



**CITY OF TEXARKANA**  
**CITY COUNCIL**  
**MINUTES • NOVEMBER 14, 2016**

**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 |         |
| Willie Ray         | Ward 2 | Absent  |         |
| Tina Veal-Gooch    | Ward 3 | Present |         |
| Brian Matthews     | Ward 4 | Late    | 6:14 PM |
| Christy P. Paddock | Ward 5 | Absent  |         |
| Josh Davis         | Ward 6 | Present |         |

Staff Present: City Manager John Whitson, Jennifer Evans, Shirley Jaster, Robby Robertson, Lynn Henry, Lisa Thompson, Kyle Dooley, Karey Parker, Kristin Peeples, Eric Schlotter, David Orr, Keith Lee, Jim Powell, Michael Henry, and Jerry Sparks.

Legal Counsel: Jeff Lewis

**II. INVOCATION AND PLEDGE BY MAYOR BOB BRUGGEMAN**

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

Mayor Bruggeman expressed it was a privilege and honor to recognize Police Chaplain Tommy Gaither for receiving the Diplomat Level Police Chaplain certification. This certification is one of the highest honors bestowed on a volunteer minister. Mr. Gaither has served officers of the Texarkana, Texas, police department for over 18 years. Mr. Gaither is often called on to help families and victims in crisis situations or to assist in death notifications. He has provided faithful service to police officers on ride alongs during the years. Mr. Gaither thanked the Mayor and Council Members for this special recognition and also credited his wife Juanda, of 51 years, for her loyal support.

**Upcoming City Council Meetings:**

Monday, November 21, 2016 at 6:00 p.m. (Canvass Election Results)  
Monday, November 28, 2016 at 6:00 p.m. (Candidate Swearing-In Ceremony)  
Monday, December 12, 2016 at 6:00 p.m.  
**Monday, December 26, 2016 - CANCELLED**

**Comprehensive Plan Meeting:**

The second meeting for the “Renew Texarkana” Comprehensive Plan will be held at the Texarkana Convention Center on Tuesday, November 15th at 6:00 p.m. All in the community are invited to attend.

**Small Business Saturday Celebration:**

A celebration recognizing small businesses will be held on Saturday November 26th at the Farmers Market located at 305 Texas Blvd.

**Parks & Recreation Events:**

|                           |                            |                     |
|---------------------------|----------------------------|---------------------|
| November 19 <sup>th</sup> | Softball Tournament        | Karrh/Wallace Parks |
| November 24 <sup>th</sup> | Turkey Trot 5K Run         | Spring Lake Park    |
| December 1 <sup>st</sup>  | Bramlett Beans & Cornbread | Southwest Center    |

For a complete list of Parks & Recreation activities and information call 903-798-3978 or visit the city website: <http://tx-texarkana.civicplus.com>

Mayor Bruggeman gave a warm welcome to Texas High School students from Mr. Littman's government class who were attending the meeting for a class assignment.

***Presentations***

Small Business Saturday Proclamation - November 26, 2016

Mayor Bruggeman read the proclamation and encouraged all to support local small businesses on Saturday, November 26th.

***Appointments to Boards & Commissions***

Council Member Matlock recommended the appointment of Carolyn Moore to the Building & Standards Committee. Council Member Veal-Gooch recommended the appointment of Willis Johnston to the Historic Landmark Preservation Committee.

1. Motion to make the recommended appointments to Boards & Commissions.

(6:21 p.m.)



|                  |                                      |
|------------------|--------------------------------------|
| <b>RESULT:</b>   | <b>ADOPTED [UNANIMOUS]</b>           |
| <b>MOVER:</b>    | Josh Davis, Ward 6                   |
| <b>SECONDER:</b> | Brian Matthews, Ward 4               |
| <b>AYES:</b>     | Matlock, Veal-Gooch, Matthews, Davis |
| <b>ABSENT:</b>   | Ray, Paddock                         |
| <b>EXCUSED:</b>  | Bruggeman                            |

#### IV. OPEN FORUM: COMMENTS FROM THE PUBLIC (LIMIT 5 MINUTES EACH)

Items scheduled for "Public Hearing" or have been heard at a previous "Public Hearing" are not to be addressed at the "Open Forum".

There were no public comments made at Open Forum.

#### V. ITEMS FOR CONSIDERATION

##### *Consent Items*

(6:23 p.m.)

|                  |                                      |
|------------------|--------------------------------------|
| <b>RESULT:</b>   | <b>ADOPTED [UNANIMOUS]</b>           |
| <b>MOVER:</b>    | Josh Davis, Ward 6                   |
| <b>SECONDER:</b> | Brian Matthews, Ward 4               |
| <b>AYES:</b>     | Matlock, Veal-Gooch, Matthews, Davis |
| <b>ABSENT:</b>   | Ray, Paddock                         |
| <b>EXCUSED:</b>  | Bruggeman                            |

1. Consider approval of the minutes of the Joint City Committee Special Meeting of the City Council held on October 11, 2016 at 3:00 PM.
2. Consider approval of the minutes of the Regular Meeting of the City Council held on October 24, 2016 at 6:00 PM.
3. Ordinance No. 2016-124 accepting additional grant funding for the Police Department budget from ArkLaTex 100 Club in the amount of \$11,055.

Public Hearing:

Second Briefing:

Council Vote: November 14, 2016

Mayor Bruggeman expressed thanks to the ArkLaTex 100 Club for its contributions to the Texarkana community.

4. Resolution No. 2016-130 setting the 2017 City Council meeting dates and official City Holiday closings.

Public Hearing:  
Second Briefing:  
Council Vote: November 14, 2016

### ***Action Items***

5. Resolution No. 2016-113 establishing a Community Relations Expenditures Policy.

Public Hearing: October 10, 2016  
Second Briefing: October 24, 2016  
Council Vote: November 14, 2016

(6:24 p.m.)

|                  |                                      |
|------------------|--------------------------------------|
| <b>RESULT:</b>   | <b>ADOPTED [UNANIMOUS]</b>           |
| <b>MOVER:</b>    | Brian Matthews, Ward 4               |
| <b>SECONDER:</b> | Josh Davis, Ward 6                   |
| <b>AYES:</b>     | Matlock, Veal-Gooch, Matthews, Davis |
| <b>ABSENT:</b>   | Ray, Paddock                         |
| <b>EXCUSED:</b>  | Bruggeman                            |

6. Resolution No. 2016-114 authorizing the expenditure of Community Relations funds in support of the KCS Holiday Express Train event.

Public Hearing: October 10, 2016  
Second Briefing: October 24, 2016  
Council Vote: November 14, 2016

(6:25 p.m.)

|                  |                                      |
|------------------|--------------------------------------|
| <b>RESULT:</b>   | <b>ADOPTED [UNANIMOUS]</b>           |
| <b>MOVER:</b>    | Brian Matthews, Ward 4               |
| <b>SECONDER:</b> | Jean H. Matlock, Ward 1              |
| <b>AYES:</b>     | Matlock, Veal-Gooch, Matthews, Davis |
| <b>ABSENT:</b>   | Ray, Paddock                         |
| <b>EXCUSED:</b>  | Bruggeman                            |

7. Resolution No. 2016-116 revising the Fire Department's swap time policy.

Public Hearing: October 10, 2016  
Second Briefing: October 24, 2016  
Council Vote: November 14, 2016

Mayor Bruggeman asked the City Secretary for a roll call vote.  
(6:26 p.m.)

|                  |                               |
|------------------|-------------------------------|
| <b>RESULT:</b>   | <b>FAILED [3 TO 1]</b>        |
| <b>MOVER:</b>    | Jean H. Matlock, Ward 1       |
| <b>SECONDER:</b> | Brian Matthews, Ward 4        |
| <b>AYES:</b>     | Matlock, Veal-Gooch, Matthews |
| <b>NAYS:</b>     | Davis                         |
| <b>ABSENT:</b>   | Ray, Paddock                  |
| <b>EXCUSED:</b>  | Bruggeman                     |

8. Ordinance No. 2016-126 amending budget expenditures for the fiscal year ending September 30, 2017 to appropriate funding in the amount of One Million Three Hundred Fifty-Three Thousand Two Hundred Dollars (\$1,353,200) for projects included in the previously approved Capital Improvement Program. (CIP).

Public Hearing:

Second Briefing:

Council Vote: November 14, 2016

City Manager Whitson briefed this item accompanied by a PowerPoint presentation.  
(6:37 p.m.)

|                  |                                      |
|------------------|--------------------------------------|
| <b>RESULT:</b>   | <b>ADOPTED [UNANIMOUS]</b>           |
| <b>MOVER:</b>    | Brian Matthews, Ward 4               |
| <b>SECONDER:</b> | Jean H. Matlock, Ward 1              |
| <b>AYES:</b>     | Matlock, Veal-Gooch, Matthews, Davis |
| <b>ABSENT:</b>   | Ray, Paddock                         |
| <b>EXCUSED:</b>  | Bruggeman                            |

9. Ordinance No. 2016-127 amending budgeted revenue and expenditures for the fiscal year ending September 30, 2017 for the Public Safety Radio Equipment fund.

Public Hearing:

Second Briefing:

Council Vote: November 14, 2016

Kristin Peebles briefed this item. Michael Henry answered questions for council.

|                |                  |                                 |
|----------------|------------------|---------------------------------|
| <b>RESULT:</b> | <b>POSTPONED</b> | <b>Next: 12/12/2016 6:00 PM</b> |
|----------------|------------------|---------------------------------|

## VI. FIRST BRIEFINGS

1. Resolution No. 2016-125 approving and authorizing the City Manager to execute the agreement between the City and Valley View Consulting, L.L.C. to provide professional investment advisory services for the City's investable funds for a period of two (2) years.

Public Hearing: November 28, 2016  
Second Briefing: December 12, 2016  
Council Vote: January 9, 2017

Kristin Peeples briefed this item.

|                |                      |                                 |
|----------------|----------------------|---------------------------------|
| <b>RESULT:</b> | <b>MOVED FORWARD</b> | <b>Next: 11/28/2016 6:00 PM</b> |
|----------------|----------------------|---------------------------------|

2. Resolution No. 2016-132 approving and authorizing the City Manager to enter into an agreement with Waste Management of Texas, Inc. for refuse collection.

Public Hearing: November 28, 2016  
Second Briefing: December 12, 2016  
Council Vote: January 9, 2017

Kyle Dooley briefed this item.

|                |                      |                                 |
|----------------|----------------------|---------------------------------|
| <b>RESULT:</b> | <b>MOVED FORWARD</b> | <b>Next: 11/28/2016 6:00 PM</b> |
|----------------|----------------------|---------------------------------|

3. Ordinance No. 2016-133 authorizing the City Manager to enter into a contract with Four Thirteen Inc. for the construction of the Texarkana, Texas Gateway Welcome sign.

Public Hearing: November 28, 2016  
Second Briefing: December 12, 2016  
Council Vote: January 9, 2017

Kyle Dooley briefed this item.

|                |                      |                                 |
|----------------|----------------------|---------------------------------|
| <b>RESULT:</b> | <b>MOVED FORWARD</b> | <b>Next: 11/28/2016 6:00 PM</b> |
|----------------|----------------------|---------------------------------|

## VII. PUBLIC HEARINGS

1. Motion to move Resolution No. 2016-120 up for council vote.

(6:56 p.m.)

|                  |                                      |
|------------------|--------------------------------------|
| <b>RESULT:</b>   | <b>ADOPTED [UNANIMOUS]</b>           |
| <b>MOVER:</b>    | Josh Davis, Ward 6                   |
| <b>SECONDER:</b> | Brian Matthews, Ward 4               |
| <b>AYES:</b>     | Matlock, Veal-Gooch, Matthews, Davis |
| <b>ABSENT:</b>   | Ray, Paddock                         |
| <b>EXCUSED:</b>  | Bruggeman                            |

2. Resolution No. 2016-120 approving Bowie Central Appraisal District's 2016 tax roll.

Public Hearing: November 14, 2016  
Second Briefing: November 28, 2016  
Council Vote: December 12, 2016

There were no public comments made at this hearing.  
(6:56 p.m.)

|                  |                                      |
|------------------|--------------------------------------|
| <b>RESULT:</b>   | <b>ADOPTED [UNANIMOUS]</b>           |
| <b>MOVER:</b>    | Tina Veal-Gooch, Ward 3              |
| <b>SECONDER:</b> | Josh Davis, Ward 6                   |
| <b>AYES:</b>     | Matlock, Veal-Gooch, Matthews, Davis |
| <b>ABSENT:</b>   | Ray, Paddock                         |
| <b>EXCUSED:</b>  | Bruggeman                            |

3. Motion to move Resolution No. 2016-121 up for council vote.

(6:57 p.m.)

|                  |                                      |
|------------------|--------------------------------------|
| <b>RESULT:</b>   | <b>ADOPTED [UNANIMOUS]</b>           |
| <b>MOVER:</b>    | Tina Veal-Gooch, Ward 3              |
| <b>SECONDER:</b> | Josh Davis, Ward 6                   |
| <b>AYES:</b>     | Matlock, Veal-Gooch, Matthews, Davis |
| <b>ABSENT:</b>   | Ray, Paddock                         |
| <b>EXCUSED:</b>  | Bruggeman                            |

4. Resolution No. 2016-121 authorizing the City Manager to enter into an incentive agreement under Chapter 380 of the Texas Local Government Code with Legato Holdings LLC for plans to remodel a facility located at 3103 Summerhill Road.

Public Hearing: November 14, 2016  
Second Briefing: November 28, 2016  
Council Vote: December 12, 2016

There were no public comments made at this hearing.  
(6:58 p.m.)

|                  |                                      |
|------------------|--------------------------------------|
| <b>RESULT:</b>   | <b>ADOPTED [UNANIMOUS]</b>           |
| <b>MOVER:</b>    | Brian Matthews, Ward 4               |
| <b>SECONDER:</b> | Jean H. Matlock, Ward 1              |
| <b>AYES:</b>     | Matlock, Veal-Gooch, Matthews, Davis |
| <b>ABSENT:</b>   | Ray, Paddock                         |
| <b>EXCUSED:</b>  | Bruggeman                            |

## VIII. SECOND BRIEFING WITH UPDATES - NONE

## IX. SECOND BRIEFING WITHOUT UPDATES

1. Ordinance No. 2016-117 amending Chapter 11 Sec. 105-99 of the International Residential Code.

Public Hearing: October 24, 2016  
Second Briefing: November 14, 2016  
Council Vote: November 28, 2016

|                |                      |
|----------------|----------------------|
| <b>RESULT:</b> | <b>MOVED FORWARD</b> |
|----------------|----------------------|

|                                 |
|---------------------------------|
| <b>Next: 11/28/2016 6:00 PM</b> |
|---------------------------------|

2. Ordinance No. 2016-119 amending the Code of Ordinances Secs. 28-1(b),130-5,140-179 and 140-239 for sidewalk board type signs to be allowed for advertising in the Central Business zoning district.

Public Hearing: October 24, 2016  
Second Briefing: November 14, 2016  
Council Vote: November 28, 2016

|                |                      |
|----------------|----------------------|
| <b>RESULT:</b> | <b>MOVED FORWARD</b> |
|----------------|----------------------|

|                                 |
|---------------------------------|
| <b>Next: 11/28/2016 6:00 PM</b> |
|---------------------------------|

## **X. ITEMS FOR DISCUSSION**

Staff Updates

Staff had no updates for council.

## **XI. ADMINISTRATIVE COMMENTS**

1. City Council

Council Members had no comments for staff.

2. City Staff

City Manager Whitson reminded council that the Employee Luncheon and Retiree Recognition is scheduled for Thursday, November 17th at 11:00 a.m. The event will be held at the Southwest Center on West 7th Street.

## **XII. ADJOURNMENT**

A motion was made to adjourn the meeting.  
(7:00 p.m.)

|                  |                                      |
|------------------|--------------------------------------|
| <b>RESULT:</b>   | <b>ADOPTED [UNANIMOUS]</b>           |
| <b>MOVER:</b>    | Brian Matthews, Ward 4               |
| <b>SECONDER:</b> | Jean H. Matlock, Ward 1              |
| <b>AYES:</b>     | Matlock, Veal-Gooch, Matthews, Davis |
| <b>ABSENT:</b>   | Ray, Paddock                         |
| <b>EXCUSED:</b>  | Bruggeman                            |



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Jennifer Evans  
City Secretary



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Bob Bruggeman  
Mayor

## Briefing Sheet

Version:  
Update Date: 9/30/2016 9:10 AM

**Lead Department:** City Manager

**Action Officer:** Jennifer Evans, City Secretary

**Subject:** Small Business Saturday Proclamation - November 26, 2016

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### Updates/History of Briefing:

NOT APPLICABLE

### Executive Summary and Background Information:

Fact Sheet attached for information.

