for in the chapter, and make textual revisions for ease of reference.

**Potential Options:**

- Approve
- Not Approve

**Fiscal Implications:**

None

**Staff Recommendation:**

Staff recommends approval.

**Advisory Board/Committee Review:**

NONE

**Board/Committee Recommendation:**

NOT APPLICABLE

**Advisory Board/Committee Meeting Date and Minutes:**

NOT APPLICABLE

**Attachments**

a. 2023-026 Goals & Perspectives (DOCX)
b. 2023-026 ATTH 01 text of amd Ch 130 (DOCX)
c. 2023-026 ATTH 02 fees (DOCX)
d. 2023-026 ATTH 03 change summary (DOCX)
e. 2023-026 ATTH 04 redline of changes (DOCX)
f. 2023-026 ATTH 05-Letter.WCC.WCCII.FLP. to City supporting 2023 changes to sidewalk ordinance (DOCX)
g. 2023-026 ATTH 06 PatnershipforPathway Letter of Support (PDF)
h. 2023-026 ORD amend Ch 130 Streets Sidewalks (DOCX)

**Staff Coordination**

| | | | | |
|---|---|---|---|---|
| Public Works Department | | Dusty Henslee | Department Head Review Completed | 02/16/2023 4:30 PM |
| City Attorney | Jeffery C. Lewis | Review | Completed | 02/16/2023 5:21 PM |
| City Manager | Jennifer Evans | City Manager Review | Skipped | 02/27/2023 6:00 PM |
| City Council | Jennifer Evans | Meeting | Completed | 02/27/2023 6:00 PM |

**Meeting History**

# City of Texarkana, Texas

## Developing Perspectives and Goals Pending Approval by the City Council:

| Perspectives | | Goals |
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| Manage the Resources | ☑ | Maintain Fiscal Strength |
| | ☑ | Maximize Utilization & Resources |
| | ☑ | Invest in Infrastructure & Transportation |
| Develop Personnel | ☐ | Develop a Skilled & Diverse Workforce |
| | ☐ | Create a Positive & Rewarding Work Culture |

**Perspectives and Goals Additional Comments:**

NONE

**Resource Impact:**

| | |
|---|---|
| Staff time required if item is approved: | Low |

**Other Potential Impacts:**

NONE APPLICABLE

**Public Information Plan:**

| | | | |
|---|---|---|---|
| ☐ | Newspaper Notice (Required by Statute) | ☐ | Public Hearing (Required by Statute) |
| ☑ | Public Forum/Input Session | ☐ | Press Release |
| ☐ | E-News Distribution | ☐ | Website Notice |
| ☐ | Social Media (Twitter, Facebook, etc.) | ☐ | Special Mailing |
| ☐ | Flyers Posted | ☐ | Banners Posted |
| ☐ | Survey | ☐ | Automated Phone Call |
| ☐ | None Required | ☐ | |

Other:

Attachment: 2023-026 Goals & Perspectives (3933 : 2023-026 ORD Amending Chapter 130 "Streets and Sidewalks")

# Chapter 130 STREETS AND SIDEWALKS

## *ARTICLE I. IN GENERAL*

### Sec. 130-1. Permit to construct sidewalks, curbs, and shared use paths.

It shall be unlawful for any person to construct any concrete sidewalk, curb, or shared use path within the city, without first having obtained a permit therefor from the city council. Such permit may be either a special permit for each job or a general permit for all such work to be done by the person to whom the permit is issued.

### Sec. 130-2. Sidewalks, curbs, and shared use paths to conform to established criteria; minimum construction requirements.

(a) All sidewalks, curbs, and shared use paths constructed in the city shall be so constructed as to conform to the established grade and lines of the streets, sidewalks and alleys of the city and as to meet all applicable statutory and regulatory requirements under the Americans with Disabilities Act. It shall be the duty of the property owner to determine and mark the established grade, or, in case there is no established grade, the natural and probable grade of any sidewalk or alley, and to request inspection by the City Engineer prior to pouring sidewalk.

(b) All sidewalks constructed in the city shall be so constructed (i) to a minimum width of five feet (5') unless a different width is approved in writing by the City Engineer, (ii) of Class "A" (3,000 psi test) concrete, and (iii) to a minimum slab thickness of four inches, reinforced with six inches by six inches by ten-gauge welded wire mesh or approved equivalent.

(c) All shared use paths constructed in the city shall be so constructed (i) to a minimum width of eight feet (8') unless a different width is approved in writing by the City Engineer, (ii) of Class "A" (3,000 psi test) concrete, and (iii) to a minimum slab thickness of four inches, reinforced with six inches by six inches by ten-gauge welded wire mesh or approved equivalent. Other material can be substituted upon written approval of the City Engineer.

### Sec. 130-3. Construction of sidewalks by property owners and developers.

(a) *Generally.* For new commercial development or redevelopment or new residential development, it shall be the duty of the developer of the property and every owner of any lot or part of a lot or block adjoining or abutting any public street or highway in the city to grade and construct sidewalks in front of and alongside of the lot or part of the lot or block so owned; and in new development, sidewalks shall be constructed on both sides of street at the time the street is constructed. Prior to grading, the owner and developer shall request a written determination from the City Engineer on whether construction of a shared use path or paths shall also be required. The cost of grading and construction required by this subsection shall be borne by the owner.

(b) *Existing commercial and residential corridors*. In all existing corridors, it shall be the duty of every owner of any lot or part of a lot or block adjoining or abutting any public street or highway in such corridor, when improving property so owned to increase its value, to grade and construct sidewalks in front of and alongside of the lot or part of the lot or block so owned. If sidewalks are neither present in such corridor nor are planned based on the City's active transportation plan, the requirements of this subsection shall not apply unless the City Engineer notifies the owner in writing of the applicability of this subsection. The cost of grading and construction required by this subsection shall be borne by the owner.

Attachment: 2023-026 ATTH 01 text of amd Ch 130 [Revision 1] (3933 : 2023-026 ORD Amending Chapter 130 "Streets and Sidewalks")

(c) *Maintenance.* The maintenance of a sidewalk or shared use path constructed on private property shall be the responsibility of the property owner. The maintenance of a sidewalk or shared use path constructed within the public right-of-way or public sidewalk easement may be specified in writing between the City Engineer and property owner; and absent any writing specifying responsibility for maintenance, such maintenance shall be the responsibility of the City.

(d) *Material and dimensions.* Sidewalks and shared use paths constructed under this section shall be constructed per the requirements of section 130-2.

(e) *Appeal*. The decisions or determinations made by the City Engineer as provided in this section shall be final unless the owner files an appeal to the Zoning Board of Adjustment within five (5) business days of the owner's receipt of the City Engineer's determination.

## Sec. 130-4. Governing TxDOT standard specifications.

All applicable sections of the then-current edition of the Texas Department of Transportation "Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges" ("TxDOT Standard Specs"), a copy of which publication shall be on file in the Public Works Department, are hereby adopted herein by reference as the standard specifications for materials and methods of construction for highways, streets, and bridges within the city. All materials used in city street and alley construction shall conform in all respects to the applicable provisions of such publication.

## Sec. 130-5. Encumbrances and obstructions on streets, sidewalks and other public rights-of-way.

(a) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

*Alley* means a minor way that is used primarily for installation of public utilities and for vehicular service access to the backside or the side of the property otherwise abutting the street.

*Easement* means a right held by the city to be used for access, drainage or the placement of utilities such as, but not limited to, water, sewer, gas, telephone, cable television and electrical lines.

*Franchise* means a grant of authority by the city to utilize the public right-of-way under certain specific terms and conditions given by ordinance.

*Noncertificated telecommunications provider* means an entity who has not been issued a certificate of convenience and necessity, certificate of operating authority or service provider certificate of operating authority to offer local exchange telephone service.

*Right-of-way* means any strip or area of land, including, surface, overhead or air space, or underground or subsurface space that is used, or intended to be used, or dedicated to be used wholly or in part as a public street, sidewalk, alley or as the location of public walkways and utility or drainage facilities or installations.

*Sidewalk* means the concrete or asphalt surfaced portion of a street between either the curbline or roadway and the adjacent property line intended for pedestrian use.

*Street* means the entire width between the boundary lines of every right-of-way, other than an alley, publicly maintained when any part of it is opened to the public for vehicular use.

(b) *Other definitions.* Definitions not expressly described herein are to be determined in accordance with customary usage in municipal planning and engineering practices.

(c) *Unlawful activities.* The following activities, uses, conditions or occurrences on the public right-of-way shall be deemed unlawful:

Attachment: 2023-026 ATTH 01 text of amd Ch 130 [Revision 1] (3933 : 2023-026 ORD Amending Chapter 130 "Streets and Sidewalks")

(1) Operating any machinery having tracks, feet or pulling lugs over or along any paved streets or alleys.

(2) Hauling of gravel, brick, sand, concrete, ready mix concrete or mortar in such a manner to scatter or waste these substances onto any streets, alleys or sidewalks.

(3) Dropping, spilling or leaking out of any tank or vessel, whether connected with a motor vehicle or otherwise, any gasoline or other oil or petroleum-based substance on to any street, alley or sidewalk.

(4) Discharging any odorous water, sewage, wastewater, waste oils, kitchen grease, kitchen slop water, mop water or other offensive or hazardous substance onto any public right-of-way.

(5) Placing, storing, constructing, installing or maintaining any structure, building, object, vehicle, device, fence, wall or other material on or within any public right-of-way. Trees and other living, domesticated vegetation located within the parkway area of a paved street and mailboxes are exempt from this prohibition. Provided, however, the city, or its authorized agents, shall not be required to replace any obstruction on or within any public way that must be removed during the course of maintenance, construction and/or reconstruction on or within the public way.

(6) Casting, placing or storing any animal, offal, garbage, trash, refuse or debris into or upon any street, alley, sidewalk, street gutter or other public right-of-way.

(7) Constructing or placing any temporary or permanent structure within, on or over any public utility or drainage easement, except for franchised utilities, other public facilities associated with drainage, or as provided herein. The property owner may place removable section type fencing, asphalt or concrete paving, or landscaping within any dedicated public utility easement. Provided, however, that the city or any franchised utility of the city shall not be required to replace anything that must be removed during the course of maintenance, construction or reconstruction within any public utility or drainage easement.

(d) *License to encumber right-of-way or easements.* The following shall control the consideration of requests for encumbrances on, over, under or through public rights-of-way or easements.

(1) The right to encumber the public right-of-way may be granted only by license and every grantee of a license shall agree to indemnify and hold the city harmless from any and all damages to persons or property or both, arising in any manner out of the use of licensed premises. Each applicant for a license shall complete an application form obtained from the public works department. The applicant shall provide a certificate of insurance naming the city as a co-insured with liability insurance coverage in a minimum amount of $1,000,000.00 for each person for bodily injury and $500,000.00 for each single occurrence for injury to or destruction of property. The application must be accompanied by plans or drawings showing the area to be used and a statement of the purpose for which the right-of-way is to be used.

(1-a) The right to encumber a public sidewalk shall be restricted to the CB central business district and shall be subject to these additional criteria:

a. A license authorized by this subsection shall be held only by the applicant and shall not be transferable.

b. Any encumbrances authorized by this subsection shall be:

1. Restricted to the front of the applicant's licensed business and used solely for purposes directly related to the applicant's licensed business;

2. Placed in such a manner as to leave a minimum unobstructed sidewalk width of four feet, a minimum of one foot away from the curb line or edge of vehicular traveled way, and allow ease of movement by many persons in and around the encumbrances; and

3. Limited to chairs, benches, tables, window boxes, railings, and one "sandwich board" or stand-up sign per license, with display of advertising restricted solely to "sandwich boards" or stand-up signs (see sections 140-179, 140-239).

Attachment: 2023-026 ATTH 01 text of amd Ch 130 [Revision 1] (3933 : 2023-026 ORD Amending Chapter 130 "Streets and Sidewalks")

c. The following placement of encumbrances shall be prohibited:

1. Placement in front of any door or other means of ingress or egress;

2. Placement which blocks or hinders access to the adjoining property;

3. Placement which blocks or hinders visibility of drivers or pedestrians;

4. Placement on a corner lot within twenty feet of the points of intersection of the joining street rights-of-way;

5. Placement on the sidewalk of any hazardous material; and

6. For "sandwich boards" or stand-up signs, placement on the sidewalk at such times as the applicant's business is closed to the public.

d. The license may be revoked with or without notice if, in the discretion of the director of public works or code enforcement officer, the use or utilization of the encumbrance or public sidewalk violates any provision of the Code, or the encumbrance becomes destroyed, unsightly, or deteriorated. This provision is cumulative of any other remedies or enforcement provisions contained in the Code.

e. For any encumbrance authorized by this subsection (1-a) in the CB central business district, a licensee shall pay a one-time license fee.

(2) No individual, person, firm or corporation shall be granted a license for an encumbrance of the public right-of-way that would adversely affect the public health, safety or welfare of the citizens of the city.

(3) Unless otherwise specified in this subsection, no license shall be issued or granted for an encumbrance of the public right-of-way for less than a three-foot width.

(4) Unless otherwise specified in this subsection, for a private license authorizing a surface, subsurface, or air space encroachment at or above the ground level (examples include a private water or sewer line, an overhead line, or a building encroachment), a licensee shall pay a one-time license fee of ten percent (10%) of the fair market value times the square footage of encumbrance; provided, however, in no event shall a license fee be less than $200.00. The city will determine the fair market value in the areas of consideration for license. Fair market value may be established by use of the county appraisal district records referencing value of adjacent land without improvements.

(5) Unless otherwise specified in this subsection, any deposits, license fees or annual fees required by this section shall be in an amount as established by the city council from time to time and is on file in the city secretary's office or city website.

(6) The total deposit shall be credited toward the license fee for the issuance of the first year if a license should be granted. Any individual, person, firm, or corporation wishing to encumber the public right-of-way in any manner shall submit a license application and required deposit to the director of public works. Upon receipt and normal review by various city departments and public utility companies of such application, the director of public works shall forward the request to the city manager for approval.

(7) Any license granted hereunder shall specify the area licensed for use and shall be issued by the public works department.

(8) Any applicant denied a license shall have the right to appeal such denial to the city council by filing a written notice of appeal with the city secretary no later than five days from receipt of notice of the denial of the request.

(9) The city council shall hear the applicant's request within 30 days of notice of appeal and shall determine whether or not to uphold the denial, to grant the request as presented or to modify it.

(e) *Exemptions.*

Attachment: 2023-026 ATTH 01 text of amd Ch 130 [Revision 1] (3933 : 2023-026 ORD Amending Chapter 130 "Streets and Sidewalks")

(1) An applicant who wishes to encumber the public right-of-way adjacent to the applicants' private property for the purpose of installation of a private lawn sprinkler or irrigation system is hereby exempt from the license fee requirements of this chapter. However, neither the city nor any franchised utility shall be responsible or liable for damages or expenses resulting from the maintenance or operations of utilities in said right-of-way.

(2) Noncertificated telecommunications providers shall be subject to an annual fee, per lineal foot, of an amount as established by the city from time to time and is on file in the city secretary's office or city website.

(3) Any applicant who is approved for a license to encumber public right-of-way for the placement of an ornamental device, is hereby exempt from the annual license fee and subject to a one-time license fee. The license fee shall be in an amount as established by the city council from time to time and is on file in the city secretary's office or city website.

(4) In the CB central business district, any applicant who is approved for a license to encumber a specified area of a public sidewalk is hereby exempt from the annual license fee and subject to a one-time license fee.

(f) *No obstruction of public property.* The applicant shall not, unnecessarily or for an unreasonable period of time, obstruct or interfere with the public use of any streets, roads, highways, alleys or public ways owned or controlled by the city.

(g) *Repair of damages.* Applicant shall repair any and all damages caused by the applicant to any real property owned or controlled by the city and shall restore such real property to substantially its condition immediately before the incident causing such damage. The applicant shall commence such repairs immediately upon completion of the work or activity in which the applicant was involved at the time the damage occurred and shall complete such repairs to the satisfaction of the city for one-year from the date of surface of said street, road, highway, alley or public way is broken for such construction or maintenance work, after which time, responsibility for the maintenance shall become the duty of the city. The city may, from time to time, adopt reasonable ordinances regulating such work.

(h) *Conduct of work or activities.* The applicant shall use reasonable care in conducting its work or activities in order to prevent injury to any person and unnecessary damage to any real or personal property.

(i) *Use of alleys.* The applicant shall attempt to utilize the alleys of the city insofar as is reasonably practical in conducting its work and activities hereunder. Notwithstanding the foregoing, however, the applicant may, when approved by city, utilize the streets and any other public ways owned or controlled by the city to perform such work and activities.

(j) *Changes in encroachments.* Applicant shall (at the applicant's expense), upon written request from the city, change the location, position, route, depth or height of any encroachment or other components of the encroachment if and when such change becomes reasonably necessary because of a change in the grade of any street, road, highway, alley, public way or other real property owned or controlled by the city or because of any change in the location of, or in the manner of maintaining, constructing, laying, repairing, removing, replacing, installing or operating, any pavement, curbs, gutters or underground or aboveground wires, cables or water or sewer pipes owned or controlled by the city. The city's written request for such change must set forth, in detail, all of the essential elements and specifications of the requested change.

(k) *Maps of encumbrances.* The applicant shall, at all times, keep on file with the City Engineer a map showing the current location of all encumbrances and other components of the applicant's facilities located in the city.

(l) *Conflicts.* In the event of any conflict between the provisions of this section and any other provision of this Code or other ordinances, this section shall control. Provided, however, that nothing in this section shall affect the right of a holder of a lawfully granted franchise.

Attachment: 2023-026 ATTH 01 text of amd Ch 130 [Revision 1] (3933 : 2023-026 ORD Amending Chapter 130 "Streets and Sidewalks")

## Sec. 130-6. Removal.

Any unlicensed obstruction or encroachment upon any sidewalk, street, alley or other public thoroughfare of the city as specified in section 130-5, shall be removed by the owner or person in charge thereof, and upon failure to do so, the city may remove said obstruction or encroachment and dispose of the same, institute proceedings in any court pursuant to Texas law or this code to require compliance with this section or penalize non-compliance, or utilize any combination of remedies contained in this code and Texas law to require compliance with this section or penalize non-compliance.

## Sec. 130-7. Structural interference with view of street intersection.

It shall be unlawful for any person to place or maintain any sign, display or any structure at street intersections in such a manner that the view of intersecting traffic is obstructed, hindered or obscured, or to place or maintain any sign, display or any structure in such a manner as to hinder or obscure the vision of operators of motor vehicles, or pedestrians upon the streets, sidewalks or alleys of the city.

## Sec. 130-8. Signs and awnings—Permit.

Any person desiring to erect or place an overhanging sign or awning over or across any sidewalk or over or across any public property in the city shall first apply for and secure a permit to do so from a city inspector. If such sign complies with the provisions of the building code, and, if in the judgment of the city inspector, such sign or awning can be safely erected or placed, the inspector shall issue the permit.

## Sec. 130-9. Same—Use of public property.

The supports and guys of all signs and awnings which are not publicly owned shall be placed on private property and such supports and guys shall comply with the provisions of the building code which has been adopted by reference by the city in this Code.

## Sec. 130-10. Reserved.

## Sec. 130-11. Use of streets and sidewalks for business purposes.

Except as otherwise provided in this Code, it shall be unlawful for any person to use any part of any sidewalk, street or alley in the city for the purpose of merchandizing or conducting any trade or business.

## Sec. 130-12. Inspection of utility poles, lines, etc.

The city fire chief, building inspector, electrical inspector, police officers and other persons designated by the city shall have power and it shall be their duty to examine and inspect, from time to time, all telegraph, telephone, electric light or other poles, gas pipe lines, pipes and other fixtures in the public places within the city for the purpose of seeing that they are in a safe and suitable condition, and, whenever any such item is found to be unsafe or unsuitable for the purpose for which it is used, the person using, possessing or maintaining the same shall be notified and required to place the same in a safe and suitable condition.

## Sec. 130-13. Deposit of litter, trash, etc., on streets and sidewalks—Prohibited.

It shall be unlawful for any person to throw, place or in any wise deposit any litter, trash, refuse or garbage upon the sidewalks, streets, street rights-of-way, highways or highway rights-of-way within the city.

Attachment: 2023-026 ATTH 01 text of amd Ch 130 [Revision 1] (3933 : 2023-026 ORD Amending Chapter 130 "Streets and Sidewalks")

## Sec. 130-14. Same—Signs authorized.

The City Engineer's office is hereby authorized to place signs at locations within the city designated by the chief executive officer or the city council to give notice of the provisions of section 130-13.

## Sec. 130-15. Going upon or interfering with street or sidewalk being paved, repaired, etc.

It shall be unlawful for any person to drive, ride, walk or otherwise go upon or in any other manner interfere with any sidewalk, street or alley, or part thereof, which is being paved, repaired or constructed.

## Sec. 130-16. Removal of lanterns, barricades, etc., from site of street or sidewalk construction.

It shall be unlawful for any person to remove any lanterns, barricade or other warning device or obstruction placed to prevent the public from going onto and upon any sidewalk, street or alley or other public place which is being paved, repaired or constructed.

## Sec. 130-17. Breaking, defacing, etc., street name signs.

It shall be unlawful for any person to willfully, maliciously or negligently break, knock down, throw down or in any way deface or otherwise injure any board, plate or card carrying or having upon it the name or designation of any street or public way in the city.

## Sec. 130-18. Trees, shrubs and other plants—Clearance over sidewalks.

It shall be unlawful for any person to permit any tree, shrub, vine, palm or any other plant of any description or kind to be grown, maintained or cultivated on any property owned by the person or under the owner's control in such a manner that any portion of such tree, shrub, vine, palm or other plant overhangs or protrudes upon or over any sidewalk, unless there is a full ten-foot clearance between the surface of all portions of the sidewalk and the overhanging tree, limb, shrub, vine, palm or plant.

## Sec. 130-19. Same—Clearance over streets.

It shall be unlawful for any person to permit any tree, shrub, vine, palm or other plant of any description or kind to be grown, maintained or cultivated on property owned or controlled by the person in any manner so as any portion of such tree, vine, shrub, palm or plant hangs over or protrudes upon any street or highway in the city, unless there is a full 12-foot clearance between the surface of all portions of such street or highway and the overhanging tree, limb, shrub, vine, palm or plant.

## Sec. 130-20. Same—Location between curb and sidewalk.

(a) It shall be unlawful for any person to plant, maintain or cultivate any tree, shrub, vine, palm or plant of any description or kind which is more than three feet in height between the sidewalk and the curb of any public street or highway in the city at a lesser distance than 20 feet from the corner of any block of any such public street or highway, such measurement to be computed at the point of intersection of two lines extended parallel with the curbline of the street or avenue intersecting and causing such corner. Shade trees growing between the sidewalk and the curb of any public street or highway on or before May 27, 1941, shall not be affected by the terms of this section, until the city council passes a resolution declaring that the growing of the trees constitutes a public nuisance or hazard and orders the same removed by the owner, occupant, lessee or person in charge of such property, within five days from the date the notice is given.

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(b) All trees between the curb and sidewalk shall be planted in a uniform line and in line with the trees already planted and growing.

### Sec. 130-21. Same—Interference with traffic.

It shall be unlawful for any person to maintain any shrubbery or trees at street intersections in such a manner that the view of intersecting traffic is obstructed, hindered or obscured, or to maintain any trees or shrubbery having overhanging limbs or extending branches that obstruct, hinder or obscure the vision of operators of motor vehicles or pedestrians upon the streets, sidewalks or alleys of the city.

### Sec. 130-22. Fees payable.

A fee shall be paid to the city, in addition to all other charges, fees or deposits, for the issuance of a permit or license, as applicable, under this chapter. This fee shall be for the purpose of defraying administrative costs of issuance, including but not limited to costs of inspection and obtaining appropriate placards. The fee shall be in an amount as established by the city council from time to time and is on file in the city secretary's office, Public Works office, or city website. All fees must be paid prior to issuance.

### Secs. 130-23—130-44. Reserved.

## *ARTICLE II. RENTAL CHARGE FOR UTILITY POLES, LINES, ETC.*

### Sec. 130-45. Applicability of article.

The provisions of this article are subject to the exception set out in Texas Local Government Code Section 590.0001.

### Sec. 130-46. Imposed; amount; when payable.

Upon August 1 of each and every year, every person occupying or using the streets, highways, easements, alleys, parks or other public places in the city with poles, pipes and for other fixtures shall, as a condition to such further occupancy, pay to the city annually for such privileges, a rental equal to not less than three percent of the gross receipts received by such person, association, organization or corporation from its business conducted in the corporate limits of the city for the preceding year, which sums shall be paid to the city.

### Sec. 130-47. Report of gross receipts of payor.

Every person using or maintaining any telegraph, telephone, electric light or other poles, gas and water pipe lines, pipes and other fixtures in any of the streets, highways, easements, alleys, parks or other places within the corporate limits of the city shall, on August 1 of each year, file with the city secretary a sworn report showing the gross receipts from the business conducted by such person or within the corporate limits of the city for the preceding year, ending the June 13.

### Sec. 130-48. Examination of books and records of payor.

The city council may, when it sees fit, have the books and records of any person required to pay the rental charge imposed by this article examined by a representative of the city to ascertain whether the statement filed in

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accord with section 130-47 is accurate, but nothing in this section shall be construed to prevent the city from ascertaining the facts by any other method.

### Sec. 130-49. Receipt for payment.

Upon receipt of the rental charge imposed by this article, the city secretary shall deliver to the person paying the same a receipt therefor, which receipt shall authorize such person to use and occupy the streets, highways, easements, alleys, parks and other public ways of the city in carrying on its business for 12 months from August 1st.

### Sec. 130-50. Charge is not a tax, but is additional to taxes.

The rental charge provided for in this article is not charged as a tax, but is made for the privilege, enjoyed by the persons upon whom it is imposed of using the streets, easements, alleys and other public ways of the city in the conduct of their businesses, and such charge is additional to all ad valorem and franchise taxes and to all taxes of every nature imposed on such persons.

### Sec. 130-51. Article does not grant franchise; cancellation of privilege and refund of rental.

This article does not grant a franchise to any utility or person to use the streets, easements, alleys and other public ways and shall never be so construed by the court or otherwise. The city reserves the right to cancel the privilege granted under this article and refund the unearned rentals paid to the city.

### Sec. 130-52. Penalties.

(a) Every person who shall operate any business without the payment of the rentals provided for in this article shall be subject to the general penalty as described in section 1-5, and for each and every day that such person shall conduct such business using and occupying the streets, easements, alleys or other public ways of the city without such payment, a fine may be recovered by the city in a court of competent jurisdiction by a suit filed therein.

(b) Every person, and the local manager or agent of such person, failing or refusing to make the report required by section 130-47, or failing or refusing to allow the examination provided for in section 130-48 shall, upon conviction thereof, be fined and every day's failure or refusal shall be deemed a separate offense.

### Secs. 130-53—130-77. Reserved.

## *ARTICLE III. EXCAVATIONS*

### Sec. 130-78. Permit—Required; fees.

(a) It shall be unlawful for any person to cut into, dig up, excavate, tunnel, undermine or in any manner break up the surface of any street, sidewalk, curb and gutter or alley in the city, unless such person shall first obtain a permit therefor from the building inspection division and thereafter notify the City Engineer at least forty-eight (48) hours in advance of commencing any work permitted.

(b) In the event of an emergency in which a sewer main, conduit or other utility facility in or under any street bursts, breaks or otherwise is in such condition as to immediately endanger the property, lives, health or safety of any person, the person owning or controlling such facility shall be permitted to immediately go in and repair the break for the protection of the property, life, health and safety of individuals; provided, however, such person owning or controlling such facility shall immediately apply for an excavation permit not later than the end of the next succeeding business day during which the building inspection division office is open for

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business and shall not proceed with permanent repairs without first obtaining an excavation permit and notifying the City Engineer as provided for in this article.

(c) An excavation permit as provided for in this article shall become invalid seven (7) business days following issuance of the permit, and all excavations shall be completed on or before the permit expiration date. In the event excavation work is not completed on or before the permit expiration date, another excavation permit as provided for in this article must be obtained, with the same period of validity as provided for in this subsection.

(d) The fee for the issuance of a permit required by this article shall be in an amount as established by the city council from time to time and is on file in the city secretary's office, Public Works office, or city website.

## Sec. 130-79. Same—Application.

An application for a permit required by section 130-78 shall give the following information:

(1) The name, address and phone number of the applicant;

(2) The exact location on the street or alley of the excavation or tunneling;

(3) The nature and purpose of the work and the dimensions of the cut or break in the pavement or surface of the street, curb and gutter or alley;

(4) The date of proposed commencement of the work;

(5) The date of proposed completion of the work;

(6) The type of surface and base, if known, of the street and to what level of completion the applicant proposes to perform repair work; and

(7) Such other information as the inspection division may require.

## Sec. 130-80. Same—Types of excavations; backfill and inspection requirements.

(a) *Asphalt streets or alleys*. Permittee shall be responsible for backfilling excavated area within two inches (2”) of the finished grade with flowable fill or other material approved by the City Engineer. Upon completion of backfill, permittee shall notify the City Engineer for a required inspection; and upon the backfill passing inspection, the City will place the final asphalt course.

(b) *Concrete streets or alleys*. Permittee shall be responsible for backfilling excavated area within seven inches (7”) of the finished grade with flowable fill or other material approved by the City Engineer. Upon completion of backfill, permittee shall notify the City Engineer for a required inspection; upon the backfill passing inspection, permittee shall be responsible for pouring a minimum seven-inch (7”) Class P Concrete Pavement (3,600 psi and minimum #3 bars on eighteen-inch centers each way); and then permittee shall notify the City Engineer for a required final inspection.

(c) *Concrete sidewalk*. Permittee must request an inspection by the City Engineer prior to pouring sidewalk; and Permittee shall construct sidewalk per the requirements of section 130-2.

(d) *Asphalt trails*. Permittee shall be responsible for backfilling excavated area within two inches (2”) of finished grade with minimum six-inch (6”) Type B, Grade 3 base material or other material approved by the City Engineer; upon completion of backfill, permittee shall notify the City Engineer for a required inspection; and upon the backfill passing inspection, the City will place the final asphalt course.

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## Sec. 130-81. Same—Insurance required of applicant.

(a) Prior to the issuance of a permit under this article, the applicant shall furnish to the building inspection division satisfactory evidence in writing that the applicant has in force and will maintain in force, during the performance of the excavation work and during the period of the excavation permit, public liability insurance in the sum of not less than $50,000.00 for any one person and $100,000.00 for any one accident, and property damage insurance of not less than $50,000.00, such insurance to be issued by an insurance company authorized to do business in this state.

(b) It shall be the permittees responsibility to maintain the site in such condition that the public is protected, until final repairs are complete.

## Sec. 130-82. Same—Issuance, contents, display, etc.

(a) In the event an applicant is granted a permit under this article, the Public Works department shall issue a placard, which shall be plainly written or printed in English and reading substantially as follows:

Excavation Permit No. _____

City of Texarkana, Texas

Place: _____

Issued: _____

(date)

Expires: _____

(date)

(b) The applicant shall display the permit in a conspicuous place at the site of the work.

(c) It shall be unlawful for any person to exhibit such placard at or about any excavation not covered by such permit, or to alter or misrepresent the number of the permit or the date of issuance or the date of expiration thereof.

## Secs. 130-83—130-84. Reserved.

## Sec. 130-85. Notice to police and fire departments if street closed.

If, in the course of work performed under a permit issued under this article, it becomes necessary to obstruct the passage over a street completely, it shall be the duty of the permittee to inform the fire department and the police department of such temporary closing and to make necessary arrangements with the street division superintendent concerning barricades, detours, signing, flagmen, etc. The permittee shall be responsible for providing such traffic control to the superintendent's satisfaction.

## Sec. 130-86. Barricades.

(a) Every person to whom a permit is issued under this article shall erect barricades which meet the requirements of the then-current Texas Manual on Uniform Traffic Control Devices at the site of the work covered by the permit to inform the public that the street, sidewalk, curb and gutter or alley is being excavated and to prevent the unobstructed passage therein and to route traffic around the excavation with a minimum of interference. Acceptable warning signs shall be placed on such barricades, and all barricades shall be illuminated at night, and all lights shall be kept burning from sunset to sunrise.

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(b) It shall be the responsibility of the permittee to maintain the proper barricading and signing at the site, until notified by the city that final repair has been satisfactorily completed.

## Sec. 130-87. Bridges required in certain instances.

Where traffic must cross open trenches at intersections and driveways, suitable bridges shall be provided by the person to whom the permit was issued under this article.

## Sec. 130-88. Means of ingress and egress for residents to be provided.

Streets, driveways or alleys affected by work under a permit issued under this article shall at all times be maintained in a condition which will provide easy ingress and egress to the residents living thereon.

## Sec. 130-89. Use of cleated equipment.

No person performing work under a permit issued under this article shall use equipment with cleats, without pads on any surfaced street.

## Sec. 130-90. Trench walls.

Whenever any excavation is made on a surfaced street, the trench walls shall be substantially vertical, with a maximum width at the top no greater than 24 inches more than the outside diameter of the pipe. The trench walls shall be sufficiently braced to prevent material under the undisturbed pavement from sluffing. Trench protection shall be required if the trench is five feet (5') or more in depth.

## Sec. 130-91. Protection of sewers.

Where sanitary sewers are encountered in making an excavation under this article, every effort shall be made to keep them undamaged. Should the sanitary sewer be damaged, it shall be completely cleaned and restored to its original condition. Where the grades on sanitary sewer lines are such that they must pass through storm sewers, a satisfactory concrete box shall be installed with a clean out manhole, and the sanitary sewer shall be laid through the box with cast iron pipe as directed by the City Engineer.

## Sec. 130-92. Backfilling, base repair and surface repair.

(a) *General.* Backfilling of excavations shall be the responsibility of the permittee. Base and concrete surface repair may be performed by the permittee or by the city at the city's option. Backfilling shall be accomplished as soon as practicable.

(b) *Materials and methods for backfilling.* Material used for backfilling may be that material excavated or other similar material, provided that the material used for backfilling is free of vegetation or other deleterious matter, contains no rock, broken concrete or broken asphaltic pieces larger than three inches maximum dimension in any plane, and is of such character and moisture content that it will stabilize when compacted. The backfill material shall be placed in six-inch loose lifts, and each lift shall be thoroughly compacted to prevent excessive settlement. This procedure will be continued, until the excavation is totally filled, unless base repairs and/or surface repair is to follow immediately, in which case the backfill procedure may stop at the elevation such base repair will start.

(c) *Materials and methods for base repair.*

(1) *Gravel base.* Material used for repair of existing gravel base streets and alleys shall meet the minimum specifications for Type B, Grade 3, flexible base material, as detailed in TxDOT Standard Specs. A minimum of ten inches, compacted depth, base material shall be placed in two equal lifts, with each lift

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thoroughly compacted. Where asphalt surface repair is to immediately follow base repair, the top two inches of base material may be omitted to allow for placement of the asphalt.

(2) *Concrete, brick and soil cement base with asphalt surface.* Material used for repair of existing concrete, brick and soil cement base without asphalt surface streets and alleys shall meet the minimum specification for Class C, 3600 psi, 28-day strength concrete, as detailed in TxDOT Standard Specs. A minimum of eight-inch depth shall be placed and broom-finished at an elevation to allow placement of a two-inch depth asphalt surface course. The concrete base shall be protected from heavy loading and allowed to cure a minimum of three days prior to placement of asphalt surface and opening for traffic.

(3) *Concrete or brick base and surface.* Material used for repair of existing concrete or brick base and surface streets and alleys shall meet the minimum specifications noted in subsection (c)(2) of this section. A minimum of eight-inch depth shall be placed and broom-finished to match the existing undisturbed surface profile around the excavation. The concrete shall be protected from heavy loading and allowed to cure a minimum of three days prior to opening for traffic.

### Sec. 130-93. Valve boxes, manholes, etc., to be brought to finished grade.

All valve boxes, manholes and the like shall be brought to the true finished grade of paved streets by persons making excavations under this article.

### Sec. 130-94. City and employees not liable for damages.

This article shall not be construed as imposing upon the city or any official or employee, any liability or responsibility for damages to any person injured by the performance of any excavation work for which an excavation permit is issued hereunder, nor shall the city or any official or employee thereof be deemed to have assumed any such responsibility or liability by reason of inspections authorized herein, or the issuance of any permit, or the approval of any excavation work.

### Secs. 130-95—130-116. Reserved.

## *ARTICLE IV. ACCESS DRIVEWAYS*

### Sec. 130-117. State regulations—Adopted.

The pamphlet known as the "Access Management Manual," published July 2011, by the Texas Department of Transportation, is hereby adopted by the city council as though set out herein in full. The Public Works Department shall maintain a copy of this pamphlet on file at all times.

### Sec. 130-118. Commercial driveways; traffic study required.

A Traffic Impact Study/Analysis shall be required for all new, proposed commercial driveways; and the cost of such study/analysis shall be borne by the property owner or developer unless waived in writing by the City Engineer.

### Sec. 130-119. Curbs for new driveways.

Commercial access driveways within the city under construction on April 27, 1954, or altered, repaired or rebuilt after such date, and any commercial access driveways built after such date anywhere within the city limits

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shall be provided with a curb not less than ten feet from the corner of the intersection streets' right-of-way, such curb shall conform to that line established for curbs for each of the intersection streets.

## Sec. 130-120. Minimum construction requirements.

That portion of access driveway constructed upon public street rights-of-way (i.e., from curbline or pavement edge to street right-of-way line) shall meet the minimum criteria for use classification as follows:

(1) Driveways providing singular access from the street to a single residential unit shall be constructed of Class "A" (3,000 psi test) concrete. Minimum slab thickness shall be four inches, if reinforced with six inches by six inches by ten-gauge welded wire mesh or its equivalent, or five inches if nonreinforced. Subgrade shall be well compacted, and an expansion joint shall be installed at the right-of-way line. Where existing curb, gutter and/or street pavement must be removed to allow proper construction, the limits of the area to be removed shall be saw-cut or scored in an approved manner, and the removal accomplished so as to provide a neat line and a vertical face exposed. The use of alternate materials and methods will be considered, provided a detailed design by a registered professional engineer is submitted, including the engineer's certification that the alternate proposed will provide equal or greater strength and durability than those specified above.

(1-a) When a rear yard of a single residential unit abuts a street, the City Engineer may approve a driveway providing singular access from the street to the rear yard if, in the discretion of the City Engineer, the rear yard cannot be reasonably accessed from a driveway described in section 130-120(1). Factors to be considered by the City Engineer when exercising such discretion may include a change in elevation, natural barriers (e.g., creek or drainage ditch), drainage facilities (e.g., box culvert or improved stormwater drain), the existence of other natural or artificial barriers, or, if applicable, the flood plain. Any driveway approved under this subsection must meet the minimum construction requirements of section 130-120(1), have a minimum width of 12 feet, and not exceed a maximum width of 15 feet. This subsection does not restrict bicycle or pedestrian facilities. Where lots have double frontage, running through from one street to another, nothing in this Code authorizes a driveway connecting both streets.

(2) Driveways providing access from a street to a parking lot; to a private drive or street serving multiple-residential units; to educational, medical or religious facilities; to public or private office facilities and to any retail, commercial or industrial type facilities shall be constructed of Class "A" (3,000 psi test) concrete on a well compacted subgrade. Minimum slab thickness shall be five inches, if reinforced with six inches by six inches by six-gauge welded wire mesh, or six inches if nonreinforced. Removal of existing curb, gutter and/or street pavement shall conform to the requirements set forth in subsection (1) of this section, as will consideration of use of alternate materials and methods of construction.

(3) All driveways shall be constructed to maintain or improve the drainage conditions in the area of the driveway. Gutter line grade shall be carefully maintained and driveway construction shall be such that storm flow is maintained in the gutter. Where driveways cross drainage ditches or swales, the City Engineer's office shall determine pipe size or capacity requirements for driveway culverts or swale sections as conditions dictate. In general, the minimum pipe size allowed will be 18 inches in diameter. Fifteen-inch diameter pipe may be allowed only in instances where larger diameter pipe is not needed and could not function properly due to conditions. In general, the minimum culvert length shall be the paved driveway width, plus two-foot shoulders each side if vertical headwalls are constructed. Otherwise, add a minimum additional two feet length each side for each one-foot depth from top of driveway to bottom of ditch to provide a maximum 2:1 end slope on backfill. Culvert pipe shall be of approved reinforced concrete construction. Alternate pipe material that will be considered, includes metals and plastics which are designed to carry H-15 loadings, are coated or treated to withstand corrosion, and provided that ends are protected by headwalls or concrete sloped end treatment. In general, the location of the culvert pipe in relation to the street pavement edge shall be a minimum of three feet for shoulder width plus three feet for each foot of ditch depth to provide a maximum 3:1 front slope for the ditch. Adjacent ditch lines shall be transitioned and reshaped as necessary to accommodate

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the culvert location. The driveway over the culvert pipe should be swaled where possible to provide overflow capability.

(4) Construction and maintenance of the access driveway is the responsibility of the owner of the property served. When requested, the city may, at its option, assist in the construction or reconstruction of driveway culverts only to the extent of installing and backfilling the culvert pipe furnished by the property owner and reshaping adjacent ditches.

## Sec. 130-121. Curbs for existing driveways.

At access driveways existing in the city prior to April 27, 1954, should the city council find, by resolution with notice to the property owner, lessee and any person having any interest in the property, that the lack of curbing at the corner of intersecting streets constitutes a traffic hazard and that curbing is necessary to the public convenience for the control of traffic, the city council may order the City Engineer to erect a proper curb on the right-of-way, at the expense of the city.

## Sec. 130-122. Parking aprons for angle parking between curb or pavement edge and property line.

Permits for the construction of parking aprons for angle parking between the curb or pavement edge and the property line shall be issued only for city streets classed as secondary or minor and only under the following conditions:

(1) The parking apron shall extend the full length of the block from curb radii to curb radii of adjoining side streets.

(2) The parking apron shall be constructed of Class "A" (five sack, 3000 psi test) concrete, reinforced with six inches by six inches by six welded wire mesh. The apron slab shall be a minimum of six-inch thickness and shall be placed on a prepared, well compacted subbase. An integral concrete curb shall be constructed along the edges of the parking apron which do not connect to the street proper. Said curb shall be six inches minimum thickness and extend a minimum vertical distance of six inches above the parking slab.

(3) The grantee shall construct and maintain an unobstructed pedestrian walk along and adjoining the curb of the parking apron for the length thereof. The walk shall be constructed of Class "A" concrete (five sack, 3,000 psi test), it shall be a minimum of four feet wide and four inches thick and shall be poured on a prepared, well compacted subbase.

(4) Drainage shall be maintained by the installation of drainage tile where necessary and/or by grading the parking apron to drain to existing gutters, catch basins or drainageways.

## Sec. 130-123. Plans and specifications; compliance with article; permit required; fees.

(a) *Application for permit.* Any person desiring to construct an access driveway or single parking apron connecting to any street or highway within the corporate limits of the city shall make application for a permit from the department of public works of the city. The applicant for such permit shall submit plans and specifications covering the work proposed showing all dimensions, property lines, sizes and other pertinent information necessary for review. Such information may be included on plat plans presented for building permits in case of new construction. In the event such work is contemplated along a state highway, two sets of plans and specifications will be required.

(b) *Permit required.* A valid permit to construct access driveways and/or angle parking aprons will be required in addition to building permits.

(c) *Fees set.* The fee for the issuance of a permit to construct access driveways or parking aprons along any street or highway in the corporate limits of the city shall be in an amount as established by the city council from time

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to time and is on file in the city secretary's office or city website. The issuance of this permit shall relieve the grantee of the grantees obligation to secure a curb cut permit as required in article III of this chapter.

(d) *Compliance with article.* The City Engineer shall require all plans and specifications to be submitted to the engineer by either the contractor, property owner or other person having an interest in the property, who applies for a building permit, to show compliance with this article, and should the person applying for a building permit refuse to comply with this article, the permit shall not be issued. If the plans and specifications show a compliance with this article and the permit is issued, and the construction fails to comply with this article, the City Engineer shall immediately notify the contractor, owner or person authorizing the building and construction, and the chief executive officer of the city and, if necessary, the chief executive officer may instruct the city attorney to institute proceedings in any court to require compliance with this article, or cessation of the work until the article is complied with.

### Secs. 130-124—130-144. Reserved.

## *ARTICLE V. STREET IMPROVEMENT STANDARDS*

### Sec. 130-145. Required adherence.

All street and alley improvements constructed within the city limits or within its jurisdiction shall be constructed in conformance with the terms and provisions of this article and TxDOT Standard Specs.

### Sec. 130-146. Definitions.

For the purpose of this article, the following words and phrases used in this article shall have the following meanings, except where the context clearly indicates a different meaning:

*Arterial street* means a street designed to facilitate rapid and heavy traffic movements and which primarily provides vehicular circulation to various sections of the city and which, as a secondary function, provides direct access to abutting property.

*Collector street* means a street used primarily for circulation within a neighborhood to carry traffic from minor streets to arterial streets or to carry traffic through or adjacent to commercial, industrial or high-population density areas.

*Consulting engineer* means a professional engineer or engineering firm authorized to practice in the state and engaged by the city or by any developer to design and supervise improvement projects.

*Developer* means any private individual or group of individuals requesting or implementing public improvements.

*Director of public works* means the director of public works of the city and the county.

*Planning and zoning commission* means the planning and zoning commission of the city and the county.

*Residential street* means a street used primarily for access to abutting residential property.

All other words and phrases used in this article shall have the generally accepted meanings consistent with their usage by the engineering profession or the legal profession, whichever is applicable.

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## Sec. 130-147. Reserved.

## Sec. 130-148. Right-of-way.

Prior to construction of any street improvement, which is to be operated and maintained by the city, the following right-of-way widths shall have been dedicated to the public by duly recorded formal instrument:

(1) *Arterial streets* 80 to 100 feet or as established by the provisions of the master plan of the city and by the provisions of the urban transportation study.

(2) *Collector streets.* Not less than 60 feet.

(3) *Urban section residential streets.* Not less than 50 feet.

(4) *Rural section residential streets.* Not less than 60 feet.

(5) *Residential or commercial alleys.* Not less than 20 feet.

## Sec. 130-149. Pavement widths and street section.

(a) *Urban section street.* In general, all street improvements constructed within the city's jurisdiction shall be of urban cross section with curb and gutter and shall be designed and constructed to the following minimum widths measured back-to-back of curb:

(1) *Arterial streets.* Fifty feet minimum width.

(2) *Collector streets.* Thirty-seven feet minimum width.

(3) *Residential streets.* Thirty-one feet minimum width.

(4) *Boulevard streets.*

a. Residential—Two 20 feet minimum width lanes;

b. Collector—Two 25 feet minimum width lanes.

(5) *Residential collector streets.* Urban streets designated as residential collector shall be constructed to a residential street width of 31 feet, up to a point which is a minimum of 150 feet from the edge of pavement of any arterial or collector street which it is intersecting. A transition from 31-foot width to 37-foot width will be accomplished in 50 feet of street length with the 37-foot width carried the remaining 100 feet to the intersection.

(b) *Rural section streets.* Where all lots within a subdivision are platted having a land area of 0.75 acre (32,670 square feet) or more and having minimum frontage of 125 feet on any adjacent street, rural section streets will be allowed. In instances where there are lots platted within a subdivision having a land area of 0.50 acre (21,780 square feet) or more and having minimum frontage of 100 feet on any adjacent street, the city planning and zoning commission may authorize and approve rural section street construction at the time of plat approval. In these instances, minimum widths shall be as follows:

(1) *Arterial streets.* As determined necessary on an individual basis.

(2) *Collector streets.* A total minimum crown width, measured from outside edge of shoulder to outside edge of shoulder of 36 feet with a minimum pavement surfaced width of 24 feet.

(3) *Residential streets.* A total minimum crown width, measured from outside edge of shoulder to outside edge of shoulder of 30 feet with a minimum pavement surfaced width of 24 feet.

(4) *Residential collector streets:* Rural streets designated as residential collector shall be constructed to the rural residential width set forth in subsection (b)(3) of this section, up to a point which is a minimum of 150 feet from the edge of pavement of any arterial or collector street which it is intersecting. A transition

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from total crown width of 30 feet with pavement surfaced width of 24 feet to a total crown width of 36 feet with pavement surfaced width of 24 feet shall be accomplished in 50 feet of street length with the 36-foot crown width and 24-foot pavement width carried the remaining 100 feet to intersection.

(c) *Alley section.* Alley improvements may be constructed of such cross section as determined best for the particular location and as approved by the City Engineer. Minimum pavement surfaced widths shall be 12 feet, edge to edge.

(d) *Cul-de-sac.* The minimum outside pavement diameter for the cul-de-sac or closed-end turnaround, shall be 100 feet, whether urban or rural section. The minimum pavement width around the cul-de-sac shall be 31 feet back-to-back of curb for urban section improvements and 28 feet edge-to-edge of pavement for rural section improvement, with any resultant center unpaved island construction with curb and gutter around its perimeter.

## Sec. 130-150. Standard cross-sectional shapes.

(a) *Street crown.* All street sections shall be constructed with a cross section that will provide minimum transverse slopes as follows:

(1) Three percent for residential and residential collector streets.

(2) Two percent for major collector and arterial streets from centerline to gutter line or centerline to outside edge of shoulder.

On residential and residential collector streets the cross slope may transition to a three percent slope from gutter line to gutter line for cross-drainage purposes where allowed by the City Engineer. This transition shall occur over a 200-foot length of street.

(b) *Monolithic concrete curb.* A concrete curb constructed monolithically with a concrete street slab shall be six inches in height above gutter elevation, have a two-inch top width, a three-inch radius top to face, a three-inch face at 30 degrees to vertical, thence a four-inch radius face to gutter low point, for a total curb width at gutter line of 9.5 inches.

(c) *Concrete curb and gutter section.* Concrete curb and gutter sections constructed independently shall be a minimum 24-inch width, minimum 12-inch height, and the curb shape shall conform to that described in subsection (b) of this section for monolithic curb.

(d) *Mountable curb.* A mountable curb may be utilized in lieu of the curb section defined in subsection (b) or (c) of this section at the developer's option. The design of said mountable curb shall be as shown in section 130-155 or as approved by the City Engineer.

(e) *Parallel drainage, rural street section.* Where rural section street construction is allowed under this chapter or where existing rural section border streets abut a subdivision proposed for development, the street drainage within or abutting such subdivision shall be designed and constructed to meet the criteria in Chapter 120 of this Code and the current adopted City of Texarkana Stormwater Management Design Manual.

## Sec. 130-151. Streets and alleys; traffic study required; minimum standards of structural design and construction.

All streets and alleys shall have Traffic Impact Study/Analysis and an individual-engineered design for pavement and subgrade based on specific site conditions and the projected traffic load and volumes that meets the then-current edition and supplements thereto, if any, of the American Association of State Highway and Transportation Officials (AASHTO) pavement structures design guide, adopted herein by reference. The requirements below are minimum standards:

(a) *Roadbed soils.* Roadbed soils with a plasticity index (P.I.) of 20 or greater shall not be considered acceptable subgrade material. Such high P.I. material must be stabilized in a manner approved in writing by the City

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Engineer. The design engineer shall require soil tests at each apparent change of soil characteristic along the street length or at intervals not exceeding 300 feet of street length. In instances where roadbed soil is stabilized or replaced, appropriate laboratory tests shall be performed in a like manner on the new or stabilized material.

(b) *Subgrade.* Acceptable roadbed soils or subbase materials shall be worked a minimum six-inch depth and compacted to a minimum 95 percent Standard Proctor Density to be considered acceptable subgrade for further construction. Prior to testing for subgrade density, a certified independent testing laboratory under the direction of the design engineer shall supervise the proof rolling of the subgrade in accordance with TxDOT Standard Specs. Once proof rolling is complete and any required repairs made, the independent testing laboratory shall test for required density with a minimum of one test for each soil type or at a minimum of one test for each 300 feet of street length or part thereof.

(c) *Rigid pavement design.* All concrete pavements shall be Class P as defined by TxDOT Standard Specs.

(1) *Arterial streets.* Over the required subgrade or subbase, the minimum thickness requirement for Portland cement concrete (PCC) pavement shall be eight inches with #3 steel reinforcing bars 24 inches c/c or #4 steel reinforcing bars 36 inches c/c spacing. The concrete pavement shall be properly placed and cured with doweled expansion and construction joints, plus neatly sawed dummy joints at approved spacing. All joints shall be sealed with material approved in writing by the City Engineer and in a timely manner approved in writing by the City Engineer. Any uncontrolled cracks occurring shall be saw cut or routed and properly sealed. The actual placement of the concrete pavement shall be monitored by a certified independent testing laboratory under the direction of the design engineer to ensure that the paving activity complies with TxDOT Standard Specs and the mix design, including slump, concrete temperature, and water/cement ratio. Concrete strength tests will be required at a minimum of one test per each 250 cubic yards or part thereof.

(2) *Collector streets.* Over the required subgrade or subbase, the minimum thickness requirement for Portland cement concrete (PCC) pavement shall be six inches with #3 steel reinforcing bars 24 inches c/c or #4 steel reinforcing bars 36 inches c/c spacing. The concrete pavement shall be properly placed and cured with doweled expansion and construction joints, plus neatly sawed dummy joints at approved spacing. All joints to be sealed with material approved in writing by the City Engineer and in a timely manner approved in writing by the City Engineer. Any uncontrolled cracks occurring shall be saw cut or routed and properly sealed also. The actual placement of the concrete pavement shall be monitored by a certified independent testing laboratory under the direction of the design engineer to ensure that the paving activity complies with TxDOT Standard Specs and the mix design, including slump, concrete temperature and water/cement ratio. Concrete strength tests will be required at a minimum of one test per each 250 cubic yards or part thereof.

(3) *Residential streets.* The minimum standards established for collector streets in subsection (c)(2) of this section shall apply for residential street rigid pavement construction.

(d) *Flexural pavement design – all streets.*

(1) *Nonstabilized flexible base.* Over the required subgrade or subbase, the minimum thickness requirement for a nonstabilized flexible base course shall be one of the following:

a. Pit run gravel shall be eight inches in thickness with a plasticity index (P.I.) of not less than five nor more than 15. It shall meet gradation and all other requirements as listed for a Type B, Grade 3 flexible base material under TxDOT Standard Specs.

b. Crushed stone shall be six inches in thickness with a meeting gradation and all other requirements as listed for a Type A, Grade 1 flexible base material under TxDOT Standard Specs. The non-stabilized flexible base material shall be shaped and compacted to a minimum 95 percent Standard Proctor Density and properly primed with an approved asphalt to be considered acceptable for further construction or surfacing. Laboratory density tests shall be performed at adequate intervals to ensure consistent density. The responsible design engineer shall determine appropriate test locations, with a minimum of one test for each 300 feet of street length or part thereof.

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(2) *Cement Treated Base.* A cement treated base shall be engineered to meet requirements of TxDOT Standard Specs; the thickness of the sub-base must either be a minimum of 8" and a minimum of 40 lbs. of cement per square yard, or as approved in writing by the City Engineer.

(3) *Hot-mix asphaltic concrete (HMAC) flexible base.* Over the required subgrade or subbase, an approved asphalt primer shall be applied, then a minimum thickness of five inches of HMAC flexible base may be applied. The HMAC base shall meet gradation and all other requirements for Type A (coarse-graded base course) or approved equal as listed under TxDOT Standard Specs.

(4) *Flexible surfacing.* The standard flexible surfacing for arterial and collector streets shall be a minimum thickness of two inches of hot-mix asphaltic concrete (HMAC) meeting the gradation and all other requirements for Type D (fine-graded surface course) or approved equal as listed under TxDOT Standard Specs. The standard flexible surfacing for residential streets shall be a minimum thickness of 1.5 inches of hot-mix asphaltic concrete (HMAC) meeting the gradation and all other requirements for Type D (fine-graded surface course) or approved equal as listed under TxDOT Standard Specs.

(5) *Design speed*. The horizontal and vertical alignment shall meet the following minimum design speed as defined in the AASHTO "Policy on Geometric Design of Highways and Streets" manual (or "green book"):

a. Arterial: 50 miles per hour.

b. Major collector: 35 miles per hour.

c. Residential and residential collector: 30 miles per hour.

## Sec. 130-152. Engineering requirements.

(a) Any street constructed within the jurisdiction of this article shall be designed by a qualified professional engineer, duly registered to practice engineering in the state. The engineers signed, sealed plans and specifications, design data and supporting test reports for such street construction shall be submitted to and approved by the City Engineer, prior to start of any construction. Where the construction falls in the city's extraterritorial jurisdiction, a complete set of design data shall be submitted to the appropriate county commissioner for the engineers review and comments, prior to the start of any construction.

(b) As construction proceeds, the design engineer shall submit status reports to the City Engineer, accompanied by appropriate certified test reports, at completion of subbase or subgrade preparation, at completion of flexible base construction where applicable, during flexible surfacing or rigid pavement construction as appropriate. Upon completion of construction of any streets improved hereunder, the design and supervising engineer responsible for the street shall submit one reproducible set of as-built plans, signed, sealed and dated, together with the engineer's signed, sealed, dated statement that the work was performed under the engineer's supervision, that the engineer has inspected same and the construction does conform in all respects to the requirements and provisions of this article. Where construction occurred in the city's extraterritorial jurisdiction, a complete set of as-built data shall be submitted to the appropriate county commissioner.

(c) The City reserves the right to inspect thoroughly all construction improvements that are proposed or intended to be dedicated as public improvements; however, the City's reservation or exercise of a right to inspect shall not relieve nor be construed as relieving the professional engineer of the requirements of subsections (a) and (b) of this section.

## Sec. 130-153. Acceptance of completed improvements.

Upon completion of any street constructed under the jurisdiction of this article, the prime contractor responsible for the street construction or the developer of the property shall file with the city, on forms acceptable to the city attorney, a contract guaranteeing the correction or replacement of any or all construction that is found faulty or inadequate in any respect during the 12-month period immediately following completion of construction,

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submission of an as-built plan and acceptance by the City Engineer. Acceptance by the City Engineer shall be in writing following receipt of as-built data and a maintenance contract.

## Sec. 130-154. Alternative surety provisions for construction of certain streets.

(a) No building permit, electrical permit or plumbing permit shall be issued by the city for the construction or improvement of any property abutting or adjoining any street where permanent street improvements are constructed or reconstructed within the city under the provisions of this article, unless and until such street fully conforms in all respects with the provisions of this article, except as is provided in subsection (b) of this section.

(b) Building, electrical, plumbing and related development permits may be issued by the city for private development on platted lots abutting a street which has not been fully constructed to comply with subsection (a) of this section, upon the providing of alternate surety in the manner as hereinafter set forth. Notwithstanding the issuance of development permits, final inspection and/or occupancy permits will be withheld, until such street has been completed and does comply as required in subsection (a) of this section.

(1) In order to secure development permits prior to city acceptance of abutting streets, the subdivider or developer of the property shall post performance and payment bonds or an irrevocable letter of credit with the city, in favor of the city and in a form acceptable to the city attorney, in an amount not less than 100 percent of the estimated cost of constructing such abutting streets.

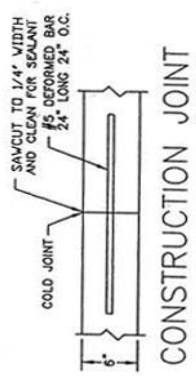
(2) Performance and payment bonds shall be from an approved surety company licensed to do business in the state and shall be so constructed as to guarantee the completion of specified street improvements, to comply with the requirements of this article within the 12-month period immediately following date of issuance, or the surety company will cause satisfactory completion within the following 12-month period.

(3) The irrevocable letter of credit shall be from a national bank, state bank or savings and loan association located in the state and shall be so constructed as to guarantee the completion of specified street improvements to comply with the requirements of this article within the 12-month period immediately following date of issuance, or the city shall have the right to require the institution issuing the letter of credit to immediately pay into an escrow account, in the name of the city, an amount equal to the cost of completing the specified street improvements, as estimated by the city, up to the original total value stated in such letter of credit.

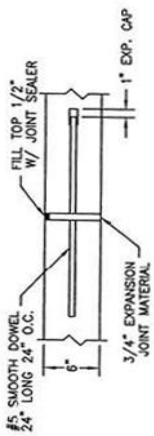
(4) The responsible design engineer employed by the developer shall develop an estimate of cost for the specified street improvements to be covered by the above-required bonds or letter of credit and shall submit a signed, sealed copy of such estimate, together with the plans and specifications for the improvements, for approval by the city engineer prior to submittal of bonds or letter of credit by the developer.

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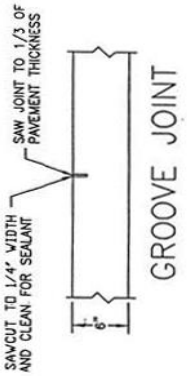
**Sec. 130-155. Standard details.**



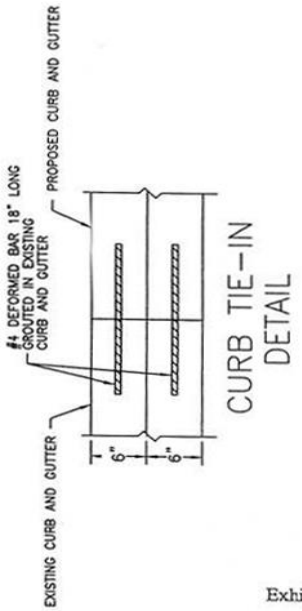

CONSTRUCTION JOINT




EXPANSION JOINT



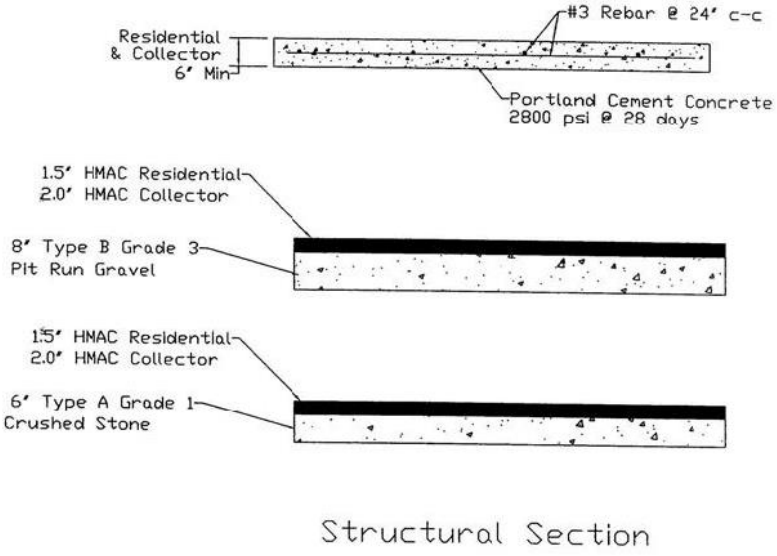

GROOVE JOINT




CURB TIE-IN DETAIL

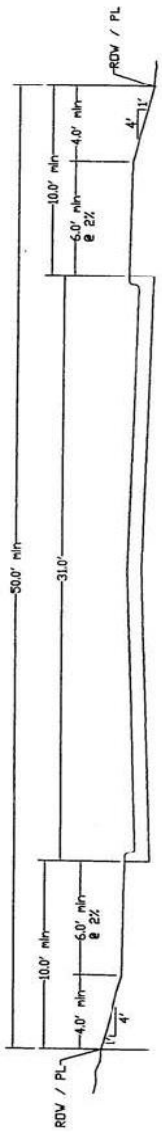
Exhibit "A"

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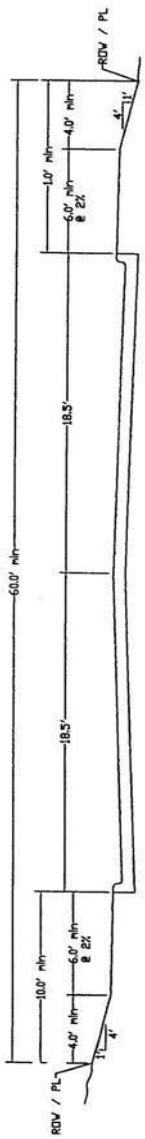

Structural Section

Attachment: 2023-026 ATTH 01 text of amd Ch 130 [Revision 1] (3933 : 2023-026 ORD Amending Chapter 130 "Streets and Sidewalks")



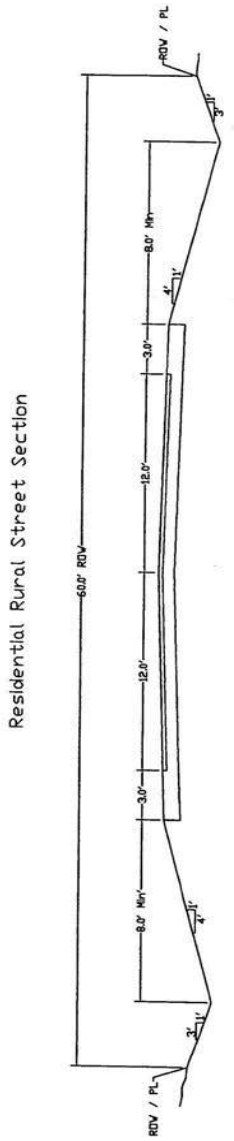

Residential Urban Street Section

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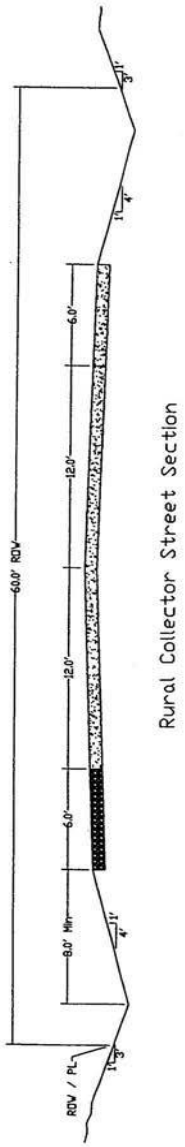



Urban Collector Street Section

Attachment: 2023-026 ATTH 01 text of amd Ch 130 [Revision 1] (3933 : 2023-026 ORD Amending Chapter 130 "Streets and Sidewalks")

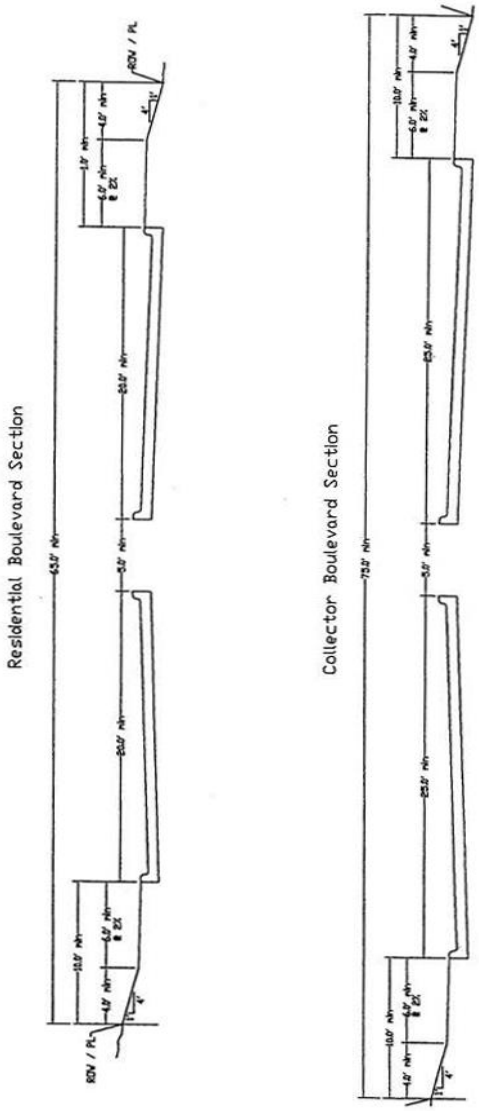



Attachment: 2023-026 ATTH 01 text of amd Ch 130 [Revision 1] (3933 : 2023-026 ORD Amending Chapter 130 "Streets and Sidewalks")




Rural Collector Street Section

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2023-026 ATTH 02

| Service/Permit | FY23 Rate | Per Unit | Other Information |
|---|---|---|---|
| License to encumber ROW - Surface, subsurface, air space, bldg encroachment *130-5(d) but not CBD sidewalks* *Combines master fee list items 275, 278, 279* | 10% FMV | Per square foot | Fair market value per square foot cost is a one-time fee. License fee minimum $200. |
| License to encumber ROW - Ornamental device; and Downtown CBD public sidewalk *Sidewalk encumbrance 130-5(d)(1-a) CBD only and ornamental 130-5(e)(3) combines master fee list Items 280 + 281* | $100 | Per request | This is a one-time fee. |
| Ground-level license to encumber ROW, sign only *master fee list item 276* | $10.00 | Per each encumbrance | <blank space on fee list> |

130-80 excavation fees

| Service/Permit | FY23 Rate | Per Unit | Other Information |
|---|---|---|---|
| Excavation, asphalt (streets, alleys, trails) | $50.00 fee AND cost of asphalt needed for street cut + 15% | Per request | Permit invalid (7) business days following issuance |
| Excavation, concrete (streets, alleys, sidewalks) | $50.00 | Per request | Permit invalid (7) business days following issuance |

Attachment: 2023-026 ATTH 02 fees (3933 : 2023-026 ORD Amending Chapter 130 "Streets and

# Summary of Proposed Changes

# to Chapter 130 of the Code of Ordinances

1. 130-1 – add shared use path
2. 130-2 - add construction requirements for sidewalks and shared use paths. Changed responsibility of establishing grade of sidewalks to property owner and request inspection of City Engineer
3. 130-3 – substantial revision
    a. a – Developers and property owners are required to construct sidewalks along the street when they are developing or redeveloping commercial. Sidewalks are also required for all new residential subdivisions, and sidewalks will be required to be constructed along any new street construction. Shared use paths may be required.
    b. b – for existing corridors, property owners are required to construct sidewalks along the street when improving the property to increase its value; but this will not apply to existing corridors where sidewalks do not exist nor are in City active transportation plan calls unless owner receives notice from City Engineer
    c. c - Defined maintenance responsibility of sidewalks.
    d. d – add shared use path
    e. e – Add appeal process to Zoning Board of Adjustment
4. 130-4 – Removed outdated process for city council directing owners to construct or repair sidewalks. Repurposed and revised reference from later part of Code to adopt by reference TxDOT Standard Specifications.
5. 130-5(d)
    a. Removed nonrefundable deposit requirement
    b. (1-a)e - added one time license fee for CB district of $100
    c. (4) substantial revision incorporating elements of current (e)(1)
        i. Changed license fee for all surface, air space, and subsurface encroachments to be 10% of fair market value.
        ii. City will be responsible for determining Fair Market Value instead of applicant.
        iii. Defined that should use value of land without improvements for determining Fair Market Value
6. 130-5 e – relocated pertinent material from subsection (1) to 130-5(d)(4)
7. 130-6 – additional enforcement options for unlicensed ROW encumbrances
8. 130-10 – high-rise signs relocated to Ch 105
9. 130-11 – proviso added to reflect licensing process otherwise provided in code provisions
10. 130-22 – revised fee payment and requirement all fees must be paid prior to permit/license issuance
11. 130-78 – added 48 hours notice to anyone performing excavations in any city street or alley and excavation permit is only valid for 7 days after issuance
12. 130-80 – Redefined excavation types and requirements and fees (fees added to Master Fee List)
    a. Excavation, asphalt streets or alleys - $50 plus cost of asphalt needed plus 10%
    b. Excavation, concrete street or alley - $50
    c. Excavation, concrete sidewalk - $50

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d. Excavation, asphalt trails - $50 plus cost of asphalt needed plus 10%

13. 130-81 – deposit provisions removed, renumber 130-82 to 130-81
14. 130-82 – fee provisions relocated, renumber 130-84 to 130-82
15. 130-83-84 – relocated sections now reserved
16. 130-86 – added barricades must meet TMUTCD
17. 130-90 – added trench protection required for depth of 5’ or more
18. 130-92 (c) (1) and (2) – revised reference to TxDOT Standard Specs
19. 130-117 – repurposed 130-118 provision for city secretary to maintain copy of access mgt. manual to Public Works Dept.
20. 130-118 – removed requirement for city secretary to maintain copy of access mgt. manual, require Traffic Impact Study for all new commercial driveways
21. 130-145 – add TxDOT Standard Specs to augment street and alley improvement standards
22. 130-147 – relocated TxDOT standard specs applicable to earlier position in chapter
23. 130-149
    a. Changed min. width for arterial street to 50’
    b. Removed regulation for cross or circular streets
    c. Grammatical errors
24. 130-150 e – revise drainage provisions with reference to new Stormwater Design Manual
25. 130-151 – added preface that all streets and alleys should have a Traffic Impact Study and an individual engineered design completed for pavement and subgrade
    a. 130-151 (a) - Revised testing of subgrade to 300’ instead of 500’
    b. 130-151 (c)- All rigid pavement shall be Class P as defined by TxDOT Standard Specs
        i. Added minimum guidelines for arterials, collectors, and residential streets
    c. 130-151 (d) – Combined min. requirements for all streets for flexible pavement design. Added cement treated base and design speed regulations.
26. 130-152 – added City right to inspect construction improvements proposed or intended to be dedicated to City.