### Potential Options:

- None
- 

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### Fiscal Implications:

None

### Staff Recommendation:

Mayor to proclaim Saturday, November 26, 2016 as Small Business Saturday in Texarkana, Texas.

### Advisory Board/Committee Review:

NONE

### Board/Committee Recommendation:

NOT APPLICABLE

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

NOT APPLICABLE

### Attachments

- Small Business Saturday Proclamation -2016 (PDF)
- Small Business Saturday FACT SHEET 112616.pdf(PDF)



# PROCLAMATION

## *Small Business Saturday November 26, 2016*

**Whereas**, the government of the City of Texarkana, Texas, celebrates our local small businesses and the contributions they make to our local economy and community; according to the United States Small Business Administration, there are currently 28.8 million small businesses in the United States, they represent 99.7 percent of all businesses with employees in the United States, are responsible for 63 percent of net new jobs created over the past 20 years; and

**Whereas**, small businesses employ over 49 percent of all businesses with employees in the United States; and

**Whereas**, 89 percent of consumers in the United States agree that small businesses contribute positively to the local community by supplying jobs and generating tax revenue; and

**Whereas**, 87 percent of consumers in the United States agree that small businesses are critical to the overall economic health of the United States; and

**Whereas**, 93 percent of consumers in the United States agree that it is important for people to support the small businesses that they value in their community; and

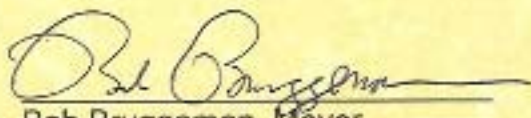
**Whereas**, the City of Texarkana, Texas supports our local businesses that create jobs, boost our local economy and preserve our neighborhoods; and

**Whereas**, advocacy groups as well as public and private organizations across the country have endorsed the Saturday after Thanksgiving as Small Business Saturday.

**NOW, THEREFORE**, I, Bob Bruggeman, Mayor of the City of Texarkana, Texas do hereby proclaim, November 26, 2016, as:

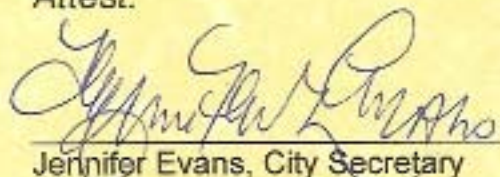
### **SMALL BUSINESS SATURDAY**

and urge the residents of our community, and communities across the country, to support small businesses and merchants on Small Business Saturday and throughout the year.



Bob Bruggeman, Mayor  
City of Texarkana, Texas

Attest:



Jennifer Evans, City Secretary  
City of Texarkana, Texas







## WHAT IS SMALL BUSINESS SATURDAY?

**Small Business Saturday** <sup>SM</sup> was created in 2010 in response to small business owners' most pressing need: more customers. Falling between Black Friday and Cyber Monday, it's a day to support the local businesses that create jobs, boost the economy and preserve neighborhoods around the country. It has since become a nation-wide, well-known celebrated event on the national calendar with support from elected officials, public and private organizations.



## WHY SUPPORT SMALL BUSINESS SATURDAY?

- Demonstrates commitment to the communities in which we live
- Creates goodwill within the communities
- When we support small business, jobs are created and local communities preserve their unique culture

## WHAT PEOPLE ACROSS THE NATION ARE SAYING ABOUT 2015 SMALL BUSINESS SATURDAY\*:

*"Small Business Saturday was an amazing experience for everyone involved. From the business owners, to the guests, everyone felt a great pride in their community and appreciated the opportunity to find companies that are local to them. I can't wait for next year!"*

– Syd Suntha of Bread and Circuses in Seattle, WA

*"At Cliché Noe Gifts + Home, Small Business Saturday is a very important kick-off to the holiday season and we have double staff all day long to provide that level of service we base our reputation on every day. We find local people coming into the shop especially to support us on that day. Does all this grow our business? Is it worth the time and trouble? We certainly think so."*

– Dani Sheehan-Meyer, Cliché Noe Gifts + Home in San Francisco, CA

*"The holiday shopping season is a critical time for our small business owners. Consumers have more choices everyday about where to spend their money and the savvy shoppers know that shopping small impacts their community's economy. Last year, 50% of businesses participating in the Small Business Saturday campaign responded that it had a significant positive impact on their business."*

– Charlotte Gill, Stay Local in New Orleans, LA

*\*If you would like to include any of this content please reach out to [meganh@mbooth.com](mailto:meganh@mbooth.com)*

## 2015 SMALL BUSINESS SATURDAY FACTS:

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- More than 95 million consumers shopped at small businesses on Small Business Saturday in 2015, marking an eight percent increase from 2014
- The U.S. Senate unanimously passed a resolution recognizing November 28, 2015 as Small Business Saturday, supporting efforts to encourage consumers to shop locally, increase awareness of the value of locally owned small businesses and highlight these businesses' impact on the economy of the United States
- Elected officials in all 50 states and Washington, D.C. – including President Obama and many senior government officials – championed Small Business Saturday
- More than 4,100 Neighborhood Champions around the country rallied local businesses and created events and activities in their communities
- 425 small business advocate groups supported the nationwide initiative
- Nearly 100 corporations, including FedEx, Eventbrite, Microsoft, and Yelp, banded together with American Express to promote shopping at small businesses for Small Business Saturday
- In the month of November, there were 85 million social media engagements in support of Small Business Saturday, many using the hashtags #SmallBizSat and #ShopSmall

## JOIN THE COALITION:

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Building on the success of the previous six years, we plan to scale this year's Small Business Saturday by expanding the coalition of supporters and creating more local events around the country. This includes support from advocacy organizations that join the initiative to motivate constituents through incentives and offers to Shop Small on November 26, 2016.

The coalition will be led by Women Impacting Public Policy, a business advocacy organization representing small businesses. **Join Us!**

## CONTACT INFO:

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Jason Lalak, Vice President, Women Impacting Public Policy (WIPP) | Phone: (415) 434-4314 | Email: JLalak@wipp.org

## City of Texarkana, Texas

Version: B

Update Date: 11/8/2016 10:48 AM

**Briefing Sheet**

**Lead Department:** City Manager      **Action Officer:** Jennifer Evans, City Secretary  
**Subject:** Consider approval of the minutes of the Joint City Committee Special Meeting of the City Council held on October 11, 2016 at 3:00 PM.

**Updates/History of Briefing:**

NOT APPLICABLE

**Executive Summary and Background Information:****Potential Options:**

- None
- 

**Fiscal Implications:****Staff Recommendation:****Advisory Board/Committee Review:**

NONE

**Board/Committee Recommendation:**

NOT APPLICABLE

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

NOT APPLICABLE

**Attachments**

- MINUTES - Joint City Committee 101116 (mm) (PDF)

# MINUTES

Joint Texarkana Community Committee

City Council of the City of Texarkana, Texas  
Board of Directors of the City of Texarkana, Arkansas

Texarkana USA Chamber of Commerce  
819 No. State Line  
Texarkana, TX 75501

October 11, 2016

3:00 p.m.

## Meeting Attendees

Elected Officials – Texarkana, Texas : Mayor Bob Bruggeman, Council Member Christy Paddock, Council Member Josh Davis. Texarkana, Arkansas: Mayor Ruth Penney Bell, Board Director Tim Johnson, Board Director Travis Odom.

City Staff – Texarkana, Texas: City Manager John Whitson, Jennifer Evans, Rea Donna Jones, Jennifer Strayhorn. Texarkana, Arkansas: City Manager Kenny Haskin.

- Welcome by Michael Malone – At 3:00 p.m., Mr. Malone welcomed all to the meeting and mentioned that no action would be taken. Mr. Malone recommended that one item be removed from the agenda – the logistics of preparing joint proclamations.
- Introduction of Attendees – After, Mr. Malone introduced the elected officials, Mayor Bob Bruggeman and Mayor Ruth Penney Bell each made opening remarks.
- Explanation of what the committee is and its purpose – The joint community committee allows the opportunity for both cities to meet and discuss issues of joint interests for the benefit of the community.
- Meeting Schedule and Location – The joint community committee will meet on a quarterly basis every January, April, July and October. Each meeting will be held on the second Tuesday of the month at 3:00 p.m. The meeting location will be hosted by the Texarkana Chamber of Commerce, 819 No. State Line, Texarkana, Texas.

- Outline of Topics to Discuss – The joint committee panel suggested the following initial future meeting topics: Water Rights issues, Texarkana Regional Airport, Texarkana Library, Bi-State Justice Center, Animal Shelter, Texarkana Water Utilities, Transit Authority, and area broadband capability.
- Future Meeting Logistics – Mayor Bruggeman cautioned on setting a topic for the April 2017 meeting as current matters may develop on an issue that would require prompt attention.
- Suggested Actions to Address Topics – Each city would prepare and inform the other city two weeks ahead of each meeting to mutually agree on the issue(s) to discuss.
- Ground Rules of Conduct or Orderly Conduct of Business – Not discussed.
- Discuss one topic of mutual interest – The topic chosen for the next quarterly meeting was the Texarkana Regional Airport and property surrounding the airport which has the potential for developing aviation-based industry. It was suggested to invite the Airport Director and Airport Authority Board to the next meeting in January 2017.
- Logistics of Preparing Joint Proclamations – Removed from the agenda by consensus.
- Closing Remarks – All agreed that this initial meeting of the joint community committee could be considered a “historic meeting” providing a forum for productive discussion between government officials on each side of Texarkana.
- Next Meeting – The next meeting is scheduled for January 10, 2017.
- Adjournment – The meeting was adjourned at 4:00 p.m.

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Jennifer Evans, City Secretary

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Bob Bruggeman, Mayor



**CITY OF TEXARKANA**  
**CITY COUNCIL**  
**MINUTES • OCTOBER 24, 2016**

**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 |         |
| Willie Ray         | Ward 2 | Present |         |
| Tina Veal-Gooch    | Ward 3 | Absent  |         |
| Brian Matthews     | Ward 4 | Present |         |
| Christy P. Paddock | Ward 5 | Present |         |
| Josh Davis         | Ward 6 | Present |         |

Staff Present: City Manager John Whitson, Jennifer Evans, Shirley Jaster, Kristin Peeples, David Orr, Kyle Dooley, Eric Schlotter, Jim Powell, Robby Robertson, Lisa Thompson, Lynn Henry, Keith Lee, Karey Parker, Craig Hicks and Jerry Sparks.

Legal Counsel: Jeff Lewis

**II. INVOCATION AND PLEDGE BY COUNCIL MEMBER JOSH DAVIS**

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

**Upcoming City Council Meetings:**

Monday, November 14, 2016 at 6:00 p.m.

Monday, November 28, 2016 at 6:00 p.m.

Monday, December 12, 2016 at 6:00 p.m.

**Monday, December 26, 2016 at 6:00 p.m. - Meeting is cancelled - City Holiday.**

**Parks & Recreation Events:**

|                          |                                                                 |                  |
|--------------------------|-----------------------------------------------------------------|------------------|
| October 27 <sup>th</sup> | Movies in the Park - "The Town that Dreaded Sundown" - Original | Spring Lake Park |
| October 29 <sup>th</sup> | Community Yard Sale & Electronics Recycling                     | Spring Lake Park |

**\*\*Movie will start at 7:00 p.m.\*\***

Minutes Acceptance: Minutes of Oct 24, 2016 6:00 PM (Consent Items)

Mayor Bruggeman reminded everyone that the Downtown Post Office largest city photo op event is scheduled for Tuesday, October 25th at 10:00 a.m. This event is in celebration of the recently acquired Texas Cultural District Designation for the City of Texarkana.

### ***Presentations***

#### **Texas Cultural District Designation**

Mr. Gary Gibbs, Executive Director of the Texas Commission on the Arts, commended the Texarkana Arts and Historic District on its achievement of submitting a successful application to the Commission and being selected for the Texas Cultural District Designation. Texarkana is now one of 35 Texas Cultural Districts and is eligible for future cultural district program grants.

Charles Jordan, representing 4th District Congressman John Ratcliffe, pledged support for the project which honors Texarkana with the Texas Cultural District Designation and expressed congratulations to the city.

#### **Texarkana Cultural District Day Proclamation**

Mayor Bruggreman read the joint proclamation.

#### **NAACP 79th Annual Convention Letter of Appreciation**

Mayor Bruggeman read the appreciation letter received by Jennifer Montoya and the staff of the Hilton Garden Inn & Convention Center. Robert Jones, current President of the Greater Texarkana NAACP Branch, gave KUDOS to the city and Jennifer Montoya, Director of Convention Services, for making the annual convention experience memorable for years to come.

Attendees of the convention were extremely grateful for the exceptional customer service and hospitality received during their stay at the Hilton Garden Inn & Convention Center.

Jennifer Montoya, in behalf of convention center staff, thanked Mr. Jones and the city for making the experience pleasant and easy to host.

|                |                  |
|----------------|------------------|
| <b>RESULT:</b> | <b>COMPLETED</b> |
|----------------|------------------|

### ***Appointments to Boards & Commissions***

There were no appointments made to any board or commission.

#### **IV. OPEN FORUM: COMMENTS FROM THE PUBLIC (LIMIT 5 MINUTES EACH)**

Items scheduled for "Public Hearing" or have been heard at a previous "Public Hearing" are not to be addressed at the "Open Forum".



There were no public comments made at Open Forum.

## V. ITEMS FOR CONSIDERATION

### *Consent Items*

|                  |                                        |
|------------------|----------------------------------------|
| <b>RESULT:</b>   | <b>ADOPTED [UNANIMOUS]</b>             |
| <b>MOVER:</b>    | Christy P. Paddock, Ward 5             |
| <b>SECONDER:</b> | Brian Matthews, Ward 4                 |
| <b>AYES:</b>     | Matlock, Ray, Matthews, Paddock, Davis |
| <b>ABSENT:</b>   | Veal-Gooch                             |
| <b>EXCUSED:</b>  | Bruggeman                              |

1. Consider approval of the minutes of the Regular Meeting of the City Council held on October 10, 2016 at 6:00 PM.
2. Ordinance No. 2016-122 amending the Tax Increment Reinvestment Zone 2012 Bond budget expenditures for the fiscal year ending September 30, 2017.

Public Hearing:  
Second Briefing:  
Council Vote: October 24, 2016

3. Resolution No. 2016-123 ratifying the reappointment of Gerald Brooks to the Civil Service Commission.

Public Hearing:  
Second Briefing:  
Council Vote: October 24, 2016

### *Action Items - None*

## VI. FIRST BRIEFINGS

1. Resolution No. 2016-120 approving Bowie Central Appraisal District's 2016 tax roll.

Public Hearing: November 14, 2016  
Second Briefing: November 28, 2016  
Council Vote: December 12, 2016

Kristin Peeples briefed this item.

|                |                      |                                 |
|----------------|----------------------|---------------------------------|
| <b>RESULT:</b> | <b>MOVED FORWARD</b> | <b>Next: 11/14/2016 6:00 PM</b> |
|----------------|----------------------|---------------------------------|

- Resolution No. 2016-121 authorizing the City Manager to enter into an incentive agreement under Chapter 380 of the Texas Local Government Code with Legato Holdings LLC for plans to remodel a facility located at 3103 Summerhill Road.

Public Hearing: November 14, 2016  
 Second Briefing: November 28, 2016  
 Council Vote: December 12, 2016

Jerry Sparks briefed this item.

|                |                      |                                 |
|----------------|----------------------|---------------------------------|
| <b>RESULT:</b> | <b>MOVED FORWARD</b> | <b>Next: 11/14/2016 6:00 PM</b> |
|----------------|----------------------|---------------------------------|

## VII. PUBLIC HEARINGS

- Ordinance No. 2016-117 amending Chapter 11 Sec. 105-99 of the International Residential Code.