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# Chapter 130 STREETS AND SIDEWALKS

## *ARTICLE I. IN GENERAL*

### Sec. 130-1. Permit to construct sidewalks, curbs, and ~~curbs~~shared use paths.

It shall be unlawful for any person to construct any concrete sidewalk ~~or any~~, curb, or shared use path within the city, without first having obtained a permit therefor from the city council. Such permit may be either a special permit for each job or a general permit for all such work to be done by the person to whom the permit is issued.

### Sec. 130-2. Sidewalks, curbs, and ~~curbs~~shared use paths to conform to established ~~grades; duty of city engineer to furnish grades~~criteria; minimum construction requirements.

(a) All sidewalks, curbs, and ~~curbs~~shared use paths constructed in the city shall be so constructed as to conform to the established grade and lines of the streets, sidewalks and alleys of the city~~, which shall be obtained from~~ and as to meet all applicable statutory and regulatory requirements under the ~~city engineer before the work is begun.~~Americans with Disabilities Act. It shall be the duty of the ~~city engineer, in person or by an assistant,~~property owner to determine and mark the established grade, or, in case there is no established grade, the natural and probable grade of any sidewalk or alley, ~~upon the request of the owner of any abutting lot or part of a lot or block, within four days from the request of the owner of such lot or part of a lot or block.~~and to request inspection by the City Engineer prior to pouring sidewalk.

(b) All sidewalks constructed in the city shall be so constructed (i) to a minimum width of five feet (5') unless a different width is approved in writing by the City Engineer, (ii) of Class "A" (3,000 psi test) concrete, and (iii) to a minimum slab thickness of four inches, reinforced with six inches by six inches by ten-gauge welded wire mesh or approved equivalent.

(c) All shared use paths constructed in the city shall be so constructed (i) to a minimum width of eight feet (8') unless a different width is approved in writing by the City Engineer, (ii) of Class "A" (3,000 psi test) concrete, and (iii) to a minimum slab thickness of four inches, reinforced with six inches by six inches by ten-gauge welded wire mesh or approved equivalent. Other material can be substituted upon written approval of the City Engineer.

### Sec. 130-3. Construction of sidewalks by property owners and developers.

(a) *Generally.* For new commercial development or redevelopment or new residential development, it shall be the duty of the developer of the property and every ~~person owning~~owner of any lot~~,~~ or part of a lot or block~~,~~ adjoining or abutting any public street or highway in the city to grade and construct sidewalks in front of and alongside of the lot or part of the lot or block ~~owned by the person, at the persons own expense, when notified to do so as provided in subsection (b) of this section.~~ so owned; and in new development, sidewalks shall be constructed on both sides of street at the time the street is constructed. Prior to grading, the owner and developer shall request a written determination from the City Engineer on whether construction of a shared use path or paths shall also be required. The cost of grading and construction required by this subsection shall be borne by the owner.

~~(b) *Resolution of council.* Whenever the city council shall determine and require, by resolution, that sidewalks shall be built upon any street or any part thereof, such resolution shall define the street or part thereof along and upon which the same shall be built, and shall prescribe the material of which the sidewalk shall be constructed, and the dimensions thereof. The publication of such resolution in any newspaper published in this city shall be sufficient notice to all owners of property fronting or abutting upon such street or part thereof to build the sidewalk as required herein.~~

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~~(c) *Time of commencement and completion of work.* It shall be the duty of the owner of any property fronting or abutting upon any street upon which sidewalks are ordered to be built by resolution of the city council, as provided in subsection (b) of this section, to commence the work of constructing such sidewalks within 30 days after the publication of the resolution and to have the same completed within 90 days therefrom.~~

~~(d) *Material and dimensions.*~~ (b) *Existing commercial and residential corridors*. In all existing corridors, it shall be the duty of every owner of any lot or part of a lot or block adjoining or abutting any public street or highway in such corridor, when improving property so owned to increase its value, to grade and construct sidewalks in front of and alongside of the lot or part of the lot or block so owned. If sidewalks are neither present in such corridor nor are planned based on the City's active transportation plan, the requirements of this subsection shall not apply unless the City Engineer notifies the owner in writing of the applicability of this subsection. The cost of grading and construction required by this subsection shall be borne by the owner.

(c) *Maintenance.* The maintenance of a sidewalk or shared use path constructed on private property shall be the responsibility of the property owner. The maintenance of a sidewalk or shared use path constructed within the public right-of-way or public sidewalk easement may be specified in writing between the City Engineer and property owner; and absent any writing specifying responsibility for maintenance, such maintenance shall be the responsibility of the City.

(d) *Material and dimensions.* Sidewalks and shared use paths constructed under this section shall be ~~built of such material and shall be of such dimensions as may be required by the city council~~constructed per the requirements of section 130-2.

(e) *Appeal*. The decisions or determinations made by the City Engineer as provided in this section shall be final unless the owner files an appeal to the Zoning Board of Adjustment within five (5) business days of the owner's receipt of the City Engineer's determination.

## Sec. 130-4. Governing TxDOT standard specifications.

All applicable sections of the then-current edition of the Texas Department of Transportation "Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges" ("TxDOT Standard Specs"), a copy of which publication shall be on file in the Public Works Department, are hereby adopted herein~~Sec. 130-4.~~ by reference as the standard specifications for materials and methods of construction for highways, streets, and bridges within the city. All materials used in city street and alley construction shall conform in all respects to the applicable provisions of such publication.

## ~~Repairing, grading, etc., sidewalks by property owners.~~

~~(a) *Resolution of council.* When any sidewalk within the city shall be in a dilapidated condition or in need of repair or is not on the official grade, the city council may, by resolution, order such repairs, cutting, filling or other work to be done as may be necessary. Such resolution shall describe the sidewalk upon which the work is to be done and the nature and character of the work.~~

~~(b) *Notice to owners.* Whenever any work is ordered to be done by resolution of the city council, as provided in subsection (a) of this section, it shall be the duty of the owner of any property fronting or abutting on such sidewalk to perform such work when notified thereof. Such notice shall be served by a police officer by delivering a copy of the resolution, signed by the city secretary, to the owner or to the owner's agent or to the party in possession of the premises. In case the owner is absent from the city, or is a nonresident and has no agent in the city who is known as such to the city secretary or officer serving the notice, the notice may be served by causing the same to be published in some newspaper published within the city for five consecutive issues.~~

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~~(c) *Time for commencement and completion of work.* It shall be the duty of the owner of the property fronting or abutting upon any sidewalk ordered to be repaired or graded, as provided in this section, to commence the work of repairing or grading the same within ten days after the service of the notice in accordance with subsection (b) of this section and to have the same completed within 20 days thereafter.~~

~~(d) *Failure of owner to perform work.* If the owner of any property fronting or abutting on any sidewalk ordered to be repaired or graded shall fail to begin the repairing or grading of the same within the time specified in subsection (c) of this section or fail to have the same completed within the time specified in subsection (c) of this section, the city council shall have the power and authority to cause such work to be done at the expense of the city. The expense of such work shall constitute a lien on the property of the owner failing or refusing to do the work and such lien shall be enforceable as provided by law.~~

## Sec. 130-5. Encumbrances and obstructions on streets, sidewalks and other public rights-of-way.

(a) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

*Alley* means a minor way that is used primarily for installation of public utilities and for vehicular service access to the backside or the side of the property otherwise abutting the street.

*Easement* means a right held by the city to be used for access, drainage or the placement of utilities such as, but not limited to, water, sewer, gas, telephone, cable television and electrical lines.

*Franchise* means a grant of authority by the city to utilize the public right-of-way under certain specific terms and conditions given by ordinance.

*Noncertificated telecommunications provider* means an entity who has not been issued a certificate of convenience and necessity, certificate of operating authority or service provider certificate of operating authority to offer local exchange telephone service.

*Right-of-way* means any strip or area of land, including, surface, overhead or air space, or underground or subsurface space that is used, or intended to be used, or dedicated to be used wholly or in part as a public street, sidewalk, alley or as the location of public walkways and utility or drainage facilities or installations.

*Sidewalk* means the concrete or asphalt surfaced portion of a street between either the curbline or roadway and the adjacent property line intended for pedestrian use.

*Street* means the entire width between the boundary lines of every right-of-way, other than an alley, publicly maintained when any part of it is opened to the public for vehicular use.

(b) *Other definitions.* Definitions not expressly described herein are to be determined in accordance with customary usage in municipal planning and engineering practices.

(c) *Unlawful activities.* The following activities, uses, conditions or occurrences on the public right-of-way shall be deemed unlawful:

(1) Operating any machinery having tracks, feet or pulling lugs over or along any paved streets or alleys.

(2) Hauling of gravel, brick, sand, concrete, ready mix concrete or mortar in such a manner to scatter or waste these substances onto any streets, alleys or sidewalks.

(3) Dropping, spilling or leaking out of any tank or vessel, whether connected with a motor vehicle or otherwise, any gasoline or other oil or petroleum-based substance on to any street, alley or sidewalk.

(4) Discharging any odorous water, sewage, wastewater, waste oils, kitchen grease, kitchen slop water, mop water or other offensive or hazardous substance onto any public right-of-way.

(5) Placing, storing, constructing, installing or maintaining any structure, building, object, vehicle, device, fence, wall or other material on or within any public right-of-way. Trees and other living, domesticated

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vegetation located within the parkway area of a paved street and mailboxes are exempt from this prohibition. Provided, however, the city, or its authorized agents, shall not be required to replace any obstruction on or within any public way that must be removed during the course of maintenance, construction and/or reconstruction on or within the public way.

(6) Casting, placing or storing any animal, offal, garbage, trash, refuse or debris into or upon any street, alley, sidewalk, street gutter or other public right-of-way.

(7) Constructing or placing any temporary or permanent structure within, on or over any public utility or drainage easement, except for franchised utilities, other public facilities associated with drainage, or as provided herein. The property owner may place removable section type fencing, asphalt or concrete paving, or landscaping within any dedicated public utility easement. Provided, however, that the city or any franchised utility of the city shall not be required to replace anything that must be removed during the course of maintenance, construction or reconstruction within any public utility or drainage easement.

(d) *License to encumber right-of-way or easements.* The following shall control the consideration of requests for encumbrances on, over, under or through public rights-of-way or easements.

(1) The right to encumber the public right-of-way may be granted only by license and every grantee of a license shall agree to indemnify and hold the city harmless from any and all damages to persons or property or both, arising in any manner out of the use of licensed premises. Each applicant for a license shall complete an application form obtained from the public works department ~~and submit a nonrefundable deposit to cover the expenses of the processing costs associated therewith. The total deposit shall be credited toward the issuance of the first year license fee, should the applicant be approved for a license.~~ The applicant shall provide a certificate of insurance naming the city as a co-insured with liability insurance coverage in a minimum amount of $1,000,000.00 for each person for bodily injury and $500,000.00 for each single occurrence for injury to or destruction of property. The application must be accompanied by plans or drawings showing the area to be used and a statement of the purpose for which the right-of-way is to be used.

(1-a) The right to encumber a public sidewalk shall be restricted to the CB central business district and shall be subject to these additional criteria:

a. A license authorized by this subsection shall be held only by the applicant and shall not be transferable.

b. Any encumbrances authorized by this subsection shall be:

1. Restricted to the front of the applicant's licensed business and used solely for purposes directly related to the applicant's licensed business;

2. Placed in such a manner as to leave a minimum unobstructed sidewalk width of four feet, a minimum of one foot away from the curb line or edge of vehicular traveled way, and allow ease of movement by many persons in and around the encumbrances; and

3. Limited to chairs, benches, tables, window boxes, railings, and one "sandwich board" or stand-up sign per license, with display of advertising restricted solely to "sandwich boards" or stand-up signs (see sections 140-179, 140-239).

c. The following placement of encumbrances shall be prohibited:

1. Placement in front of any door or other means of ingress or egress;

2. Placement which blocks or hinders access to the adjoining property;

3. Placement which blocks or hinders visibility of drivers or pedestrians;

4. Placement on a corner lot within twenty feet of the points of intersection of the joining street rights-of-way;

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5. Placement on the sidewalk of any hazardous material; and

6. For "sandwich boards" or stand-up signs, placement on the sidewalk at such times as the applicant's business is closed to the public.

d. The license may be revoked with or without notice if, in the discretion of the director of public works or code enforcement officer, the use or utilization of the encumbrance or public sidewalk violates any provision of the Code, or the encumbrance becomes destroyed, unsightly, or deteriorated. This provision is cumulative of any other remedies or enforcement provisions contained in the Code.

e. For any encumbrance authorized by this subsection (1-a) in the CB central business district, a licensee shall pay a one-time license fee.

(2) No individual, person, firm or corporation shall be granted a license for an encumbrance of the public right-of-way that would adversely affect the public health, safety or welfare of the citizens of the city.

(3) Unless otherwise specified in this subsection, no license shall be issued or granted for an encumbrance of the public right-of-way for less than a three-foot width.

(4) Unless otherwise specified in this subsection, ~~a licensee shall pay a license fee depending upon the amount of right-of-way encumbered as set out below. In no event shall a license fee be less than $200.00 for a period of one year.~~

~~a.~~ for a private license authorizing a surface, subsurface, or air space encroachment at or above the ground level~~, the annual~~ (examples include a private water or sewer line, an overhead line, or a building encroachment), a licensee shall pay a one-time license fee ~~shall be 100~~of ten percent (10%) of the fair market value times the square footage of encumbrance~~.~~

~~b. For a private license authorizing an air space encroachment above the ground level, the annual license fee shall be ten percent of the fair market value times the square footage of encumbrance.~~

~~c. For a private license to encumber subsurface area, the annual license fee shall be ten percent of the fair market value times the square footage of encumbrance.~~

; provided, however, in no event shall a license fee be less than $200.00. The ~~applicant is responsible for the establishment of~~city will determine the fair market value in the areas of consideration for license. Fair market value may be established by use of the county appraisal district records ~~for~~referencing value of adjacent ~~properties.~~ land without improvements.

(5) Unless otherwise specified in this subsection, any deposits, license fees or annual fees required by this section shall be in an amount as established by the city council from time to time and is on file in the city secretary's office or city website.

(6) The total deposit shall be credited toward the license fee for the issuance of the first year if a license should be granted. Any individual, person, firm, or corporation wishing to encumber the public right-of-way in any manner shall submit a license application and required deposit to the director of public works. Upon receipt and normal review by various city departments and public utility companies of such application, the director of public works shall forward the request to the city manager for approval.

(7) Any license granted hereunder shall specify the area licensed for use and shall be issued by the public works department.

(8) Any applicant denied a license shall have the right to appeal such denial to the city council by filing a written notice of appeal with the city secretary no later than five days from receipt of notice of the denial of the request.

(9) The city council shall hear the applicant's request within 30 days of notice of appeal and shall determine whether or not to uphold the denial, to grant the request as presented or to modify it.

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(e) *Exemptions.*

~~(1) Any applicant who wishes to encumber public rights-of-way for installation of a private water line, with a diameter of one inch or less, and for a distance of not more than 300 feet; a private sewer line with a diameter of four inches or less, and for a distance of not more than 300 feet; and an overhead line for a distance of not more than 300 feet; or for an encroachment by a building, is hereby exempt from the annual license fee and shall be subject to a one-time license fee.~~ (1) An applicant who wishes to encumber the public right-of-way adjacent to the applicants' private property for the purpose of installation of a private lawn sprinkler or irrigation system is hereby exempt from the license fee requirements of this chapter. However, neither the city nor any franchised utility shall be responsible or liable for damages or expenses resulting from the maintenance or operations of utilities in said right-of-way.

(2) Noncertificated telecommunications providers shall be subject to an annual fee, per lineal foot, of an amount as established by the city from time to time and is on file in the city secretary's office or city website.

(3) Any applicant who is approved for a license to encumber public right-of-way for the placement of an ornamental device, is hereby exempt from the annual license fee and subject to a one-time license fee. The license fee shall be in an amount as established by the city council from time to time and is on file in the city secretary's office or city website.

(4) In the CB central business district, any applicant who is approved for a license to encumber a specified area of a public sidewalk is hereby exempt from the annual license fee and subject to a one-time license fee.

(f) *No obstruction of public property.* The applicant shall not, unnecessarily or for an unreasonable period of time, obstruct or interfere with the public use of any streets, roads, highways, alleys or public ways owned or controlled by the city.

(g) *Repair of damages.* Applicant shall repair any and all damages caused by the applicant to any real property owned or controlled by the city and shall restore such real property to substantially its condition immediately before the incident causing such damage. The applicant shall commence such repairs immediately upon completion of the work or activity in which the applicant was involved at the time the damage occurred and shall complete such repairs to the satisfaction of the city for one-year from the date of surface of said street, road, highway, alley or public way is broken for such construction or maintenance work, after which time, responsibility for the maintenance shall become the duty of the city. The city may, from time to time, adopt reasonable ordinances regulating such work.

(h) *Conduct of work or activities.* The applicant shall use reasonable care in conducting its work or activities in order to prevent injury to any person and unnecessary damage to any real or personal property.

(i) *Use of alleys.* The applicant shall attempt to utilize the alleys of the city insofar as is reasonably practical in conducting its work and activities hereunder. Notwithstanding the foregoing, however, the applicant may, when approved by city, utilize the streets and any other public ways owned or controlled by the city to perform such work and activities.

(j) *Changes in encroachments.* Applicant shall (at the applicant's expense), upon written request from the city, change the location, position, route, depth or height of any encroachment or other components of the encroachment if and when such change becomes reasonably necessary because of a change in the grade of any street, road, highway, alley, public way or other real property owned or controlled by the city or because of any change in the location of, or in the manner of maintaining, constructing, laying, repairing, removing, replacing, installing or operating, any pavement, curbs, gutters or underground or aboveground wires, cables or water or sewer pipes owned or controlled by the city. The city's written request for such change must set forth, in detail, all of the essential elements and specifications of the requested change.

(k) *Maps of encumbrances.* The applicant shall, at all times, keep on file with the City Engineer a map showing the current location of all encumbrances and other components of the applicant's facilities located in the city.

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(l) *Conflicts.* In the event of any conflict between the provisions of this section and any other provision of this Code or other ordinances, this section shall control. Provided, however, that nothing in this section shall ~~effect~~affect the right of a holder of a lawfully granted franchise.

## Sec. 130-6. Removal.

Any unlicensed obstruction or encroachment upon any sidewalk, street, alley or other public thoroughfare of the city as specified in section 130-5, shall be removed by the owner or person in charge thereof, and upon failure to do so, the city~~, through its agents, shall~~ may remove said obstruction or encroachment and dispose of the same~~.~~ , institute proceedings in any court pursuant to Texas law or this code to require compliance with this section or penalize non-compliance, or utilize any combination of remedies contained in this code and Texas law to require compliance with this section or penalize non-compliance.

## Sec. 130-7. Structural interference with view of street intersection.

It shall be unlawful for any person to place or maintain any sign, display or any structure at street intersections in such a manner that the view of intersecting traffic is obstructed, hindered or obscured, or to place or maintain any sign, display or any structure in such a manner as to hinder or obscure the vision of operators of motor vehicles, or pedestrians upon the streets, sidewalks or alleys of the city.

## Sec. 130-8. Signs and awnings—Permit.

Any person desiring to erect or place an overhanging sign or awning over or across any sidewalk or over or across any public property in the city shall first apply for and secure a permit to do so from a city inspector. If such sign complies with the provisions of the building code, and, if in the judgment of the city inspector, such sign or awning can be safely erected or placed, the inspector shall issue the permit.

## Sec. 130-9. Same—Use of public property.

The supports and guys of all signs and awnings which are not publicly owned shall be placed on private property and such supports and guys shall comply with the provisions of the building code which has been adopted by reference by the city in this Code.

## Sec. 130-10. ~~High-rise signs~~Reserved.

~~(a) High-rise signs, as defined herein, are signs of any kind which exceed 30 feet in height as measured from the ground level to the topmost part of the structure, and shall include, signs attached to or placed on buildings or structures not specifically built for supporting such signs. High-rise signs are also defined as any sign of sufficient height and proximity to existing electrical power lines that they could fall or be blown down upon any electrical line of more than 300 volts to ground.~~

~~(b) Before any permit is issued for such sign, a construction plan shall be submitted to the city engineer by the applicant for the permit. The specifications and design of such sign must bear the seal and signature of a registered professional engineer in the state certifying that the design and specifications meet or exceed the minimum requirements as set forth in the building code which has been adopted by reference by the city in this Code. Failure to furnish such certification upon request shall constitute grounds for refusal of the permit.~~

~~(c) No guys on any type structure that extend over any electrical power line 300 volts to ground shall be permitted.~~

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### Sec. 130-11. Use of streets and sidewalks for business purposes.

Except as otherwise provided in this Code, it shall be unlawful for any person to use any part of any sidewalk, street or alley in the city for the purpose of merchandizing or conducting any trade or business.

### Sec. 130-12. Inspection of utility poles, lines, etc.

The city fire chief, building inspector, electrical inspector, police officers and other persons designated by the city shall have power and it shall be their duty to examine and inspect, from time to time, all telegraph, telephone, electric light or other poles, gas pipe lines, pipes and other fixtures in the public places within the city for the purpose of seeing that they are in a safe and suitable condition, and, whenever any such item is found to be unsafe or unsuitable for the purpose for which it is used, the person using, possessing or maintaining the same shall be notified and required to place the same in a safe and suitable condition.

### Sec. 130-13. Deposit of litter, trash, etc., on streets and sidewalks—Prohibited.

It shall be unlawful for any person to throw, place or in any wise deposit any litter, trash, refuse or garbage upon the sidewalks, streets, street rights-of-way, highways or highway rights-of-way within the city.

### Sec. 130-14. Same—Signs authorized.

The City Engineer's office is hereby authorized to place signs at locations within the city designated by the chief executive officer or the city council to give notice of the provisions of section 130-13.

### Sec. 130-15. Going upon or interfering with street or sidewalk being paved, repaired, etc.

It shall be unlawful for any person to drive, ride, walk or otherwise go upon or in any other manner interfere with any sidewalk, street or alley, or part thereof, which is being paved, repaired or constructed.

### Sec. 130-16. Removal of lanterns, barricades, etc., from site of street or sidewalk construction.

It shall be unlawful for any person to remove any lanterns, barricade or other warning device or obstruction placed to prevent the public from going onto and upon any sidewalk, street or alley or other public place which is being paved, repaired or constructed.

### Sec. 130-17. Breaking, defacing, etc., street name signs.

It shall be unlawful for any person to willfully, maliciously or negligently break, knock down, throw down or in any way deface or otherwise injure any board, plate or card carrying or having upon it the name or designation of any street or public way in the city.

### Sec. 130-18. Trees, shrubs and other plants—Clearance over sidewalks.

It shall be unlawful for any person to permit any tree, shrub, vine, palm or any other plant of any description or kind to be grown, maintained or cultivated on any property owned by the person or under the owner's control in such a manner that any portion of such tree, shrub, vine, palm or other plant overhangs or protrudes upon or over any sidewalk, unless there is a full ten-foot clearance between the surface of all portions of the sidewalk and the overhanging tree, limb, shrub, vine, palm or plant.

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### Sec. 130-19. Same—Clearance over streets.

It shall be unlawful for any person to permit any tree, shrub, vine, palm or other plant of any description or kind to be grown, maintained or cultivated on property owned or controlled by the person in any manner so as any portion of such tree, vine, shrub, palm or plant hangs over or protrudes upon any street or highway in the city, unless there is a full 12-foot clearance between the surface of all portions of such street or highway and the overhanging tree, limb, shrub, vine, palm or plant.

### Sec. 130-20. Same—Location between curb and sidewalk.

(a) It shall be unlawful for any person to plant, maintain or cultivate any tree, shrub, vine, palm or plant of any description or kind which is more than three feet in height between the sidewalk and the curb of any public street or highway in the city at a lesser distance than 20 feet from the corner of any block of any such public street or highway, such measurement to be computed at the point of intersection of two lines extended parallel with the curbline of the street or avenue intersecting and causing such corner. Shade trees growing between the sidewalk and the curb of any public street or highway on or before May 27, 1941, shall not be affected by the terms of this section, until the city council passes a resolution declaring that the growing of the trees constitutes a public nuisance or hazard and orders the same removed by the owner, occupant, lessee or person in charge of such property, within five days from the date the notice is given.

(b) All trees between the curb and sidewalk shall be planted in a uniform line and in line with the trees already planted and growing.

### Sec. 130-21. Same—Interference with traffic.

It shall be unlawful for any person to maintain any shrubbery or trees at street intersections in such a manner that the view of intersecting traffic is obstructed, hindered or obscured, or to maintain any trees or shrubbery having overhanging limbs or extending branches that obstruct, hinder or obscure the vision of operators of motor vehicles or pedestrians upon the streets, sidewalks or alleys of the city.

### Sec. 130-22. Fees payable.

A fee shall be paid to the city, in addition to all other charges, fees or deposits, for the issuance of a permit or license, as applicable, under this chapter. This fee shall be for the purpose of defraying administrative costs of issuance, including but not limited to costs of inspection and obtaining appropriate placards. The fee shall be in an amount as established by the city council from time to time and is on file in the city secretary's office, Public Works office, or city website. All fees must be paid prior to issuance.

### Secs. 130-~~22~~23—130-~~45~~44. Reserved.

## *ARTICLE II. RENTAL CHARGE FOR UTILITY POLES, LINES, ETC.*

### Sec. 130-45. Applicability of article.

The provisions of this article are subject to the exception set out in Texas Local Government Code Section 590.0001.

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### Sec. 130-46. Imposed; amount; when payable.

Upon August 1 of each and every year, every person occupying or using the streets, highways, easements, alleys, parks or other public places in the city with poles, pipes and for other fixtures shall, as a condition to such further occupancy, pay to the city annually for such privileges, a rental equal to not less than three percent of the gross receipts received by such person, association, organization or corporation from its business conducted in the corporate limits of the city for the preceding year, which sums shall be paid to the city.

### Sec. 130-47. Report of gross receipts of payor.

Every person using or maintaining any telegraph, telephone, electric light or other poles, gas and water pipe lines, pipes and other fixtures in any of the streets, highways, easements, alleys, parks or other places within the corporate limits of the city shall, on August 1 of each year, file with the city secretary a sworn report showing the gross receipts from the business conducted by such person or within the corporate limits of the city for the preceding year, ending the June 13.

### Sec. 130-48. Examination of books and records of payor.

The city council may, when it sees fit, have the books and records of any person required to pay the rental charge imposed by this article examined by a representative of the city to ascertain whether the statement filed in accord with section 130-47 is accurate, but nothing in this section shall be construed to prevent the city from ascertaining the facts by any other method.

### Sec. 130-49. Receipt for payment.

Upon receipt of the rental charge imposed by this article, the city secretary shall deliver to the person paying the same a receipt therefor, which receipt shall authorize such person to use and occupy the streets, highways, easements, alleys, parks and other public ways of the city in carrying on its business for 12 months from August 1st.

### Sec. 130-50. Charge is not a tax, but is additional to taxes.

The rental charge provided for in this article is not charged as a tax, but is made for the privilege, enjoyed by the persons upon whom it is imposed of using the streets, easements, alleys and other public ways of the city in the conduct of their businesses, and such charge is additional to all ad valorem and franchise taxes and to all taxes of every nature imposed on such persons.

### Sec. 130-51. Article does not grant franchise; cancellation of privilege and refund of rental.

This article does not grant a franchise to any utility or person to use the streets, easements, alleys and other public ways and shall never be so construed by the court or otherwise. The city reserves the right to cancel the privilege granted under this article and refund the unearned rentals paid to the city.

### Sec. 130-52. Penalties.

(a) Every person who shall operate any business without the payment of the rentals provided for in this article shall be subject to the general penalty as described in section 1-5, and for each and every day that such person shall conduct such business using and occupying the streets, easements, alleys or other public ways of the city without such payment, a fine may be recovered by the city in a court of competent jurisdiction by a suit filed therein.

(b) Every person, and the local manager or agent of such person, failing or refusing to make the report required by section 130-47, or failing or refusing to allow the examination provided for in section 130-48 shall, upon conviction thereof, be fined and every day's failure or refusal shall be deemed a separate offense.

**Secs. 130-53—130-77. Reserved.**

## *ARTICLE III. EXCAVATIONS*

### Sec. 130-78. Permit—Required; fees.

(a) It shall be unlawful for any person to cut into, dig up, excavate, tunnel, undermine or in any manner break up the surface of any street, sidewalk, curb and gutter or alley in the city, unless such person shall first obtain a permit therefor from the building inspection division. and thereafter notify the City Engineer at least forty-eight (48) hours in advance of commencing any work permitted.

(b) In the event of an emergency in which a sewer main, conduit or other utility facility in or under any street bursts, breaks or otherwise is in such condition as to immediately endanger the property, lives, health or safety of any person, the person owning or controlling such facility shall be permitted to immediately go in and repair the break for the protection of the property, life, health and safety of individuals; provided, however, such person owning or controlling such facility shall immediately apply for an excavation permit not later than the end of the next succeeding business day during which the building inspection division office is open for business and shall not proceed with permanent repairs without first obtaining an excavation permit and notifying the City Engineer as provided for in this article.

(c) An excavation permit as provided for in this article shall become invalid seven (7) business days following issuance of the permit, and all excavations shall be completed on or before the permit expiration date. In the event excavation work is not completed on or before the permit expiration date, another excavation permit as provided for in this article must be obtained, with the same period of validity as provided for in this subsection.

(d) The fee for the issuance of a permit required by this article shall be in an amount as established by the city council from time to time and is on file in the city secretary's office, Public Works office, or city website.

### Sec. 130-79. Same—Application.

An application for a permit required by section 130-78 shall give the following information:

(1) The name, address and phone number of the applicant;

(2) The exact location on the street or alley of the excavation or tunneling;

(3) The nature and purpose of the work and the dimensions of the cut or break in the pavement or surface of the street, curb and gutter or alley;

(4) The date of proposed commencement of the work;

(5) The date of proposed completion of the work;

(6) The type of surface and base, if known, of the street and to what level of completion the applicant proposes to perform repair work; and

(7) Such other information as the inspection division may require.

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**Sec. 130-80. ~~Same—Amount of deposit required of applicant.~~ Same—Types of excavations; backfill and inspection requirements.**

~~At the time of the issuance of the permit under this article, the applicant shall deposit with the city a sum of money for the costs of labor and materials necessary to restore the street, alley, curb, gutter or sidewalk to a like condition prior to the cut, break or excavation. The amount of said deposits shall be as follows:~~

~~(1) *Type I. Gravel-surfaced streets and alleys*—$10.00 for each square yard or any fraction thereof.~~

~~(2) *Type II. Asphalt on gravel base*—$15.00 for each square yard or any fraction thereof.~~

~~(3) *Type III. Concrete or brick (no asphalt)*—$20.00 for each square yard or any fraction thereof.~~

~~(4) *Type IV. Asphalt on brick, concrete or soil cement*—$28.00 for each square yard or any fraction thereof.~~

**~~Sec. 130-81. Same—Deposit refund or additional charge.~~**

~~(a) Upon completion of the permitted excavation and backfilling, as specified in section 130-92, the permittee shall notify the building inspection office of such completion. An inspection of the excavation site shall be made by city personnel to determine the actual cut dimensions and the amount and type of work and material required for the city to complete repairs. Depending on results of inspection, the final charge and resultant amount of refund or extra charge shall be computed as follows:~~

~~(1) *Type I. Gravel-surfaced street or alley.*~~

~~a. *Condition A.* No additional work or material required: Full deposit refund.~~

~~b. *Condition B.* Additional work and/or material required for the city to complete repair: Final charge of $10.00 per square yard or any fraction thereof based on field-measured surface cut dimensions.~~

~~(2) *Type II. Asphalt on gravel base.*~~

~~a. *Condition A.* No additional work or material required: Full deposit refund.~~

~~b. *Condition B.* Additional work, additional gravel base material and asphalt replacement material required for the city to complete repairs: Final charge of $15.00 per square yard or any fraction thereof based on field-measured surface cut dimensions.~~

~~c. *Condition C.* Additional work and asphalt replacement material only required for the city to complete repairs: Final charge of $10.00 per square yard or any fraction thereof based on field-measured surface cut dimensions.~~

~~(3) *Type III. Concrete or brick surface (no asphalt).*~~

~~a. *Condition A.* No additional work or material required: Full deposit refund.~~

~~b. *Condition B.* Additional work and replacement concrete material required for city to complete repair: Final charge of $20.00 per square yard or any fraction thereof based on field-measured cut dimensions.~~

~~(4) *Type IV. Asphalt on brick, concrete or soil cement.*~~

~~a. *Condition A:* No additional work or material required: Full deposit refund.~~

~~b. *Condition B:* Additional work, replacement concrete base material and asphalt replacement material required for city to complete repair: Final charge of $28.00 per square yard or any fraction thereof based on field-measured surface cut dimensions.~~

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~~c. *Condition C.* Additional work and asphalt replacement material only required for the city to complete repairs: A final charge of $10.00 per square yard or any fraction thereof based on field-measured surface cut dimensions.~~

~~(b) Following satisfactory completion of repair work, the permittee will be mailed a statement detailing final charge computations and resultant refund or extra charge amounts due and/or payable within 30 days of statement date.~~

~~Sec. 130-82.~~(a) *Asphalt streets or alleys*. Permittee shall be responsible for backfilling excavated area within two inches (2") of the finished grade with flowable fill or other material approved by the City Engineer. Upon completion of backfill, permittee shall notify the City Engineer for a required inspection; and upon the backfill passing inspection, the City will place the final asphalt course.

(b) *Concrete streets or alleys*. Permittee shall be responsible for backfilling excavated area within seven inches (7") of the finished grade with flowable fill or other material approved by the City Engineer. Upon completion of backfill, permittee shall notify the City Engineer for a required inspection; upon the backfill passing inspection, permittee shall be responsible for pouring a minimum seven-inch (7") Class P Concrete Pavement (3,600 psi and minimum #3 bars on eighteen-inch centers each way); and then permittee shall notify the City Engineer for a required final inspection.

(c) *Concrete sidewalk*. Permittee must request an inspection by the City Engineer prior to pouring sidewalk; and Permittee shall construct sidewalk per the requirements of section 130-2.

(d) *Asphalt trails*. Permittee shall be responsible for backfilling excavated area within two inches (2") of finished grade with minimum six-inch (6") Type B, Grade 3 base material or other material approved by the City Engineer; upon completion of backfill, permittee shall notify the City Engineer for a required inspection; and upon the backfill passing inspection, the City will place the final asphalt course.

## Sec. 130-81. Same—Insurance required of applicant.

(a) Prior to the issuance of a permit under this article, the applicant shall furnish to the building inspection division satisfactory evidence in writing that the applicant has in force and will maintain in force, during the performance of the excavation work and during the period of the excavation permit, public liability insurance in the sum of not less than $50,000.00 for any one person and $100,000.00 for any one accident, and property damage insurance of not less than $50,000.00, such insurance to be issued by an insurance company authorized to do business in this state.

(b) It shall be the permittees responsibility to maintain the site in such condition that the public is protected, until final repairs are complete.

## Sec. 130-~~83. Same—Fee for permit.~~

~~A fee shall be paid to the city, in addition to all other charges, fees or deposits, for the issuance of a permit under this article. This fee shall be for the purpose of defraying the cost of the issuance of permits and obtaining proper placards, administrative costs and costs of inspection. The permit fee shall be in an amount as established by the city council from time to time and is on file in the city secretary's office or website.~~

## ~~Sec. 130-84~~82. Same—Issuance, contents, display, etc.

(a) In the event an applicant is granted a permit under this article, the ~~inspection division~~Public Works department shall issue a placard, which shall be plainly written or printed in English and reading substantially as follows:

Excavation Permit No. _____

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Place: _____

Issued: _____

(date)

Expires: _____

(date)

(b) The applicant shall display the permit in a conspicuous place at the site of the work.

(c) It shall be unlawful for any person to exhibit such placard at or about any excavation not covered by such permit, or to alter or misrepresent the number of the permit or the date of issuance or the date of expiration thereof.

## Secs. 130-83—130-84. Reserved.

## Sec. 130-85. Notice to police and fire departments if street closed.

If, in the course of work performed under a permit issued under this article, it becomes necessary to obstruct the passage over a street completely, it shall be the duty of the permittee to inform the fire department and the police department of such temporary closing and to make necessary arrangements with the street division superintendent concerning barricades, detours, signing, flagmen, etc. The permittee shall be responsible for providing such traffic control to the superintendent's satisfaction.

## Sec. 130-86. Barricades.

(a) Every person to whom a permit is issued under this article shall erect ~~proper barricades~~barricades which meet the requirements of the then-current Texas Manual on Uniform Traffic Control Devices at the site of the work covered by the permit to inform the public that the street, sidewalk, curb and gutter or alley is being excavated and to prevent the unobstructed passage therein and to route traffic around the excavation with a minimum of interference. Acceptable warning signs shall be placed on such barricades, and all barricades shall be illuminated at night, and all lights shall be kept burning from sunset to sunrise.

(b) It shall be the responsibility of the permittee to maintain the proper barricading and signing at the site, until notified by the city that final repair has been satisfactory completed.

## Sec. 130-87. Bridges required in certain instances.

Where traffic must cross open trenches at intersections and driveways, suitable bridges shall be provided by the person to whom the permit was issued under this article.

## Sec. 130-88. Means of ingress and egress for residents to be provided.

Streets, driveways or alleys affected by work under a permit issued under this article shall at all times be maintained in a condition which will provide easy ingress and egress to the residents living thereon.

## Sec. 130-89. Use of cleated equipment.

No person performing work under a permit issued under this article shall use equipment with cleats, without pads on any surfaced street.

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## Sec. 130-90. Trench walls.

Whenever any excavation is made on a surfaced street, the trench walls shall be substantially vertical, with a maximum width at the top no greater than 24 inches more than the outside diameter of the pipe. The trench walls shall be sufficiently braced to prevent material under the undisturbed pavement from sluffing. Trench protection shall be required if the trench is five feet (5') or more in depth.

## Sec. 130-91. Protection of sewers.

Where sanitary sewers are encountered in making an excavation under this article, every effort shall be made to keep them undamaged. Should the sanitary sewer be damaged, it shall be completely cleaned and restored to its original condition. Where the grades on sanitary sewer lines are such that they must pass through storm sewers, a satisfactory concrete box shall be installed with a clean out manhole, and the sanitary sewer shall be laid through the box with cast iron pipe as directed by the City Engineer.

## Sec. 130-92. Backfilling, base repair and surface repair.

(a) *General.* Backfilling of excavations shall be the responsibility of the permittee. Base and concrete surface repair may be performed by the permittee or by the city at the city's option. Backfilling shall be accomplished as soon as practicable.

(b) *Materials and methods for backfilling.* Material used for backfilling may be that material excavated or other similar material, provided that the material used for backfilling is free of vegetation or other deleterious matter, contains no rock, broken concrete or broken asphaltic pieces larger than three inches maximum dimension in any plane, and is of such character and moisture content that it will stabilize when compacted. The backfill material shall be placed in six-inch loose lifts, and each lift shall be thoroughly compacted to prevent excessive settlement. This procedure will be continued, until the excavation is totally filled, unless base repairs and/or surface repair is to follow immediately, in which case the backfill procedure may stop at the elevation such base repair will start.

(c) *Materials and methods for base repair.*

(1) *Gravel base.* Material used for repair of existing gravel base streets and alleys shall meet the minimum specifications for Type B, Grade 3, flexible base material, as detailed in ~~Item 248 of the Texas State Department of Highways and Public Transportation, 1982 edition, Standard Specifications for Construction of Highways, Streets and Bridges.~~TxDOT Standard Specs. A minimum of ten inches, compacted depth, base material shall be placed in two equal lifts, with each lift thoroughly compacted. Where asphalt surface repair is to immediately follow base repair, the top two inches of base material may be omitted to allow for placement of the asphalt.

(2) *Concrete, brick and soil cement base with asphalt surface.* Material used for repair of existing concrete, brick and soil cement base without asphalt surface streets and alleys shall meet the minimum specification for Class C, 3600 psi, 28-day strength concrete, as detailed in ~~Item 421 of the Texas State Department of Highways and Public Transportation, 1982 edition, Standard Specifications for Construction of Highways, Streets and Bridges.~~TxDOT Standard Specs. A minimum of eight-inch depth shall be placed and broom-finished at an elevation to allow placement of a two-inch depth asphalt surface course. The concrete base shall be protected from heavy loading and allowed to cure a minimum of three days prior to placement of asphalt surface and opening for traffic.

(3) *Concrete or brick base and surface.* Material used for repair of existing concrete or brick base and surface streets and alleys shall meet the minimum specifications noted in subsection (c)(2) of this section. A minimum of eight-inch depth shall be placed and broom-finished to match the existing undisturbed surface profile around the excavation. The concrete shall be protected from heavy loading and allowed to cure a minimum of three days prior to opening for traffic.

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### Sec. 130-93. Valve boxes, manholes, etc., to be brought to finished grade.

All valve boxes, manholes and the like shall be brought to the true finished grade of paved streets by persons making excavations under this article.

### Sec. 130-94. City and employees not liable for damages.

This article shall not be construed as imposing upon the city or any official or employee, any liability or responsibility for damages to any person injured by the performance of any excavation work for which an excavation permit is issued hereunder, nor shall the city or any official or employee thereof be deemed to have assumed any such responsibility or liability by reason of inspections authorized herein, or the issuance of any permit, or the approval of any excavation work.

### Secs. 130-95—130-116. Reserved.

## *ARTICLE IV. ACCESS DRIVEWAYS*

### Sec. 130-117. State regulations—Adopted.

The pamphlet known as the "Access Management Manual," published July 2011, by the Texas Department of Transportation, is hereby adopted by the city council as though set out herein in full. The Public Works Department shall maintain a copy of this pamphlet on file at all times.

### Sec. 130-118. ~~Same—Filing and distribution of copies~~ Commercial driveways; traffic study required.

~~The city secretary shall maintain a copy of the pamphlet "Access Management Manual," adopted by section 130-117, on file in the secretary's office at all times, and the secretary shall procure extra copies for distribution at a reasonable fee.~~ A Traffic Impact Study/Analysis shall be required for all new, proposed commercial driveways; and the cost of such study/analysis shall be borne by the property owner or developer unless waived in writing by the City Engineer.

### Sec. 130-119. Curbs for new driveways.

Commercial access driveways within the city under construction on April 27, 1954, or altered, repaired or rebuilt after such date, and any commercial access driveways built after such date anywhere within the city limits shall be provided with a curb not less than ten feet from the corner of the intersection streets' right-of-way, such curb shall conform to that line established for curbs for each of the intersection streets.

### Sec. 130-120. Minimum construction requirements.

That portion of access driveway constructed upon public street rights-of-way (i.e., from curbline or pavement edge to street right-of-way line) shall meet the minimum criteria for use classification as follows:

(1) Driveways providing singular access from the street to a single residential unit shall be constructed of Class "A" (3,000 psi test) concrete. Minimum slab thickness shall be four inches, if reinforced with six inches by six inches by ten-gauge welded wire mesh or its equivalent, or five inches if nonreinforced. Subgrade shall be well compacted, and an expansion joint shall be installed at the right-of-way line. Where existing curb, gutter and/or street pavement must be removed to allow proper construction, the

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limits of the area to be removed shall be saw-cut or scored in an approved manner, and the removal accomplished so as to provide a neat line and a vertical face exposed. The use of alternate materials and methods will be considered, provided a detailed design by a registered professional engineer is submitted, including the engineer's certification that the alternate proposed will provide equal or greater strength and durability than those specified above.

(1-a) When a rear yard of a single residential unit abuts a street, the City Engineer may approve a driveway providing singular access from the street to the rear yard if, in the discretion of the City Engineer, the rear yard cannot be reasonably accessed from a driveway described in section 130-120(1). Factors to be considered by the City Engineer when exercising such discretion may include a change in elevation, natural barriers (e.g., creek or drainage ditch), drainage facilities (e.g., box culvert or improved stormwater drain), the existence of other natural or artificial barriers, or, if applicable, the flood plain. Any driveway approved under this subsection must meet the minimum construction requirements of section 130-120(1), have a minimum width of 12 feet, and not exceed a maximum width of 15 feet. This subsection does not restrict bicycle or pedestrian facilities. Where lots have double frontage, running through from one street to another, nothing in this Code authorizes a driveway connecting both streets.

(2) Driveways providing access from a street to a parking lot; to a private drive or street serving multiple-residential units; to educational, medical or religious facilities; to public or private office facilities and to any retail, commercial or industrial type facilities shall be constructed of Class "A" (3,000 psi test) concrete on a well compacted subgrade. Minimum slab thickness shall be five inches, if reinforced with six inches by six inches by six-gauge welded wire mesh, or six inches if nonreinforced. Removal of existing curb, gutter and/or street pavement shall conform to the requirements set forth in subsection (1) of this section, as will consideration of use of alternate materials and methods of construction.

(3) All driveways shall be constructed to maintain or improve the drainage conditions in the area of the driveway. Gutter line grade shall be carefully maintained and driveway construction shall be such that storm flow is maintained in the gutter. Where driveways cross drainage ditches or swales, the City Engineer's office shall determine pipe size or capacity requirements for driveway culverts or swale sections as conditions dictate. In general, the minimum pipe size allowed will be 18 inches in diameter. Fifteen-inch diameter pipe may be allowed only in instances where larger diameter pipe is not needed and could not function properly due to conditions. In general, the minimum culvert length shall be the paved driveway width, plus two-foot shoulders each side if vertical headwalls are constructed. Otherwise, add a minimum additional two feet length each side for each one-foot depth from top of driveway to bottom of ditch to provide a maximum 2:1 end slope on backfill. Culvert pipe shall be of approved reinforced concrete construction. Alternate pipe material that will be considered, includes metals and plastics which are designed to carry H-15 loadings, are coated or treated to withstand corrosion, and provided that ends are protected by headwalls or concrete sloped end treatment. In general, the location of the culvert pipe in relation to the street pavement edge shall be a minimum of three feet for shoulder width plus three feet for each foot of ditch depth to provide a maximum 3:1 front slope for the ditch. Adjacent ditch lines shall be transitioned and reshaped as necessary to accommodate the culvert location. The driveway over the culvert pipe should be swaled where possible to provide overflow capability.

(4) Construction and maintenance of the access driveway is the responsibility of the owner of the property served. When requested, the city may, at its option, assist in the construction or reconstruction of driveway culverts only to the extent of installing and backfilling the culvert pipe furnished by the property owner and reshaping adjacent ditches.

## Sec. 130-121. Curbs for existing driveways.

At access driveways existing in the city prior to April 27, 1954, should the city council find, by resolution with notice to the property owner, lessee and any person having any interest in the property, that the lack of curbing at the corner of intersecting streets constitutes a traffic hazard and that curbing is necessary to the public convenience

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for the control of traffic, the city council may order the City Engineer to erect a proper curb on the right-of-way, at the expense of the city.

## Sec. 130-122. Parking aprons for angle parking between curb or pavement edge and property line.

Permits for the construction of parking aprons for angle parking between the curb or pavement edge and the property line shall be issued only for city streets classed as secondary or minor and only under the following conditions:

(1) The parking apron shall extend the full length of the block from curb radii to curb radii of adjoining side streets.

(2) The parking apron shall be constructed of Class "A" (five sack, 3000 psi test) concrete, reinforced with six inches by six inches by six welded wire mesh. The apron slab shall be a minimum of six-inch thickness and shall be placed on a prepared, well compacted subbase. An integral concrete curb shall be constructed along the edges of the parking apron which do not connect to the street proper. Said curb shall be six inches minimum thickness and extend a minimum vertical distance of six inches above the parking slab.

(3) The grantee shall construct and maintain an unobstructed pedestrian walk along and adjoining the curb of the parking apron for the length thereof. The walk shall be constructed of Class "A" concrete (five sack, 3,000 psi test), it shall be a minimum of four feet wide and four inches thick and shall be poured on a prepared, well compacted subbase.

(4) Drainage shall be maintained by the installation of drainage tile where necessary and/or by grading the parking apron to drain to existing gutters, ~~catchbasins~~catch basins or drainageways.

## Sec. 130-123. Plans and specifications; compliance with article; permit required; fees.

(a) *Application for permit.* Any person desiring to construct an access driveway or single parking apron connecting to any street or highway within the corporate limits of the city shall make application for a permit from the department of public works of the city. The applicant for such permit shall submit plans and specifications covering the work proposed showing all dimensions, property lines, sizes and other pertinent information necessary for review. Such information may be included on plat plans presented for building permits in case of new construction. In the event such work is contemplated along a state highway, two sets of plans and specifications will be required.

(b) *Permit required.* A valid permit to construct access driveways and/or angle parking aprons will be required in addition to building permits.

(c) *Fees set.* The fee for the issuance of a permit to construct access driveways or parking aprons along any street or highway in the corporate limits of the city shall be in an amount as established by the city council from time to time and is on file in the city secretary's office or city website. The issuance of this permit shall relieve the grantee of the grantees obligation to secure a curb cut permit as required in article III of this chapter.

(d) *Compliance with article.* The City Engineer shall require all plans and specifications to be submitted to the engineer by either the contractor, property owner or other person having an interest in the property, who applies for a building permit, to show compliance with this article, and should the person applying for a building permit refuse to comply with this article, the permit shall not be issued. If the plans and specifications show a compliance with this article and the permit is issued, and the construction fails to comply with this article, the City Engineer shall immediately notify the contractor, owner or person authorizing the building and construction, and the chief executive officer of the city and, if necessary, the chief executive officer may instruct the city attorney to institute proceedings in any court to require compliance with this article, or cessation of the work until the article is complied with.

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**Secs. 130-124—130-144. Reserved.**

## *ARTICLE V. STREET IMPROVEMENT STANDARDS*

### Sec. 130-145. Required adherence.

All street and alley improvements constructed within the city limits or within its jurisdiction shall be constructed in conformance with the terms and provisions of this article~~.~~ and TxDOT Standard Specs.

### Sec. 130-146. Definitions.

For the purpose of this article, the following words and phrases used in this article shall have the following meanings, except where the context clearly indicates a different meaning:

*Arterial street* means a street designed to facilitate rapid and heavy traffic movements and which primarily provides vehicular circulation to various sections of the city and which, as a secondary function, provides direct access to abutting property.

*Collector street* means a street used primarily for circulation within a neighborhood to carry traffic from minor streets to arterial streets or to carry traffic through or adjacent to commercial, industrial or high-population density areas.

*Consulting engineer* means a professional engineer or engineering firm authorized to practice in the state and engaged by the city or by any developer to design and supervise improvement projects.

*Developer* means any private individual or group of individuals requesting or implementing public improvements.

*Director of public works* means the director of public works of the city and the county.

*Planning and zoning commission* means the planning and zoning commission of the city and the county.

*Residential street* means a street used primarily for access to abutting residential property.

All other words and phrases used in this article shall have the generally accepted meanings consistent with their usage by the engineering profession or the legal profession, whichever is applicable.

### Sec. 130-147. ~~Governing standard specifications for materials and methods of construction~~Reserved.

~~All applicable sections of that certain publication titled Standard Specifications for Road and Bridge Construction, adopted in 2004 by the Texas Highway Department, and including all applicable approved revisions thereof, a copy of which publication shall be on file in the office of the city secretary, are hereby adopted as the standard specifications for materials and methods of construction for streets within the city. All materials used in city street and alley construction shall conform in all respects to the applicable provisions of such publication.~~

### Sec. 130-148. Right-of-way.

Prior to construction of any street improvement, which is to be operated and maintained by the city, the following right-of-way widths shall have been dedicated to the public by duly recorded formal instrument:

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(1) *Arterial streets.* ~~Eighty~~ 80 to 100 feet or as established by the provisions of the master plan of the city and by the provisions of the urban transportation study.

(2) *Collector streets.* Not less than 60 feet.

(3) *Urban section residential streets.* Not less than 50 feet.

(4) *Rural section residential streets.* Not less than 60 feet.

(5) *Residential or commercial alleys.* Not less than 20 feet.

## Sec. 130-149. Pavement widths and street section.

(a) *Urban section street.* In general, all street improvements constructed within the city's jurisdiction shall be of urban cross section with curb and gutter and shall be designed and constructed to the following minimum widths measured back-to-back of curb:

(1) *Arterial streets.* ~~Forty-eight~~Fifty feet minimum width.

(2) *Collector streets.* Thirty-seven feet minimum width.

(3) *Residential streets.* Thirty-one feet minimum width.

(4) *Boulevard streets.*

a. Residential—Two 20 feet minimum width lanes;

b. Collector—Two 25 feet minimum width lanes.

~~(5) *Cross or circular streets.* Residential streets not exceeding 400 feet in length between intersections nor serving more than four lots between intersections may be constructed to minimum 28 feet in width.~~

~~(6~~(5) *Residential collector streets.* Urban streets designated as residential collector shall be constructed to a residential street width of 31 feet, up to a point which is a minimum of 150 feet from the edge of pavement of any arterial or collector street which it is intersecting. A transition from 31-foot width to 37-foot width will be accomplished in 50 feet of street length with the 37-foot width carried the remaining 100 feet to the intersection.

(b) *Rural section streets.* Where all lots within a subdivision are platted having a land area of 0.75 acre (32,670 square feet) or more and having minimum frontage of 125 feet on any adjacent street, rural section streets will be allowed. In instances where there are lots platted within a subdivision having a land area of 0.50 acre (21,780 square feet) or more and having minimum frontage of 100 feet on any adjacent street, the city planning and zoning commission may authorize and approve rural section street construction at the time of plat approval. In these instances, minimum widths shall be as follows:

(1) *Arterial streets.* As determined necessary on an individual basis.

(2) *Collector streets.* A total minimum crown width, measured from outside edge of shoulder to outside edge of shoulder of 36 feet with a minimum pavement surfaced width of 24 feet.

(3) *Residential streets.* A total minimum crown width, measured from outside edge of shoulder to outside edge of shoulder of 30 feet with a minimum pavement surfaced width of 24 feet.

(4) *Residential collector streets:* Rural streets designated as residential collector shall be constructed to the rural residential width set forth in subsection (b)(3) of this section, up to a point which is a minimum of 150 feet from the edge of pavement of any arterial or collector street which it is intersecting. A transition from total crown width of 30 feet with pavement surfaced width of 24 feet to a total crown width of 36 feet with pavement surfaced width of 24 feet shall be accomplished in 50 feet of street length with the 36-foot crown width and 24-foot pavement width carried the remaining 100 feet to intersection.

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(c) *Alley section.* Alley improvements may be constructed of such cross section as determined best for the particular location and as approved by the City Engineer. Minimum pavement surfaced widths shall be 12 feet, edge to edge.

(d) *Cul-de-sac.* The minimum outside pavement diameter for the cul-de-sac or closed-end turnaround, shall be 100 feet, whether urban or rural section. The minimum pavement width around the cul-de-sac shall be 31 feet back-to-back of curb for urban section improvements and 28 feet edge-to-edge of pavement for rural section improvement, with any resultant center unpaved island construction with curb and gutter around its perimeter.

## Sec. 130-150. Standard cross-sectional shapes.

(a) *Street crown.* All street sections shall be constructed with a cross section that will provide minimum transverse slopes as follows:

(1) Three percent for residential and residential collector streets.

(2) Two percent for major collector and arterial streets from centerline to ~~gutterline~~gutter line or centerline to outside edge of shoulder.

On residential and residential collector streets the cross slope may transition to a three percent slope from ~~gutterline~~gutter line to ~~gutterline~~gutter line for cross-drainage purposes where allowed by the City Engineer. This transition shall occur over a 200-foot length of street.

(b) *Monolithic concrete curb.* A concrete curb constructed monolithically with a concrete street slab shall be six inches in height above gutter elevation, have a two-inch top width, a three-inch radius top to face, a three-inch face at 30 degrees to vertical, thence a four-inch radius face to gutter low point, for a total curb width at ~~gutterline~~gutter line of 9.5 inches.

(c) *Concrete curb and gutter section.* Concrete curb and gutter sections constructed independently shall be a minimum 24-inch width, minimum 12-inch height, and the curb shape shall conform to that described in subsection (b) of this section for monolithic curb.

(d) *Mountable curb.* A mountable curb may be utilized in lieu of the curb section defined in subsection (b) or (c) of this section at the developer's option. The design of said mountable curb shall be as shown in section 130-155 or as approved by the City Engineer.

(e) *Parallel drainage, rural street section.* Where rural section street construction is allowed under this chapter or where existing rural section border streets abut a subdivision proposed for development, the street drainage within or abutting such subdivision shall be designed and constructed to meet the ~~following minimum criteria:~~criteria in Chapter 120 of this Code and the current adopted City of Texarkana Stormwater Management Design Manual.

~~(1) Drainageways parallel with streets shall be designed to meet the requirements of section 120-5.~~

~~(2) The street drainageways shall be shaped, graded and improved in such manner that erosion will be controlled and side slopes will not exceed 4:1 front slope and 3:1 back slope to facilitate safety and maintenance.~~

~~(3) Street and drainage plans submitted shall include notes designating culvert pipe or culvert box size required for future access driveways along such streetside drainageways to comply with design capacity calculations for the various sections thereof. Minimum allowable pipe size shall be 15-inch diameter and culverts shall be located no closer than 26 feet to the centerline of the street.~~

~~(4) In instances where topography or other factors dictate that a streetside drainageway has a vertical depth greater than three feet, measured from top of front slope to flowline, the side slopes must be steeper than allowed above, or where erosion cannot be controlled otherwise, such drainageway shall be lined with concrete or other materials in a manner approved by the city engineer.~~

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~~(5) All cross-drainage structures under rural section streets shall be constructed with approved headwalls or sloped concrete-lined end sections.~~

## Sec. 130-151. Streets and alleys; traffic study required; minimum standards of structural design and construction.

All streets and alleys shall have Traffic Impact Study/Analysis and an individual-engineered design for pavement and subgrade based on specific site conditions and the projected traffic load and volumes that meets the then-current edition and supplements thereto, if any, of the American Association of State Highway and Transportation Officials (AASHTO) pavement structures design guide, adopted herein by reference. The requirements below are minimum standards:

(a) *Roadbed soils.* Roadbed soils with a plasticity index (P.I.) of 20 or greater shall not be considered acceptable subgrade material. Such high P.I. material must be stabilized in ~~an approved manner or replaced with a minimum of 18-inch thick approved subbase material.~~a manner approved in writing by the City Engineer. The design engineer shall require soil tests at each apparent change of soil characteristic along the street length or at intervals not exceeding ~~500~~300 feet of street length. In instances where roadbed soil is stabilized or replaced, appropriate laboratory tests shall be performed in a like manner on the new or stabilized material.

(b) *Subgrade.* Acceptable roadbed soils or subbase materials shall be worked a minimum six-inch depth and compacted to a minimum 95 percent Standard Proctor Density to be considered acceptable subgrade for further construction. Prior to testing for subgrade density, a certified independent testing laboratory under the direction of the design engineer shall supervise the proof rolling of the subgrade in accordance with ~~Item 216 of the herein adopted state department of transportation standard specifications.~~TxDOT Standard Specs. Once proof rolling is complete and any required repairs made, the independent testing laboratory shall test for required density with a minimum of one test for each soil type or at a minimum of one test for each ~~500~~300 feet of street length or part thereof.

(c) *Rigid pavement design.* All concrete pavements shall be Class P as defined by TxDOT Standard Specs.

~~(1) *Arterial streets.* Individual design based on projected and assigned traffic volumes by individual study.~~

(1) *Arterial streets.* Over the required subgrade or subbase, the minimum thickness requirement for Portland cement concrete (PCC) pavement shall be eight inches with #3 steel reinforcing bars 24 inches c/c or #4 steel reinforcing bars 36 inches c/c spacing. The concrete pavement shall be properly placed and cured with doweled expansion and construction joints, plus neatly sawed dummy joints at approved spacing. All joints shall be sealed with material approved in writing by the City Engineer and in a timely manner approved in writing by the City Engineer. Any uncontrolled cracks occurring shall be saw cut or routed and properly sealed. The actual placement of the concrete pavement shall be monitored by a certified independent testing laboratory under the direction of the design engineer to ensure that the paving activity complies with TxDOT Standard Specs and the mix design, including slump, concrete temperature, and water/cement ratio. Concrete strength tests will be required at a minimum of one test per each 250 cubic yards or part thereof.

(2) *Collector streets.* Over the required subgrade or subbase, the minimum thickness requirement for Portland cement concrete (PCC) pavement shall be six inches with #3 steel reinforcing bars 24 inches c/c or #4 steel reinforcing bars 36 inches c/c spacing. ~~The concrete shall be designed to produce a 3600 psi nonreinforced compressive beam strength at 28 days.~~ The concrete pavement shall be properly placed and cured with doweled expansion and construction joints, plus neatly sawed dummy joints at approved spacing. All joints to be sealed with material approved ~~material~~ in ~~an approved~~ writing by the City Engineer and in a timely manner approved in writing by the City Engineer. Any uncontrolled cracks occurring shall be saw cut or routed and properly sealed also. The actual placement of the concrete pavement shall be monitored by a certified independent testing laboratory under the direction of the design engineer to ensure that the paving activity complies with ~~the herein adopted state department of transportation standard specifications~~TxDOT Standard Specs and the mix design, including slump,

Attachment: 2023-026 ATTH 04 redline of changes [Revision 1] (3933 : 2023-026 ORD Amending Chapter 130 "Streets and Sidewalks")

concrete temperature and water/cement ratio. Concrete strength tests will be required at a minimum of one test per each 250 cubic yards or part thereof.

(3) *Residential streets.* The minimum standards established for collector streets in subsection (c)(2) of this section shall apply for residential street rigid pavement construction.

(d) *Flexural pavement design – all streets.*

~~(1) *Arterial street.* Individual design based on projected and assigned traffic volumes by individual study.~~

~~(2) *Collector street.*~~

~~a.~~ (1) *Nonstabilized flexible base.* Over the required subgrade or subbase, the minimum thickness requirement for a nonstabilized flexible base course shall be one of the following:

~~1~~a. Pit run gravel shall be eight inches in thickness with a plasticity index (P.I.) of not less than five nor more than 15. It shall meet gradation and all other requirements as listed for a Type B, Grade 3 flexible base material under ~~Item 247 of the adopted standard specifications~~TxDOT Standard Specs.

~~2~~b. Crushed stone shall be six inches in thickness with a meeting gradation and all other requirements as listed for a Type A, Grade 1 flexible base material under ~~Item 247 of the adopted standard specifications. The nonstabilized~~TxDOT Standard Specs. The non-stabilized flexible base material shall be shaped and compacted to a minimum 95 percent Standard Proctor Density and properly primed with an approved asphalt to be considered acceptable for further construction or surfacing. Laboratory density tests shall be performed at adequate intervals to ensure consistent density. The responsible design engineer shall determine appropriate test locations, with a minimum of one test for each ~~500~~300 feet of street length or part thereof.

~~b.~~(2) *Cement Treated Base.* A cement treated base shall be engineered to meet requirements of TxDOT Standard Specs; the thickness of the sub-base must either be a minimum of 8" and a minimum of 40 lbs. of cement per square yard, or as approved in writing by the City Engineer.

(3) *Hot-mix asphaltic concrete (HMAC) flexible base.* Over the required subgrade or subbase, an approved asphalt primer shall be applied, then a minimum thickness of five inches of HMAC flexible base may be applied. The HMAC base shall meet gradation and all other requirements for Type A (coarse-graded base course) or approved equal as listed under ~~Item 340 of the adopted standard specifications.~~ TxDOT Standard Specs.

~~c.~~(4) *Flexible surfacing.* The standard flexible surfacing for arterial and collector streets shall be a minimum thickness of two inches of hot-mix asphaltic concrete (HMAC) meeting the gradation and all other requirements for Type D (fine-graded surface course) or approved equal as listed under ~~Item 340 of the adopted standard specifications.~~

~~d. *Design speed*. The horizontal and vertical alignment shall meet the following minimum design speed as defined in the AASHTO green book:~~

~~1~~TxDOT Standard Specs. ~~Arterial: 50 miles per hour.~~

~~2. Major collector: 35 miles per hour.~~

~~3. Residential and residential collector: 30 miles per hour.~~

~~(3) *Residential and residential collector streets.*~~

~~a. *Nonstabilized flexible base*. The minimum standards set forth in subsection (d)(2)a. of this section shall apply to residential streets when surfaced with 1½ inches hot-mix asphaltic concrete (HMAC) as specified in subsection (d)(3)c. of this section.~~

~~b. *Hot-mix asphaltic concrete (HMAC) flexible base*. The minimum standards set forth in subsection (d)(2)b. of this section shall apply to residential streets when surfaced with 1½ inches of HMAC as specified in subsection (d)(3)c. of this section.~~

Attachment: 2023-026 ATTH 04 redline of changes [Revision 1] (3933 : 2023-026 ORD Amending Chapter 130 "Streets and Sidewalks")

~~c. *Flexible surfacing.*~~ The standard flexible surfacing for residential streets shall be a minimum thickness of 1~~½~~.5 inches of hot-mix asphaltic concrete (HMAC) meeting the gradation and all other requirements for Type D (fine-graded surface course) or approved equal as listed under ~~Item 340 of the adopted standard specifications.~~ TxDOT Standard Specs.