Public Hearing: October 24, 2016  
 Second Briefing: November 14, 2016  
 Council Vote: November 28, 2016

There were no public comments made at this hearing.

|                |                      |                                 |
|----------------|----------------------|---------------------------------|
| <b>RESULT:</b> | <b>MOVED FORWARD</b> | <b>Next: 11/14/2016 6:00 PM</b> |
|----------------|----------------------|---------------------------------|

- Ordinance No. 2016-119 amending the Code of Ordinances Secs. 28-1(b), 130-5, 140-179 and 140-239 for sidewalk board type signs to be allowed for advertising in the Central Business zoning district.

Public Hearing: October 24, 2016  
 Second Briefing: November 14, 2016  
 Council Vote: November 28, 2016

There were no public comments made at this hearing.

|                |                      |                                 |
|----------------|----------------------|---------------------------------|
| <b>RESULT:</b> | <b>MOVED FORWARD</b> | <b>Next: 11/14/2016 6:00 PM</b> |
|----------------|----------------------|---------------------------------|

## VIII. SECOND BRIEFING WITH UPDATES - NONE

**IX. SECOND BRIEFING WITHOUT UPDATES**

1. Resolution No. 2016-113 establishing a Community Relations Expenditures Policy.

Public Hearing: October 10, 2016  
 Second Briefing: October 24, 2016  
 Council Vote: November 14, 2016

|                |                      |                                 |
|----------------|----------------------|---------------------------------|
| <b>RESULT:</b> | <b>MOVED FORWARD</b> | <b>Next: 11/14/2016 6:00 PM</b> |
|----------------|----------------------|---------------------------------|

2. Resolution No. 2016-114 authorizing the expenditure of Community Relations funds in support of the KCS Holiday Express Train event.

Public Hearing: October 10, 2016  
 Second Briefing: October 24, 2016  
 Council Vote: November 14, 2016

|                |                      |                                 |
|----------------|----------------------|---------------------------------|
| <b>RESULT:</b> | <b>MOVED FORWARD</b> | <b>Next: 11/14/2016 6:00 PM</b> |
|----------------|----------------------|---------------------------------|

3. Resolution No. 2016-116 revising the Fire Department's swap time policy.

Public Hearing: October 10, 2016  
 Second Briefing: October 24, 2016  
 Council Vote: November 14, 2016

|                |                      |                                 |
|----------------|----------------------|---------------------------------|
| <b>RESULT:</b> | <b>MOVED FORWARD</b> | <b>Next: 11/14/2016 6:00 PM</b> |
|----------------|----------------------|---------------------------------|

**X. ITEMS FOR DISCUSSION**

Staff Updates

Staff had no updates for council.

**XI. ADMINISTRATIVE COMMENTS**

1. City Council

Mayor Bruggeman thanked Parks and Recreation staff for the nice appearance of the fence row at the Swanger Complex in Spring Lake Park along Interstate 30. The Mayor also thanked staff for timely responding to several council mowing requests for various parts of the city.

## 2. City Staff

Staff had no administrative comments for council.

**XII. ADJOURNMENT**

A motion was made to adjourn the meeting.

(6:40 p.m.)

|                  |                                        |
|------------------|----------------------------------------|
| <b>RESULT:</b>   | <b>ADOPTED [UNANIMOUS]</b>             |
| <b>MOVER:</b>    | Willie Ray, Ward 2                     |
| <b>SECONDER:</b> | Brian Matthews, Ward 4                 |
| <b>AYES:</b>     | Matlock, Ray, Matthews, Paddock, Davis |
| <b>ABSENT:</b>   | Veal-Gooch                             |
| <b>EXCUSED:</b>  | Bruggeman                              |



Jennifer Evans  
City Secretary



Bob Bruggeman  
Mayor

## City of Texarkana, Texas

Version: A

Update Date: 11/8/2016 9:42 AM

**Briefing Sheet**

**Lead Department:** Police **Action Officer:** Kevin Schutte  
**Subject:** Ordinance No. 2016-124 accepting additional grant funding for the Police Department budget from ArkLaTex 100 Club in the amount of \$11,055.  
**Briefing:** 11/14/2016 **Public Hearing:** **Second Briefing:** **Council Vote:** 11/14/2016

**Item Schedule**Schedule 3: No briefing required (one week)**Updates/History of Briefing:**

NOT APPLICABLE

**Executive Summary and Background Information:**

The police department recently submitted a request to the ArkLaTex 100 Club soliciting a grant in the amount of \$11,055.00 from their organization for the purpose of purchasing new tactical communication headsets for members of the department's SWAT Team. With the installation of the new public safety communication system, it became necessary to upgrade this equipment to digital in order to be compatible and function with the new system. The grant was awarded and monies have been received from the ArkLaTex 100 Club and have been deposited into the city general fund for that purpose. This ordinance amends Ordinance No. 2016-086 in which Council approved the City of Texarkana Texas Budget for Fiscal Year 2016-2017. This amendment is needed to allow for the money awarded to be allocated and added to the police department budget account 101-1702-52207 (Minor Tools & Equipment). This Ordinance will publicly acknowledge receipt of the money and authorize its allocation to a line item of the police department's budget to facilitate the purchase of the tactical communication headsets.

**Potential Options:**

- NONE
- 

**Fiscal Implications:**

Increase of \$11,055.00 in grant revenue to the city.

**Staff Recommendation:**

Staff recommends accepting this grant award and increasing the department's budget to reflect the monies awarded.

**Advisory Board/Committee Review:**

NONE

**Board/Committee Recommendation:**

## City of Texarkana, Texas

NOT APPLICABLE”

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

NOT APPLICABLE

### Attachments

- a. 2016-124 ORD FY17 Budget Amendment (DOC)
- b. 2016-124 ATTH 01 Grant check (copy) (PDF)
- c. 2016-124 Goals & Perspectives (DOCX)
- d. 2016-124 ORD amending PD Budget for ArkLaTex Club grant funds signed (PDF)

### Staff Coordination

|                            |                     |                        |                        |            |
|----------------------------|---------------------|------------------------|------------------------|------------|
| Police                     | Dan Shiner          | Department Head Review | Completed              |            |
|                            | 10/18/2016 3:39 PM  |                        |                        |            |
| Finance Department         | Kristin Peebles     | Finance Review         | Completed              | 10/18/2016 |
|                            | 5:16 PM             |                        |                        |            |
| Assistant City Manager     |                     | Shirley Jaster         | Assistant City Manager |            |
| Review                     | Completed           | 10/19/2016 10:51 AM    |                        |            |
| Public Information Officer |                     | Lisa Thompson          | PIO Review             | Completed  |
|                            | 10/19/2016 10:53 AM |                        |                        |            |
| City Manager               | John Whitson        | City Manager Review    | Completed              | 10/20/2016 |
|                            | 3:16 PM             |                        |                        |            |
| City Council               | Jennifer Evans      | Meeting                | Completed              | 11/14/2016 |
|                            | 6:00 PM             |                        |                        |            |

### Meeting History

**ORDINANCE NO. 2016 - 124**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEXARKANA, TEXAS, AMENDING THE POLICE DEPARTMENT BUDGET EXPENDITURES FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2017; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith TO THE EXTENT OF SUCH CONFLICT; CONTAINING A SEVERABILITY CLAUSE; PROVIDING FOR PUBLICATION; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, the City of Texarkana, Texas, has upgraded their public safety communications capabilities from analog to digital; and

**WHEREAS**, the digital upgrade has rendered some of the police department's specialized analog communication equipment incompatible with this newly acquired digital system; and

**WHEREAS**, the police department submitted a grant request to the ArkLaTex 100 Club for the amount of \$11,055 to purchase new tactical communications headsets compatible with the newly acquired public safety communications system; and

**WHEREAS**, the ArkLaTex 100 Club awarded a grant in the amount of \$11,055 to the police department for said purpose and those funds need to be allocated to the Fiscal Year 2016-2017 Budget for expenditure to purchase the equipment.

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

**SECTION 1:** That the budget estimate and expenditures of the Police Department 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, 2016, and ending September 30, 2017, be amended to reflect additional expenditures appropriated as a result of a grant award as follows:

1. Increase appropriations in the Texarkana, Texas Police Department budget account number 101-1702-52207 Minor Tools and Equipment in the amount of \$11,055.

**SECTION 2:** That a copy of said amended final adopted budget shall be filed with the City Secretary, in the Texarkana Public Library, and placed on the City's website.

**SECTION 3:** It is further provided that 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 4:** All ordinances or parts of ordinances in conflict herewith are specifically repealed to the extent of such conflict.

**SECTION 5:** This Ordinance shall be in full force and effect from and after its passage and approval, and after the adoption of this budget or budget amendment, budget officer shall provide for the filing of a true copy of the approved budget or amendment in the Office of the City Secretary.

**PASSED AND APPROVED** in Regular Council Session on this the **14<sup>th</sup> day of November, 2016.**

ATTEST:

\_\_\_\_\_  
JENNIFER EVANS, CITY SECRETARY

\_\_\_\_\_  
BOB BRUGGEMAN, MAYOR



ArkLaTex 100 Club  
3710 SKYLINE BLVD  
TEXARKANA, TEXAS 75503-1437

COPY

EZSmart® Check Fraud Protection for Business

88-1532/1

DATE

10/13/16

PAY  
TO THE  
ORDER OF

City of Texarkana Texas

\$11,055.00

Eleven thousand fifty five and no/100

DOLLARS

FOR

Guaranty  
Bank & Trust  
www.gnty.com

TTPD Grant Headsets

JH Rupp

⑈002515⑈ ⑆111915327⑆ ⑈12903845⑈

## City of Texarkana, Texas

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

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

## Perspectives and Goals Additional Comments:

NONE

## Resource Impact:

Staff time required if item is approved: No Additional

## Other Potential Impacts:

NONE APPLICABLE

## Public Information Plan:

|                                                                 |                                                               |
|-----------------------------------------------------------------|---------------------------------------------------------------|
| <input type="checkbox"/> Newspaper Notice (Required by Statute) | <input type="checkbox"/> Public Hearing (Required by Statute) |
| <input type="checkbox"/> Public Forum/Input Session             | <input type="checkbox"/> Press Release                        |
| <input type="checkbox"/> E-News Distribution                    | <input type="checkbox"/> Website Notice                       |
| <input type="checkbox"/> Social Media (Twitter, Facebook, etc.) | <input type="checkbox"/> Special Mailing                      |
| <input type="checkbox"/> Flyers Posted                          | <input type="checkbox"/> Banners Posted                       |
| <input type="checkbox"/> Survey                                 | <input type="checkbox"/> Automated Phone Call                 |
| <input checked="" type="checkbox"/> None Required               | <input type="checkbox"/>                                      |

Other:

**ORDINANCE NO. 2016 - 124**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEXARKANA, TEXAS, AMENDING THE POLICE DEPARTMENT BUDGET EXPENDITURES FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2017; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith TO THE EXTENT OF SUCH CONFLICT; CONTAINING A SEVERABILITY CLAUSE; PROVIDING FOR PUBLICATION; AND ESTABLISHING AN EFFECTIVE DATE.**

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**WHEREAS**, the digital upgrade has rendered some of the police department's specialized analog communication equipment incompatible with this newly acquired digital system; and

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**WHEREAS**, the ArkLaTex 100 Club awarded a grant in the amount of \$11,055 to the police department for said purpose and those funds need to be allocated to the Fiscal Year 2016-2017 Budget for expenditure to purchase the equipment.

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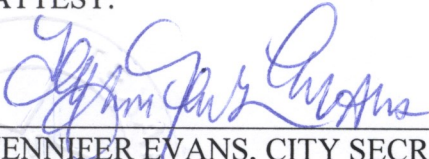
**SECTION 3:** It is further provided that in case a section, clause, sentence, or part of this Ordinance shall be deemed or adjudged by a court of competent jurisdiction to be invalid, then such invalidity shall not affect, impair, or invalidate the remainder of this Ordinance.

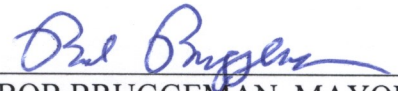
**SECTION 4:** All ordinances or parts of ordinances in conflict herewith are specifically repealed to the extent of such conflict.

**SECTION 5:** This Ordinance shall be in full force and effect from and after its passage and approval, and after the adoption of this budget or budget amendment, budget officer shall provide for the filing of a true copy of the approved budget or amendment in the Office of the City Secretary.

**PASSED AND APPROVED** in Regular Council Session on this the **14<sup>th</sup>** day of **November, 2016**.

ATTEST:

  
JENNIFER EVANS, CITY SECRETARY

  
BOB BRUGGEMAN, MAYOR

6:23 p.m.



## City of Texarkana, Texas

Version: A

Update Date: 11/8/2016 9:42 AM

# Briefing Sheet

**Lead Department:** City Manager **Action Officer:** John Whitson, City Manager  
**Subject:** Resolution No. 2016-130 setting the 2017 City Council meeting dates and official City Holiday closings.  
**Briefing:** 11/14/2016 **Public Hearing:** **Second Briefing:** **Council Vote:** 11/14/2016

## Item Schedule

### Updates/History of Briefing:

NOT APPLICABLE

### Executive Summary and Background Information:

Each year the city council sets the annual schedule for regular city council meetings (2<sup>nd</sup> and 4<sup>th</sup> Monday each month) and affirms the holiday closing schedule (12 paid holidays). The attached 2017 schedule is presented for consideration.

### Potential Options:

- Adopt the attached schedule as recommended
- Revise the schedule and adopt as revised

### Fiscal Implications:

None

### Staff Recommendation:

Adopt the schedule as presented

### Advisory Board/Committee Review:

NONE

### Board/Committee Recommendation:

NOT APPLICABLE

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

NOT APPLICABLE

### Attachments

- 2016-130 RES Setting 2017 City Council Regular Meeting Schedule and City Holidays (DOC)
- 2016-130 ATTH 01 2017 City Holiday and Council Meeting Schedule (PDF)
- 2016-130 Goals & Perspectives (PDF)
- 2016-130 RES Setting 2017 Holiday and Meeting Schedule signed (PDF)

## City of Texarkana, Texas

**Staff Coordination**

|                                    |                     |                        |                        |            |
|------------------------------------|---------------------|------------------------|------------------------|------------|
| City Manager                       | John Whitson        | Department Head Review | Completed              |            |
|                                    | 10/31/2016 11:12 AM |                        |                        |            |
| Public Works Department            |                     | Kyle Dooley            | Review                 | Completed  |
|                                    | 10/31/2016 11:19 AM |                        |                        |            |
| Parks, Recreation & Health         |                     | Robby Robertson        | Review                 | Completed  |
|                                    | 10/31/2016 11:29 AM |                        |                        |            |
| Planning and Community Development |                     | David Orr              | Review                 | Completed  |
|                                    | 10/31/2016 12:08 PM |                        |                        |            |
| Fire Department                    | Eric Schlotter      | Review                 | Completed              | 10/31/2016 |
| 12:25 PM                           |                     |                        |                        |            |
| Finance Department                 | Kristin Peeples     | Review                 | Completed              | 10/31/2016 |
| 12:28 PM                           |                     |                        |                        |            |
| Information Technology             |                     | Kevin J. Davenport     | Review                 | Completed  |
|                                    | 10/31/2016 12:50 PM |                        |                        |            |
| Human Resources                    | Jim Powell          | Review                 | Completed              | 10/31/2016 |
| 12:58 PM                           |                     |                        |                        |            |
| Police                             | Dan Shiner          | Review                 | Completed              | 10/31/2016 |
| 2:01 PM                            |                     |                        |                        |            |
| Water Utilities                    | JD Phillips         | Review                 | Completed              | 11/03/2016 |
| 11:14 AM                           |                     |                        |                        |            |
| Building Code Administration       |                     | Lynn Henry             | Review                 | Completed  |
|                                    | 11/03/2016 1:17 PM  |                        |                        |            |
| Assistant City Manager             |                     | Shirley Jaster         | Assistant City Manager |            |
| Review                             | Completed           | 11/03/2016 1:33 PM     |                        |            |
| Public Information Officer         |                     | Lisa Thompson          | PIO Review             | Completed  |
|                                    | 11/03/2016 1:58 PM  |                        |                        |            |
| City Manager                       | John Whitson        | City Manager Review    | Completed              | 11/08/2016 |
| 10:44 AM                           |                     |                        |                        |            |
| City Council                       | Jennifer Evans      | Meeting                | Completed              | 11/14/2016 |
| 6:00 PM                            |                     |                        |                        |            |