(5) *Design speed*. The horizontal and vertical alignment shall meet the following minimum design speed as defined in the AASHTO "Policy on Geometric Design of Highways and Streets" manual (or "green book"):

a. Arterial: 50 miles per hour.

b. Major collector: 35 miles per hour.

c. Residential and residential collector: 30 miles per hour.

~~d. *Alternate flexural design standard, residential streets.* Should the designer wish to substitute a two- or three-course surface treatment in full conformance to Item 316 or Item 318 of the adopted standard specifications in lieu of the standard 1½ inch HMAC as specified in subsection (d)(3)c. of this section over a nonstabilized flexible base, it will be allowed, provided, a minimum thickness of eight inches of crushed stone base as per subsection (c)(2)a.2. of this section, meeting all other requirements of subsection (d)(3)a. of this section is constructed and that all requirements of subsections (a) and (b) of this section are complied with. The asphalt type, aggregate type and rates of application shall be subject to the approval of the city engineer.~~

## Sec. 130-152. Engineering requirements.

(a) Any street constructed within the jurisdiction of this article shall be designed by a qualified professional engineer, duly registered to practice engineering in the state. The engineers signed, sealed plans and specifications, design data and supporting test reports for such street construction shall be submitted to and approved by the City Engineer, prior to start of any construction. Where the construction falls in the city's extraterritorial jurisdiction, a complete set of design data shall be submitted to the appropriate county commissioner for the engineers review and comments, prior to the start of any construction.

(b) As construction proceeds, the design engineer shall submit status reports to the City Engineer, accompanied by appropriate certified test reports, at completion of subbase or subgrade preparation, at completion of flexible base construction where applicable, during flexible surfacing or rigid pavement construction as appropriate. Upon completion of construction of any streets improved hereunder, the design and supervising engineer responsible for the street shall submit one reproducible set of as-built plans, signed, sealed and dated, together with the engineer's signed, sealed, dated statement that the work was performed under the engineer's supervision, that the engineer has inspected same and the construction does conform in all respects to the requirements and provisions of this article. Where construction occurred in the city's extraterritorial jurisdiction, a complete set of as-built data shall be submitted to the appropriate county commissioner.

(c) The City reserves the right to inspect thoroughly all construction improvements that are proposed or intended to be dedicated as public improvements; however, the City's reservation or exercise of a right to inspect shall not relieve nor be construed as relieving the professional engineer of the requirements of subsections (a) and (b) of this section.

## Sec. 130-153. Acceptance of completed improvements.

Upon completion of any street constructed under the jurisdiction of this article, the prime contractor responsible for the street construction or the developer of the property shall file with the city, on forms acceptable to the city attorney, a contract guaranteeing the correction or replacement of any or all construction that is found faulty or inadequate in any respect during the 12-month period immediately following completion of construction,

Attachment: 2023-026 ATTH 04 redline of changes [Revision 1] (3933 : 2023-026 ORD Amending Chapter 130 "Streets and Sidewalks")

submission of an as-built plan and acceptance by the City Engineer. Acceptance by the City Engineer shall be in writing following receipt of as-built data and a maintenance contract.

## Sec. 130-154. Alternative surety provisions for construction of certain streets.

(a) No building permit, electrical permit or plumbing permit shall be issued by the city for the construction or improvement of any property abutting or adjoining any street where permanent street improvements are constructed or reconstructed within the city under the provisions of this article, unless and until such street fully conforms in all respects with the provisions of this article, except as is provided in subsection (b) of this section.

(b) Building, electrical, plumbing and related development permits may be issued by the city for private development on platted lots abutting a street which has not been fully constructed to comply with subsection (a) of this section, upon the providing of alternate surety in the manner as hereinafter set forth. Notwithstanding the issuance of development permits, final inspection and/or occupancy permits will be withheld, until such street has been completed and does comply as required in subsection (a) of this section.

(1) In order to secure development permits prior to city acceptance of abutting streets, the subdivider or developer of the property shall post performance and payment bonds or an irrevocable letter of credit with the city, in favor of the city and in a form acceptable to the city attorney, in an amount not less than 100 percent of the estimated cost of constructing such abutting streets.

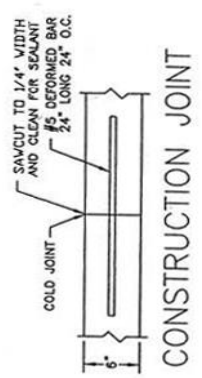
(2) Performance and payment bonds shall be from an approved surety company licensed to do business in the state and shall be so constructed as to guarantee the completion of specified street improvements, to comply with the requirements of this article within the 12-month period immediately following date of issuance, or the surety company will cause satisfactory completion within the following 12-month period.

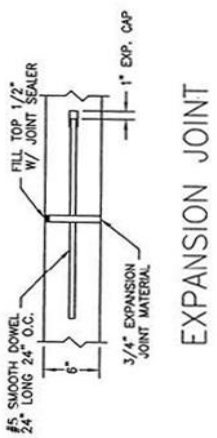
(3) The irrevocable letter of credit shall be from a national bank, state bank or savings and loan association located in the state and shall be so constructed as to guarantee the completion of specified street improvements to comply with the requirements of this article within the 12-month period immediately following date of issuance, or the city shall have the right to require the institution issuing the letter of credit to immediately pay into an escrow account, in the name of the city, an amount equal to the cost of completing the specified street improvements, as estimated by the city, up to the original total value stated in such letter of credit.

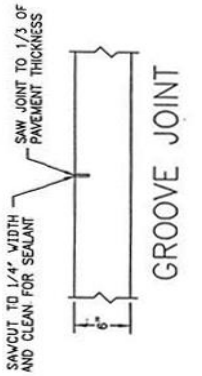
(4) The responsible design engineer employed by the developer shall develop an estimate of cost for the specified street improvements to be covered by the above-required bonds or letter of credit and shall submit a signed, sealed copy of such estimate, together with the plans and specifications for the improvements, for approval by the city engineer prior to submittal of bonds or letter of credit by the developer.

Attachment: 2023-026 ATTH 04 redline of changes [Revision 1] (3933 : 2023-026 ORD Amending Chapter 130 "Streets and Sidewalks")

**Sec. 130-155. Standard details.**



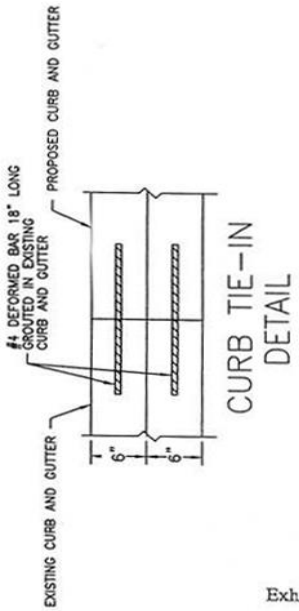
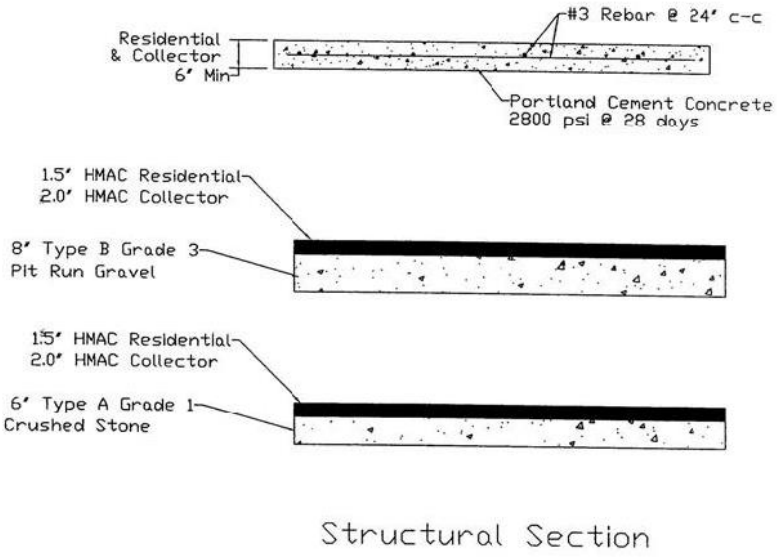



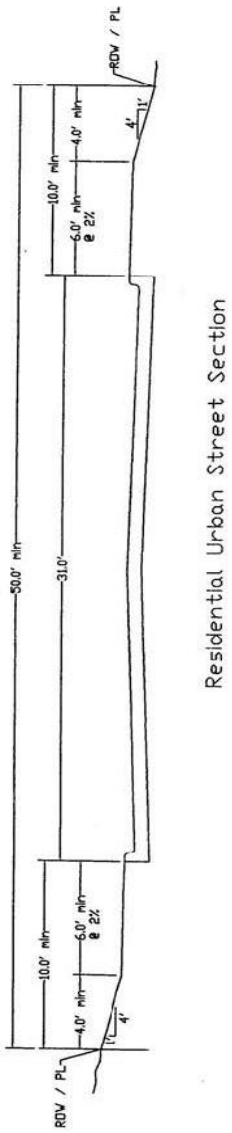

Exhibit "A"

Attachment: 2023-026 ATTH 04 redline of changes [Revision 1] (3933 : 2023-026 ORD Amending Chapter 130 "Streets and Sidewalks")



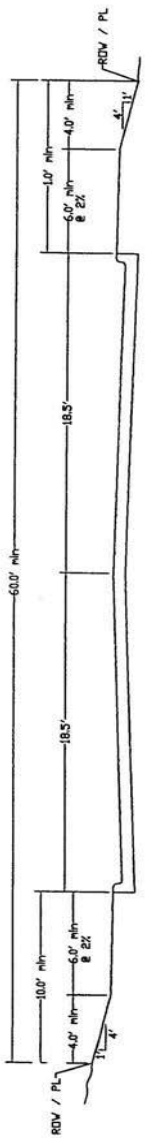

Structural Section

Attachment: 2023-026 ATTH 04 redline of changes [Revision 1] (3933 : 2023-026 ORD Amending Chapter 130 "Streets and Sidewalks")



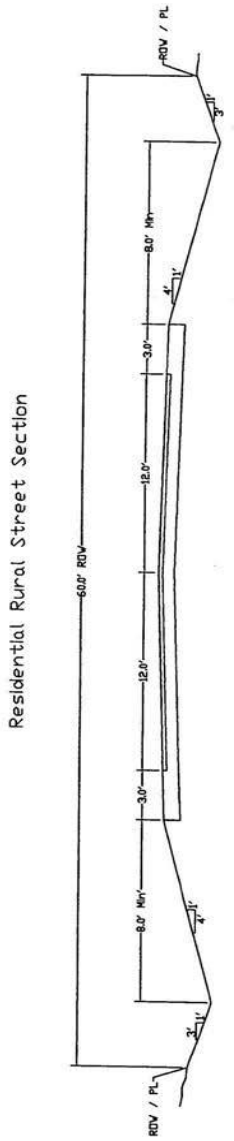

Residential Urban Street Section

Attachment: 2023-026 ATTH 04 redline of changes [Revision 1] (3933 : 2023-026 ORD Amending Chapter 130 "Streets and Sidewalks")

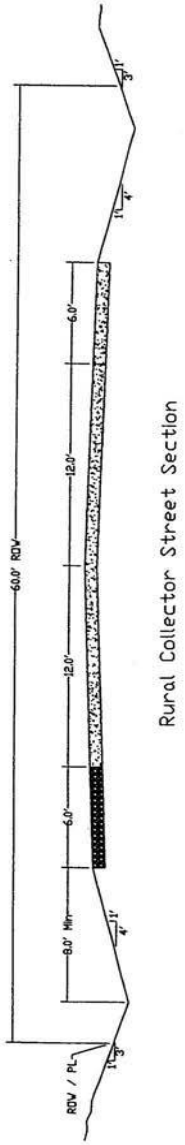



Urban Collector Street Section

Attachment: 2023-026 ATTH 04 redline of changes [Revision 1] (3933 : 2023-026 ORD Amending Chapter 130 "Streets and Sidewalks")

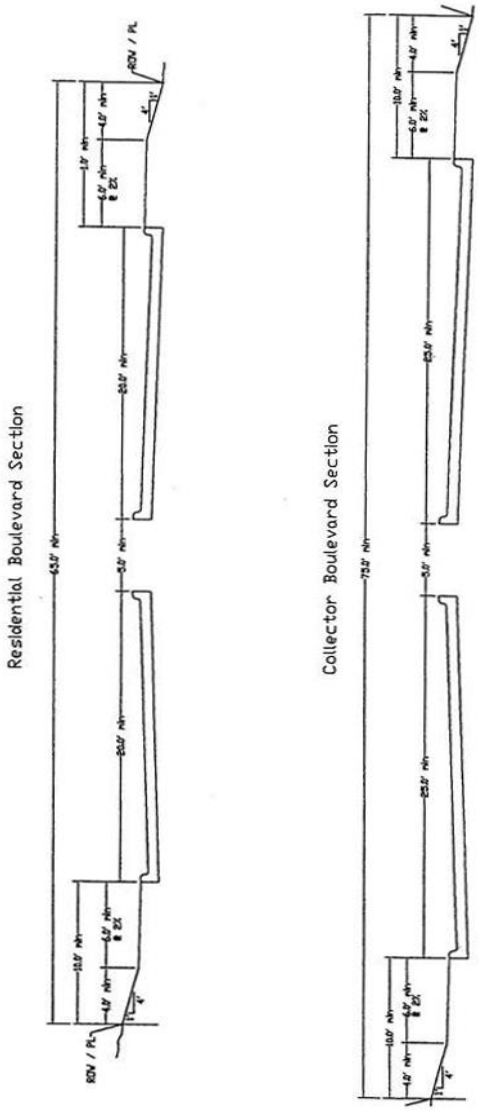



Attachment: 2023-026 ATTH 04 redline of changes [Revision 1] (3933 : 2023-026 ORD Amending Chapter 130 "Streets and Sidewalks")




Rural Collector Street Section

Attachment: 2023-026 ATTH 04 redline of changes [Revision 1] (3933 : 2023-026 ORD Amending Chapter 130 "Streets and Sidewalks")




~~(Code 1961, § 24-80; Ord. No. 142-06, § 1, 6-26-2006)~~

Attachment: 2023-026 ATTH 04 redline of changes [Revision 1] (3933 : 2023-026 ORD Amending Chapter 130 "Streets and Sidewalks")

2023-026 ATTH 05


# JOSH R. MORRISS, III

217 W BROAD ST, APT D ◯ TEXARKANA, TEXAS 75501


March 10, 2023

Honorable Mayor and Council Members
City of Texarkana, Texas

RE: Proposed Updates on Sidewalks in City Ordinances in Sections 130-1- to 130-3

Ladies and Gentlemen:

Please accept this as a letter of support from me and from the three land-owning entities I participate in management for (being Waggoner Creek Crossing, L.P., Waggoner Creek Crossing II, L.P., and the Josh R. Morriss, Jr., Family Limited Partnership) seeking your favorable consideration of the changes to Sections 130-1 to 130-3 in the City Ordinances. Over time I believe, these changes promise more user-friendly and safer neighborhoods and business areas.

Thank you for your service to our community and your consideration.

Yours Very Truly,

Josh R. Morriss, III


*Telephone:* (903) 244-8526 *E-mail:* joshmorriss3rd@gmail.com


Attachment: 2023-026 ATTH 05-Letter.WCC.WCCII.FLP. to City supporting 2023 changes to sidewalk ordinance (3933 : 2023-026 ORD Amending

PARTNERSHIP FOR THE PATHWAY
BUILDING A TRAIL FOR TWO CITIES

February 22, 2023

Mr. Dusty Henslee
Assistant City Manager
City of Texarkana, Texas
220 Texas Blvd.
Texarkana, Texas 75501

Dear Mr. Henslee,

This is a letter of support for Chapter 130 Streets and Sidewalks, Article 1, Sections 130-1 to 130-3 on behalf of the Partnership for the Pathway.

Our organization has worked for the past 16 years with the City of Texarkana, Texas to build pedestrian and bike trails in Texarkana. The Partnership for the Pathway has provided matching money for grants for the Phillip McDougal Trail, the Texas Tourists Bureau Trail, Sister Damian Trail, and two phases of the Bringle Lake Trail. These sidewalks and shared use trails have helped to make Texarkana not only safer, but much more attractive.

We are very much in favor of this regulation which sets out minimum standards for shared use paths and sidewalks for the City and its citizens. These standards will enable sidewalks and trails to be built as the City grows and develops, thus enabling the pedestrian and bike riders to get to their destinations safely. We have all seen our local pedestrians and bike riders traveling on crowded streets or walking where there were no sidewalks.

This regulation will help to transform Texarkana into a Bike-Pedestrian friendly City which has been badly needed for many years. We urge the passage of this ordinance by the City Council as soon as possible.

Sincerely,

John E. Harrison
Board Member
Partnership for the Pathway

Julie-Ray Harrison
Board Member
Partnership for the Pathway

Attachment: 2023-026 ATTH 06 PatnershipforPathway Letter of Support (3933 : 2023-026 ORD Amending Chapter 130 "Streets and Sidewalks")

Publish

# ORDINANCE NO. 2023-026

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEXARKANA, TEXAS, AMENDING CHAPTER 130 ("STREETS AND SIDEWALKS") OF THE LAND DEVELOPMENT CODE; AMENDING THE MASTER FEE LIST FOR CHAPTER 130 LICENSE AND PERMIT FEES; CONTAINING REPEALER AND SEVERABILITY CLAUSES; PROVIDING FOR PUBLICATION; CONTAINING LEGISLATIVE FINDINGS; AND ESTABLISHING AN EFFECTIVE DATE.**

## *Recitals*

**WHEREAS**, Chapter 130 of the Land Development Code regulates the City's streets and sidewalks, rental charges not otherwise governed by state or federal law, excavations, access driveways, and street improvement standards; and

**WHEREAS**, the Public Works Department recommends amending Chapter 130 as set out in the attached **ATTH 01** and also amending the City's Master Fee list for additions and revisions to the permit and license fees addressed in Chapter 130 as set out in the attached **ATTH 02**; and

**WHEREAS**, the City Council finds and determines that the revisions to Chapter 130, as proposed by the Public Works department and the additions and revisions to the permit and license fees as set forth in this ordinance, are reasonable and in the best interests of the City.

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

**SECTION 1:** Chapter 130 of the Land Development Code of the City of Texarkana, Texas, shall be amended in its entirety by replacing the existing provisions with the content set out in the attached **ATTH 01**, incorporated herein by reference for all purposes.

**SECTION 2:** The Master Fee list is hereby amended to add, or revise fees set out in the attached **ATTH 02**, incorporated herein by reference for all purposes. The Master Fee list shall also be amended to update the relocation of the Public Works Department to City Hall.

**SECTION 3:** All ordinances or parts of ordinances and resolutions or parts of resolutions in conflict herewith are specifically repealed to the extent of such conflict.

**SECTION 4:** In case a section, clause, sentence or part of this Ordinance shall be deemed or adjudged by a court of competent jurisdiction to be invalid, then such invalidity shall not affect, impair, or invalidate the remainder of this Ordinance.

**SECTION 5:** The City Secretary shall give notice of the passage of this Ordinance as provided in Article XI, Section 3 of the Charter of the City of Texarkana, Texas.

Attachment: 2023-026 ORD amend Ch 130 Streets Sidewalks (3933 : 2023-026 ORD Amending Chapter 130 "Streets and Sidewalks")

Publish

**SECTION 6:** The Recitals set out in this Ordinance are true and correct and are incorporated herein and made a part hereof as legislative findings of the City Council for all purposes.

**SECTION 7:** This Ordinance shall be in full force and effect ten (10) days after its passage and approval.

**PASSED AND APPROVED** in Regular Council Session on this the **13th day of March, 2023**.

ATTEST:

| | |
|---|---|
| JENNIFER EVANS, CITY SECRETARY | BOB BRUGGEMAN, MAYOR |

Attachment: 2023-026 ORD amend Ch 130 Streets Sidewalks (3933 : 2023-026 ORD Amending Chapter 130 "Streets and Sidewalks")

City of Texarkana, Texas

# Briefing Sheet

Version:
**Update Date:** 2/6/2023 9:18 AM

**Lead Department:** City Manager **Action Officer:** David Orr, City Manager

**Subject:** Resolution No. 2023-020 adopting legislative priorities for the City of Texarkana.

**Briefing:** 2/27/2023 **Public Hearing:** 2/27/2023 **Council Vote:** 2/27/2023

| Item Schedule |
| --- |
| Schedule 1: Brief twice - vote once (six weeks) |

## Updates/History of Briefing:

NOT APPLICABLE

## Executive Summary and Background Information:

The Northeast Texas Regional Alliance Legislative Trip is scheduled for March 1st and 2nd, 2022 in Austin where our region's priorities will be discussed with elected members of the Texas State Legislature.

During the 88th Session, it is anticipated the Texas State Legislature will decide many significant issues that will impact residents, non-profit organizations and businesses of Texarkana.

The attached legislative priorities of the City of Texarkana are proposed for adoption for the 88th session of the Texas State Legislature.

## Potential Options:

- Approve
- Deny

## Fiscal Implications:

None

## Staff Recommendation:

Staff recommends approval.

## Advisory Board/Committee Review:

NONE

## Board/Committee Recommendation:

NOT APPLICABLE

**City of Texarkana, Texas**

**Advisory Board/Committee Meeting Date and Minutes:**

NOT APPLICABLE

**Attachments**

a. 2023-020 RES Adopting Legislative Priorities (DOCX)
b. 2023-020 EXH 'A' Texarkana Legislative Priorities (DOCX)
c. 2023-020 Goals & Perspectives (DOCX)
d. 2023-020 RES Legislative Priorities signed (PDF)

**Staff Coordination**

| | | | | |
|---|---|---|---|---|
| City Manager | David Orr | Department Head Review | Completed | 02/01/2023 4:53 PM |
| City Manager | David Orr | City Manager Review | Completed | 02/01/2023 4:53 PM |
| City Council | Jennifer Evans | Meeting | Completed | 02/13/2023 6:00 PM |

**Meeting History**

| | | | |
|---|---|---|---|
| 02/13/23 | City Council | MOVED FORWARD | Next: 02/27/23 |

**RESOLUTION NO. 2023 - 020**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEXARKANA, TEXAS, ADOPTING THE CITY OF TEXARKANA'S LEGISLATIVE PRIORITIES FOR THE 88TH SESSION OF THE TEXAS LEGISLATURE; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS,** the City Council of the City of Texarkana, Texas, desires to adopt legislative priorities of the City of Texarkana for the 88th session of the Texas State Legislature; and

**WHEREAS**, the Northeast Texas Regional Alliance Legislative Trip is scheduled for March 1st and 2nd, 2023 in Austin where the local region's priorities will be discussed with elected members of the Texas State Legislature; and

**WHEREAS,** during the 88th Session, it is anticipated the Texas State Legislature will decide many significant issues that will impact residents, non-profit organizations, and businesses of Texarkana.

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

**SECTION 1:** The City Council of the City of Texarkana, Texas, hereby approves and adopts the City's Legislative Priorities for the 88th Session of the Texas State Legislature (**Exhibit A**).

**SECTION 2:** That this Resolution shall be in full force and effect from and after its passage and approval.

**PASSED AND APPROVED** in Regular Council Session on this the **27th day of February, 2023.**

ATTEST:

_____ _____

JENNIFER EVANS, CITY SECRETARY BOB BRUGGEMAN, MAYOR

Attachment: 2023-020 RES Adopting Legislative Priorities (3927 : 2023-020 RES Adopting Legislative Priorities)

CITY OF
# TEXARKANA
220 TEXAS BOULEVARD TEXARKANA TEXAS 75501 TEXAS

## Legislative Priorities

**Support** the Texas Municipal League's legislative efforts to uphold cities home-rule authority and oppose legislation that diminishes home-rule authority.

**Support** local responsibility for land use, development, and annexation authority.

**Support** legislation that would maintain the current revenue structure of the City of Texarkana and other home-rule municipalities in the state.

## Economic Development & Tourism

**Support** all economic development programs currently available under Texas law.

**Support** state and local utilization of tax abatements and other economic development incentives including Ch. 313 extension proposals.

**Support** further funding of the Broadband Development Office and prioritize funding distribution to local governmen entities.

**Support** amendments to the Hotel Occupancy Tax statute in a manner that provides all Texas cities the authority to spend Hotel Occupancy Tax revenue on existing sports facilities and fields in a manner that promotes tourism within the city.

**Support** amendments to the Hotel Occupancy Tax statute that would rebate a portion of the state Hotel Occupancy Tax revenues to Texas cities for use in the development, maintenance and operations of convention centers and other performance facilities.

## Transportation

**Support** increasing Texas Department of Transportation (TxDOT) funding for new projects and maintenance. Local project priorities include I-30 widening, State Line Ave, and Texarkana MPO established transportation priorities.

**Support** legislation that would allow for greater flexibility by cities to fund local airport transportation projects.

## Water

**Support** legislation which promotes maintaining local authority of water rights within individual districts and/or municipalities and make funding available to water rights holders for bi-state development of water resources.

**Support** legislation to streamline the water project permitting process at both the state and federal level.

## Open Government & Elections

**Support** efforts and legislation to maintain the May and November Uniform Election dates.

Attachment: 2023-020 EXH 'A' Texarkana Legislative Priorities (3927 : 2023-020 RES Adopting Legislative Priorities)

# City of Texarkana, Texas

**Developing Perspectives and Goals Pending Approval by the City Council:**

| Perspectives | Goals |
|---|---|
| Serve the Community | ☐ Promote an Environmentally Sensitive & Livable Community<br>☐ Provide a Safe Community<br>☑ Deliver Quality Services<br>☐ Foster a Healthy Community |
| Run the Operations | ☐ Enhance Community Preparedness & Responsiveness<br>☐ Maximize Partnership Opportunities<br>☑ Provide Courteous & Responsive Customer Service<br>☐ Model a Positive City Image<br>☑ Deliver Efficient Services<br>☑ Cultivate Community Involvement & Access |
| Manage the Resources | ☐ Maintain Fiscal Strength<br>☐ Maximize Utilization & Resources<br>☐ Invest in Infrastructure & Transportation |
| Develop Personnel | ☐ Develop a Skilled & Diverse Workforce<br>☐ Create a Positive & Rewarding Work Culture |

**Perspectives and Goals Additional Comments:**

**Resource Impact:**

| | |
|---|---|
| Staff time required if item is approved: | No Additional |

**Other Potential Impacts:**

**Public Information Plan:**

| | | | |
|---|---|---|---|
| ☐ | Newspaper Notice (Required by Statute) | ☐ | Public Hearing (Required by Statute) |
| ☐ | Public Forum/Input Session | ☐ | Press Release |
| ☐ | E-News Distribution | ☐ | Website Notice |
| ☐ | Social Media (Twitter, Facebook, etc.) | ☐ | Special Mailing |
| ☐ | Flyers Posted | ☐ | Banners Posted |
| ☐ | Survey | ☐ | Automated Phone Call |
| ☐ | None Required | ☐ | |

Other:

Attachment: 2023-020 Goals & Perspectives (3927 : 2023-020 RES Adopting Legislative Priorities)

# RESOLUTION NO. 2023 - 020

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEXARKANA, TEXAS, ADOPTING THE CITY OF TEXARKANA'S LEGISLATIVE PRIORITIES FOR THE 88TH SESSION OF THE TEXAS LEGISLATURE; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS,** the City Council of the City of Texarkana, Texas, desires to adopt legislative priorities of the City of Texarkana for the 88th session of the Texas State Legislature; and

**WHEREAS**, the Northeast Texas Regional Alliance Legislative Trip is scheduled for March 1st and 2nd, 2023 in Austin where the local region's priorities will be discussed with elected members of the Texas State Legislature; and

**WHEREAS,** during the 88th Session, it is anticipated the Texas State Legislature will decide many significant issues that will impact residents, non-profit organizations, and businesses of Texarkana.

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

**SECTION 1:** The City Council of the City of Texarkana, Texas, hereby approves and adopts the City's Legislative Priorities for the 88th Session of the Texas State Legislature (**Exhibit A**).

**SECTION 2:** That this Resolution shall be in full force and effect from and after its passage and approval.

**PASSED AND APPROVED** in Regular Council Session on this the **27th day of February, 2023.**

ATTEST:

JENNIFER EVANS, CITY SECRETARY

BOB BRUGGEMAN, MAYOR

6:30p.m.

Attachment: 2023-020 RES Legislative Priorities signed (3927 : 2023-020 RES Adopting Legislative Priorities)

CITY OF

# TEXARKANA

220 TEXAS BOULEVARD TEXARKANA TEXAS 75501 TEXAS

## Legislative Priorities

**Support** the Texas Municipal League's legislative efforts to uphold cities home-rule authority and oppose legislation that diminishes home-rule authority.

**Support** local responsibility for land use, development, and annexation authority.

**Support** legislation that would maintain the current revenue structure of the City of Texarkana and other home-rule municipalities in the state.

## Economic Development & Tourism

**Support** all economic development programs currently available under Texas law.

**Support** state and local utilization of tax abatements and other economic development incentives including Ch. 313 extension proposals.

**Support** further funding of the Broadband Development Office and prioritize funding distribution to local governmen entities.

**Support** amendments to the Hotel Occupancy Tax statute in a manner that provides all Texas cities the authority to spend Hotel Occupancy Tax revenue on existing sports facilities and fields in a manner that promotes tourism within the city.

**Support** amendments to the Hotel Occupancy Tax statute that would rebate a portion of the state Hotel Occupancy Tax revenues to Texas cities for use in the development, maintenance and operations of convention centers and other performance facilities.

## Transportation

**Support** increasing Texas Department of Transportation (TxDOT) funding for new projects and maintenance. Local project priorities include I-30 widening, State Line Ave, and Texarkana MPO established transportation priorities.

**Support** legislation that would allow for greater flexibility by cities to fund local airport transportation projects.

## Water

**Support** legislation which promotes maintaining local authority of water rights within individual districts and/or municipalities and make funding available to water rights holders for bi-state development of water resources.

**Support** legislation to streamline the water project permitting process at both the state and federal level.

## Open Government & Elections

**Support** efforts and legislation to maintain the May and November Uniform Election dates.

Attachment: 2023-020 RES Legislative Priorities signed (3927 : 2023-020 RES Adopting Legislative Priorities)

City of Texarkana, Texas

Version:

# Briefing Sheet

**Update Date:** 2/3/2023 10:58 AM

**Lead Department:** City Attorney **Action Officer:** Jeffery Lewis,

**Subject:** Resolution No. 2023-021 authorizing a written services agreement for provision of city services to RaceTrac, Inc., site [US 59 & S. Kings Hwy] in the event the City Council adopts an ordinance for full-purpose annexation of the tract.

**Briefing:** 2/27/2023 **Public Hearing:** 2/27/2023 **Council Vote:** 2/27/2023

**Item Schedule**

**Updates/History of Briefing:**

NOT APPLICABLE

**Executive Summary and Background Information:**

RaceTrac, Inc., the owner of an 8.755 acre tract on the northeast corner of U.S. Highway 59 and S. Kings Highway, has requested that the City annex the acreage into the city limits. The tract is within the Limited Purpose Property described in the City's Strategic Partnership Agreement with Macedonia-Eylau Municipal Utility District No. 1 of Bowie County, approved by the City Council on October 24, 2022 [Res. No. 2022-130].

Prior to RaceTrac, Inc., acquiring ownership of this tract, the City Council approved limited-purpose annexation of the Property consistent with the Strategic Partnership Agreement [Ord. No. 2022-137] and authorized and ordered for the tract the legal sale of malt beverages and wine for off-premise consumption consistent with City ordinances and the Texas Alcoholic Beverage Code [Ord. No. 2022-138], both ordinances to be effective upon the execution of the proposed services agreement. RaceTrac, Inc., represented by legal counsel, has agreed to and signed the proposed services agreement.

Under Texas law, a city that elects to annex an area by petition of landowner must first negotiate and enter into a written agreement with the owner of land in the area for the provision of services in the area, with the agreement including (1) a list of each service the city will provide on the effective date of the annexation, and (2) a schedule that includes the period within which the city will provide each service that is not provided on the effective date of the annexation.

Approval of this resolution does not annex the tract. Annexation must be accomplished by ordinance; and before a city may adopt an ordinance annexing an area by petition of landowners, the governing body must conduct a public hearing, providing persons interested in the annexation the opportunity to be heard, and thereafter the governing body may adopt an ordinance annexing the area.

Approval of this resolution authorizes infrastructure work to commence for delivery of retail water and sewer service to the site, consistent with Section 3.4 of the City's Strategic Partnership Agreement with Macedonia-Eylau Municipal Utility District.

**Potential Options:**

Approve (or not) the proposed services agreement.

**Fiscal Implications:**

The infrastructure work for delivery of retail water and sewer service to the site is outlined in the attached Strategic Partnership Agreement with Macedonia-Eylau Municipal Utility District.

**Staff Recommendation:**

City staff recommends that the City Council elect to begin the process of consideration of annexation of the subject tract: authorizing the City Manager to negotiate and execute the proposed services agreement pertaining to development incentives and services to be provided by the City in the event the City Council, in its discretion, favorably votes to annex the subject tract; and authorizing infrastructure work to commence for delivery of retail water and sewer service to the site, consistent with Section 3.4 of the City's Strategic Partnership Agreement with Macedonia-Eylau Municipal Utility District.

**Advisory Board/Committee Review:**

NONE

**Board/Committee Recommendation:**

NOT APPLICABLE

**Advisory Board/Committee Meeting Date and Minutes:**

NOT APPLICABLE

**Attachments**

a. 2023-021 RES RaceTrac serv agmt (DOCX)
b. 2023-021 ATTH 01 Serv Agmt RT (PDF)
c. 2023-021 ATTH 02 SPA City & M-E MUD (PDF)
d. 2023-021 Goals & Perspectives (DOCX)
e. 2023-021 RES Race Trac vol. annex. svc. agrmt signed (PDF)

**Staff Coordination**

| | | | | |
|---|---|---|---|---|
| City Attorney | Jeffery C. Lewis | Department Head Review | Completed | 02/03/2023 10:59 AM |
| Water Utilities | Gary Smith | Review | Completed | 02/03/2023 11:30 AM |
| Public Works Department | Dusty Henslee | Review | Completed | 02/03/2023 12:45 PM |

**City of Texarkana, Texas**

| | | | | |
|---|---|---|---|---|
| City Manager 1:47 PM | David Orr | City Manager Review | Completed | 02/03/2023 |
| City Council 6:00 PM | Jennifer Evans | Meeting | Completed | 02/13/2023 |

## Meeting History

| | | | |
|---|---|---|---|
| 02/13/23 | City Council | MOVED FORWARD | Next: 02/27/23 |

**RESOLUTION NO. 2023 - 021**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEXARKANA, TEXAS, ELECTING TO BEGIN THE PROCESS OF CONSIDERING THE VOLUNTARY ANNEXTION OF AN 8.755 ACRE TRACT, H. S. JANES HRS A-306, INTO THE CITY LIMITS OF THE CITY OF TEXARKANA, TEXAS, BY AUTHORIZING A WRITTEN SERVICES AGREEMENT FOR PROVISION OF CITY SERVICES IN THE EVENT THE CITY COUNCIL ADOPTS AN ORDINANCE ANNEXING THE TRACT; AUTHORIZING INFRASTRUCTURE WORK FOR DELIVERY OF RETAIL WATER AND SEWER SERVICE; DIRECTING THE PREPARATION OF A FORM ANNEXATION ORDINANCE AND A PUBLIC HEARING BEFORE INSTITUTING ANY ANNEXATION PROCEEDINGS; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS,** RaceTrac, Inc., the owner of an 8.755 lying and situated in the H. S. Janes Headright Survey, Abstract 306, Bowie County, Texas, described in Section 1 of the proposed "Municipal Services Agreement" ("MSA") attached to this resolution as **ATTH 01**, has requested that the City of Texarkana, Texas, annex the acreage into the city limits and has signed the proposed MSA; and

**WHEREAS,** the tract is within the Limited Purpose Property as defined and described in the Strategic Partnership Agreement ("SPA") authorized by Section 43.0751 of the Texas Local Government Code entered into by and between the City and Macedonia-Eylau Municipal Utility District No. 1 of Bowie County ("District"); and

**WHEREAS**, prior to RaceTrac, Inc., acquiring ownership of the Property, the City Council approved limited-purpose annexation of the Property consistent with the SPA [Ord. No. 2022-137] and authorized and ordered for the Property the legal sale of malt beverages and wine for off-premise consumption consistent with City ordinances and pursuant to Section 251.725 of the Texas Alcoholic Beverage Code [Ord. No. 2022-138], both ordinances to be effective upon the execution of the services agreement attached to this resolution; and

**WHEREAS**, pursuant to the Texas Local Government Code, the governing body of a city that elects to annex an area by petition of landowner must first negotiate and enter into a written agreement with the owner of land in the area for the provision of services in the area, with the agreement including (1) a list of each service the city will provide on the effective date of the annexation, and (2) a schedule that includes the period within which the city will provide each service that is not provided on the effective date of the annexation; and

**WHEREAS,** before a city may adopt an ordinance annexing an area by petition of landowners, the governing body must conduct a public hearing, providing persons interested in the annexation the opportunity to be heard, and thereafter the governing body may adopt an ordinance annexing the area; and

**WHEREAS,** City staff recommends that the City Council elect to begin the process of consideration of annexation of the subject tract by first authorizing the City Manager to negotiate

Attachment: 2023-021 RES RaceTrac serv agmt (3928 : 2023-021 RES RaceTrac agmt)

and execute the proposed MSA attached to this resolution pertaining to development incentives and services to be provided by the City in the event the City Council, in its discretion, favorably votes to annex the subject tract.

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

**SECTION 1:** The City Council elects to begin the process of considering the voluntary annexation of the tract described in Section 1 of the attached Municipal Services Agreement **[ATTH 01]** and authorizes the City Manager to execute the agreement.

**SECTION 2:** The City Council's approval of this resolution does not bind the City Council to approve annexation of the subject tract; and nothing in this resolution promises or guarantees a favorable vote by the City Council to approve annexation of the tract.

**SECTION 3:** Consistent with Section 3.4 of the SPA and the Statement of Work for implementing full-purpose annexation of the Corridor, and upon execution of the MSA, the Council authorizes the City Manager to begin such infrastructure work, within Council-approved budgeted parameters, for delivery of retail water and sewer service to the tract described in Section 1 of the attached MSA.

**SECTION 4:** Upon execution of the MSA, the City Council directs the City Manager to prepare a proposed annexation ordinance for the subject tract; and, at an appropriate time as determined by the City Manager and consistent with Texas law before instituting any annexation proceedings, the City Council shall give all interested persons the right to appear and to be heard at a public hearing during a regular meeting of the City Council pertaining to a proposed annexation for the subject tract.

**SECTION 5:** The City Manager or designee shall cause to be issued all newspaper publications and notices as required by law for the proceedings and hearings authorized by this Resolution.

**SECTION 6:** This Resolution shall be in full force and effect from and after its passage and approval.

**PASSED AND APPROVED** in Regular Council Session on this the **27th day of February, 2023**.

ATTEST:

JENNIFER EVANS, CITY SECRETARY

BOB BRUGGEMAN, MAYOR

Attachment: 2023-021 RES RaceTrac serv agmt (3928 : 2023-021 RES RaceTrac agmt)

# Municipal Services Agreement – Commercial

* * * * *

## Owner-Consent Voluntary Annexation

This Municipal Services Agreement ("Agreement") is entered into by and between the City of Texarkana, Texas, a home-rule municipality of the State of Texas ("City"), and RaceTrac, Inc. ("Owner").

*Recitals*

The parties agree that the following recitals are true and correct and form the basis upon which the parties have entered into this Agreement.

**WHEREAS**, pursuant to the Texas Local Government Code, the governing body of a city that elects to annex an area by petition of landowner must first negotiate and enter into a written agreement with the owners of land in the area for the provision of services in the area, with the agreement including (1) a list of each service the city will provide on the effective date of the annexation, and (2) a schedule that includes the period within which the city will provide each service that is not provided on the effective date of the annexation; and

**WHEREAS**, RaceTrac, Inc., has acquired a certain parcel of land situated in Bowie County, Texas, within the City's extraterritorial jurisdiction, more particularly described in Section 1, below ("the Property"); and

**WHEREAS**, the Property is located within the Limited Purpose Property as defined and described in the Strategic Partnership Agreement ("SPA") authorized by Section 43.0751 of the Texas Local Government Code entered into by and between the City and Macedonia-Eylau Municipal Utility District No. 1 of Bowie County ("District"); and

**WHEREAS**, prior to RaceTrac, Inc., acquiring ownership of the Property, the City Council approved limited-purpose annexation of the Property consistent with the SPA [Ord. No. 2022-137] and authorized and ordered for the Property the legal sale of malt beverages and wine for off-premise consumption consistent with City ordinances and pursuant to Section 251.725 of the Texas Alcoholic Beverage Code [Ord. No. 2022-138], both ordinances to be effective upon the execution of this Agreement; and

**WHEREAS**, by this Agreement, Owner requests and consents to full-purpose annexation of the Property by the City; and

**WHEREAS**, City and Owner desire to set out their agreements for the development of the Property by confirming development incentives, pre-annexation development of the Property, the process for City Council consideration of full-purpose annexation of the Property, and — in the event the City Council approves full-purpose annexation — the City services to be provided for the Property on or after the effective date of full-purpose annexation.

**NOW THEREFORE,** in exchange for the mutual covenants, conditions and promises contained herein, City and Owner agree as follows:



Attachment: 2023-021 ATTH 01 Serv Agmt RT (3928 : 2023-021 RES RaceTrac agmt)

1. **PROPERTY.** This Agreement is only applicable to the Property described below:

All that certain lot, tract or parcel of land lying and situated in the H. S. Janes Headright Survey, Abstract 306, Bowie County, Texas, being all of that certain tract of land described as Tract 1 with 4 acres, and Tract 2, with 0.74 in the deed from N. E. Jones Oil Company, Inc. to Cole & Prewitt, LLC., dated April 14, 2015, recorded in Document No. 2015-3696 of the Real Property Records, Bowie County, Texas, being all of that certain tract of land described as 3.963 acres in the deed from Gary Tipton, et al to Cole & Prewitt, LLC., dated December 29, 2015, recorded in Document No. 2016-35 of the Real Property Records, Bowie County, Texas, being all of that certain tract of land described as 0.215 acres in the Order to Close, Abandon, and Vacate Black Drive, from the Bowie County Commissioners Court to Cole & Prewitt, LLC, recorded in Document No. 2022-00012360 of the Real Property Records of Bowie County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING at a 1 inch square pipe found for a corner, lying in the East right-of-way line of Farm-to-Market Road 989 (South Kings Highway), the Northwest corner of the said 4 acre tract, and the Southwest corner of that certain tract of land described as 20.903 acres in the deed from Woody Ridge Livestock Auction, LLC to SMBL Cattle Company, LLC, dated August 25, 2016, recorded in Document No. 2016-10474 of the Real Property Records, Bowie County, Texas

THENCE North 70 degrees 46 minutes 33 seconds East a distance of 244.41 feet generally along a fence line and the South line of the said 20.903 acre tract to a 1/2 inch steel pipe (control monument), found for a corner, the Northeast corner of the said 4 acre tract, the Northwest corner of the said 3.963 acre tract, and at an angle point in the South line of the said 20.903 acre tract;

THENCE North 87 degrees 38 minutes 42 seconds East a distance of 265.29 feet generally along a fence line, the North line of the said 3.963 acre tract and the South line of the said 20.903 acre tract to a 1/2 inch steel pipe (control monument), found for a corner, at an angle point in the North line of the said 3.963 acre tract, the Southeast corner of the said 20.903 acre tract, and the Southwest corner of Lot No. 3, Block No. 2 of Lake Drive Plaza Subdivision, according to the plat recorded in Volume 5435, Page 1 of the Real Property Records, Bowie County, Texas;

THENCE North 87 degrees 48 minutes 46 seconds East a distance of 29.53 feet generally along a fence line, the North line of the said 3.963 acre tract and the South line of the said Lot No. 3 to a 1/2 inch steel rod, capped MTG 101011-00, set for a corner, the Northeast corner of the said 3.963 acre tract, lying in the South line of the said Lot No. 3, and the Northwest corner of that certain tract of land described as 1.916 acres in the deed from Thomas A. Simpson, et ux, to Gary W. Treadway, dated March 11, 2015, recorded in Document No. 2015-3028 of the Real Property Records, Bowie County, Texas, said corner bears North 87 degrees 48 minutes 46 seconds East a distance of 176.16 feet to a 1/2 inch steel rod, found for the Northeast corner of the said 1.916 acre tract;

THENCE South 23 degrees 41 minutes 34 seconds East a distance of 576.41 feet generally along a fence line, the East line of the said 3.963 acre tract and the West line of the said 1.916 acre tract to a 1/2 inch steel rod, capped MTG 101011-00, set for a corner, lying the North right-of-way line of U.S. Highway No. 59 (South Lake Drive), the Southeast corner of the said 3.963 acre tract, and the Southwest corner of the said 1.916 acre tract, at the beginning of a circular curve, to the left, said corner bears North 49 degrees 49 minutes 52 seconds East a distance of 162.86 feet to a 1/2 inch steel rod, found for the Southeast corner of the said 1.916 acre tract;



Attachment: 2023-021 ATTH 01 Serv Agmt RT (3928 : 2023-021 RES RaceTrac agmt)

THENCE in a Southwesterly direction along the arc of the said circular curve a distance of 414.64 feet, with a delta angle of 06 degrees 05 minutes 31 seconds, a radius of 3899.84 feet, a chord bearing of South 45 degrees 35 minutes 23 seconds West, and a chord distance of 414.45 feet to a 1/2 inch steel rod, capped MTG 101011-00, set for a corner, at an angle point in the South line of the said 0.74 acre tract and the North right-of-way line of the said South Lake Drive;

THENCE South 80 degrees 46 minutes 00 seconds West a distance of 124.00 feet along the South line of the said 0.74 acre tract and the North right-of-way line of the said South Lake Drive a 1/2 inch steel rod, capped MTG 101011-00, set for a corner, lying at intersection of the North right-of-way of the said South Lake Drive, and the East right-of-way line of the said South Kings Highway, the Southwest corner of the said 0.74 acre tract;

THENCE North 24 degrees 17 minutes 59 seconds West a distance of 130.54 feet along the East right-of-way line of the said South Kings Highway and the West line of the said 0.74 acre tract to a 1/2 inch steel rod, capped MTG 101011-00, set for a corner, the Northwest corner of the said 0.74 acre tract, the Southwest corner of the said Black Street 0.215 acre tract;

THENCE North 24 degrees 27 minutes 14 seconds West a distance of 687.99 feet along the East right-of-way line of the said South Kings Highway, the West line of the said 0.215 acre tract, and the West line of the said 4 acre tract to the point of beginning and containing 8.755 acres of land, more or less.

2. **OWNER CONSENT FOR FULL-PURPOSE ANNEXATION and PROPERTY DEVELOPMENT PLAN.**

a. Owner requests, consents, covenants, and agrees to full-purpose annexation of the Property by the City; with such consent, and subject to Section 3 of this Agreement, City intends for this Agreement to provide for the delivery of specific municipal services to the Property in accordance with state law and accomplished through any means permitted by law.

b. In the event of full-purpose annexation of the Property, Owner agrees and consents to a zoning classification of Planned Development / Commercial according to City's Code of Ordinances; and Owner shall prepare all site plan documentation in anticipation of and consistent with this zoning classification. Owner shall defer to the City's discretion with respect to the timing for initiating full-purpose annexation proceedings, which may occur on or about Owner requesting a certificate of occupancy in the latter part of the calendar year 2023.

c. Except as provided herein, Owner agrees to comply with — and City is authorized to enforce and shall enforce — all of City's ordinances, regulations, and planning authority for the Property as authorized by law, this Agreement, and the SPA, in the same manner such ordinances and regulations are enforced within the City's boundaries; provided, however, that City shall not require Owner to obtain a demolition permit for demolition of existing structures upon the Property, which Owner intends to commence promptly following execution of this Agreement.

3. **MUNICIPAL SERVICES.** In accordance with applicable City ordinances, rules, regulations, and policies, Owner and City agree that the City will provide the municipal services set forth in Exhibit "A", attached hereto and incorporated herein by reference for all purposes (hereinafter, "Services"), at the times, events, or conditions specified therein for each of the



Attachment: 2023-021 ATTH 01 Serv Agmt RT (3928 : 2023-021 RES RaceTrac agmt)

Services. Unless otherwise expressly stated in Exhibit "A", Owner acquisition of the Property and full-purpose annexation of the Property is a condition precedent for the provision of Services pursuant to this Agreement; provided, however, that nothing in this Agreement should be construed as requiring the City to annex the Property for full-purpose annexation (and if such requirement exists under law, the parties agree such requirement is waived).

4. **PROPERTY DEVELOPMENT INCENTIVE.** To incentivize prompt development of the Property prior to City Council consideration of full-purpose annexation of the Property, and consistent with the SPA by and between City and District, Owner and City agree – and by this Agreement make effective – City Council Ordinances Nos. 2022-137 and 2022-138, approving limited-purpose annexation of the Property consistent with the SPA and authorizing and ordering for the Property the legal sale of malt beverages and wine for off-premise consumption consistent with City ordinances and pursuant to Section 251.725 of the Texas Alcoholic Beverage Code. Owner agrees, represents, and warrants that the Property (1) is not more than one percent of the total area covered by the City, (2) all of the land in the Property is zoned for commercial use only, and (3) the Property is not adjacent to residential, church, or school property. To further incentivize prompt development of the Property, Owner and City agree that the fee or fees set by the City Council for any discrete annexation proceeding (e.g., limited-purpose annexation, full-purpose annexation, or both) shall be waived.

5. **SEVERABILITY.** Except as otherwise provided herein, if any part, term, or provision of this Agreement is held by a court to be illegal, invalid, or otherwise unenforceable, such illegality, invalidity, or unenforceability will not affect the validity of any other part, term or provision, and the rights of the parties will be construed as if the part, term, or provision was never part of the Agreement; provided, however, that Sections 2, 4, 9, 10, and 11 are not severable from this Agreement.

6. **GOVERNING LAW, INTERPRETATION, and VENUE**. The parties to this Agreement covenant and agree that in any litigation relating to this Agreement, the terms and conditions of the Agreement will be interpreted according to the laws of the State of Texas. The parties acknowledge that they are of equal bargaining power and that this Agreement shall be fairly interpreted in accordance with its terms and conditions and not for or against either party. Venue for any litigation relating to this Agreement shall be in the state or federal courts located in Bowie County, Texas.

7. **NO WAIVER.** The failure of either party to insist upon the performance of any term or provision of this Agreement or to exercise any right granted hereunder shall not constitute a waiver of that party's right to insist upon appropriate performance or to assert any such right on any future occasion.

8. **GOVERNMENTAL POWERS and FUNCTIONS.** Owner and City agree that no provision of this Agreement is in any way intended to constitute a waiver of the City's governmental immunities from suit or from liability; Owner and City acknowledge that the terms, provisions, and execution of this Agreement, together with the provision of Services, constitute



Attachment: 2023-021 ATTH 01 Serv Agmt RT (3928 : 2023-021 RES RaceTrac agmt)

governmental functions of the City, and that the City does not waive or surrender any of its governmental powers or immunities by execution or performance of this Agreement.

9. **FORCE MAJEURE.** "Force Majeure" means an event, circumstance, or act that is beyond a party's reasonable control, such as an act of God, an act of the public enemy, an act of a government entity, strikes, other labor disturbances, supplier performance, supply chain interruption, hurricanes, earthquakes, fires, floods, epidemics, pandemics, embargoes, war, riots, ransomware or cyber events, or any other similar cause. Neither party will be liable for its non-performance or delayed performance if caused by a Force Majeure. A party that becomes aware of a Force Majeure that will significantly delay performance will notify the other party promptly (but in no event later than fifteen days) after it discovers the Force Majeure. If a Force Majeure occurs, any deadline for provision of Services shall be extended for a time period that is reasonable under the circumstances, and any suspension of provision for Services shall be reasonable under the circumstances.

10. **AGREEMENT BINDS AND BENEFITS SUCCESSORS AND RUNS WITH THE LAND.** This Agreement is binding on and inures to the benefit of the parties, their successors, and assigns. Upon annexation of the Property, Owner shall file this Agreement in the Deed Records of Bowie County, Texas, at such time prior to any sale of any portion of the Property to third parties. The terms of this Agreement constitute covenants running with the land comprising the Property, is binding on the Owner and the City, is binding on subsequent owners of any portion of the Property, and is enforceable by any current or future owner of any portion of the Property.

11. **COSTS/FEES TO PAY OR REIMBURSE.** In addition to any costs or fees set out in this Agreement or exhibits thereto, Owner agrees to reimburse or pay the following:

a. City's cost of publication of any ordinance pursuant to Section 251.725 of the Texas Alcoholic Beverage Code authorizing the sale of malt beverages and wine for off-premise consumption for the Property;

b. Publication costs incurred by City and the District relating to noticing public hearings required by Section 43.0751 of the Texas Local Government Code for consideration of a strategic partnership agreement authorized by that law;

c. City's filing costs to file the SPA in the Real Property Records of Bowie County, Texas;

d. City's cost of notice, publication, and advertising as may be required by law or City Charter for any discrete annexation proceeding of the Property, including the publication costs of proposed annexation ordinances for the Property in the form in which such may be finally passed as required by Article I, Section 5 of the City Charter of the City of Texarkana, Texas;

e. Owner shall be responsible for paying or otherwise reimbursing the City for all infrastructure or development costs on the Property; Owner agrees that such costs shall include rerouting of the water main.



Attachment: 2023-021 ATTH 01 Serv Agmt RT (3928 : 2023-021 RES RaceTrac agmt)

f. The amount of compensation required to be paid by City pursuant to Texas Health & Safety Code Section 775.022 with respect to annexation of the Property.

12. **AUTHORITY and ENTIRE AGREEMENT.** City and Owner represent that they have full power, authority, and legal right to execute, deliver and perform their obligations pursuant to this Agreement. This Agreement constitutes the entire agreement between the parties and supersedes all prior oral and written agreements between said parties. Except as provided herein, this Agreement shall not be amended unless approved by the City Council and executed in writing by both parties; provided, however, during such time prior to full-purpose annexation of the Property, the City Council delegates to the City Manager the authority to agree to and execute written amendments that do not materially obligate the City to extend services beyond the scope of this Agreement, and such written amendments upon execution shall be appended to this Agreement.

13. **GOVERNMENTAL IMMUNITY.** This Agreement is expressly made subject to City's governmental immunity as provided by the Texas Constitution, Texas law, and applicable federal law. The parties expressly agree that no provision of this Agreement is in any way intended to constitute a waiver of the City's immunities from suit or from liability.

14. **ASSIGNMENT.** This Agreement shall be binding upon the respective successors and assigns of the parties; provided, however, that neither party may assign this Agreement without the other party's prior written consent.

15. **JOINT DRAFTING.** The drafting of this Agreement shall not be attributed to either Party: the parties prepared this Agreement jointly, following arm's length and careful negotiation, with each party represented by legal counsel; and each party has the requisite experience and sophistication to understand, interpret, and agree to the particular language of its provisions.

16. **SECTION HEADINGS**. The section headings in this Agreement are inserted only for convenience and are not to be construed as part of this Agreement or as a limitation of the scope of the particular section to which the heading refers.

17. **EFFECTIVE DATE.** This Agreement shall be effective upon the execution by both City and Owner.

**City of Texarkana, Texas**

By: _____ Date: _____, 2023
David W. Orr, PhD
City Manager

**Owner, RaceTrac, Inc.:**

By: _____ Date: 2/2, 2023
Justen Gilmanton



Attachment: 2023-021 ATTH 01 Serv Agmt RT (3928 : 2023-021 RES RaceTrac agmt)

# Exhibit A to Municipal Services Agreement - Commercial

**The term "annexation" as used in this exhibit refers only to full-purpose annexation of the Property, as distinguished from limited-purpose annexation.**

## I. Services to be Provided Upon Annexation of Property.

### A. Fire

Fire suppression service from the City's Fire Department will be available to the Property upon annexation. Primary fire response will be provided by Fire Station No. 7, located at 3101 S. Lake Dr. Fire prevention activities will be provided by the Fire Marshall's office as needed.

### B. Police

Currently, the Property is under the jurisdiction of the Bowie County Sheriff's Office. Upon annexation, the City's Police Department will extend regular and routine patrols to the Property.

### C. Building Inspection

The City's Building Inspection Department will provide Inspection Services upon annexation. This includes issuing building, electrical, and plumbing permits for any new construction and remodeling and enforcing all other applicable codes which regulate building construction within the City of Texarkana, Texas.

### D. Planning and Zoning

The Planning and Zoning Department's responsibility for regulating development and land use through the administration of the City of Texarkana Zoning Ordinance will extend to this Property upon annexation. The property will also continue to be regulated under the requirements of the City of Texarkana Subdivision Ordinance.

### E. Library

Upon annexation, free library use privileges with issuance of a free library card will be available to anyone residing in this Property. A free library card for those in the City limits includes checkouts for books, DVDs, and audiobooks. Also, databases are available that can be accessed from home, including free tutoring for grade school through college, foreign language, genealogy, Consumer Reports, and downloadable audiobooks and e-books.

Attachment: 2023-021 ATTH 01 Serv Agmt RT (3928 : 2023-021 RES RaceTrac agmt)

### F. Health Department

The Texarkana-Bowie County Health Department will provide health services to eligible residents, if any, of the Property upon annexation.

### G. Code Enforcement

The City's Code Enforcement Division will provide Code Enforcement services upon annexation. These services include enforcing the City's health ordinances, health inspections, and enforcing the City's Code of Ordinances governing litter, junk vehicles, high grass and weeds, and substandard structures. Animal Control services will be provided to the Property as needed.

### H. Parks

Existing park use privileges subject to Parks Rules and Regulations will be available to anyone residing within the Property upon annexation.

### I. Traffic Engineering

Upon annexation, City will provide traffic engineering services and regulatory signage services in accordance with the City policies and procedures and applicable laws.

### J. Water and Sewer Service

Owner acknowledges and agrees that its proposed development shall be required to connect to the City's water and sewer system at Owner's expense.

## II. Services to be Provided to the Property Upon Specific Conditions or Events Following Annexation.

### A. Drainage and Stormwater Management

Owner must provide stormwater drainage at its own expense and will be inspected by the City Engineers at time of completions. After inspection, the City will thereafter maintain the drainage only upon approval by City Engineers and only if drainage is dedicated in the public drainage easement and the City accepts the dedication; provided, however, that nothing herein should be construed as requiring the City to accept such dedication.

Maintenance of existing drainage facilities will be provided by the City upon annexation only if the drainage facilities are located in the street right-of-way or a public drainage easement. Owner shall be responsible and agrees to pay for maintenance of any drainage facility that is not in the street right-of-way or public drainage easement.

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**B. Solid Waste Services**

Beginning with occupancy of residential structures, if any, Solid Waste Collection shall be provided to the Property in accordance with City ordinance and policies.

## III. General Provisions

A. The parties acknowledge and agree that the City is not required to provide a service that is not identified herein.

B. Owner understands and acknowledges that City departments referenced herein may change names or be re-organized by the City Manager. Any reference to a specific department also includes any subsequent City department that will provide the same or similar service.

Attachment: 2023-021 ATTH 01 Serv Agmt RT (3928 : 2023-021 RES RaceTrac agmt)

# RESOLUTION NO. 2022-130

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEXARKANA, TEXAS, APPROVING A STRATEGIC PARTNERSHIP AGREEMENT BY AND BETWEEN THE CITY OF TEXARKANA, TEXAS, AND MACEDONIA-EYLAU MUNICIPAL UTILITY DISTRICT NO. 1 OF BOWIE COUNTY; CONTAINING LEGISLATIVE FINDINGS; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, Local Government Code Section 43.0751 ("the Act") authorizes the City of Texarkana, Texas, a home-rule municipality operating under a municipal charter adopted as authorized by Article XI, Section 5, of the Texas Constitution and as recognized by Texas Local Government Code Section 5.004 and having full power of local self-government ("City"), and Macedonia-Eylau Municipal Utility District No. 1 of Bowie County, a municipal utility district created under and subject to the authority, conditions, and restrictions of Article XVI, Section 59, and Article III, Section 52, of the Texas Constitution and Chapters 49 and 54 of the Texas Water Code, as amended ("District"), to negotiate and enter into a strategic partnership agreement by mutual consent; and

**WHEREAS**, City and District desire to enter into the "Strategic Partnership Agreement" attached to this resolution and incorporated herein by reference for all purposes; and

**WHEREAS**, District encompasses a coverage area for water and sewer service to the west and southwest of City, and portions of District are located within City's extraterritorial jurisdiction ("ETJ"); and

**WHEREAS**, the "Strategic Partnership Agreement" sets out the terms acceptable to District and City for limited-purpose annexation of any commercial property within delineated areas or boundaries wholly within the District and City's ETJ ("Limited Purpose Property"), and full-purpose annexation at the option of the City of certain commercial property in and within such boundaries; and

**WHEREAS**, subject to the terms and conditions of the Strategic Partnership Agreement and for the health, safety, and welfare of the residents within the District, the District is willing to allow the City to annex any portion of Limited Purpose Property for the limited purposes set forth in the agreement; and

**WHEREAS**, in accordance with the Act, City and District provided notice of and conducted two joint public hearings — the first joint meeting held within the City on August 8, 2022, and the second joint meeting held within the District on September 13, 2022 — for the purpose of providing the public with an opportunity to speak or present testimony or evidence regarding this Agreement and the proposed limited-purpose annexation, together with providing separate locations within City and District where copies of the proposed Agreement may be obtained prior to each hearing; and

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**WHEREAS**, in accordance with the requirements of Subsection (p) of the Act, the Strategic Partnership Agreement (1) does not require District to provide revenue to City solely for the purpose of an agreement with City to forgo annexation of any District Property, and (2) provides benefits to City and District, including revenue, services, and regulatory benefits, which are reasonable and equitable with regard to the benefits provided by the other party; and

**WHEREAS**, District's Board of Directors adopted and approved this Agreement on September 26, 2022. in open session at a meeting held in accordance with Chapter 551 of the Texas Government Code; and

**WHEREAS**, all notices, hearings, and other requirements imposed by law for the City's adoption of this Agreement have been met.

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

**SECTION 1:** The City Council approves the "Strategic Partnership Agreement" attached to this Resolution **(EXH 1)** and authorizes the City Manager to execute the Agreement on behalf of the City and to take any other action necessary to effectuate the Agreement and its intent.

**SECTION 2:** The Recitals set out in this Resolution are true and correct and are incorporated herein and made a part hereof as legislative findings of the City Council for all purposes.

**SECTION 3:** This Resolution shall be in full force and effect from and after its passage and approval.

**PASSED AND APPROVED** in Regular Council Session on this the **24th day of October, 2022**.

ATTEST:

JENNIFER EVANS, CITY SECRETARY

BOB BRUGGEMAN, MAYOR

6:24 p.m.

Attachment: 2023-021 ATTH 02 SPA City & M-E MUD (3928 : 2023-021 RES RaceTrac agmt)

# Strategic Partnership Agreement

* * * * *

## Macedonia-Eylau Municipal Utility District No. 1 of Bowie County and City of Texarkana, Texas

This Strategic Partnership Agreement ("Agreement"), authorized by Section 43.0751 of the Texas Local Government Code, is entered into by and between the City of Texarkana, Texas, a home-rule municipality operating under a municipal charter adopted as authorized by Article XI, Section 5, of the Texas Constitution and as recognized by Texas Local Government Code Section 5.004 and having full power of local self-government ("City"), and Macedonia-Eylau Municipal Utility District No. 1 of Bowie County, a municipal utility district created under and subject to the authority, conditions, and restrictions of Article XVI, Section 59, and Article III, Section 52, of the Texas Constitution and Chapters 49 and 54 of the Texas Water Code, as amended ("District").

## RECITALS

**WHEREAS**, Local Government Code Section 43.0751 (the "Act") authorizes City and District to negotiate and enter into a strategic partnership agreement by mutual consent; and

**WHEREAS**, City and District desire to enter into this Agreement, which they negotiated by mutual consent; and

**WHEREAS**, District encompasses a coverage area for water and sewer service to the west and southwest of City as set out in **Exhibit "A"**, and portions of District are located within City's extraterritorial jurisdiction ("ETJ"); and

**WHEREAS**, this Agreement sets out the terms acceptable to District and City for limited- purpose annexation of any commercial property within the delineated boundaries of **Exhibit "B"** which is wholly within the District and City's ETJ ("Limited Purpose Property"), and full-purpose annexation at the option of the City of certain commercial property in and within such boundaries as set forth herein, with a corresponding Statement of Work to implement such full-purpose annexation detailed in **Exhibit "C"**; and

**WHEREAS**, this Agreement sets out the terms acceptable to District and City for limited- purpose annexation of any commercial property within the delineated boundaries of **Exhibit "D"** which is wholly within the District and City's ETJ ("Limited Purpose Property"), and full-purpose annexation at the option of the City of property in and within such boundaries as set forth herein; and

[Type here]

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**WHEREAS**, subject to the terms and conditions of this Agreement and for the health, safety, and welfare of the residents within the District, the District is willing to allow the City to annex any portion of Limited Purpose Property for the limited purposes set forth herein; and

**WHEREAS**, in accordance with the Act, City and District provided notice of and conducted two joint public hearings — the first joint meeting held within the City on August 8, 2022, and the second joint meeting held within the District on September 13, 2022 — for the purpose of providing the public with an opportunity to speak or present testimony or evidence regarding this Agreement and the proposed limited-purpose annexation, together with providing separate locations within City and District where copies of the proposed Agreement may be obtained prior to each hearing; and

**WHEREAS**, District's Board of Directors adopted and approved this Agreement on September 26, 2022, in open session at a meeting held in accordance with Chapter 551 of the Texas Government Code; and

**WHEREAS**, following District's adoption and approval of this Agreement, City, by its City Council, adopted and approved this Agreement on October 24, 2022, in open session at a meeting held in accordance with Chapter 551 of the Texas Government Code; and

**WHEREAS**, all notices, hearings, and other requirements imposed by law for the adoption of this Agreement have been met; and

**WHEREAS**, in accordance with the requirements of Subsection (p) of the Act, this Agreement (1) does not require District to provide revenue to City solely for the purpose of an agreement with City to forgo annexation of any District Property, and (2) provides benefits to City and District, including revenue, services, and regulatory benefits, which are reasonable and equitable with regard to the benefits provided by the other party.

**NOW, THEREFORE**, for and in consideration of the mutual agreements, covenants and conditions contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and District agree as follows:

## Article I. Recitals

The above and foregoing recitals are true and correct and are incorporated herein and made a part hereof as findings by both District and City for all purposes.



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## Article II. Adoption and Term of Agreement

2.1 Public Hearings. District and City acknowledge and agree that prior to the execution of this Agreement, the governing bodies of the District and the City conducted two joint public hearings for the purpose of considering the adoption of this Agreement and that such hearings were noticed and conducted in accordance with the terms of the Act, this Agreement, and Chapter 551 of the Government Code.

2.2 Effective Date and Filing. Pursuant to Subsection (c) of the Act, this Agreement is effective on the date that the City adopts and approves this Agreement ("Effective Date"). City shall file this Agreement in the Real Property Records of Bowie County, Texas; provided, however, that the filing date of this Agreement shall not be construed as the Effective Date of this Agreement.

2.3 Term. This Agreement commences on the Effective Date and shall continue until the City annexes the entirety of Limited Purpose Property for full purposes or disannexes the entirety of Limited Purpose Property; and except as otherwise provided herein, this Agreement shall not apply to any portion of the Limited Purpose Property that has been fully annexed by City.

## Article III. Scope of Agreement

3.1 District Continuity; Powers and Functions Retained by District. District shall continue in existence during the term of this Agreement and is authorized to exercise all of its powers and functions provided by existing law or any amendments or additions thereto as it pertains to the Limited Purpose Property. District's assets, liabilities, indebtedness, and obligations will remain the responsibility of District. [*See* Act, subsection (f)(1).] This Agreement does not convert District into a "Limited District" as defined by law. [*See* Act, subsections (a)(3), (f)(6).]