**Meeting History**

**RESOLUTION NO. 2016 - 130****A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEXARKANA, TEXAS, SETTING THE 2017 CITY COUNCIL REGULAR MEETING SCHEDULE AND CITY HOLIDAYS; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, in accordance with Article II, Section 8 of the city charter the City Council is required to meet at least monthly in regular session at city hall on a date as determined by the City Council; and

**WHEREAS**, to continue to provide for transparency in local government the City Council generally meets twice monthly in regular session to conduct the city's business and consider policy items as presented and recommended by the city staff; and

**WHEREAS**, to provide for public access to local government the City Council includes an opportunity for citizens to address the City Council in a public forum setting during each regular meeting of the City Council;

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

**SECTION 1:** That the City Council adopts the attached 2017 Schedule of City Council Meetings and City Holidays.

**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 **14<sup>th</sup> day of November, 2016.**

ATTEST:

\_\_\_\_\_  
JENNIFER EVANS, CITY SECRETARY

\_\_\_\_\_  
BOB BRUGGEMAN, MAYOR

| 2017 City of Texarkana, Texas Holiday and Council Meeting Schedule |          |          |          |          |          |          |          |          |          |          |          |          |
|--------------------------------------------------------------------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|
| DAY                                                                | JAN      | FEB      | MAR      | APR      | MAY      | JUN      | JUL      | AUG      | SEP      | OCT      | NOV      | DEC      |
| 1                                                                  | SUNDAY   |          |          | SATURDAY |          |          | SATURDAY |          |          | SUNDAY   |          |          |
| 2                                                                  | HOLIDAY  |          |          | SUNDAY   |          |          | SUNDAY   |          | SATURDAY |          |          | SATURDAY |
| 3                                                                  |          |          |          |          |          | SATURDAY |          |          | SUNDAY   |          |          | SUNDAY   |
| 4                                                                  |          | SATURDAY | SATURDAY |          |          | SUNDAY   | HOLIDAY  |          | HOLIDAY  |          | SATURDAY |          |
| 5                                                                  |          | SUNDAY   | SUNDAY   |          |          |          |          | SATURDAY |          |          | SUNDAY   |          |
| 6                                                                  |          |          |          |          | SATURDAY |          |          | SUNDAY   |          |          |          |          |
| 7                                                                  | SATURDAY |          |          |          | SUNDAY   |          |          |          |          | SATURDAY |          |          |
| 8                                                                  | SUNDAY   |          |          | SATURDAY | MEETING  |          | SATURDAY |          |          | SUNDAY   |          |          |
| 9                                                                  | MEETING  |          |          | SUNDAY   |          |          | SUNDAY   |          | SATURDAY | MEETING  |          | SATURDAY |
| 10                                                                 |          |          |          | MEETING  |          | SATURDAY | MEETING  |          | SUNDAY   |          | HOLIDAY  | SUNDAY   |
| 11                                                                 |          | SATURDAY | SATURDAY |          |          | SUNDAY   |          |          | MEETING  |          | SATURDAY | MEETING  |
| 12                                                                 |          | SUNDAY   | SUNDAY   |          |          | MEETING  |          | SATURDAY |          |          | SUNDAY   |          |
| 13                                                                 |          | MEETING  | MEETING  |          | SATURDAY |          |          | SUNDAY   |          |          | MEETING  |          |
| 14                                                                 | SATURDAY |          |          | HOLIDAY  | SUNDAY   |          |          | MEETING  |          | SATURDAY |          |          |
| 15                                                                 | SUNDAY   |          |          | SATURDAY |          |          | SATURDAY |          |          | SUNDAY   |          |          |
| 16                                                                 | HOLIDAY  |          |          | SUNDAY   |          |          | SUNDAY   |          | SATURDAY |          |          | SATURDAY |
| 17                                                                 |          |          |          |          |          | SATURDAY |          |          | SUNDAY   |          |          | SUNDAY   |
| 18                                                                 |          | SATURDAY | SATURDAY |          |          | SUNDAY   |          |          |          |          | SATURDAY |          |
| 19                                                                 |          | SUNDAY   | SUNDAY   |          |          |          |          | SATURDAY |          |          | SUNDAY   |          |
| 20                                                                 |          |          |          |          | SATURDAY |          |          | SUNDAY   |          |          |          |          |
| 21                                                                 | SATURDAY |          |          |          | SUNDAY   |          |          |          |          | SATURDAY |          |          |
| 22                                                                 | SUNDAY   |          |          | SATURDAY | MEETING  |          | SATURDAY |          |          | SUNDAY   |          | HOLIDAY  |
| 23                                                                 | MEETING  |          |          | SUNDAY   |          |          | SUNDAY   |          | SATURDAY | MEETING  | HOLIDAY  | SATURDAY |
| 24                                                                 |          |          |          | MEETING  |          | SATURDAY | MEETING  |          | SUNDAY   |          | HOLIDAY  | SUNDAY   |
| 25                                                                 |          | SATURDAY | SATURDAY |          |          | SUNDAY   |          |          | MEETING  |          | SATURDAY | HOLIDAY  |
| 26                                                                 |          | SUNDAY   | SUNDAY   |          |          | MEETING  |          | SATURDAY |          |          | SUNDAY   | HOLIDAY  |
| 27                                                                 |          | MEETING  | MEETING  |          | SATURDAY |          |          | SUNDAY   |          |          | MEETING  |          |
| 28                                                                 | SATURDAY |          |          |          | SUNDAY   |          |          | MEETING  |          | SATURDAY |          |          |
| 29                                                                 | SUNDAY   |          |          | SATURDAY | HOLIDAY  |          | SATURDAY |          |          | SUNDAY   |          |          |
| 30                                                                 |          |          |          | SUNDAY   |          |          | SUNDAY   |          | SATURDAY |          |          | SATURDAY |
| 31                                                                 |          |          |          |          |          |          |          |          |          |          |          | SUNDAY   |



## City of Texarkana, Texas

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

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

## Perspectives and Goals Additional Comments:

NONE

## Resource Impact:

Staff time required if item is approved: No Additional

## Other Potential Impacts:

NONE APPLICABLE

## Public Information Plan:

|                                                                 |                                                               |
|-----------------------------------------------------------------|---------------------------------------------------------------|
| <input type="checkbox"/> Newspaper Notice (Required by Statute) | <input type="checkbox"/> Public Hearing (Required by Statute) |
| <input type="checkbox"/> Public Forum/Input Session             | <input type="checkbox"/> Press Release                        |
| <input type="checkbox"/> E-News Distribution                    | <input type="checkbox"/> Website Notice                       |
| <input type="checkbox"/> Social Media (Twitter, Facebook, etc.) | <input type="checkbox"/> Special Mailing                      |
| <input type="checkbox"/> Flyers Posted                          | <input type="checkbox"/> Banners Posted                       |
| <input type="checkbox"/> Survey                                 | <input type="checkbox"/> Automated Phone Call                 |
| <input checked="" type="checkbox"/> None Required               | <input type="checkbox"/>                                      |

Other:

# RESOLUTION NO. 2016 - 130

## A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEXARKANA, TEXAS, SETTING THE 2017 CITY COUNCIL REGULAR MEETING SCHEDULE AND CITY HOLIDAYS; AND ESTABLISHING AN EFFECTIVE DATE.

**WHEREAS**, in accordance with Article II, Section 8 of the city charter the City Council is required to meet at least monthly in regular session at city hall on a date as determined by the City Council; and

**WHEREAS**, to continue to provide for transparency in local government the City Council generally meets twice monthly in regular session to conduct the city's business and consider policy items as presented and recommended by the city staff; and

**WHEREAS**, to provide for public access to local government the City Council includes an opportunity for citizens to address the City Council in a public forum setting during each regular meeting of the City Council;

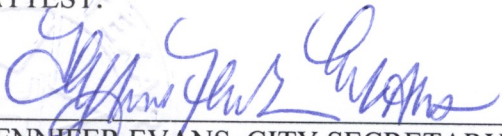
**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TEXARKANA, TEXAS:**

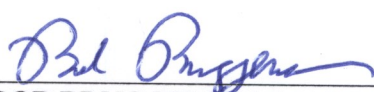
**SECTION 1:** That the City Council adopts the attached 2017 Schedule of City Council Meetings and City Holidays.

**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 14<sup>th</sup> day of November, 2016.

ATTEST:

  
JENNIFER EVANS, CITY SECRETARY

  
BOB BRUGGEMAN, MAYOR

6:23p.m.



| 2017 City of Texarkana, Texas Holiday and Council Meeting Schedule |          |          |          |          |          |          |          |          |          |          |          |          |
|--------------------------------------------------------------------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|
| DAY                                                                | JAN      | FEB      | MAR      | APR      | MAY      | JUN      | JUL      | AUG      | SEP      | OCT      | NOV      | DEC      |
| 1                                                                  | SUNDAY   |          |          | SATURDAY |          |          | SATURDAY |          |          | SUNDAY   |          |          |
| 2                                                                  | HOLIDAY  |          |          | SUNDAY   |          |          | SUNDAY   |          | SATURDAY |          |          | SATURDAY |
| 3                                                                  |          |          |          |          |          | SATURDAY |          |          | SUNDAY   |          |          | SUNDAY   |
| 4                                                                  |          | SATURDAY | SATURDAY |          |          | SUNDAY   | HOLIDAY  |          | HOLIDAY  |          | SATURDAY |          |
| 5                                                                  |          | SUNDAY   | SUNDAY   |          |          |          |          | SATURDAY |          |          | SUNDAY   |          |
| 6                                                                  |          |          |          |          | SATURDAY |          |          | SUNDAY   |          |          |          |          |
| 7                                                                  | SATURDAY |          |          |          | SUNDAY   |          |          |          |          | SATURDAY |          |          |
| 8                                                                  | SUNDAY   |          |          | SATURDAY | MEETING  |          | SATURDAY |          |          | SUNDAY   |          |          |
| 9                                                                  | MEETING  |          |          | SUNDAY   |          | SATURDAY | MEETING  |          | SATURDAY | MEETING  |          | SATURDAY |
| 10                                                                 |          |          |          | MEETING  |          | SATURDAY | SUNDAY   |          | SUNDAY   |          | HOLIDAY  | SUNDAY   |
| 11                                                                 |          | SATURDAY | SATURDAY |          |          | SUNDAY   | MEETING  |          | MEETING  |          | SATURDAY | MEETING  |
| 12                                                                 |          | SUNDAY   | SUNDAY   |          |          | MEETING  |          | SATURDAY |          |          | SUNDAY   |          |
| 13                                                                 |          | MEETING  | MEETING  |          | SATURDAY |          |          | SUNDAY   |          |          | MEETING  |          |
| 14                                                                 | SATURDAY |          |          | HOLIDAY  | SUNDAY   |          |          | MEETING  |          | SATURDAY |          |          |
| 15                                                                 | SUNDAY   |          |          | SATURDAY |          |          | SATURDAY |          |          | SUNDAY   |          |          |
| 16                                                                 | HOLIDAY  |          |          | SUNDAY   |          |          | SUNDAY   |          | SATURDAY |          |          | SATURDAY |
| 17                                                                 |          |          |          |          |          | SATURDAY |          |          | SUNDAY   |          |          | SUNDAY   |
| 18                                                                 |          | SATURDAY | SATURDAY |          |          | SUNDAY   |          |          |          |          | SATURDAY |          |
| 19                                                                 |          | SUNDAY   | SUNDAY   |          |          |          | SATURDAY |          |          |          | SUNDAY   |          |
| 20                                                                 |          |          |          |          | SATURDAY |          |          | SUNDAY   |          |          |          |          |
| 21                                                                 | SATURDAY |          |          |          | SUNDAY   |          |          |          |          | SATURDAY |          |          |
| 22                                                                 | SUNDAY   |          |          | SATURDAY | MEETING  |          | SATURDAY |          |          | SUNDAY   |          | HOLIDAY  |
| 23                                                                 | MEETING  |          |          | SUNDAY   |          |          | SUNDAY   |          | SATURDAY | MEETING  | HOLIDAY  | SATURDAY |
| 24                                                                 |          |          |          | MEETING  |          | SATURDAY | MEETING  |          | SUNDAY   |          | HOLIDAY  | SUNDAY   |
| 25                                                                 |          | SATURDAY | SATURDAY |          |          | SUNDAY   |          | MEETING  |          |          | SATURDAY | SUNDAY   |
| 26                                                                 |          | SUNDAY   | SUNDAY   |          |          | MEETING  |          | SATURDAY |          |          | SUNDAY   | HOLIDAY  |
| 27                                                                 |          | MEETING  | MEETING  |          | SATURDAY |          |          | SUNDAY   |          |          | MEETING  |          |
| 28                                                                 | SATURDAY |          |          |          | SUNDAY   |          |          | MEETING  |          | SATURDAY |          |          |
| 29                                                                 | SUNDAY   |          |          | SATURDAY | HOLIDAY  |          | SATURDAY |          |          | SUNDAY   |          |          |
| 30                                                                 |          |          |          | SUNDAY   |          |          | SUNDAY   |          | SATURDAY |          |          | SATURDAY |
| 31                                                                 |          |          |          |          |          |          |          |          |          |          |          | SUNDAY   |

## City of Texarkana, Texas

Version: B

Update Date: 11/8/2016 9:43 AM

**Briefing Sheet**

**Lead Department:** City Manager **Action Officer:** John Whitson, City Manager  
**Subject:** Resolution No. 2016-113 establishing a Community Relations Expenditures Policy.  
**Briefing:** 11/14/2016 **Public Hearing:** 10/10/2016 **Second Briefing:** October 24, 2016 **Council Vote:** 11/14/2016

| Item Schedule |
|---------------|
|               |

**Updates/History of Briefing:**

NOT APPLICABLE

**Executive Summary and Background Information:**

Throughout the fiscal year the city often pays to participate in certain community relations activities sponsored by non-governmental organizations. Staff charges these city expenses to various accounts within the city council's budget such as "Training and Travel" or "Supplies" since no account had been established with a clear designation for these types of charges.

During FY16 the staff created a new account number 101-xxxx-54514 wherein these types are charges can be recorded as properly classified. During the development of the FY17 budget the staff recommended that \$50,000 be appropriated in the account 101-1000-54514 permitting the city council to have some flexibility throughout the year to fund certain activities classified as community relations activities.

After the city council adopted the recommended FY17 budget the city council, by motion, second, and vote, directed the staff to prepare and present the city council with a policy of how these funds may be expended. Since prior year expenditures had been charged to various other accounts the \$50,000 does not represent all new funding. Other accounts were reduced accordingly to help provide for the \$50,000 grand total. Therefore, some expenditures are expected to be consistent with prior years' expenditures. Generally, these expenditures include activities such as:

Dine-on-the-Line  
 USMC Birthday Ball  
 Freedom Fund Awards Banquet  
 MLK Gala  
 Economic Outlook Dinner  
 Firefighters' Ball  
 RRAD Hail and Farewell  
 and others

Staff has prepared a simple policy permitting the city manager's office to continue to approve expenditures similar to expenditures in past fiscal years in amounts of up to \$2,000 per single

## City of Texarkana, Texas

expenditure. All other expenditures must be approved by resolution of the city council. The policy also includes a general policy statement that these funds are not available for contribution or distribution to non-governmental organizations but rather for the city to participate with non-governmental organization by providing a service to the organization or event.

### Potential Options:

- Adopt the recommended resolution
- Amend and Adopt the resolution
- Deny the recommended resolution

### Fiscal Implications:

Expect to expend approximately \$6,000 for routine charges but subject to expending the full \$50,000 should appropriate opportunities be presented by qualifying organizations.