3.2 District Consent: Limited-Purpose Annexation. District, on behalf of itself and all present and future landowners within the District, hereby requests that City annex any commercial property within the Limited Purpose Property (**Exhibit "B"** and **Exhibit "D"** of this Agreement) for the express limited purposes as set forth in this Agreement; District consents to such limited-purpose annexation; District further consents to noncontiguous annexation of such commercial property [*see* Act, subsection (r)]; and such consent shall bind District and all current and future landowners within the District. City



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may commence limited-purpose annexation of any commercial property within the Limited Purpose Property following the Effective Date. District acknowledges that City may adopt and approve one or more limited-purpose annexation ordinances at one or more meetings conducted in accordance with Chapter 551 of the Government Code at various times throughout the Term of this Agreement; and District acknowledges and agrees that no additional notices, hearings, or other procedures are required by law in order for City to adopt and approve such limited-purpose annexations. District and City agree that limited-purpose annexation of any commercial property in and within the Limited Purpose Property pursuant to this Agreement shall not obligate the City to provide any municipal services to such property. Should City choose to annex any commercial property within the Limited Purpose Property for a limited-purpose annexation and thereby exercise any authority set out in this Agreement over such property, then from and after the date of such limited-purpose annexation, (i) such limited-purpose annexation and exercise of authority shall not be interpreted to bind City to the assumption or repayment of District debt, (ii) neither District nor any landowners of taxable property within the District are liable for any present or future City debts, (iii) current and future ad valorem taxes levied by City will not be levied on taxable property within the District; and (iv) City may enact any ordinance not otherwise proscribed by law or this Agreement for zoning, health, safety, and use of such limited-purpose annexed property, including any ordinance authorized by Chapter 251 of the Texas Alcoholic Beverage Code.

3.3 Voting Rights: Limited-Purpose Annexation. District and City anticipate that the Limited Purpose Property will consist of commercial property. If, however, the Limited Purpose Property includes residential dwellings as part of a mixed-use development, then the qualified voters of an area annexed for limited purposes are entitled to vote in City municipal elections regarding the election or recall of members of the City Council and the amendment of the City's municipal charter. However, such voters may not vote in any municipal bond election; and a resident of an area annexed for limited purposes is not eligible to be a candidate for or to be elected to a City municipal office. [*See* Act, subsection (q), and Tex. Loc. Gov't Code §§ 43.130 (a) and (b).]

3.4 District Consent: Full-Purpose Annexation of U.S. Hwy. 59 Corridor to Kings Highway. District consents to full-purpose annexation of commercial property in and within the Limited Purpose Property generally along the U.S. Hwy. 59 corridor bordered to the west by Kings Highway and to the east by the City's territorial city limits ("Corridor") pursuant to the terms set forth in this section. [*See* Act, subsections (f)(4), (f)(5), and (h).] Specifically, the Corridor shall encompass (1) the commercial property only on the north side of the Corridor and abutting U.S. Hwy. 59, (2) the portion of the U.S. Hwy. 59 footprint within the Corridor, and (3) the right-of-way only on the south side



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of the Corridor. District further consents to noncontiguous annexation of such commercial property. [*See* Act, subsection (r).] District acknowledges that City may adopt and approve a full-purpose annexation ordinance for the Corridor at a meeting conducted in accordance with Chapter 551 of the Government Code; the date of City's approval and adoption of such ordinance shall be deemed the full-purpose annexation date of the Corridor; and District acknowledges and agrees that no additional notice, hearing, or other procedures are required by law in order for City to adopt and approve such full-purpose annexation. City may utilize, but is not required by this Agreement to utilize, other applicable annexation law for full-purpose annexation of the Corridor. Nothing in this Agreement shall be construed to require the City to submit to its City Council for approval or the City Council to approve full-purpose annexation of any or all of the Corridor. In the event of full-purpose annexation of any or all of the Corridor, City and District shall work cooperatively to obtain updated Certificates of Convenience and Necessity from the Texas Commission on Environmental Quality consistent with full-purpose annexation of the Corridor. **Exhibit "C"** to this Agreement sets out the Statement of Work for implementing full-purpose annexation of the Corridor. The parties shall execute respective bills of sale for any and all assets conveyed for implementation of full-purpose annexation of the Corridor. Upon full-purpose annexation of the Corridor:

(a) In exchange for City acquisition of water customers and respective water revenues from full-purpose annexation of the Corridor, City shall transfer the account of the Liberty-Eylau Middle School and associated respective water revenues to District together with relocating master meters at the respective locations at City's cost;

(b) City will be required to install sewer flow meters at two lift stations which currently have non-operational flow meters, and District will be required to install flow meters at other lift stations in its system; and

(c) District will transfer to City ownership the existing three-inch force main within the right-of-way on the south side of the Corridor that City currently maintains for District.

3.5 District Consent: Full-Purpose Annexation of Certain Terry St. / S. Bishop Rd. Acreage. District consents to full-purpose annexation of commercial property in and within the Limited Purpose Property as detailed in **Exhibit "D"**, generally bordered to the north in part by Terry St. and to the east by S. Bishop Rd. ("Terry/Bishop Tracts") pursuant to the terms set forth in this section. [*See* Act, subsections (f)(4), (f)(5), and (h).] District further consents to noncontiguous annexation of such property. [*See* Act, subsection (r).] District represents that it cannot provide either water or sewer service to the Terry/Bishop Tracts. District acknowledges that City may adopt and approve a full-purpose annexation ordinance for one or more of the Terry/Bishop Tracts at a meeting or meetings conducted in accordance with Chapter 551 of the Government Code; the date of City's approval and



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adoption of such respective ordinance for one or more of such tracts shall be deemed the full-purpose annexation date of the respective Terry/Bishop Tracts; and District acknowledges and agrees that no additional notice, hearing, or other procedures are required by law in order for City to adopt and approve such full-purpose annexation. City may utilize, but is not required by this Agreement to utilize, other applicable annexation law for full-purpose annexation of the Terry/Bishop Tracts. Nothing in this Agreement shall be construed to require the City to submit to its City Council for approval or the City Council to approve full-purpose annexation of any or all of the Terry/Bishop Tracts. In the event of full-purpose annexation of any or all of the Terry/Bishop Tracts, City and District shall work cooperatively to obtain updated Certificates of Convenience and Necessity from the Texas Commission on Environmental Quality consistent with such full-purpose annexation.

3.6 Other Full-Purpose Annexation. Except as provided in Sections 3.4 and 3.5 of this Agreement, City and District must supplement this Agreement in the event of full-purpose annexation of other commercial property in and within the Limited Purpose Property pursuant to the terms set forth in this section. [*See* Act, subsections (f)(4), (f)(5), and (h).] District consents to noncontiguous annexation of such commercial property. [*See* Act, subsection (r).] City may, but is not required by this Agreement to utilize, other applicable annexation law for full-purpose annexation of other commercial property in and within the Limited Purpose Property; and supplementation of this Agreement shall not be a requirement for City to utilize such other applicable annexation law for full-purpose annexation of other commercial property in and within the Limited Purpose Property.

3.7 Request for Annexation. In the event a person requests City annexation of property wholly within the District and City's ETJ but not designated as Limited Purpose Property in this Agreement, and District's General Manager confirms to the City Manager that the District cannot provide water or sewer service to such property, then representatives of City and District shall meet and confer to evaluate and respond to the request as may be deemed to be in the best interests of the District and the City.

## Article IV. Breach, Notice, and Remedies

4.1 Notification of Breach. If either party commits a breach of this Agreement, the non-breaching party shall give Notice to the breaching party that described the breach in reasonable detail.

4.2 Cure of Breach. The breaching party shall commence curing such breach within fourteen (14) calendar days after receipt of Notice of the breach and shall complete



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the cure within fourteen (14) calendar days from the date of commencement of the cure; however, if the breach is not reasonable susceptible to cure by the breaching party within such fourteen (14) day period, the non-breaching party shall not bring any action so long as the breaching party has commenced to cure the breach within such fourteen (14) day period and diligently completes the cure within a reasonable time without unreasonable cessation.

4.3 Remedies for Breach. If the breaching party does not substantially cure such breach within the stated period of time, the non-breaching party may, in its sole discretion, and without prejudice to any other right under this Agreement, law, or equity, seek relief available at law or in equity, including, but not limited to, an action under the Uniform Declaratory Judgment Act, specific performance, mandamus and injunctive relief; provided, however, the non-breaching party shall not be entitled to terminate this Agreement. Damages, if any, to which any non-breaching party may be entitled shall be limited to actual damages and shall not include special or consequential damages.

## Article V. Additional Provisions

5.1 Notices. All notices under this Agreement ("Notice") shall be in writing, shall be signed by or on behalf of the party giving the Notice, and shall become effective as follows: (a) on the third (3rd) business day after being deposited with the United States mail service, Certified Mail, Return Receipt Requested with a confirming copy sent by facsimile; (b) on the day delivered by private delivery or private messenger service (such as FedEx or UPS) as evidenced by a receipt signed by any person at the delivery address (whether or not such person is the person to whom the Notice is addressed); or (c) otherwise on the day actually received by the person to whom the Notice is addressed, including, but not limited to, delivery in persona and delivery by regular mail. All Notices given pursuant to this section shall be addressed as follows:

**To City:**

City of Texarkana, Texas
Attn: City Manager
220 Texas Boulevard
Texarkana, TX 75501

With copy to:
Atchley, Russell, Waldrop & Hlavinka, L.L.P.
Attn: Jeffery C. Lewis
1730 Galleria Oaks Dr.
Texarkana, TX 75503



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**To District:**

Macedonia-Eylau Municipal Utility
District No. 1 of Bowie County
Attn: General Manager
701 S Kings Hwy
Texarkana, TX 75501

With copy to:
Miller, James, Miller & Hornsby, L.L.P.
Attn: Troy Hornsby
1725 Galleria Oaks Drive
Texarkana, Texas 75503

5.2 No Waiver. Any failure by a party to insist upon strict performance by the other party of any provision of this Agreement shall not be deemed a waiver thereof, and the party shall have the right at any time thereafter to insist upon strict performance of any and all of the provisions of this Agreement. No provision of this Agreement may be waived except in writing signed by the party waiving such provision. Any waiver shall be limited to the specific purpose for which it is given. No waiver by any party hereto of any term or condition of this Agreement shall be deemed or construed to be a waiver of any other term or condition or subsequent waiver of the same term or condition.

5.3 Governing Law and Venue. This Agreement must be construed and enforced in accordance with the laws of the State of Texas, as they apply to contracts performed within the State of Texas and without regard to any choice of law rules or principles to the contrary. The Parties acknowledge that this Agreement is performable in Bowie County, Texas, and hereby submit to the jurisdiction of the courts of Bowie County, Texas, and agree that any such court with proper jurisdiction shall be a proper forum for the determination of any dispute arising hereunder.

5.4 Authority to Execute. City warrants that this Agreement has been approved by the City Council in accordance with all applicable public meeting and public notice requirements (including, but not limited to, notices required by the Texas Open Meetings Act) and that the individual executing this Agreement on behalf of City has been authorized to do so. District warrants that this Agreement has been approved by the Board in accordance with all applicable public meeting and public notice requirements (including, but not limited to, notices required by the Open Meetings Act) and the individual executing this Agreement on behalf of District has been authorized to do so.

5.5 Entire Agreement; Severability. City and District have other agreements in effect pertaining to water and wastewater, and this Agreement shall not be construed as amending those agreements in any manner. With respect to matters authorized by law under the Act, this Agreement constitutes the entire agreement between City and District and supersedes all prior agreements, whether oral or written, covering the subject matter of this Agreement. If any provision of this Agreement is determined by a court of



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competent jurisdiction to be unenforceable for any reason, then (a) such unenforceable provision shall be deleted from this Agreement; (b) the unenforceable provision shall, to the extent possible, be rewritten to be enforceable and to give effect to the intent of City and District; and (c) the remainder of this Agreement shall remain in full force and effect and shall be interpreted to give effect to the intent of City and District.

5.6 Changes in State or Federal Law. If any state or federal law changes so as to make it impossible for the City or the District to perform its obligations under this Agreement, the Parties will cooperate to amend this Agreement in such a manner that is most consistent with the original intent of this Agreement and legally possible.

5.7 Assignability; Successors and Assigns. This Agreement shall not be assignable by any party without the other party's written consent. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective representatives, successors and assigns.

5.8 Amendment. This Agreement may be amended only by written agreement with approval of the governing bodies of both the City and the District.

5.9 Interpretation. City and District acknowledge that each party and its legal counsel have reviewed and drafted this Agreement such that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.

5.10 No Third-Party Beneficiaries. This Agreement is solely for the benefit of City and District. Neither City nor District intends by any provision of this Agreement to create any rights in any third-party beneficiaries or to confer any benefit or enforceable rights under this Agreement or otherwise upon anyone other than City and District.

5.11 Governmental Powers. By execution of this Agreement, neither City nor District waives or surrenders any of its respective governmental functions, powers, immunities, or rights. Nothing in this Agreement shall waive any claims, defenses or immunities that City or District has with respect to suits against City or District by persons or entities not a party to this Agreement.

5.12 Incorporation of Exhibits by Reference. All exhibits attached to this Agreement are incorporated into this Agreement by reference for the purposes set forth herein, as follows:

Exhibit "A" Coverage Map of District



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Exhibit "B" Map of Limited Purpose Property
Exhibit "C" Statement of Work to Implement Full-Purpose Annexation of Corridor-
Exhibit "D" Map of Limited Purpose Property ("Terry/Bishop Tracts")

**Macedonia-Eylau Municipal Utility District No. 1 of Bowie County**

By: _____ Date: 10-19-2022, 2022

Debra Elijah
Board President

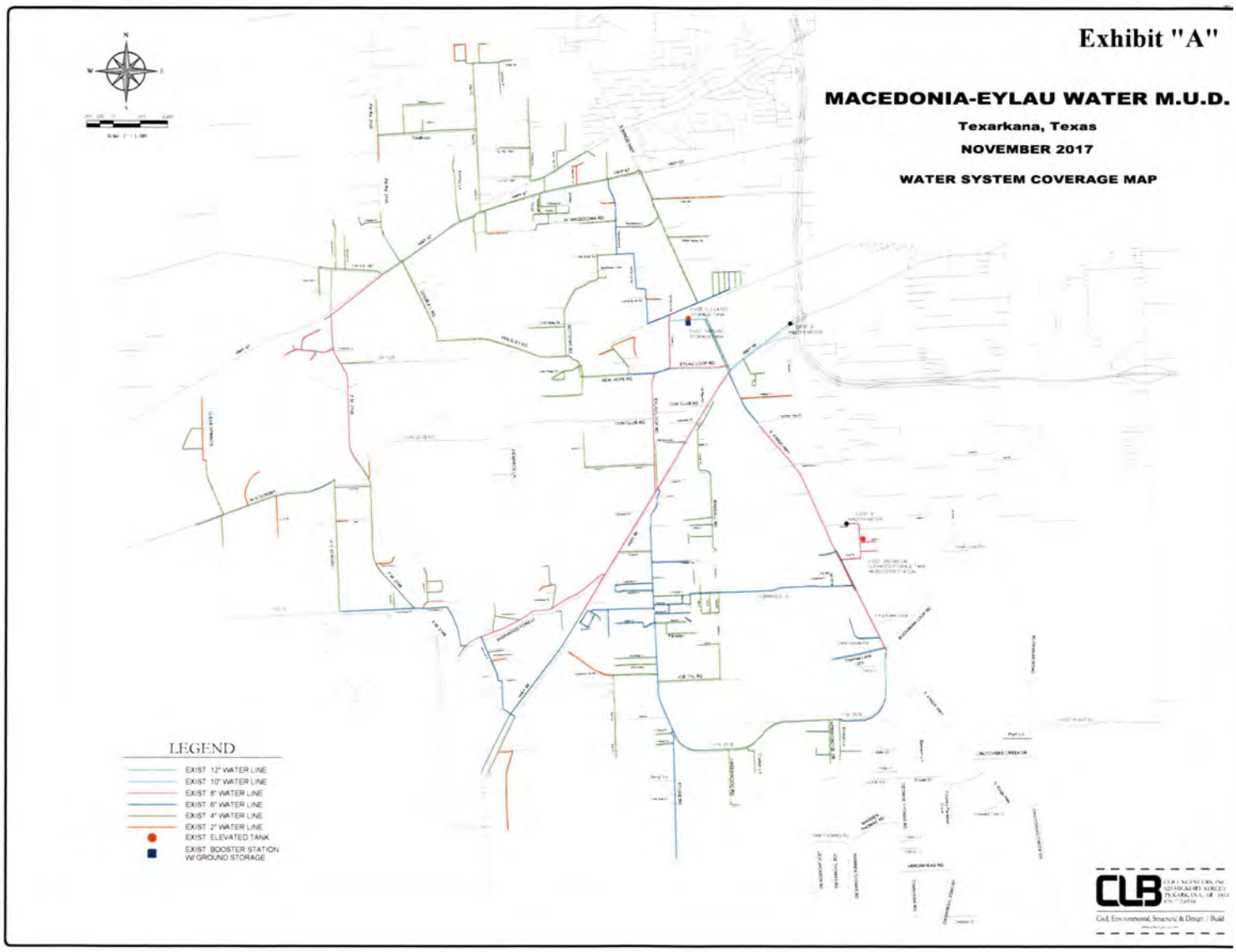
**City of Texarkana, Texas**

By: _____ Date: 10-24-, 2022

David W. Orr, Ph.D.
City Manager

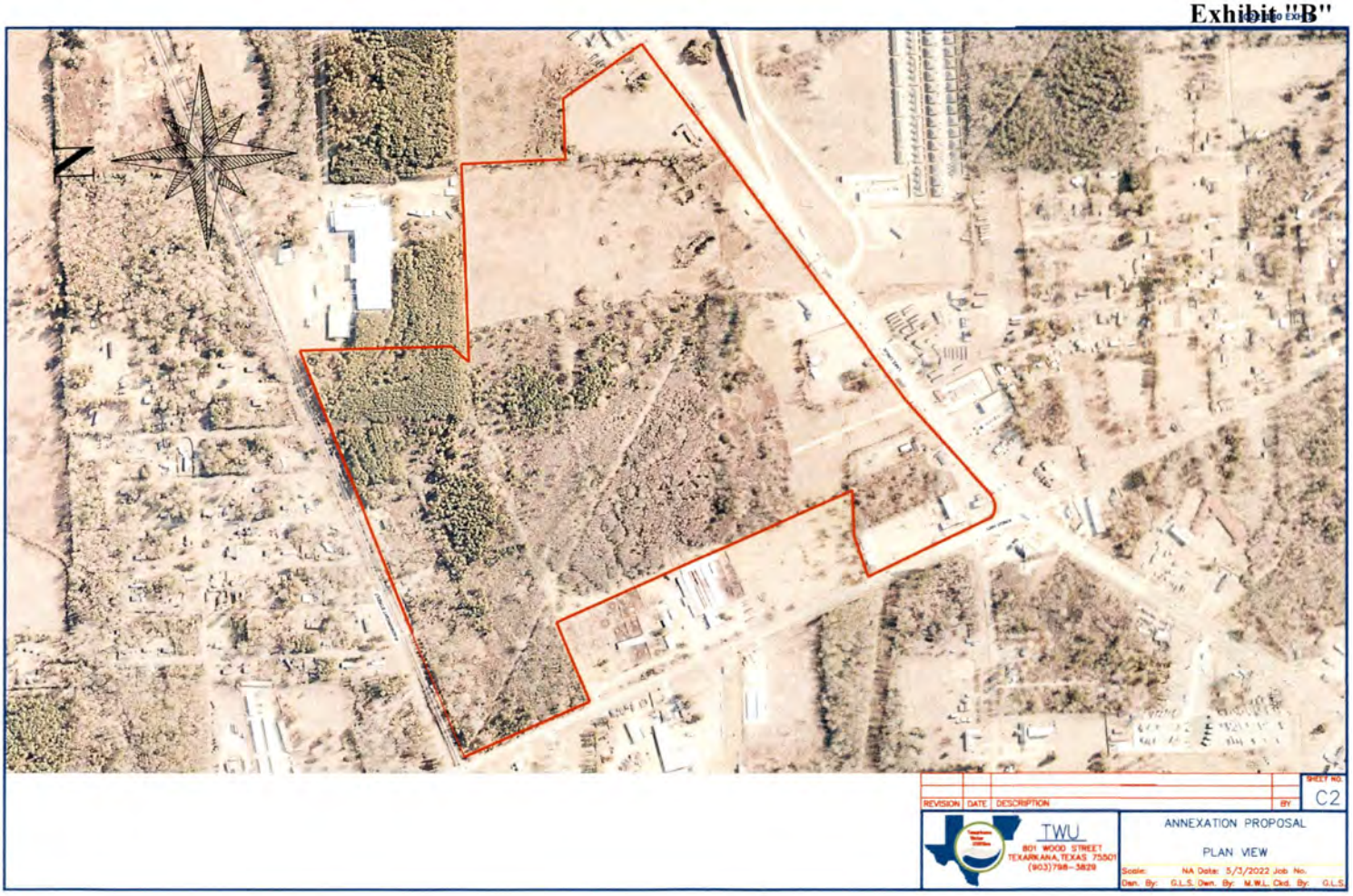


Attachment: 2023-021 ATTH 02 SPA City & M-E MUD (3928 : 2023-021 RES RaceTrac agmt)




Attachment: 2023-021 ATTH 02 SPA City & M-E MUD (3928 : 2023-021 RES RaceTrac agmt)

Exhibit "B"




Attachment: 2023-021 ATTH 02 SPA City & M-E MUD (3928 : 2023-021 RES RaceTrac agmt)

# EXHIBIT "C"

## Statement of Work to Implement Full-Purpose Annexation of Corridor

City and District set out their Statement of Work ("SOW") to implement Section 3.4 of the Agreement and full-purpose annexation of the Corridor as described in the Agreement.

Cost estimates and detail maps for certain aspects of this SOW are attached to this exhibit; estimates are preliminary and may not reflect actual costs.

City delegates to its City Manager, and District delegates to its General Manager, the authority to agree to written change orders or modifications to this SOW consistent with the intent of the parties as set out in the Agreement, including revisions of cost estimates to reflect actual costs; and such change orders or modifications, upon execution, shall be appended to this exhibit.

Except as otherwise stated herein, this Statement of Work is conditioned upon the City, through its City Council, approving full-purpose annexation of any or all of the Corridor.

### I. Wastewater/Sewer

A. A commercial business has made inquiry to both District and City for a proposed commercial development within the Corridor on the northeast corner of Kings Highway and US Hwy 59 ("the Prospect"). District intends to convey to City the lift station on US Hwy 59 and the associated eight-inch (8") force main, located on the North side of US Hwy 59 and just to the east of the proposed commercial development (the proposed development would gravity flow into this lift station). City intends to install a flow meter on this lift station: when the City reads the meter, the usage of the Prospect (based on the water meter readings of the Prospect) will be deducted, and the difference would calculate the District's flow going into this lift station; District will be responsible for the cost of its flow. Prior to full-purpose annexation of the Corridor, City and District will work to secure the following information: customer usage and flow into the lift station, including dry weather flow and wet weather flow; the demands on the lift station with regard to the Prospect and existing customers within the Corridor to the east of the proposed development; whether the proposed commercial development or other factors relating to the Prospect's anticipated use may require a new lift station for existing and proposed customers; if a new lift station is required, the fair market value of the cost of the lift station attributable to the Prospect or other factors, and the equitable allocation of costs as between City and District.

B. City intends to install a flow meter on the lift station located in the southwest quadrant of the intersection of US Hwy 67 and Kings Highway.

C. City and District intend to re-route the Golden Rule force main to connect to the District's manhole (which flows into the lift station described in subsection A, above) located on the south side of US Hwy 59. Prior to full-purpose annexation of the Corridor, City and District



Attachment: 2023-021 ATTH 02 SPA City & M-E MUD (3928 : 2023-021 RES RaceTrac agmt)

will work collaboratively on the installation of a meter on the lift station that serves the duplex subdivision located on the south side of US Hwy 59 just west of Loop 151, operation and ownership of the lift station after full-purpose annexation, and the equitable allocation of costs as between City and District.

## II. Treated Water

A. City intends to relocate District's existing six-inch (6") master meter (located at the northwest quadrant of the intersection of US Hwy 59 and Loop 151) to the northeast quadrant of the intersection of US Hwy 59 and Kings Highway.

B. City intends to run a new six-inch (6") water main, beginning just west of the new master meter location, on the north side of Hwy 59, connecting to the existing four-inch (4") water main at Golden Rule (and City will decommission Golden Rule's existing connection to the existing twelve-inch (12") water main located on the north side of US Hwy 59), which will put the Golden Rule area on the downstream side of the new master meter location; and City intends to add an additional water line of approximately 750 feet to connect the 12" water line that serves the duplex subdivisions.

C. City intends to relocate District's existing four-inch (4") master meter (located at the intersection of Leopard Drive and Stipp Lane) to just north of Liberty Eylau's Middle School's northern-most water meter located on Leopard Drive. This will facilitate the transfer of the school's customer account as set out in the Agreement.



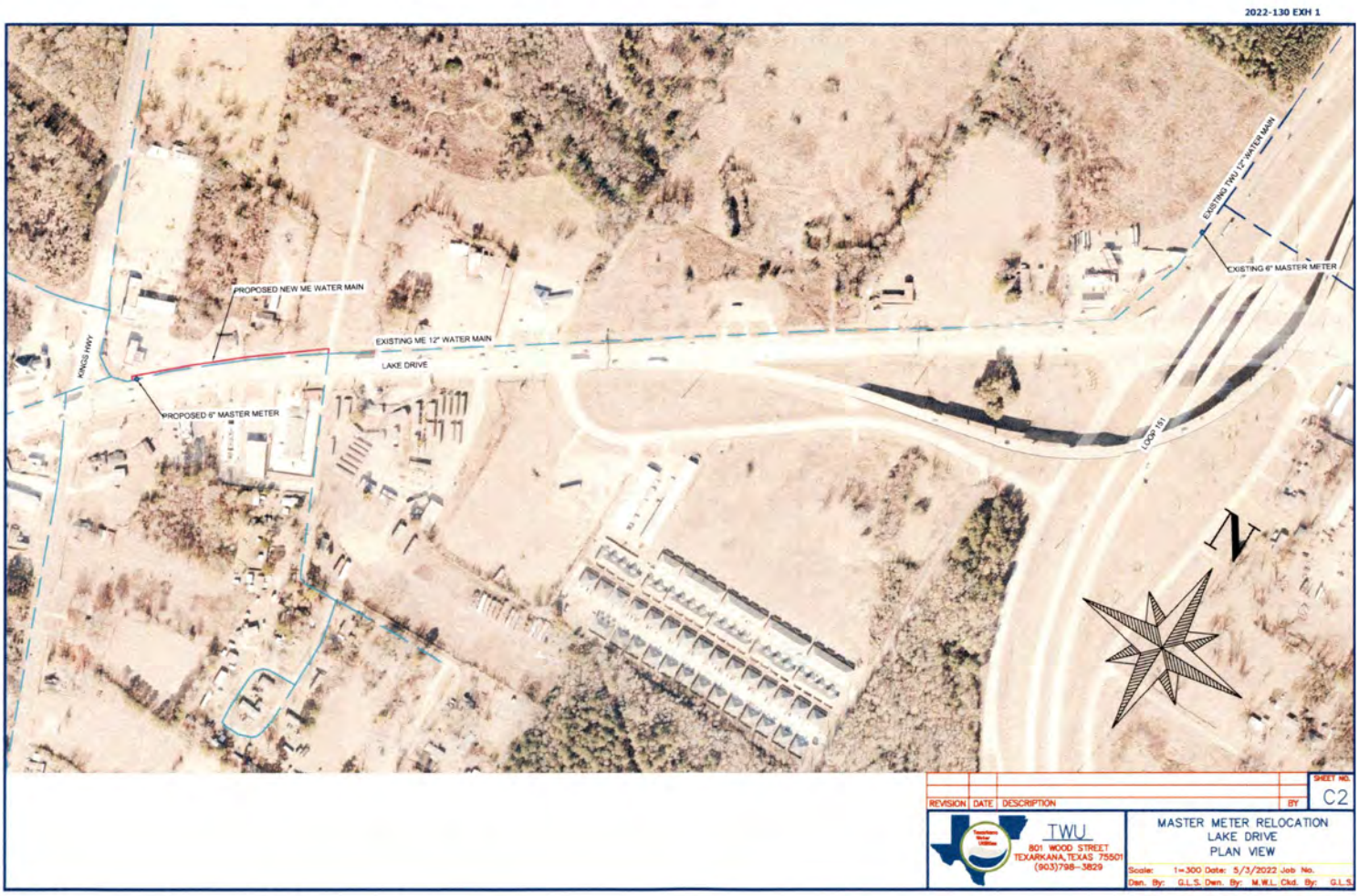
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| INSTALLATION OF SEWER METERS | | | | | |
|---|---|---|---|---|---|
| PRELIMINARY COST ESTIMATE - MAY 15, 2022 REVISED JUNE 23, 2022 | | | | | |
| Item No. | Description | Unit | Bid Quantity | Unit Price | Total Bid |
| 1 | Mobilization, Bonds, & Submittals | EA | 1 | $5,000.00 | $5,000.00 |
| 2 | Mag Meter | EA | 3 | $3,506.00 | $10,518.00 |
| 3 | Signal Converter | EA | 3 | $1,642.00 | $4,926.00 |
| 4 | Vault | EA | 3 | $8,500.00 | $25,500.00 |
| 5 | Installation of Vault, Meter, & Controls | EA | 3 | $5,000.00 | $15,000.00 |
| 6 | Remote Monitoring System | EA | 3 | $15,000.00 | $45,000.00 |
| 7 | 8" Sewer Pipe | LF | 120 | $50.00 | $6,000.00 |
| 8 | Electrical Power to Site | EA | 3 | $7,000.00 | $21,000.00 |
| 9 | Equipment Electrical Connections | EA | 3 | $1,500.00 | $4,500.00 |
| 10 | Fencing | LF | 75 | $30.00 | $2,250.00 |
| 11 | Gate | EA | 3 | $250.00 | $750.00 |
| 12 | Miscellaneous | LS | 1 | $7,500.00 | $7,500.00 |
| 13 | 3" Force Main & Connection | LF | 200 | $20.00 | $4,000.00 |
| 17 | Cut, Plug, & Abandon 3" Force Main | EA | 1 | $1,000.00 | $1,000.00 |
| 20 | Trench Protection | LS | 1 | $3,000.00 | $3,000.00 |
| 21 | Cellulose Fiber Mulch Seeding | LS | 1 | $2,000.00 | $2,000.00 |
| 22 | Golden Rule 3" FM by Open Cut | LF | 210 | $20.00 | $4,200.00 |
| 23 | Golden Rule 3" FM by Bore | LF | 20 | $50.00 | $1,000.00 |
| 24 | 3" Force Main Connection to Exist. MH | EA | 1 | $1,500.00 | $1,500.00 |
| 25 | Remove & Replace Concrete | SY | 70 | $400.00 | $28,000.00 |
| | | | | | |
| | **SUB-TOTAL** | | | | **$192,644.00** |
| | 15% CONTINGENCIES | | | | $28,896.60 |
| | **SUB-TOTAL** | | | | **$221,540.60** |
| | ENGINEERING | | | | $22,154.06 |
| | | | | | |
| | **TOTAL** | | | | **$243,694.66** |