### Staff Recommendation:

Recommend adoption of the resolution as presented

### Advisory Board/Committee Review:

NONE

### Board/Committee Recommendation:

NOT APPLICABLE

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

NOT APPLICABLE

### Attachments

- a. 2016-113 RES Establishing Policy Related to the Expenditures of Community Relations Funds (DOC)
- b. 2016-113 Goals & Perspectives (DOCX)
- c. 2016-113 RES Community Relations Expenditures Policy signed (PDF)

### Staff Coordination

|                            |                     |                        |                        |
|----------------------------|---------------------|------------------------|------------------------|
| City Manager               | John Whitson        | Department Head Review | Completed              |
|                            | 09/16/2016 8:18 AM  |                        |                        |
| Assistant City Manager     |                     | Shirley Jaster         | Assistant City Manager |
| Review                     | Completed           | 09/16/2016 11:17 AM    |                        |
| Public Information Officer |                     | Lisa Thompson          | PIO Review             |
|                            | 09/16/2016 11:49 AM |                        | Completed              |
| City Manager               | John Whitson        | City Manager Review    | Completed              |
| 9:16 AM                    |                     |                        | 09/21/2016             |
| City Council               | Jennifer Evans      | Meeting                | Completed              |
| 6:00 PM                    |                     |                        | 09/26/2016             |

**City of Texarkana, Texas****Meeting History**

|          |              |               |                |
|----------|--------------|---------------|----------------|
| 09/26/16 | City Council | MOVED FORWARD | Next: 10/10/16 |
| 10/10/16 | City Council | MOVED FORWARD | Next: 10/24/16 |
| 10/24/16 | City Council | MOVED FORWARD | Next: 11/14/16 |

**RESOLUTION NO. 2016 - 113****A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
TEXARKANA, TEXAS, ESTABLISHING POLICY RELATED TO  
THE EXPENDITURES OF COMMUNITY RELATIONS FUNDS;  
AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, city staff recommended and programmed \$50,000 to be appropriated in the FY17 Budget for the purpose of promoting community relations; and

**WHEREAS**, upon adoption of the FY17 budget, the city council directed that a policy be presented for their consideration concerning the approval of Community Relations expenditures; and

**WHEREAS**, throughout any given fiscal year a number of opportunities are generally presented wherein the city is asked to financially participate in certain activities that are intended to promote community spirit in support of a specific non-governmental activity; and

**WHEREAS**, in previous fiscal years and budgets the staff has programmed some undesignated funds within an unrelated account or has reviewed expenditures and determined undesignated funds were available to accommodate a small level of city support of activities that might be classified as community relations activities; and

**WHEREAS**, some of the previous requests include; Railroad Company Holiday Train Visit; Dragon Boat Race; Mayoral and/or City Council Parade Floats; and other similar activities; and

**WHEREAS**, other activities such as tickets and/or table sponsorships for Dine-On-The-Line; USMC Birthday Ball; Freedom Fund Awards Banquet; MLK Gala; Economic Outlook Dinner; Roast and Toast of Prissy Hickerson; Firefighters' Ball; RRAD Hail and Farewell; Annual Chamber of Commerce Celebration Dinner; and other similar invitations and events; and

**WHEREAS**, the \$50,000 appropriation for Community Relations does not represent all new funding but rather a combination of some new funding and reprogrammed funds that in previous years these activity charges had been assigned to other accounts within the city council budget.

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

**SECTION 1:** The general policy statement related to Community Relations Funding is that the funds are not intended to be funds to be contributed or distributed to non-governmental organizations but rather for the city to provide a service to or to participate with other community service or social organizations that generally serve the community.

**SECTION 2:** Expenditure of Community Relations Funds requires city council approval by resolution for single expenditures exceeding \$2,000. All other expenditures such as admission tickets, table sponsorships, celebratory meals, and other similar charges are hereby authorized as approved by the city manager's office.

**SECTION 3:** 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 **14<sup>th</sup> day of November, 2016.**

ATTEST:

\_\_\_\_\_  
JENNIFER EVANS, CITY SECRETARY

\_\_\_\_\_  
BOB BRUGGEMAN, MAYOR



## City of Texarkana, Texas

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

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

## Perspectives and Goals Additional Comments:

NONE

## Resource Impact:

Staff time required if item is approved: No Additional

## Other Potential Impacts:

NONE APPLICABLE

## Public Information Plan:

|                                                                 |                                                               |
|-----------------------------------------------------------------|---------------------------------------------------------------|
| <input type="checkbox"/> Newspaper Notice (Required by Statute) | <input type="checkbox"/> Public Hearing (Required by Statute) |
| <input type="checkbox"/> Public Forum/Input Session             | <input type="checkbox"/> Press Release                        |
| <input type="checkbox"/> E-News Distribution                    | <input type="checkbox"/> Website Notice                       |
| <input type="checkbox"/> Social Media (Twitter, Facebook, etc.) | <input type="checkbox"/> Special Mailing                      |
| <input type="checkbox"/> Flyers Posted                          | <input type="checkbox"/> Banners Posted                       |
| <input type="checkbox"/> Survey                                 | <input type="checkbox"/> Automated Phone Call                 |
| <input checked="" type="checkbox"/> None Required               | <input type="checkbox"/>                                      |

Other:

**RESOLUTION NO. 2016 - 113****A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEXARKANA, TEXAS, ESTABLISHING POLICY RELATED TO THE EXPENDITURES OF COMMUNITY RELATIONS FUNDS; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, city staff recommended and programmed \$50,000 to be appropriated in the FY17 Budget for the purpose of promoting community relations; and

**WHEREAS**, upon adoption of the FY17 budget, the city council directed that a policy be presented for their consideration concerning the approval of Community Relations expenditures; and

**WHEREAS**, throughout any given fiscal year a number of opportunities are generally presented wherein the city is asked to financially participate in certain activities that are intended to promote community spirit in support of a specific non-governmental activity; and

**WHEREAS**, in previous fiscal years and budgets the staff has programmed some undesignated funds within an unrelated account or has reviewed expenditures and determined undesignated funds were available to accommodate a small level of city support of activities that might be classified as community relations activities; and

**WHEREAS**, some of the previous requests include; Railroad Company Holiday Train Visit; Dragon Boat Race; Mayoral and/or City Council Parade Floats; and other similar activities; and

**WHEREAS**, other activities such as tickets and/or table sponsorships for Dine-On-The-Line; USMC Birthday Ball; Freedom Fund Awards Banquet; MLK Gala; Economic Outlook Dinner; Roast and Toast of Prissy Hickerson; Firefighters' Ball; RRAD Hail and Farewell; Annual Chamber of Commerce Celebration Dinner; and other similar invitations and events; and

**WHEREAS**, the \$50,000 appropriation for Community Relations does not represent all new funding but rather a combination of some new funding and reprogrammed funds that in previous years these activity charges had been assigned to other accounts within the city council budget.

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

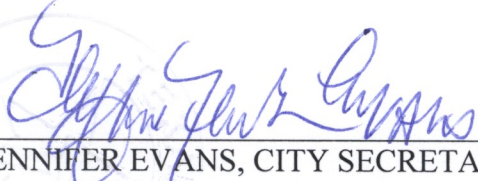
**SECTION 1:** The general policy statement related to Community Relations Funding is that the funds are not intended to be funds to be contributed or distributed to non-governmental organizations but rather for the city to provide a service to or to participate with other community service or social organizations that generally serve the community.

**SECTION 2:** Expenditure of Community Relations Funds requires city council approval by resolution for single expenditures exceeding \$2,000. All other expenditures such as admission tickets, table sponsorships, celebratory meals, and other similar charges are hereby authorized as approved by the city manager's office.

**SECTION 3:** 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 **14<sup>th</sup> day of November, 2016.**

ATTEST:

  
JENNIFER EVANS, CITY SECRETARY

  
BOB BRUGGEMAN, MAYOR

6:24 p.m.

## City of Texarkana, Texas

Version: C

Update Date: 9/23/2016 9:25 AM

**Briefing Sheet**

**Lead Department:** City Manager **Action Officer:** John Whitson, City Manager  
**Subject:** Resolution No. 2016-114 authorizing the expenditure of Community Relations funds in support of the KCS Holiday Express Train event.  
**Briefing:** 11/14/2016 **Public Hearing:** 10/10/2016 **Second Briefing:** October 24, 2016 **Council Vote:** 11/14/2016

**Item Schedule**Schedule 1: Brief twice - vote once (six weeks)**Updates/History of Briefing:**

NOT APPLICABLE

**Executive Summary and Background Information:**

Frequently the Kansas City Southern Railroad Company will stop their Holiday Express Train in Texarkana for the community to access and enjoy the train. The event is generally an evening event and thousands of area families participate in the event. Often the city staff is not aware of Texarkana being selected as a stop during the development of the city budget, therefore funds to support this event are not always budgeted.

This event meets the definition of being a Community Relations Event as it provides a holiday celebration for the community but requires local support to make the event happen. The city will be coordinating manpower and equipment and also providing city staff support throughout the event.

It is anticipated that the city will contract with TISD for buses with drivers in amount of approximately \$2,000. Rentals of other equipment such as portable toilets and light unites are estimated to be about \$1,000. Overtime for city staff supporting the event will be about \$700. The police department will be providing eight to ten officers for traffic control and security.

**Potential Options:**

- Adopt the resolution as recommended
- Revise and adopt the resolution
- Deny the resolution

**Fiscal Implications:**

Not to exceed \$4,000 in total expenditures

**Staff Recommendation:**

Approve the resolution as presented

**Advisory Board/Committee Review:**

NONE

## City of Texarkana, Texas

**Board/Committee Recommendation:**

NOT APPLICABLE

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

NOT APPLICABLE

**Attachments**

- a. 2016-114 RES Approving Community Relations Expenditures for the KCS Holiday Express Train (DOC)
- b. 2016-114 Goals & Perspectives (DOCX)
- c. 2016-114 RES Approving Community Relations Expenditures for KCS Holiday Express Train signed (PDF)

**Staff Coordination**

|                            |                     |                        |                        |            |
|----------------------------|---------------------|------------------------|------------------------|------------|
| City Manager               | John Whitson        | Department Head Review | Completed              |            |
|                            | 09/16/2016 10:01 AM |                        |                        |            |
| Parks, Recreation & Health |                     | Robby Robertson        | Review                 | Completed  |
|                            | 09/16/2016 10:14 AM |                        |                        |            |
| Public Works Department    |                     | Kyle Dooley            | Review                 | Completed  |
|                            | 09/16/2016 10:26 AM |                        |                        |            |
| Police                     | Dan Shiner          | Review                 | Completed              | 09/16/2016 |
| 10:50 AM                   |                     |                        |                        |            |
| Fire Department            | Eric Schlotter      | Review                 | Completed              | 09/16/2016 |
| 12:45 PM                   |                     |                        |                        |            |
| Finance Department         | Kristin Peebles     | Finance Review         | Completed              | 09/20/2016 |
| 9:22 AM                    |                     |                        |                        |            |
| Assistant City Manager     |                     | Shirley Jaster         | Assistant City Manager |            |
| Review                     | Completed           | 09/20/2016 9:58 AM     |                        |            |
| Public Information Officer |                     | Lisa Thompson          | PIO Review             | Completed  |
|                            | 09/20/2016 10:20 AM |                        |                        |            |
| City Manager               | John Whitson        | City Manager Review    | Completed              | 09/21/2016 |
| 9:20 AM                    |                     |                        |                        |            |
| City Council               | Jennifer Evans      | Meeting                | Completed              | 09/26/2016 |
| 6:00 PM                    |                     |                        |                        |            |

**Meeting History**

|          |              |               |                |
|----------|--------------|---------------|----------------|
| 09/26/16 | City Council | MOVED FORWARD | Next: 10/10/16 |
| 10/10/16 | City Council | MOVED FORWARD | Next: 10/24/16 |
| 10/24/16 | City Council | MOVED FORWARD | Next: 11/14/16 |



**RESOLUTION NO. 2016 - 114****A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEXARKANA, TEXAS, AUTHORIZING THE CITY MANAGER TO EXPEND UP TO \$4,000 OF COMMUNITY RELATIONS FUNDING IN SUPPORT OF THE 2016 KCS HOLIDAY TRAIN STOP IN TEXARKANA; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS,** the Kansas City Southern Railroad Company has announced that their 2016 Holiday Express Train will stop in Texarkana on December 10, 2016; and

**WHEREAS,** the Kansas City Southern Railroad Company has requested that the city provide local support for families to visit and enjoy the train while it is in Texarkana; and

**WHEREAS,** city staff is coordinating with the Texas Independent School District to use the football stadium area as a staging area and to provide school buses with drivers to shuttle visitors between the staging point and the train and return; and

**WHEREAS,** city staff and community volunteers will provide the necessary support to get people onto and off of the buses and the train.

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

**SECTION 1:** The City Manager is hereby authorized to expend up to \$4,000 of Community Relations funds in support of the KCS Holiday Express Train Stop in Texarkana.

**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 **14<sup>th</sup> day of November, 2016.**

ATTEST:

\_\_\_\_\_  
JENNIFER EVANS, CITY SECRETARY

\_\_\_\_\_  
BOB BRUGGEMAN, MAYOR

## City of Texarkana, Texas

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

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

## Perspectives and Goals Additional Comments:

NONE

## Resource Impact:

Staff time required if item is approved: Medium

## Other Potential Impacts:

NONE APPLICABLE

## Public Information Plan:

|                                                                 |                                                               |
|-----------------------------------------------------------------|---------------------------------------------------------------|
| <input type="checkbox"/> Newspaper Notice (Required by Statute) | <input type="checkbox"/> Public Hearing (Required by Statute) |
| <input type="checkbox"/> Public Forum/Input Session             | <input type="checkbox"/> Press Release                        |
| <input type="checkbox"/> E-News Distribution                    | <input type="checkbox"/> Website Notice                       |
| <input type="checkbox"/> Social Media (Twitter, Facebook, etc.) | <input type="checkbox"/> Special Mailing                      |
| <input type="checkbox"/> Flyers Posted                          | <input type="checkbox"/> Banners Posted                       |
| <input type="checkbox"/> Survey                                 | <input type="checkbox"/> Automated Phone Call                 |
| <input checked="" type="checkbox"/> None Required               | <input type="checkbox"/>                                      |

Other:



**RESOLUTION NO. 2016 - 114**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEXARKANA, TEXAS, AUTHORIZING THE CITY MANAGER TO EXPEND UP TO \$4,000 OF COMMUNITY RELATIONS FUNDING IN SUPPORT OF THE 2016 KCS HOLIDAY TRAIN STOP IN TEXARKANA; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, the Kansas City Southern Railroad Company has announced that their 2016 Holiday Express Train will stop in Texarkana on December 10, 2016; and

**WHEREAS**, the Kansas City Southern Railroad Company has requested that the city provide local support for families to visit and enjoy the train while it is in Texarkana; and

**WHEREAS**, city staff is coordinating with the Texas Independent School District to use the football stadium area as a staging area and to provide school buses with drivers to shuttle visitors between the staging point and the train and return; and

**WHEREAS**, city staff and community volunteers will provide the necessary support to get people onto and off of the buses and the train.

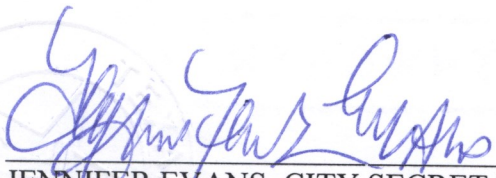
**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TEXARKANA, TEXAS:**

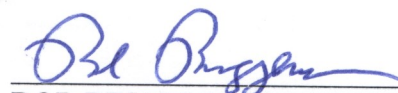
**SECTION 1:** The City Manager is hereby authorized to expend up to \$4,000 of Community Relations funds in support of the KCS Holiday Express Train Stop in Texarkana.

**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 **14<sup>th</sup>** day of **November, 2016**.

ATTEST:

  
JENNIFER EVANS, CITY SECRETARY

  
BOB BRUGGEMAN, MAYOR

6:25 p.m.

## City of Texarkana, Texas

## Briefing Sheet

Version:

Update Date: 9/21/2016 2:40 PM

Lead Department: Fire DepartmentAction Officer: Eric Schlotter, Fire ChiefSubject: Resolution No. 2016-116 revising the Fire Department's swap time policy.

**Public** **Second** **Council**  
**Briefing:** 11/14/2016 **Hearing:** 10/10/2016 **Briefing:** October 24, 2016 **Vote:** 11/14/2016

## Item Schedule

Schedule 1: Brief twice - vote once (six weeks)

## Updates/History of Briefing:

"NOT APPLICABLE"

## Executive Summary and Background Information:

The Fire Department currently has a practice of allowing firefighters to "swap time" with one another. Swapping time is when one firefighter works for another. When this occurs the firefighter who was supposed to be on duty is paid as though he is at work while another firefighter is actually in his position. The person who is working for another firefighter is on duty for all practical purposes other than for pay. Currently, there is a policy that governs swap time; however, this policy is in need of revision as some of the current practices are not in-line with the law and do not have proper control of the practice which allows for abuse.