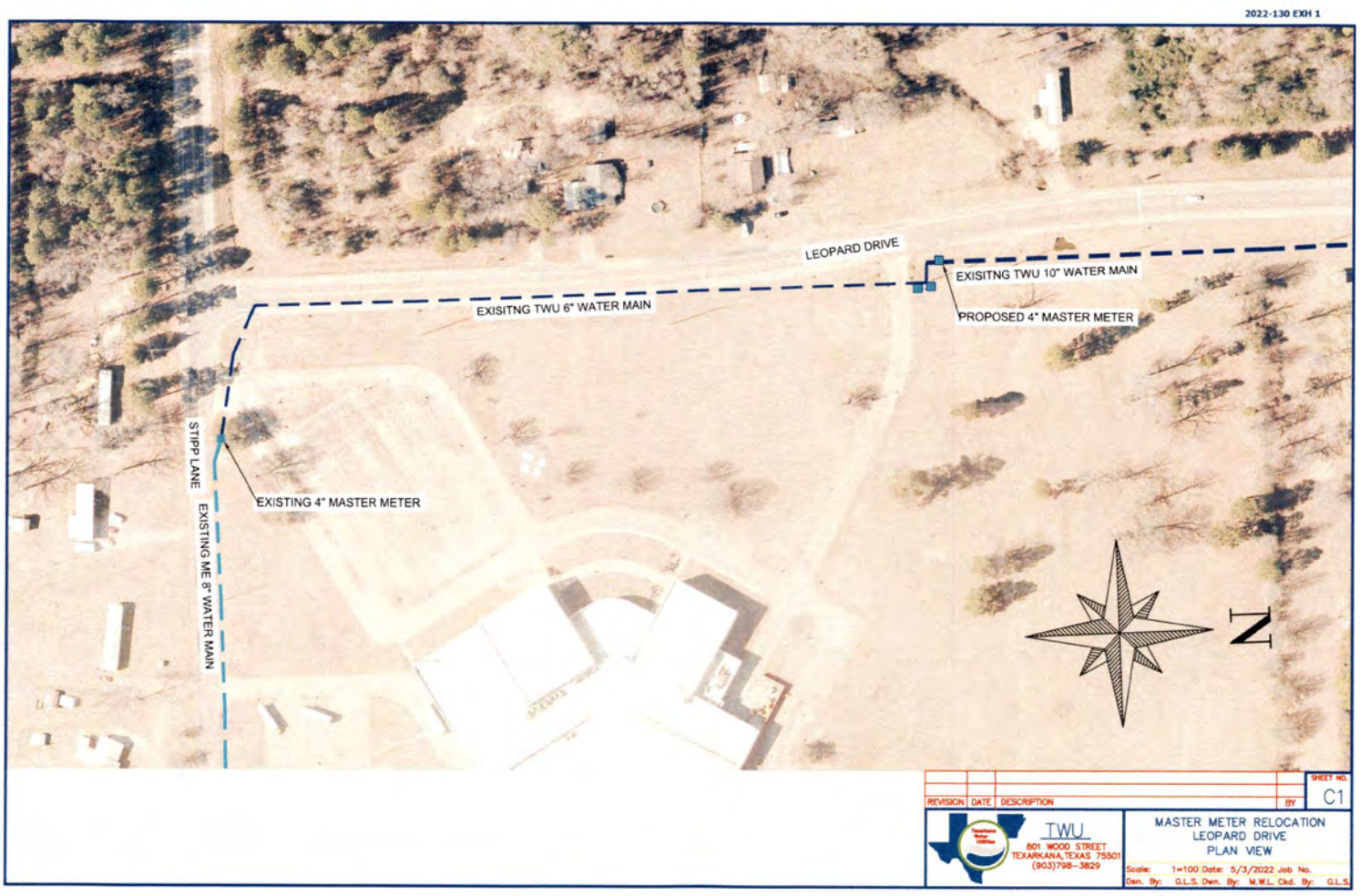
Attachment: 2023-021 ATTH 02 SPA City & M-E MUD (3928 : 2023-021 RES RaceTrac agmt)

| RELOCATE 6" & 4" MASTER METERS | | | | | |
|---|---|---|---|---|---|
| PRELIMINARY COST ESTIMATE - MAY 2, 2022 REVISED JUNE 23, 2022 | | | | | |
| Item No. | Description | Unit | Bid Quantity | Unit Price | Total Bid |
| 1 | Mobilization, Bonds, & Submittals | LS | 1 | $5,000.00 | $5,000.00 |
| 2 | 6" Master Meter & Vault | LS | 1 | $65,000.00 | $65,000.00 |
| 3 | 12" x 6" Tapping Sleeve & Valve | EA | 2 | $5,000.00 | $10,000.00 |
| 4 | 12" Stop Valve | EA | 2 | $10,000.00 | $20,000.00 |
| 5 | Cut, Plug, & Abandon 12" | EA | 2 | $2,500.00 | $5,000.00 |
| 6 | Miscellaneous Piping | LS | 1 | $5,000.00 | $5,000.00 |
| 7 | Remove Exist. 6" Meter & Install Pipe | LS | 1 | $2,500.00 | $2,500.00 |
| 8 | Remove & Replace Existing Pavement | SY | 45 | $400.00 | $18,000.00 |
| 9 | 6" PVC C-900 Water Pipe by Open Cut | LF | 1000 | $45.00 | $45,000.00 |
| 10 | 6" Certa-Lok C-900 Water Pipe by Bore | LF | 460 | $120.00 | $55,200.00 |
| 11 | 6" x 6" Tapping Sleeve & Valve | EA | 1 | $4,000.00 | $4,000.00 |
| 12 | Cut, Plug, & Abandon 6" | EA | 1 | $2,500.00 | $2,500.00 |
| 13 | 12" x 6" Tapping Sleeve & Valve | EA | 1 | $5,000.00 | $5,000.00 |
| 14 | 6" x 4" Tapping Sleeve & Valve | EA | 1 | $3,000.00 | $3,000.00 |
| 15 | Cut, Plug, & Abandon 4" | EA | 2 | $2,000.00 | $4,000.00 |
| 16 | 4" Master Meter & Vault | LS | 1 | $45,000.00 | $45,000.00 |
| 17 | 10" x 4" Tapping Sleeve & Valve | EA | 2 | $3,500.00 | $7,000.00 |
| 18 | 10" Stop Valve | EA | 2 | $10,000.00 | $20,000.00 |
| 19 | Cut, Plug, & Abandon 10" | EA | 2 | $2,500.00 | $5,000.00 |
| 20 | Miscellaneous Piping | LS | 1 | $4,000.00 | $4,000.00 |
| 21 | Remove Exist. 4" Meter & Install Pipe | LS | 1 | $2,500.00 | $2,500.00 |
| 22 | Trench Protection | LS | 1 | $3,500.00 | $3,500.00 |
| 23 | Cellulose Fiber Mulch Seeding | LS | 1 | $4,000.00 | $4,000.00 |
| 24 | Silt Fence | LF | 490 | $6.50 | $3,185.00 |
| | | | | | |
| | **SUB-TOTAL** | | | | **$343,385.00** |
| | 15% CONTINGENCIES | | | | $51,507.75 |
| | **SUB-TOTAL** | | | | **$394,892.75** |
| | ENGINEERING | | | | $39,489.28 |
| | **TOTAL** | | | | **$434,382.03** |
| | | | | | |

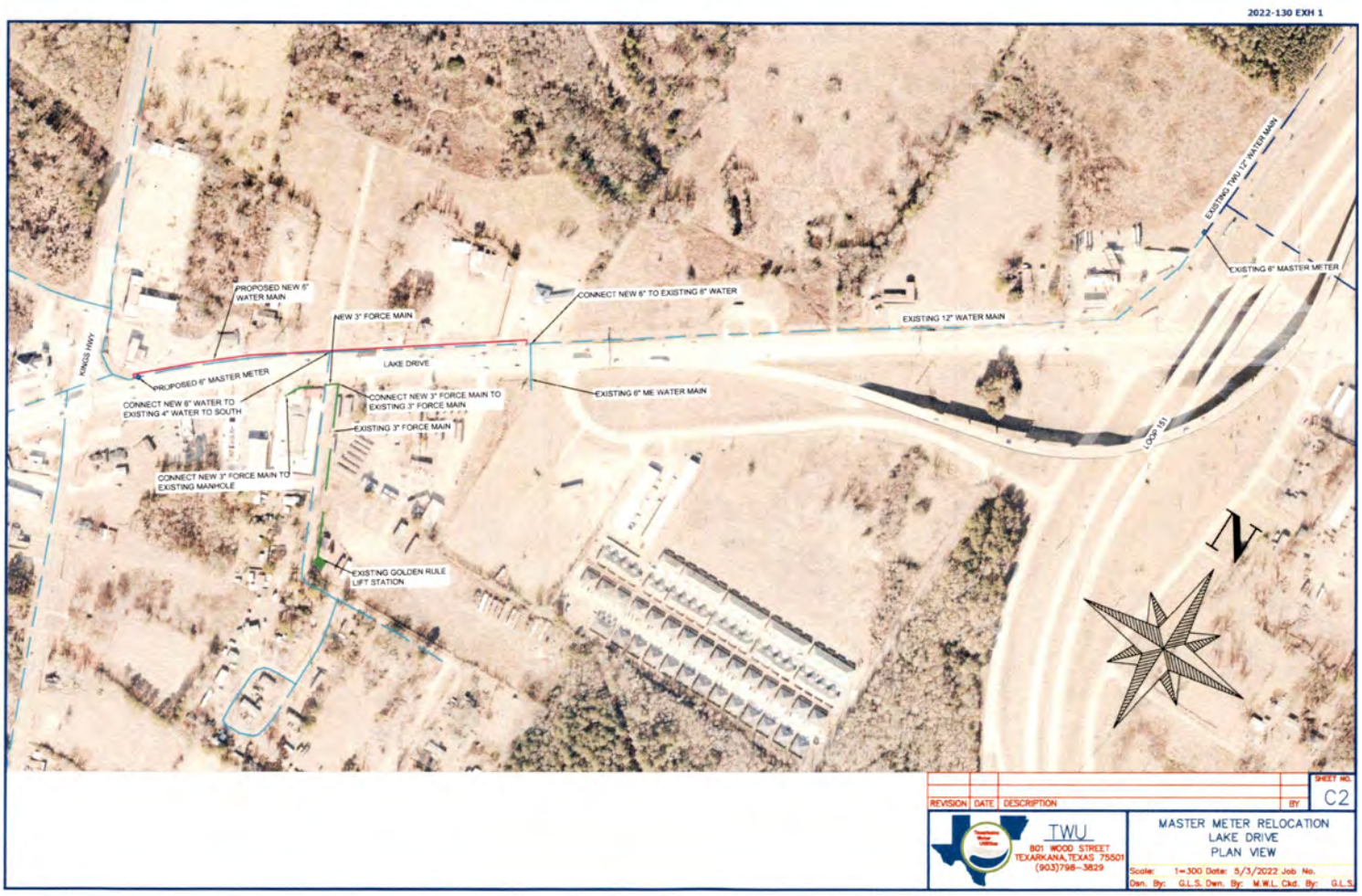
Attachment: 2023-021 ATTH 02 SPA City & M-E MUD (3928 : 2023-021 RES RaceTrac agmt)




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# Exhibit "D"




Attachment: 2023-021 ATTH 02 SPA City & M-E MUD (3928 : 2023-021 RES RaceTrac agmt)

# City of Texarkana, Texas

| Developing Perspectives and Goals Pending Approval by the City Council: | |
|---|---|
| **Perspectives** | **Goals** |
| Serve the Community | ☐ Promote an Environmentally Sensitive & Livable Community<br>☐ Provide a Safe Community<br>☑ Deliver Quality Services<br>☐ Foster a Healthy Community |
| Run the Operations | ☐ Enhance Community Preparedness & Responsiveness<br>☑ Maximize Partnership Opportunities<br>☑ Provide Courteous & Responsive Customer Service<br>☐ Model a Positive City Image<br>☑ Deliver Efficient Services<br>☐ Cultivate Community Involvement & Access |
| Manage the Resources | ☐ Maintain Fiscal Strength<br>☐ Maximize Utilization & Resources<br>☑ Invest in Infrastructure & Transportation |
| Develop Personnel | ☐ Develop a Skilled & Diverse Workforce<br>☐ Create a Positive & Rewarding Work Culture |
| **Perspectives and Goals Additional Comments:** | |

| Resource Impact: | |
|---|---|
| Staff time required if item is approved: | No Additional |
| **Other Potential Impacts:** | |

| Public Information Plan: | | | |
|---|---|---|---|
| ☐ | Newspaper Notice (Required by Statute) | ☐ | Public Hearing (Required by Statute) |
| ☐ | Public Forum/Input Session | ☐ | Press Release |
| ☐ | E-News Distribution | ☐ | Website Notice |
| ☐ | Social Media (Twitter, Facebook, etc.) | ☐ | Special Mailing |
| ☐ | Flyers Posted | ☐ | Banners Posted |
| ☐ | Survey | ☐ | Automated Phone Call |
| ☐ | None Required | ☐ | |
| Other: | | | |

Attachment: 2023-021 Goals & Perspectives (3928 : 2023-021 RES RaceTrac agmt)

# RESOLUTION NO. 2023 - 021

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEXARKANA, TEXAS, ELECTING TO BEGIN THE PROCESS OF CONSIDERING THE VOLUNTARY ANNEXTION OF AN 8.755 ACRE TRACT, H. S. JANES HRS A-306, INTO THE CITY LIMITS OF THE CITY OF TEXARKANA, TEXAS, BY AUTHORIZING A WRITTEN SERVICES AGREEMENT FOR PROVISION OF CITY SERVICES IN THE EVENT THE CITY COUNCIL ADOPTS AN ORDINANCE ANNEXING THE TRACT; AUTHORIZING INFRASTRUCTURE WORK FOR DELIVERY OF RETAIL WATER AND SEWER SERVICE; DIRECTING THE PREPARATION OF A FORM ANNEXATION ORDINANCE AND A PUBLIC HEARING BEFORE INSTITUTING ANY ANNEXATION PROCEEDINGS; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS,** RaceTrac, Inc., the owner of an 8.755 lying and situated in the H. S. Janes Headright Survey, Abstract 306, Bowie County, Texas, described in Section 1 of the proposed "Municipal Services Agreement" ("MSA") attached to this resolution as **ATTH 01**, has requested that the City of Texarkana, Texas, annex the acreage into the city limits and has signed the proposed MSA; and

**WHEREAS,** the tract is within the Limited Purpose Property as defined and described in the Strategic Partnership Agreement ("SPA") authorized by Section 43.0751 of the Texas Local Government Code entered into by and between the City and Macedonia-Eylau Municipal Utility District No. 1 of Bowie County ("District"); and

**WHEREAS**, prior to RaceTrac, Inc., acquiring ownership of the Property, the City Council approved limited-purpose annexation of the Property consistent with the SPA [Ord. No. 2022-137] and authorized and ordered for the Property the legal sale of malt beverages and wine for off-premise consumption consistent with City ordinances and pursuant to Section 251.725 of the Texas Alcoholic Beverage Code [Ord. No. 2022-138], both ordinances to be effective upon the execution of the services agreement attached to this resolution; and

**WHEREAS**, pursuant to the Texas Local Government Code, the governing body of a city that elects to annex an area by petition of landowner must first negotiate and enter into a written agreement with the owner of land in the area for the provision of services in the area, with the agreement including (1) a list of each service the city will provide on the effective date of the annexation, and (2) a schedule that includes the period within which the city will provide each service that is not provided on the effective date of the annexation; and

**WHEREAS,** before a city may adopt an ordinance annexing an area by petition of landowners, the governing body must conduct a public hearing, providing persons interested in the annexation the opportunity to be heard, and thereafter the governing body may adopt an ordinance annexing the area; and

**WHEREAS,** City staff recommends that the City Council elect to begin the process of consideration of annexation of the subject tract by first authorizing the City Manager to negotiate

Attachment: 2023-021 RES Race Trac vol. annex. svc. agrmt signed (3928 : 2023-021 RES RaceTrac agmt)

and execute the proposed MSA attached to this resolution pertaining to development incentives and services to be provided by the City in the event the City Council, in its discretion, favorably votes to annex the subject tract.

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

**SECTION 1:** The City Council elects to begin the process of considering the voluntary annexation of the tract described in Section 1 of the attached Municipal Services Agreement **[ATTH 01]** and authorizes the City Manager to execute the agreement.

**SECTION 2:** The City Council's approval of this resolution does not bind the City Council to approve annexation of the subject tract; and nothing in this resolution promises or guarantees a favorable vote by the City Council to approve annexation of the tract.

**SECTION 3:** Consistent with Section 3.4 of the SPA and the Statement of Work for implementing full-purpose annexation of the Corridor, and upon execution of the MSA, the Council authorizes the City Manager to begin such infrastructure work, within Council-approved budgeted parameters, for delivery of retail water and sewer service to the tract described in Section 1 of the attached MSA.

**SECTION 4:** Upon execution of the MSA, the City Council directs the City Manager to prepare a proposed annexation ordinance for the subject tract; and, at an appropriate time as determined by the City Manager and consistent with Texas law before instituting any annexation proceedings, the City Council shall give all interested persons the right to appear and to be heard at a public hearing during a regular meeting of the City Council pertaining to a proposed annexation for the subject tract.

**SECTION 5:** The City Manager or designee shall cause to be issued all newspaper publications and notices as required by law for the proceedings and hearings authorized by this Resolution.

**SECTION 6:** This Resolution shall be in full force and effect from and after its passage and approval.

**PASSED AND APPROVED** in Regular Council Session on this the **27th day of February, 2023**.

ATTEST:

JENNIFER EVANS, CITY SECRETARY

BOB BRUGGEMAN, MAYOR

6:31 p.m.

Attachment: 2023-021 RES Race Trac vol. annex. svc. agrmt signed (3928 : 2023-021 RES RaceTrac agmt)

# Municipal Services Agreement – Commercial

* * * * *

## Owner-Consent Voluntary Annexation

This Municipal Services Agreement ("Agreement") is entered into by and between the City of Texarkana, Texas, a home-rule municipality of the State of Texas ("City"), and RaceTrac, Inc. ("Owner").

*Recitals*

The parties agree that the following recitals are true and correct and form the basis upon which the parties have entered into this Agreement.

**WHEREAS**, pursuant to the Texas Local Government Code, the governing body of a city that elects to annex an area by petition of landowner must first negotiate and enter into a written agreement with the owners of land in the area for the provision of services in the area, with the agreement including (1) a list of each service the city will provide on the effective date of the annexation, and (2) a schedule that includes the period within which the city will provide each service that is not provided on the effective date of the annexation; and

**WHEREAS**, RaceTrac, Inc., has acquired a certain parcel of land situated in Bowie County, Texas, within the City's extraterritorial jurisdiction, more particularly described in Section 1, below ("the Property"); and

**WHEREAS**, the Property is located within the Limited Purpose Property as defined and described in the Strategic Partnership Agreement ("SPA") authorized by Section 43.0751 of the Texas Local Government Code entered into by and between the City and Macedonia-Eylau Municipal Utility District No. 1 of Bowie County ("District"); and

**WHEREAS**, prior to RaceTrac, Inc., acquiring ownership of the Property, the City Council approved limited-purpose annexation of the Property consistent with the SPA [Ord. No. 2022-137] and authorized and ordered for the Property the legal sale of malt beverages and wine for off-premise consumption consistent with City ordinances and pursuant to Section 251.725 of the Texas Alcoholic Beverage Code [Ord. No. 2022-138], both ordinances to be effective upon the execution of this Agreement; and

**WHEREAS**, by this Agreement, Owner requests and consents to full-purpose annexation of the Property by the City; and

**WHEREAS**, City and Owner desire to set out their agreements for the development of the Property by confirming development incentives, pre-annexation development of the Property, the process for City Council consideration of full-purpose annexation of the Property, and — in the event the City Council approves full-purpose annexation — the City services to be provided for the Property on or after the effective date of full-purpose annexation.

**NOW THEREFORE,** in exchange for the mutual covenants, conditions and promises contained herein, City and Owner agree as follows:



Attachment: 2023-021 RES Race Trac vol. annex. svc. agrmt signed (3928 : 2023-021 RES RaceTrac agmt)

1. **PROPERTY.** This Agreement is only applicable to the Property described below:

All that certain lot, tract or parcel of land lying and situated in the H. S. Janes Headright Survey, Abstract 306, Bowie County, Texas, being all of that certain tract of land described as Tract 1 with 4 acres, and Tract 2, with 0.74 in the deed from N. E. Jones Oil Company, Inc. to Cole & Prewitt, LLC., dated April 14, 2015, recorded in Document No. 2015-3696 of the Real Property Records, Bowie County, Texas, being all of that certain tract of land described as 3.963 acres in the deed from Gary Tipton, et al to Cole & Prewitt, LLC., dated December 29, 2015, recorded in Document No. 2016-35 of the Real Property Records, Bowie County, Texas, being all of that certain tract of land described as 0.215 acres in the Order to Close, Abandon, and Vacate Black Drive, from the Bowie County Commissioners Court to Cole & Prewitt, LLC, recorded in Document No. 2022-00012360 of the Real Property Records of Bowie County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING at a 1 inch square pipe found for a corner, lying in the East right-of-way line of Farm-to-Market Road 989 (South Kings Highway), the Northwest corner of the said 4 acre tract, and the Southwest corner of that certain tract of land described as 20.903 acres in the deed from Woody Ridge Livestock Auction, LLC to SMBL Cattle Company, LLC, dated August 25, 2016, recorded in Document No. 2016-10474 of the Real Property Records, Bowie County, Texas

THENCE North 70 degrees 46 minutes 33 seconds East a distance of 244.41 feet generally along a fence line and the South line of the said 20.903 acre tract to a 1/2 inch steel pipe (control monument), found for a corner, the Northeast corner of the said 4 acre tract, the Northwest corner of the said 3.963 acre tract, and at an angle point in the South line of the said 20.903 acre tract;

THENCE North 87 degrees 38 minutes 42 seconds East a distance of 265.29 feet generally along a fence line, the North line of the said 3.963 acre tract and the South line of the said 20.903 acre tract to a 1/2 inch steel pipe (control monument), found for a corner, at an angle point in the North line of the said 3.963 acre tract, the Southeast corner of the said 20.903 acre tract, and the Southwest corner of Lot No. 3, Block No. 2 of Lake Drive Plaza Subdivision, according to the plat recorded in Volume 5435, Page 1 of the Real Property Records, Bowie County, Texas;

THENCE North 87 degrees 48 minutes 46 seconds East a distance of 29.53 feet generally along a fence line, the North line of the said 3.963 acre tract and the South line of the said Lot No. 3 to a 1/2 inch steel rod, capped MTG 101011-00, set for a corner, the Northeast corner of the said 3.963 acre tract, lying in the South line of the said Lot No. 3, and the Northwest corner of that certain tract of land described as 1.916 acres in the deed from Thomas A. Simpson, et ux, to Gary W. Treadway, dated March 11, 2015, recorded in Document No. 2015-3028 of the Real Property Records, Bowie County, Texas, said corner bears North 87 degrees 48 minutes 46 seconds East a distance of 176.16 feet to a 1/2 inch steel rod, found for the Northeast corner of the said 1.916 acre tract;

THENCE South 23 degrees 41 minutes 34 seconds East a distance of 576.41 feet generally along a fence line, the East line of the said 3.963 acre tract and the West line of the said 1.916 acre tract to a 1/2 inch steel rod, capped MTG 101011-00, set for a corner, lying the North right-of-way line of U.S. Highway No. 59 (South Lake Drive), the Southeast corner of the said 3.963 acre tract, and the Southwest corner of the said 1.916 acre tract, at the beginning of a circular curve, to the left, said corner bears North 49 degrees 49 minutes 52 seconds East a distance of 162.86 feet to a 1/2 inch steel rod, found for the Southeast corner of the said 1.916 acre tract;



Attachment: 2023-021 RES Race Trac vol. annex. svc. agrmt signed (3928 : 2023-021 RES RaceTrac agmt)

THENCE in a Southwesterly direction along the arc of the said circular curve a distance of 414.64 feet, with a delta angle of 06 degrees 05 minutes 31 seconds, a radius of 3899.84 feet, a chord bearing of South 45 degrees 35 minutes 23 seconds West, and a chord distance of 414.45 feet to a 1/2 inch steel rod, capped MTG 101011-00, set for a corner, at an angle point in the South line of the said 0.74 acre tract and the North right-of-way line of the said South Lake Drive;

THENCE South 80 degrees 46 minutes 00 seconds West a distance of 124.00 feet along the South line of the said 0.74 acre tract and the North right-of-way line of the said South Lake Drive a 1/2 inch steel rod, capped MTG 101011-00, set for a corner, lying at intersection of the North right-of-way of the said South Lake Drive, and the East right-of-way line of the said South Kings Highway, the Southwest corner of the said 0.74 acre tract;

THENCE North 24 degrees 17 minutes 59 seconds West a distance of 130.54 feet along the East right-of-way line of the said South Kings Highway and the West line of the said 0.74 acre tract to a 1/2 inch steel rod, capped MTG 101011-00, set for a corner, the Northwest corner of the said 0.74 acre tract, the Southwest corner of the said Black Street 0.215 acre tract;

THENCE North 24 degrees 27 minutes 14 seconds West a distance of 687.99 feet along the East right-of-way line of the said South Kings Highway, the West line of the said 0.215 acre tract, and the West line of the said 4 acre tract to the point of beginning and containing 8.755 acres of land, more or less.

2. **OWNER CONSENT FOR FULL-PURPOSE ANNEXATION and PROPERTY DEVELOPMENT PLAN.**

a. Owner requests, consents, covenants, and agrees to full-purpose annexation of the Property by the City; with such consent, and subject to Section 3 of this Agreement, City intends for this Agreement to provide for the delivery of specific municipal services to the Property in accordance with state law and accomplished through any means permitted by law.

b. In the event of full-purpose annexation of the Property, Owner agrees and consents to a zoning classification of Planned Development / Commercial according to City's Code of Ordinances; and Owner shall prepare all site plan documentation in anticipation of and consistent with this zoning classification. Owner shall defer to the City's discretion with respect to the timing for initiating full-purpose annexation proceedings, which may occur on or about Owner requesting a certificate of occupancy in the latter part of the calendar year 2023.

c. Except as provided herein, Owner agrees to comply with — and City is authorized to enforce and shall enforce — all of City's ordinances, regulations, and planning authority for the Property as authorized by law, this Agreement, and the SPA, in the same manner such ordinances and regulations are enforced within the City's boundaries; provided, however, that City shall not require Owner to obtain a demolition permit for demolition of existing structures upon the Property, which Owner intends to commence promptly following execution of this Agreement.

3. **MUNICIPAL SERVICES.** In accordance with applicable City ordinances, rules, regulations, and policies, Owner and City agree that the City will provide the municipal services set forth in Exhibit "A", attached hereto and incorporated herein by reference for all purposes (hereinafter, "Services"), at the times, events, or conditions specified therein for each of the



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Services. Unless otherwise expressly stated in Exhibit "A", Owner acquisition of the Property and full-purpose annexation of the Property is a condition precedent for the provision of Services pursuant to this Agreement; provided, however, that nothing in this Agreement should be construed as requiring the City to annex the Property for full-purpose annexation (and if such requirement exists under law, the parties agree such requirement is waived).

4. **PROPERTY DEVELOPMENT INCENTIVE.** To incentivize prompt development of the Property prior to City Council consideration of full-purpose annexation of the Property, and consistent with the SPA by and between City and District, Owner and City agree – and by this Agreement make effective – City Council Ordinances Nos. 2022-137 and 2022-138, approving limited-purpose annexation of the Property consistent with the SPA and authorizing and ordering for the Property the legal sale of malt beverages and wine for off-premise consumption consistent with City ordinances and pursuant to Section 251.725 of the Texas Alcoholic Beverage Code. Owner agrees, represents, and warrants that the Property (1) is not more than one percent of the total area covered by the City, (2) all of the land in the Property is zoned for commercial use only, and (3) the Property is not adjacent to residential, church, or school property. To further incentivize prompt development of the Property, Owner and City agree that the fee or fees set by the City Council for any discrete annexation proceeding (e.g., limited-purpose annexation, full-purpose annexation, or both) shall be waived.

5. **SEVERABILITY.** Except as otherwise provided herein, if any part, term, or provision of this Agreement is held by a court to be illegal, invalid, or otherwise unenforceable, such illegality, invalidity, or unenforceability will not affect the validity of any other part, term or provision, and the rights of the parties will be construed as if the part, term, or provision was never part of the Agreement; provided, however, that Sections 2, 4, 9, 10, and 11 are not severable from this Agreement.

6. **GOVERNING LAW, INTERPRETATION, and VENUE**. The parties to this Agreement covenant and agree that in any litigation relating to this Agreement, the terms and conditions of the Agreement will be interpreted according to the laws of the State of Texas. The parties acknowledge that they are of equal bargaining power and that this Agreement shall be fairly interpreted in accordance with its terms and conditions and not for or against either party. Venue for any litigation relating to this Agreement shall be in the state or federal courts located in Bowie County, Texas.

7. **NO WAIVER.** The failure of either party to insist upon the performance of any term or provision of this Agreement or to exercise any right granted hereunder shall not constitute a waiver of that party's right to insist upon appropriate performance or to assert any such right on any future occasion.

8. **GOVERNMENTAL POWERS and FUNCTIONS.** Owner and City agree that no provision of this Agreement is in any way intended to constitute a waiver of the City's governmental immunities from suit or from liability; Owner and City acknowledge that the terms, provisions, and execution of this Agreement, together with the provision of Services, constitute



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governmental functions of the City, and that the City does not waive or surrender any of its governmental powers or immunities by execution or performance of this Agreement.

9. **FORCE MAJEURE.** "Force Majeure" means an event, circumstance, or act that is beyond a party's reasonable control, such as an act of God, an act of the public enemy, an act of a government entity, strikes, other labor disturbances, supplier performance, supply chain interruption, hurricanes, earthquakes, fires, floods, epidemics, pandemics, embargoes, war, riots, ransomware or cyber events, or any other similar cause. Neither party will be liable for its non-performance or delayed performance if caused by a Force Majeure. A party that becomes aware of a Force Majeure that will significantly delay performance will notify the other party promptly (but in no event later than fifteen days) after it discovers the Force Majeure. If a Force Majeure occurs, any deadline for provision of Services shall be extended for a time period that is reasonable under the circumstances, and any suspension of provision for Services shall be reasonable under the circumstances.

10. **AGREEMENT BINDS AND BENEFITS SUCCESSORS AND RUNS WITH THE LAND.** This Agreement is binding on and inures to the benefit of the parties, their successors, and assigns. Upon annexation of the Property, Owner shall file this Agreement in the Deed Records of Bowie County, Texas, at such time prior to any sale of any portion of the Property to third parties. The terms of this Agreement constitute covenants running with the land comprising the Property, is binding on the Owner and the City, is binding on subsequent owners of any portion of the Property, and is enforceable by any current or future owner of any portion of the Property.

11. **COSTS/FEES TO PAY OR REIMBURSE.** In addition to any costs or fees set out in this Agreement or exhibits thereto, Owner agrees to reimburse or pay the following:

a. City's cost of publication of any ordinance pursuant to Section 251.725 of the Texas Alcoholic Beverage Code authorizing the sale of malt beverages and wine for off-premise consumption for the Property;

b. Publication costs incurred by City and the District relating to noticing public hearings required by Section 43.0751 of the Texas Local Government Code for consideration of a strategic partnership agreement authorized by that law;

c. City's filing costs to file the SPA in the Real Property Records of Bowie County, Texas;

d. City's cost of notice, publication, and advertising as may be required by law or City Charter for any discrete annexation proceeding of the Property, including the publication costs of proposed annexation ordinances for the Property in the form in which such may be finally passed as required by Article I, Section 5 of the City Charter of the City of Texarkana, Texas;

e. Owner shall be responsible for paying or otherwise reimbursing the City for all infrastructure or development costs on the Property; Owner agrees that such costs shall include rerouting of the water main.



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f. The amount of compensation required to be paid by City pursuant to Texas Health & Safety Code Section 775.022 with respect to annexation of the Property.

12. **AUTHORITY and ENTIRE AGREEMENT.** City and Owner represent that they have full power, authority, and legal right to execute, deliver and perform their obligations pursuant to this Agreement. This Agreement constitutes the entire agreement between the parties and supersedes all prior oral and written agreements between said parties. Except as provided herein, this Agreement shall not be amended unless approved by the City Council and executed in writing by both parties; provided, however, during such time prior to full-purpose annexation of the Property, the City Council delegates to the City Manager the authority to agree to and execute written amendments that do not materially obligate the City to extend services beyond the scope of this Agreement, and such written amendments upon execution shall be appended to this Agreement.

13. **GOVERNMENTAL IMMUNITY.** This Agreement is expressly made subject to City's governmental immunity as provided by the Texas Constitution, Texas law, and applicable federal law. The parties expressly agree that no provision of this Agreement is in any way intended to constitute a waiver of the City's immunities from suit or from liability.

14. **ASSIGNMENT.** This Agreement shall be binding upon the respective successors and assigns of the parties; provided, however, that neither party may assign this Agreement without the other party's prior written consent.

15. **JOINT DRAFTING.** The drafting of this Agreement shall not be attributed to either Party: the parties prepared this Agreement jointly, following arm's length and careful negotiation, with each party represented by legal counsel; and each party has the requisite experience and sophistication to understand, interpret, and agree to the particular language of its provisions.

16. **SECTION HEADINGS**. The section headings in this Agreement are inserted only for convenience and are not to be construed as part of this Agreement or as a limitation of the scope of the particular section to which the heading refers.

17. **EFFECTIVE DATE.** This Agreement shall be effective upon the execution by both City and Owner.

**City of Texarkana, Texas**

By: _____ Date: 3/3, 2023
David W. Orr, PhD
City Manager

**Owner, RaceTrac, Inc.:**

By: _____ Date: 2/2, 2023
Justus Glasscock



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# Exhibit A to Municipal Services Agreement - Commercial

**The term "annexation" as used in this exhibit refers only to full-purpose annexation of the Property, as distinguished from limited-purpose annexation.**

## I. Services to be Provided Upon Annexation of Property.

### A. Fire

Fire suppression service from the City's Fire Department will be available to the Property upon annexation. Primary fire response will be provided by Fire Station No. 7, located at 3101 S. Lake Dr. Fire prevention activities will be provided by the Fire Marshall's office as needed.

### B. Police

Currently, the Property is under the jurisdiction of the Bowie County Sheriff's Office. Upon annexation, the City's Police Department will extend regular and routine patrols to the Property.

### C. Building Inspection

The City's Building Inspection Department will provide Inspection Services upon annexation. This includes issuing building, electrical, and plumbing permits for any new construction and remodeling and enforcing all other applicable codes which regulate building construction within the City of Texarkana, Texas.

### D. Planning and Zoning

The Planning and Zoning Department's responsibility for regulating development and land use through the administration of the City of Texarkana Zoning Ordinance will extend to this Property upon annexation. The property will also continue to be regulated under the requirements of the City of Texarkana Subdivision Ordinance.

### E. Library

Upon annexation, free library use privileges with issuance of a free library card will be available to anyone residing in this Property. A free library card for those in the City limits includes checkouts for books, DVDs, and audiobooks. Also, databases are available that can be accessed from home, including free tutoring for grade school through college, foreign language, genealogy, Consumer Reports, and downloadable audiobooks and e-books.

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**F. Health Department**

The Texarkana-Bowie County Health Department will provide health services to eligible residents, if any, of the Property upon annexation.

**G. Code Enforcement**

The City's Code Enforcement Division will provide Code Enforcement services upon annexation. These services include enforcing the City's health ordinances, health inspections, and enforcing the City's Code of Ordinances governing litter, junk vehicles, high grass and weeds, and substandard structures. Animal Control services will be provided to the Property as needed.

**H. Parks**

Existing park use privileges subject to Parks Rules and Regulations will be available to anyone residing within the Property upon annexation.

**I. Traffic Engineering**

Upon annexation, City will provide traffic engineering services and regulatory signage services in accordance with the City policies and procedures and applicable laws.

**J. Water and Sewer Service**

Owner acknowledges and agrees that its proposed development shall be required to connect to the City's water and sewer system at Owner's expense.

## II. Services to be Provided to the Property Upon Specific Conditions or Events Following Annexation.

**A. Drainage and Stormwater Management**

Owner must provide stormwater drainage at its own expense and will be inspected by the City Engineers at time of completions. After inspection, the City will thereafter maintain the drainage only upon approval by City Engineers and only if drainage is dedicated in the public drainage easement and the City accepts the dedication; provided, however, that nothing herein should be construed as requiring the City to accept such dedication.

Maintenance of existing drainage facilities will be provided by the City upon annexation only if the drainage facilities are located in the street right-of-way or a public drainage easement. Owner shall be responsible and agrees to pay for maintenance of any drainage facility that is not in the street right-of-way or public drainage easement.

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B. **Solid Waste Services**

Beginning with occupancy of residential structures, if any, Solid Waste Collection shall be provided to the Property in accordance with City ordinance and policies.

## III. General Provisions

A. The parties acknowledge and agree that the City is not required to provide a service that is not identified herein.

B. Owner understands and acknowledges that City departments referenced herein may change names or be re-organized by the City Manager. Any reference to a specific department also includes any subsequent City department that will provide the same or similar service.

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