The practice of swapping or trading time is authorized under the Fair Labor Standards Act in section 7(p)(3). While the practice is legal there are certain current practices that may not be in accordance with the law. Currently, firefighters use two options to payback another firefighter who has swapped with them, they either work for the person who worked for them or they provide them with remuneration the second of which may not be in accordance with the law. While conducting research for the policy revision I have not been able to find another department that allows remuneration. In fact, many strictly prohibit the practice.

In addition to addressing the issue of remuneration, the revised policy sets limits on the number of swap occurrences a firefighter can have in a given period. The current policy does not set a limit, other than to prohibit the practice of swapping multiple consecutive shifts, and this has led to abuse of the privilege. In the past three years there have been employees who have swapped as many as 35 shifts in a year. Thirty five shifts is the equivalent of three and a half months of working time.

The proposed policy would prohibit remuneration, and create a maximum number of swaps per year.

## Potential Options:

- Make only the changes necessary to comply with applicable laws.
- Propose alternate provisions for the policy.

## City of Texarkana, Texas

### Fiscal Implications:

There are no fiscal implications for the City.

### Staff Recommendation:

Staff recommends approval of the resolution as presented.

### Advisory Board/Committee Review:

"NONE"

### Board/Committee Recommendation:

"NOT APPLICABLE"

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

"NOT APPLICABLE"

### Attachments

- a. 2016-116 RES Revising the Fire Department Policy and Procedure Manual (DOC)
- b. 2016-116 RES Goals & Perspectives (DOCX)
- c. 2016-116 ATTH 01 City of Texarkana FD Policy 20161114 (PDF)
- d. 2016-116 ATTH 02 City of Texarkana FD Policy 20091102 (DOC)
- e. 2016-116 ATTH 03 Trade Time Log (PDF)
- f. 2016-116 ATTH 04 29 CFR 553 Substitution (PDF)
- g. 2016-116 ATTH 05 email from Labor Counsel Cranford (PDF)
- h. 2016-116 ATTH 06 Council Minutes 28 DEC 54 - FF Double (PDF)
- i. 2016-116 ATTH 07 City of McKinney FD Policy (PDF)
- j. 2016-116 ATTH 08 City of Nacogdoches FD Policy (DOC)
- k. 2016-116 ATTH 09 City of Longview FD Policy (PDF)
- l. 2016-116 ATTH 10 City of Burleson FD Policy (PDF)
- m. 2016-116 ATTH 11 City of Lufkin FD Policy (PDF)
- n. 2016-116 ATTH 12 City of Paris FD Policy (DOC)
- o. 2016-116 ATTH 13 City of Sherman FD Policy (PDF)
- p. 2016-116 ATTH 14 City of Tyler FD Policy (PDF)
- q. 2016-116 ATTH 15 City of Duncanville FD Policy (PDF)
- r. 2016-116 ATTH 16 City of Irving FD Policy (PDF)

### Staff Coordination

|                            |                    |                        |                        |
|----------------------------|--------------------|------------------------|------------------------|
| Fire Department            | Eric Schlotter     | Department Head Review | Completed              |
|                            | 09/20/2016 7:25 AM |                        |                        |
| Assistant City Manager     |                    | Shirley Jaster         | Assistant City Manager |
| Review                     | Completed          | 09/20/2016 8:55 AM     |                        |
| Public Information Officer |                    | Lisa Thompson          | PIO Review             |
|                            | 09/20/2016 2:19 PM |                        | Completed              |
| City Manager               | John Whitson       | City Manager Review    | Completed              |
| 8:18 AM                    |                    |                        | 09/23/2016             |

**City of Texarkana, Texas**City Council  
6:00 PM

Jennifer Evans

Meeting

Completed

09/26/2016

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**Meeting History**

|          |              |               |                |
|----------|--------------|---------------|----------------|
| 09/26/16 | City Council | MOVED FORWARD | Next: 10/10/16 |
| 10/10/16 | City Council | MOVED FORWARD | Next: 10/24/16 |
| 10/24/16 | City Council | MOVED FORWARD | Next: 11/14/16 |

## RESOLUTION NO. 2016 - 116

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEXARKANA, TEXAS, REVISING THE TEXARKANA, TEXAS FIRE DEPARTMENT POLICY AND PROCEDURE MANUAL, GENERAL PERSONNEL POLICIES, SECTION 8 - SUBSTITUTES; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, the Fire Department allows for the use of substitutes; and

**WHEREAS**, the Fire Department strives to maintain compliance with applicable laws; and

**WHEREAS**, the proper operation of the Fire Department requires well-developed policies and procedures.

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

**SECTION 1:** That Section 8 - Substitutes of the General Personnel Policies, contained in the Texarkana, Texas Fire Department Policy and Procedure Manual is revised as written in **Attachment #1**.

**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 **14<sup>th</sup>** day of **November, 2016**.

ATTEST:

\_\_\_\_\_  
JENNIFER EVANS, CITY SECRETARY

\_\_\_\_\_  
BOB BRUGGEMAN, MAYOR

## City of Texarkana, Texas

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

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

## Perspectives and Goals Additional Comments:

NONE

## Resource Impact:

Staff time required if item is approved: No Additional

## Other Potential Impacts:

NONE APPLICABLE

## Public Information Plan:

|                                                                 |                                                               |
|-----------------------------------------------------------------|---------------------------------------------------------------|
| <input type="checkbox"/> Newspaper Notice (Required by Statute) | <input type="checkbox"/> Public Hearing (Required by Statute) |
| <input type="checkbox"/> Public Forum/Input Session             | <input type="checkbox"/> Press Release                        |
| <input type="checkbox"/> E-News Distribution                    | <input type="checkbox"/> Website Notice                       |
| <input type="checkbox"/> Social Media (Twitter, Facebook, etc.) | <input type="checkbox"/> Special Mailing                      |
| <input type="checkbox"/> Flyers Posted                          | <input type="checkbox"/> Banners Posted                       |
| <input type="checkbox"/> Survey                                 | <input type="checkbox"/> Automated Phone Call                 |
| <input checked="" type="checkbox"/> None Required               | <input type="checkbox"/>                                      |

Other:

Attachment: 2016-116 RES Goals &amp; Perspectives (1545 : 2016-116 RES revising fire department swap time policy)



|                                                                                                                 |                                     |                            |  |
|-----------------------------------------------------------------------------------------------------------------|-------------------------------------|----------------------------|--|
|                                | <b>Texarkana Fire Department</b>    |                            |  |
|                                                                                                                 | <b>Policy and Procedures Manual</b> |                            |  |
|                                                                                                                 | Title: General Personnel Policies   |                            |  |
|                                                                                                                 | Applies to: All Personnel           |                            |  |
|                                                                                                                 | Approved by:                        | Effective Date: 11-14-2016 |  |
| <br>Eric Schlotter, Fire Chief | Revision Date: 11-14-2016           |                            |  |
|                                                                                                                 | Pages: <u>1 of 13</u>               | Tab: 19                    |  |

This Policy/Procedure is for the Texarkana Texas Fire Department's internal use only and does not enhance an employee's civil or criminal liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third party claims. Violations of this Policy/Procedure, if proven, may only form the basis for a complaint by the Texarkana Texas Fire Department in a non-judicial, administrative setting.

## Section 1 Administration

- 1-1 Purpose: The purpose of this section is to provide information on various personnel related issues within the department. This policy should be used in conjunction with Chapter 143, Texas Local Government Code; City of Texarkana, Texas Personnel Policies; and various Federal and State of Texas laws related to personnel issues.
- 1-2 Scope: This policy applies to all personnel. When conflicts arise between various laws and policies governing personnel issues, they are to be resolved by the following priority order:
- a) Federal Statutes and Rules
  - b) Chapter 143, Texas Local Government Code (Civil Service)
  - c) Other State of Texas statutes and rules
  - d) City of Texarkana, Texas Local Civil Service Rules
  - e) City of Texarkana, Texas Personnel Policies
    - i) Exception: In circumstances where department policies are more stringent than city policies, the more stringent policy will apply.
  - f) Texarkana Fire Department Policies and Procedures

## Section 2 Definitions

- 2-1 Civil Service Law – Chapter 143 of the Texas Local Government Code.
- 2-2 Local Civil Service Rules – Rules governing local Civil Service as approved by the Civil Service Commission and published by the Civil Service Director
- 2-3 Personnel Policies – Policies of the City of Texarkana, Texas as approved by the City manager and City Council and made available to employees by the Human Resources Director.
- 2-4 USSERA – *Uniformed Services Employment and Reemployment Rights Act*. This Federal law specifies rights regarding employment and re-employment for veterans returning from active duty.

## Section 3 Pay and Benefits

- 3-1 Base Pay – All members shall receive base pay as approved by the City Council in the current budget. All members holding the same rank and having the same tenure in their rank shall receive the same base pay.



- 3-2 Longevity Pay – All members shall receive longevity pay at the rate of \$4.00 per month per year of service. The maximum longevity pay is \$100.00 per month.
- 3-3 Certification Incentive Pay – Members who hold advanced levels of certification from the Texas Commission on Fire Protection are eligible for certification incentive pay. Members with Intermediate certification shall receive \$50.00 per month. Members with advanced certification shall receive \$100.00 per month. Members with master certification shall receive \$150.00 per month. Members may receive both certification incentive pay and education incentive pay.
- 3-4 Education incentive pay – Eligible members may receive education incentive pay. Qualifications and pay amounts are listed in the City Personnel Policy Handbook. Members may receive both certification incentive pay and education incentive pay.
- 3-5 Overtime pay – Overtime pay shall be calculated and paid in accordance with the Fair Labor Standards Act and City Personnel Guidelines. In Operations Division, overtime pay shall be calculated based on a 15 day FLSA cycle. Overtime shall be paid on the payday following the pay period in which the FLSA cycle ends. In calculating overtime, leave time shall be credited in accordance with City personnel guidelines.
- 3-6 Step-up Pay – Members temporarily working in a higher classification shall be paid step-up pay. Step-up pay shall be the difference between the member's base pay and the lowest base pay of the next higher classification.
- 3-7 Assignment Pay – Members assigned to Fire Prevention or Training Divisions will receive assignment pay in the amount specified in the City budget. Other members may receive assignment pay if assigned to special functions and assignment pay is approved in the City budget.
- 3-8 Vacation – Members shall accumulate 15 days of vacation per year. Rate of accumulation shall be as indicated in the city personnel guidelines.
- 3-9 Holidays – Members shall receive holiday leave as indicated in the city personnel guidelines.
- 3-10 For members in Operations Division, two (2) days of leave time shall be equivalent to one (1) 24 hour shift.
- 3-11 Members in Operations Division shall take holidays with their vacation. Vacations and holidays shall be scheduled as directed by the Fire Chief.
- 3-12 Members in all divisions except Operations shall take holidays on the scheduled day as listed in the city personnel guidelines. These members shall request vacation time by submitting a written request to their immediate supervisor for approval.

- 3-13 Sick Leave – Members shall accumulate 15 days of sick leave per year as indicated in the city personnel guidelines. Members may take sick leave as allowed by the City personnel guidelines and by the section in this chapter entitled "Sick Leave".

#### **Section 4 Working in a higher classification**

- 4-1 Members working temporarily in a higher classification shall receive step-up pay in accordance with paragraph 3-6 above.
- 4-2 The Battalion Chief of Operations is authorized to approve step-up in accordance with these guidelines. Any exceptions to these guidelines shall be approved by the Fire Chief.
- 4-3 Each individual selected to step-up shall be qualified and capable of filling the position in the next higher rank that is open. Not every individual of a particular rank meets these requirements. Determination of the fitness to step-up is based solely on the judgment of the Operations Chief and/or Fire Chief.
- 4-4 Members shall not step-up more than one rank.
- 4-5 Newly promoted members shall not step-up until after successful completion of a six-month training period in their new rank. This six-month training period also applies to personnel transferred from other divisions who do not have prior experience at their current rank in Operations Division.
- 4-6 Newly hired members shall not step-up until after completion of their probationary period
- 4-7 Members shall not step-up to fill positions if there are members of the appropriate rank available to fill the position.

#### **Section 5 Sick Leave**

- 5-1 All members are eligible for sick leave benefits. Members shall accumulate sick leave in accordance with Texas Civil Service Law and City personnel guidelines.
- 5-2 Members retiring or resigning from the Fire Department shall receive pay for unused sick leave in accordance with Texas Civil Service Law and City personnel guidelines.
- 5-3 All Members are eligible for incentive days for non-use of sick leave as described in City personnel guidelines.
- 5-4 Sick leave shall be granted for the following reasons only:
- a) When a member is unable to perform his duties due to illness or an off-duty injury.
  - b) When a medical, dental, or optical examination or treatment is necessary. Members shall attempt to schedule such appointments on off-duty time when possible. All such appointments shall be approved in advance by the Fire Chief or the member's Battalion Chief.

- c) When a member has been exposed to a contagious disease (as would normally be subject to quarantine as prescribed by Health Department Standards) and presence on the job would jeopardize the health of others.
  - d) When a medical situation arises involving illness of a member's immediate family. The relationship must meet the requirements defined in the City Personnel Guidelines.
  - e) When leave is needed for the purpose of attending a funeral, making arrangements, or otherwise attending to the affairs of a deceased family member.
  - f) When leave is authorized by the Family and Medical Leave Act.
- 5-5 Members shall provide a physician's release in certain circumstances. The release shall state that the member has been under the physician's care and that the member is released to perform full or regular duties. The member shall provide the release prior to or at the time of returning to work. Supervisors shall not allow a member to return to work without this release. A release is required in all the following circumstances:
- a) Any sick leave taken for personal illness or injury which exceeds 48 hours (2 shifts).
  - b) Any sick leave taken due to exposure to contagious disease.
  - c) Following any surgery, whether sick leave was taken or not.
  - d) Any off-duty injury requiring a physician's examination or treatment.
  - e) When requested by the Fire Chief.
- 5-6 Frequent claiming of sick leave may constitute grounds for the assumption by the Fire Chief that the physical condition of a member is below the standard required for the proper performance of duties and this may lead to a request for a physical examination to determine fitness for the job. Any such examination shall be conducted in accordance with requirements of Texas Civil Service law.
- 5-7 Members who abuse sick leave are subject to disciplinary action, up to and including indefinite suspension.
- 5-8 In Operations Division, members claiming sick leave shall notify the Operations Chief on duty of their inability to report to work and the reason they cannot report. Members shall make this notification at least 30 minutes prior to their scheduled duty shift. The Operations Chief receiving this notification shall notify the station captain where the member was scheduled to work and both the Battalion Chief and the captain shall notify their relief at shift change. In other divisions, members shall notify someone in the office of their absence. This notification shall be made within 30 minutes of the start of their scheduled shift.
- 5-9 While on sick leave, members shall not work at another job. The Fire Chief may make exceptions to this rule with appropriate medical clearance.

- 5-10 Members who use sick leave shall sign a personnel action form and shall indicate on the form the reason for their absence.
- 5-11 Members who are members of the “Doubling List” and whose sick leave is exhausted are allowed to have other members work for them in accordance with the guidelines on substitutes and rules of the “Doubling List” as established by the members.

## **Section 6 Military Leave**

- 6-1 Fifteen (15) days of military leave per Federal fiscal year are available to members of the reserves or National Guard. This military leave may be taken for weekend drills, annual duty, specialized training, or any other active military duty.
- 6-2 Members must notify their chain of command as far in advance as possible of the need to take military leave.

## **Section 7 Return from Active Military Duty**

- 7-1 Return from active military duty will be handled in accordance with USERRA and applicable sections of Civil Service law.
- 7-2 In order to be eligible to be returned to duty after a period of military service, a member must meet each of the following requirements:
  - a) Member must have received an honorable discharge or other honorable separation from service
  - b) Member must remain physically and mentally fit to discharge the duties of their position
  - c) Member must make application for reinstatement within the time limits established in USERRA
  - d) Member must maintain current required certifications, including TCFP structure firefighter and DSHS Emergency Medical Technician
- 7-3 To determine physical fitness for duty, members may be required to complete an entry physical and the incumbent physical ability test
  - a) Members whose absence for military duty is greater than or equal to one year shall be required to take the physical and PAT
  - b) Members whose absence for military service is less than one year may be required to take the physical and PAT at the discretion of the Fire Chief
- 7-4 Mental fitness for duty will be assumed unless evidence indicates otherwise. If a question as to mental fitness arises, the Fire Chief will institute proceedings under Section 143.081 of Civil Service law.
- 7-5 At the discretion of the Fire Chief, an orientation and retraining period may be required prior to a returning member being assigned to fire suppression duties.

**Section 8 Substitutes**

- 8-1 Members in operations division may employ substitutes (commonly called swap time) to work in their place.
- 8-2 Members may have no more than 12 substitutions during the fiscal year (Oct. 1<sup>st</sup> – Sept. 30<sup>th</sup>), exceptions may be requested in writing to the Fire Chief.
- 8-3 When a member employs a substitute, the member is on duty for payroll purposes only. The substitute is on duty for all other purposes.
- 8-4 Members shall request approval for substitutes at least one shift in advance on the form provided for this purpose. The Company Officer shall recommend approval or disapproval of the substitution and forward the form to the Operations Chief. The Operations Chief shall make the final decision of approval or disapproval of the substitution. Operations Chief substitutes shall be approved or disapproved by the Fire Chief. Requests for substitutes received less than one shift in advanced may be considered at the discretion of the officers involved.
- 8-5 Members shall make a reasonable effort to employ a substitute of equal rank. In every case, substitutes shall be qualified to perform the duties of the position filled. Members shall not employ substitutes more than one rank below their own.
- 8-6 Substitutions are time for time only, no other form of remuneration is allowed regardless of the circumstance.
- 8-7 Members working overtime are not permitted to employ a substitute.
- 8-8 Station officers shall record substitutes in the company log book. Operations Chiefs shall record substitutes in the Operations Chief's log book and on the status report.
- 8-9 Members shall not work another job while off with a substitute with the exception of required military reserve drills.
- 8-10 Any substitute arrangements that will result in a member being off multiple shifts shall not be approved.
- 8-11 Receiving time off by employing a substitute is a privilege, not a right. Members who abuse this privilege are subject to disciplinary action and/or having this privilege revoked on an individual basis at the discretion of the Fire Chief.

**Section 9 Disciplinary Action**

- 9-1 All disciplinary action taken shall be taken in accordance with State and local Civil Service rules and regulations and in accordance with any applicable federal, state, and local statutes.
- 9-2 The degree of disciplinary action that may be taken by the Fire Department is as follows:

- a) Oral reprimand (including documented oral reprimand)
  - b) Written reprimand
  - c) Demotion
  - d) Temporary suspension without pay.
  - e) Indefinite suspension without pay.
- 9-3 Action taken will depend on the degree of the offense, the record of the offender, and the seriousness of the consequences of the violation.
- 9-4 Company officers and Battalion Chiefs may give oral reprimands. If desired, these officers may document these oral reprimands to the Fire Chief on the form provided.
- 9-5 All levels of disciplinary action other than oral reprimand shall be given by the Fire Chief. Officers who believe disciplinary action is needed shall initiate such action by letter through channels to the Fire Chief. Officers shall include in this letter a description of the problem, any supporting evidence or documentation, and a recommendation for action.
- 9-6 Any member subject to disciplinary action shall be given an opportunity to present any information he/she has or any mitigating circumstances prior to disciplinary action being taken.
- 9-7 The Fire Chief shall have the final decision in all disciplinary matters, subject to appeal procedures in civil service statutes.

### **Section 10 Promotional Procedures**

- 10-1 The Fire Chief shall make all promotions in accordance with Texas civil service law and City of Texarkana, Texas Civil Service Rules and Regulations.
- 10-2 At least two copies of all books on promotional reading lists will be available at the Texarkana Public Library. One copy of each book will be kept in the library and will be available to study there. One or more copies of each book will be available to members to check out. Books shall be checked out for seven (7) days only. Books shall not be checked out consecutively by the same person
- 10-3 Books on promotional reading lists may be available from the Fire Department library. When a promotional exam is not posted, members may check out these books in accordance with normal procedures. From the time an exam notice is posted until an exam is given, members may check out these books for no longer than seven (7) consecutive days. Books shall not be checked out consecutively by the same person.
- 10-4 From the time an exam notice is posted until an exam is given, only those members eligible to take that promotional exam may check out study material for that exam. This applies both at the public library and at the department library.

- 10-5 Members shall return any books that are on the reading list for a currently posted promotional exam in a prompt manner and no later than the due date. Failure to return books on time will result in disciplinary action.
- 10-6 Members shall not take promotional exams while on duty; however, members may employ a substitute while taking a promotional exam.
- 10-7 Members must make arrangements to be present when an exam is given regardless of vacation or other leave time.
- 10-8 The Civil Service Director shall schedule the date, time, and location of exams. Member's dates of eligibility for the exam will not be consulted when scheduling the exam.

## **Section 11 Overtime Hiring and Emergency Recall**

### **11-1 Routine Overtime Hiring**

- a) Routine overtime hiring must be done in a consistent manner to insure fairness to all members. Circumstances in hiring vary. Generally, someone must be hired immediately. Sometimes time is not a concern within reasonable limits. Be sure that all members are afforded the same opportunity to work if they so desire, within the guidelines imposed by these rules.
- b) Overtime hiring worksheets will be provided for each crew. Each crew's worksheet will have the names of members on the other two crews listed in order of seniority. Care must be exercised to be certain that the appropriate worksheet for the crew on duty is used.
- c) The last member hired will be listed in the Operations Chief log book and on the list kept in the Operations Chief's office for that purpose. Each shift will have a separate column on the "last hired" sheet.
- d) When hiring, the member calling (normally the Operations Chief) will start with the first name on the overtime hiring worksheet under the person last hired.
- e) Members will be called in the order that their name appears on the worksheet. No member will be skipped except for reasons listed in this procedure. If a member is hired, write the time hired for and the station on the left side of their name. If a member is not hired, indicate the reason on the right side of their name.
- f) Overtime hiring will be for ½ shift at a time under normal circumstances. All daytime slots will be filled prior to hiring evening slots.
- g) Members will be utilized at their rank whenever possible. If not possible, they will be utilized at the highest available position below their rank.



- h) Members must be capable of filling the position needed. Members who cannot drive fire department vehicles, including those on probation, may be hired if sufficient personnel are available to fill required driver and officer positions. (Except see policy on probationary firefighters for exception during first few months of employment.) Otherwise, no member should be excluded from working overtime if arrangements can reasonably be made to fill all required positions.
- i) Members on sick leave will not be hired overtime. For purposes of overtime, sick leave begins when a member calls in sick and does not end until the member reports back to work. For example, a member is off on sick leave 24 hours on Monday. His next scheduled shift is Thursday. He is not eligible for overtime on Tuesday or Wednesday.
- j) Members on vacation are not eligible for overtime. For purposes of overtime, vacation leave begins at the time a member is actually off work and ends when he reports back. For example, a member's vacation starts at 7:00 AM on April 15 and he reports back to work at 7:00 AM on April 30. He is eligible for overtime on April 13 and 14, but he is not on April 28 or 29. This rule is written for purposes of consistency. This is being approached in different ways by different people.
- k) Members off on holiday, vacation, or incentive leave of one shift or less are ineligible for overtime only on their shift while they are actually on leave. For example, a member takes a holiday on Monday night. He is eligible for overtime on Tuesday.
- l) Operations Chiefs may consider response time in the hiring process. For example, it is 06:45 and the next person on the list for hiring lives approximately 90 minutes away. The position needs to be filled at 07:00 or someone will be forced to stay overtime. It is appropriate to skip the out of town person and go down the list to someone who lives closer. It would not be appropriate to skip someone if the hiring is being done for the PM shift and there is sufficient time for travel. The Operations Chief needs to use judgment in this process. He must balance giving equal rights to overtime work to all members against the immediate need to fill an open position. If a member is skipped when hiring for daytime because of travel time, the skipped member(s) shall be considered for the PM shift if needed.
- m) When calling for overtime, always identify yourself and the purpose of your call to the person answering the phone even if the member is not home. If you reach an answering machine, leave this information on the machine. This is the proper and courteous thing to do and helps prevent complaints that the member was not called.

- n) Phone rings are only 5 seconds apart. Always let the phone ring at least 6 times before hanging up and writing “no answer” on the call sheet.
- o) Both primary and secondary contact numbers are shown on the overtime sheet. Primary numbers will always be called. Secondary numbers are shown for convenience sake and are not required to be called. Be consistent. If you call the secondary number for one person, call them for all.
- p) Show equal consideration to all members when hiring overtime. Each member deserves an equal chance to work. If you have time to let one member’s spouse call him to call you back, treat all the same. Favoritism has no place in the hiring process.
- q) Only members assigned to Operations Division are eligible for regular overtime in Operations Division. New members who have not completed training and members assigned to other divisions are not eligible. Members are not eligible for regular overtime on their own shift.

#### 11-2 Emergency Recall

- a) Emergency recall hiring will be handled differently. If an entire shift is needed to be recalled, or all off duty personnel, the Incident Commander should request the dispatcher to initiate a recall of a particular shift or shifts through the “Code Red” system. When the Incident Commander needs a certain number of personnel (less than a full shift), he should contact the investigator on call and request that the investigator initiate a recall of personnel until he has contacted the required number. Members living in the immediate Texarkana area will be called before those who travel any significant distance. No particular order of calling is required in an emergency recall. Any members who can be reached will be hired.

### **Section 12 Miscellaneous Provisions**

#### 12-1 Moonlighting

- a) City personnel guidelines require that all full-time city employees who hold other positions of paid employment or accept pay for services obtain written approval of their department head prior to accepting such employment. The Department Head may cancel such approval at any time it is determined that such outside employment conflicts or interferes with a member's duties and responsibilities as an employee of the City of Texarkana, Texas.
- b) Members wishing to request such approval shall do so on a form available from the Fire Chief's office. Members must fill out forms completely, providing all requested information.

- c) Members shall give priority to their duties and responsibilities as Fire Department employees over any responsibility to other employers. Such responsibility to another employer shall not be a valid reason for not responding to an emergency recall, mandatory overtime, required meeting, required training, or any other obligation to this department.
- d) Members shall not engage in business activities related to other employment while on duty and shall not use city property or facilities for such activities.
- e) Members shall use care in selecting outside employment to ensure that the employment does not create a conflict of interest with regard to their Fire Department employment.
- f) Members shall not use their status as Fire Department members in any way to generate additional business or solicit favors in regard to outside employment.
- g) Members shall inform the Fire Chief on the appropriate form when the member leaves employment at a part-time job previously approved.

#### 12-2 Flower Fund

- a) A flower fund has been established in the Fire Department. This fund shall be maintained to provide flowers in accordance with these guidelines.
- b) When the balance in the fund is depleted, the Battalion Chiefs in charge of each crew and division will collect a contribution from each participating member. The particular amount of the contribution will be determined by the Fire Chief. Participation by members is voluntary.
- c) The flower fund will be administered by the Fire Department Administrative Coordinator. The Administrative Coordinator will receive and deposit all contributions, make payments, and place orders. In the absence of the Administrative Coordinator, the Fire Chief or a member designated by the Fire Chief will administer the fund.
- d) Flowers will be sent to the funeral of a current member, the immediate family of a current member, or a retired member. For purposes of this section, immediate family is defined as husband, wife, son, daughter, father, mother, brother, sister, father-in-law, or mother-in-law.
- e) If requested by the family of the deceased, a contribution may be made to a chosen charity in lieu of sending flowers.
- f) Members who become aware of a death in one of these categories shall notify the Battalion Chief on duty. The Battalion Chief shall notify the Fire Chief so that necessary arrangements can be made.

#### 12-3 Nepotism

- a) City personnel guidelines regulate nepotism within the City government. Refer to the personnel guidelines for exact wording.

- b) Within the Fire Department, the nepotism rules will be applied as follows:
  - i) Two related members will not be allowed to work at the same station.
  - ii) Two related Captains will not be allowed to work on the same crew.
  - iii) No member shall supervise, directly or indirectly, a related member.
- c) As long as the requirements in 3-9.02 above are not violated, related members may work on the same shift. Operations Chiefs should make a reasonable effort to accommodate related members when a related member is eligible for overtime on his relative's shift.
- d) Related members will not normally be permanently assigned to the same crew. While legal, it would present scheduling problems if the restrictions had to be dealt with on a regular basis.

#### 12-4 Education and Training Procedures

- a) In order to maintain consistency between City personnel guidelines and Fire Department policies while maintaining an awareness of differences in Fire Department schedules, the following policy will be followed in regard to attending training or college & university classes on duty days.
  - i) Members may employ a substitute (swap time) to attend classes, but not from 7:00 AM to 5:00 PM weekdays.
  - ii) Regular college classes may not be attended on duty regardless of job relationship except for classes that are required by the department.
  - iii) Shorter seminars (one or two day) that are job related will be considered on an individual basis by the Fire Chief.
- b) Exceptions to the above policy may be made if the Fire Chief considers a particular class beneficial to the department as a whole and the exception is reasonable.

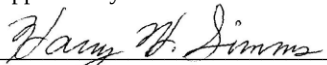
#### 12-5 Public Service Leave

- a) A member called to jury duty or subpoenaed to testify as a witness will receive public service leave during the time of the court appearance.
- b) If a member is not selected for a jury, the member will return to work immediately after being dismissed by the judge.
- c) If a member is selected to serve on a jury, the member will return to work after the completion of the trial and dismissal by the judge.
- d) A member called as a witness will return to work as soon as released by the judge.

- e) The above guidelines are general. Obviously, if a member is selected for a jury but does not have to report for an extended period of time, he should work when scheduled in the interim. Common sense must be used in applying these guidelines.
- f) All members shall document court appearance requirements by providing a copy of the juror summons or the subpoena.

12-6 Member Telephone Numbers

- a) All members are required to provide their home telephone number for contact during off duty hours.
- b) Normally, member phone numbers will be posted at all fire stations and in the Operations Chief's office.
- c) If a member requests in writing, his phone number will be omitted from the lists posted at the fire stations. It will still be included on the list posted at the Operations Chief's office.
- d) Member's phone numbers are not to be released to callers. If a request is received for a member phone number, advise the caller that the number cannot be released. Offer to take the caller's name and phone number and relay the information to the member as soon as possible. Always maintain a professional and courteous attitude when dealing with this situation.

|                                                                                   |                                                                                                                                 |                            |
|-----------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------|----------------------------|
|  | <b>Texarkana Fire Department</b>                                                                                                |                            |
|                                                                                   | <b>Policy and Procedures Manual</b>                                                                                             |                            |
|                                                                                   | Title: General Personnel Policies                                                                                               |                            |
|                                                                                   | Applies to: All Personnel                                                                                                       |                            |
|                                                                                   | Approved by:<br><br>Harry H. Simms, Fire Chief | Effective Date: 11-02-2009 |
|                                                                                   | Revision Date: 11-02-2009                                                                                                       |                            |
|                                                                                   | Pages: 1 of 14                                                                                                                  | Tab: 19                    |

This Policy/Procedure is for the Texarkana Texas Fire Department's internal use only and does not enhance an employee's civil or criminal liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third party claims. Violations of this Policy/Procedure, if proven, may only form the basis for a complaint by the Texarkana Texas Fire Department in a non-judicial, administrative setting.

### Section 1 Administration

- 1-1 Purpose: The purpose of this section is to provide information on various personnel related issues within the department. This policy should be used in conjunction with Chapter 143, Texas Local Government Code; City of Texarkana, Texas Personnel Policies; and various Federal and State of Texas laws related to personnel issues.
- 1-2 Scope: This policy applies to all personnel. When conflicts arise between various laws and policies governing personnel issues, they are to be resolved by the following priority order:
- a) Federal Statutes and Rules
  - b) Chapter 143, Texas Local Government Code (Civil Service)
  - c) Other State of Texas statutes and rules
  - d) City of Texarkana, Texas Local Civil Service Rules
  - e) City of Texarkana, Texas Personnel Policies
    - i) Exception: In circumstances where department policies are more stringent than city policies, the more stringent policy will apply.
  - f) Texarkana Fire Department Policies and Procedures

### Section 2 Definitions

- 2-1 Civil Service Law – Chapter 143 of the Texas Local Government Code.
- 2-2 Local Civil Service Rules – Rules governing local Civil Service as approved by the Civil Service Commission and published by the Civil Service Director
- 2-3 Personnel Policies – Policies of the City of Texarkana, Texas as approved by the City manager and City Council and made available to employees by the Human Resources Director.
- 2-4 USSERA – *Uniformed Services Employment and Reemployment Rights Act*. This Federal law specifies rights regarding employment and re-employment for veterans returning from active duty.

### Section 3 Pay and Benefits

- 3-1 Base Pay – All members shall receive base pay as approved by the City Council in the current budget. All members holding the same rank and having the same tenure in their rank shall receive the same base pay.

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- 3-2 Longevity Pay – All members shall receive longevity pay at the rate of \$4.00 per month per year of service. The maximum longevity pay is \$100.00 per month.
- 3-3 Certification Incentive Pay – Members who hold advanced levels of certification from the Texas Commission on Fire Protection are eligible for certification incentive pay. Members with Intermediate certification shall receive \$50.00 per month. Members with advanced certification shall receive \$100.00 per month. Members with master certification shall receive \$150.00 per month. Members may receive both certification incentive pay and education incentive pay.
- 3-4 Education incentive pay – Eligible members may receive education incentive pay. Qualifications and pay amounts are listed in the City Personnel Policy Handbook. Members may receive both certification incentive pay and education incentive pay.
- 3-5 Overtime pay – Overtime pay shall be calculated and paid in accordance with the Fair Labor Standards Act and City Personnel Guidelines. In Operations Division, overtime pay shall be calculated based on a 15 day FLSA cycle. Overtime shall be paid on the payday following the pay period in which the FLSA cycle ends. In calculating overtime, leave time shall be credited in accordance with City personnel guidelines.
- 3-6 Step-up Pay – Members temporarily working in a higher classification shall be paid step-up pay. Step-up pay shall be the difference between the member's base pay and the lowest base pay of the next higher classification.
- 3-7 Assignment Pay – Members assigned to Fire Prevention or Training Divisions will receive assignment pay in the amount specified in the City budget. Other members may receive assignment pay if assigned to special functions and assignment pay is approved in the City budget.
- 3-8 Vacation – Members shall accumulate 15 days of vacation per year. Rate of accumulation shall be as indicated in the city personnel guidelines.
- 3-9 Holidays – Members shall receive holiday leave as indicated in the city personnel guidelines.
- 3-10 For members in Operations Division, two (2) days of leave time shall be equivalent to one (1) 24 hour shift.
- 3-11 Members in Operations Division shall take holidays with their vacation. Vacations and holidays shall be scheduled as directed by the Fire Chief.
- 3-12 Members in all divisions except Operations shall take holidays on the scheduled day as listed in the city personnel guidelines. These members shall request vacation time by submitting a written request to their immediate supervisor for approval.



- 3-13 Sick Leave – Members shall accumulate 15 days of sick leave per year as indicated in the city personnel guidelines. Members may take sick leave as allowed by the City personnel guidelines and by the section in this chapter entitled "Sick Leave".

#### **Section 4 Working in a higher classification**

- 4-1 Members working temporarily in a higher classification shall receive step-up pay in accordance with paragraph 3-6 above.
- 4-2 The Battalion Chief of Operations is authorized to approve step-up in accordance with these guidelines. Any exceptions to these guidelines shall be approved by the Fire Chief.
- 4-3 Each individual selected to step-up shall be qualified and capable of filling the position in the next higher rank that is open. Not every individual of a particular rank meets these requirements. Determination of the fitness to step-up is based solely on the judgment of the Operations Chief and/or Fire Chief.
- 4-4 Members shall not step-up more than one rank.
- 4-5 Newly promoted members shall not step-up until after successful completion of a six-month training period in their new rank. This six-month training period also applies to personnel transferred from other divisions who do not have prior experience at their current rank in Operations Division.
- 4-6 Newly hired members shall not step-up until after completion of their probationary period
- 4-7 Members shall not step-up to fill positions if there are members of the appropriate rank available to fill the position.

#### **Section 5 Sick Leave**

- 5-1 All members are eligible for sick leave benefits. Members shall accumulate sick leave in accordance with Texas Civil Service Law and City personnel guidelines.
- 5-2 Members retiring or resigning from the Fire Department shall receive pay for unused sick leave in accordance with Texas Civil Service Law and City personnel guidelines.
- 5-3 All Members are eligible for incentive days for non-use of sick leave as described in City personnel guidelines.
- 5-4 Sick leave shall be granted for the following reasons only:
  - a) When a member is unable to perform his duties due to illness or an off-duty injury.
  - b) When a medical, dental, or optical examination or treatment is necessary. Members shall attempt to schedule such appointments on off-duty time when possible. All such appointments shall be approved in advance by the Fire Chief or the member's Battalion Chief.

- c) When a member has been exposed to a contagious disease (as would normally be subject to quarantine as prescribed by Health Department Standards) and presence on the job would jeopardize the health of others.
  - d) When a medical situation arises involving illness of a member's immediate family. The relationship must meet the requirements defined in the City Personnel Guidelines.
  - e) When leave is needed for the purpose of attending a funeral, making arrangements, or otherwise attending to the affairs of a deceased family member.
  - f) When leave is authorized by the Family and Medical Leave Act.
- 5-5 Members shall provide a physician's release in certain circumstances. The release shall state that the member has been under the physician's care and that the member is released to perform full or regular duties. The member shall provide the release prior to or at the time of returning to work. Supervisors shall not allow a member to return to work without this release. A release is required in all the following circumstances:
- a) Any sick leave taken for personal illness or injury which exceeds 48 hours (2 shifts).
  - b) Any sick leave taken due to exposure to contagious disease.
  - c) Following any surgery, whether sick leave was taken or not.
  - d) Any off-duty injury requiring a physician's examination or treatment.
  - e) When requested by the Fire Chief.
- 5-6 Frequent claiming of sick leave may constitute grounds for the assumption by the Fire Chief that the physical condition of a member is below the standard required for the proper performance of duties and this may lead to a request for a physical examination to determine fitness for the job. Any such examination shall be conducted in accordance with requirements of Texas Civil Service law.
- 5-7 Members who abuse sick leave are subject to disciplinary action, up to and including indefinite suspension.
- 5-8 In Operations Division, members claiming sick leave shall notify the Operations Chief on duty of their inability to report to work and the reason they cannot report. Members shall make this notification at least 30 minutes prior to their scheduled duty shift. The Operations Chief receiving this notification shall notify the station captain where the member was scheduled to work and both the Battalion Chief and the captain shall notify their relief at shift change. In other divisions, members shall notify someone in the office of their absence. This notification shall be made within 30 minutes of the start of their scheduled shift.
- 5-9 While on sick leave, members shall not work at another job. The Fire Chief may make exceptions to this rule with appropriate medical clearance.

- 5-10 Members who use sick leave shall sign a personnel action form and shall indicate on the form the reason for their absence.
- 5-11 Members who are members of the “Doubling List” and whose sick leave is exhausted are allowed to have other members work for them in accordance with the guidelines on substitutes and rules of the “Doubling List” as established by the members.

#### **Section 6 Military Leave**

- 6-1 Fifteen (15) days of military leave per Federal fiscal year are available to members of the reserves or National Guard. This military leave may be taken for weekend drills, annual duty, specialized training, or any other active military duty.
- 6-2 Members must notify their chain of command as far in advance as possible of the need to take military leave.

#### **Section 7 Return from Active Military Duty**

- 7-1 Return from active military duty will be handled in accordance with USERRA and applicable sections of Civil Service law.
- 7-2 In order to be eligible to be returned to duty after a period of military service, a member must meet each of the following requirements:
  - a) Member must have received an honorable discharge or other honorable separation from service
  - b) Member must remain physically and mentally fit to discharge the duties of their position
  - c) Member must make application for reinstatement within the time limits established in USERRA
  - d) Member must maintain current required certifications, including TCFP structure firefighter and DSHS Emergency Medical Technician
- 7-3 To determine physical fitness for duty, members may be required to complete an entry physical and the incumbent physical ability test
  - a) Members whose absence for military duty is greater than or equal to one year shall be required to take the physical and PAT
  - b) Members whose absence for military service is less than one year may be required to take the physical and PAT at the discretion of the Fire Chief
- 7-4 Mental fitness for duty will be assumed unless evidence indicates otherwise. If a question as to mental fitness arises, the Fire Chief will institute proceedings under Section 143.081 of Civil Service law.
- 7-5 At the discretion of the Fire Chief, an orientation and retraining period may be required prior to a returning member being assigned to fire suppression duties.

## Section 8 Substitutes

- 8-1 Members in operations division may employ substitutes (commonly called swap time) to work in their place.
- 8-18-2 ~~Members may have no more than 12 substitutions during the fiscal year (Oct. 1<sup>st</sup>-Sept. 30<sup>th</sup>), exceptions may be requested in writing to the Fire Chief.~~
- 8-28-3 When a member employs a substitute, the member is on duty for payroll purposes only. The substitute is on duty for all other purposes.
- 8-38-4 Members shall request approval for substitutes at least one shift in advance on the form provided for this purpose. The Company Officer shall recommend approval or disapproval of the substitution and forward the form to the Operations Chief. The Operations Chief shall make the final decision of approval or disapproval of the substitution. Operations Chief substitutes shall be approved or disapproved by the Fire Chief. Requests for substitutes received less than one shift in advanced may be considered at the discretion of the officers involved.
- 8-5 Members shall make a reasonable effort to employ a substitute of equal rank. In every case, substitutes shall be qualified to perform the duties of the position filled. Members shall not employ substitutes more than one rank below their own. ~~Operations Chiefs may make exceptions to this rule if sufficient qualified members are available to fill all positions, any moving by members is voluntary, no step up pay is created, and no major disruption of the crew is created.~~
- 8-6 ~~Substitutions are time for time only, no other form of remuneration is allowed regardless of the circumstance.~~
- 8-48-7 ~~Members working overtime are not permitted to employ a substitute.~~
- 8-58-8 Station officers shall record substitutes in the company log book. Operations Chiefs shall record substitutes in the Operations Chief's log book and on the status report.
- 8-68-9 Members shall not work another job while off with a substitute with the exception of required military reserve drills.
- 8-78-10 Any substitute arrangements that will result in a member being off multiple shifts ~~over an extended period of time will shall~~ not be approved.
- 8-88-11 ~~Substitutes may be employed to attend college or university classes but not between the hours of 7:00 a.m. and 5:00 p.m. weekdays.~~
- 8-98-12 Receiving time off by employing a substitute is a privilege, not a right. Members who abuse this privilege are subject to disciplinary action and/or having this privilege revoked on an individual basis at the discretion of the Fire Chief.

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## Section 9 Disciplinary Action

- 9-1 All disciplinary action taken shall be taken in accordance with State and local Civil Service rules and regulations and in accordance with any applicable federal, state, and local statutes.
- 9-2 The degree of disciplinary action that may be taken by the Fire Department is as follows:
  - a) Oral reprimand (including documented oral reprimand)
  - b) Written reprimand
  - c) Demotion
  - d) Temporary suspension without pay.
  - e) Indefinite suspension without pay.
- 9-3 Action taken will depend on the degree of the offense, the record of the offender, and the seriousness of the consequences of the violation.
- 9-4 Company officers and Battalion Chiefs may give oral reprimands. If desired, these officers may document these oral reprimands to the Fire Chief on the form provided.
- 9-5 All levels of disciplinary action other than oral reprimand shall be given by the Fire Chief. Officers who believe disciplinary action is needed shall initiate such action by letter through channels to the Fire Chief. Officers shall include in this letter a description of the problem, any supporting evidence or documentation, and a recommendation for action.
- 9-6 Any member subject to disciplinary action shall be given an opportunity to present any information he/she has or any mitigating circumstances prior to disciplinary action being taken.
- 9-7 The Fire Chief shall have the final decision in all disciplinary matters, subject to appeal procedures in civil service statutes.

## Section 10 Promotional Procedures

- 10-1 The Fire Chief shall make all promotions in accordance with Texas civil service law and City of Texarkana, Texas Civil Service Rules and Regulations.
- 10-2 At least two copies of all books on promotional reading lists will be available at the Texarkana Public Library. One copy of each book will be kept in the library and will be available to study there. One or more copies of each book will be available to members to check out. Books shall be checked out for seven (7) days only. Books shall not be checked out consecutively by the same person

- 10-3 Books on promotional reading lists may be available from the Fire Department library. When a promotional exam is not posted, members may check out these books in accordance with normal procedures. From the time an exam notice is posted until an exam is given, members may check out these books for no longer than seven (7) consecutive days. Books shall not be checked out consecutively by the same person.
- 10-4 From the time an exam notice is posted until an exam is given, only those members eligible to take that promotional exam may check out study material for that exam. This applies both at the public library and at the department library.
- 10-5 Members shall return any books that are on the reading list for a currently posted promotional exam in a prompt manner and no later than the due date. Failure to return books on time will result in disciplinary action.
- 10-6 Members shall not take promotional exams while on duty; however, members may employ a substitute while taking a promotional exam.
- 10-7 Members must make arrangements to be present when an exam is given regardless of vacation or other leave time.
- 10-8 The Civil Service Director shall schedule the date, time, and location of exams. Member's dates of eligibility for the exam will not be consulted when scheduling the exam.

#### **Section 11 Overtime Hiring and Emergency Recall**

##### **11-1 Routine Overtime Hiring**

- a) Routine overtime hiring must be done in a consistent manner to insure fairness to all members. Circumstances in hiring vary. Generally, someone must be hired immediately. Sometimes time is not a concern within reasonable limits. Be sure that all members are afforded the same opportunity to work if they so desire, within the guidelines imposed by these rules.
- b) Overtime hiring worksheets will be provided for each crew. Each crew's worksheet will have the names of members on the other two crews listed in order of seniority. Care must be exercised to be certain that the appropriate worksheet for the crew on duty is used.
- c) The last member hired will be listed in the Operations Chief log book and on the list kept in the Operations Chief's office for that purpose. Each shift will have a separate column on the "last hired" sheet.
- d) When hiring, the member calling (normally the Operations Chief) will start with the first name on the overtime hiring worksheet under the person last hired.

- e) Members will be called in the order that their name appears on the worksheet. No member will be skipped except for reasons listed in this procedure. If a member is hired, write the time hired for and the station on the left side of their name. If a member is not hired, indicate the reason on the right side of their name.
- f) Overtime hiring will be for ½ shift at a time under normal circumstances. All daytime slots will be filled prior to hiring evening slots.
- g) Members will be utilized at their rank whenever possible. If not possible, they will be utilized at the highest available position below their rank.
- h) Members must be capable of filling the position needed. Members who cannot drive fire department vehicles, including those on probation, may be hired if sufficient personnel are available to fill required driver and officer positions. (Except see policy on probationary firefighters for exception during first few months of employment.) Otherwise, no member should be excluded from working overtime if arrangements can reasonably be made to fill all required positions.
- i) Members on sick leave will not be hired overtime. For purposes of overtime, sick leave begins when a member calls in sick and does not end until the member reports back to work. For example, a member is off on sick leave 24 hours on Monday. His next scheduled shift is Thursday. He is not eligible for overtime on Tuesday or Wednesday.
- j) Members on vacation are not eligible for overtime. For purposes of overtime, vacation leave begins at the time a member is actually off work and ends when he reports back. For example, a member's vacation starts at 7:00 AM on April 15 and he reports back to work at 7:00 AM on April 30. He is eligible for overtime on April 13 and 14, but he is not on April 28 or 29. This rule is written for purposes of consistency. This is being approached in different ways by different people.
- k) Members off on holiday, vacation, or incentive leave of one shift or less are ineligible for overtime only on their shift while they are actually on leave. For example, a member takes a holiday on Monday night. He is eligible for overtime on Tuesday.



- l) Operations Chiefs may consider response time in the hiring process. For example, it is 06:45 and the next person on the list for hiring lives approximately 90 minutes away. The position needs to be filled at 07:00 or someone will be forced to stay overtime. It is appropriate to skip the out of town person and go down the list to someone who lives closer. It would not be appropriate to skip someone if the hiring is being done for the PM shift and there is sufficient time for travel. The Operations Chief needs to use judgment in this process. He must balance giving equal rights to overtime work to all members against the immediate need to fill an open position. If a member is skipped when hiring for daytime because of travel time, the skipped member(s) shall be considered for the PM shift if needed.
- m) When calling for overtime, always identify yourself and the purpose of your call to the person answering the phone even if the member is not home. If you reach an answering machine, leave this information on the machine. This is the proper and courteous thing to do and helps prevent complaints that the member was not called.
- n) Phone rings are only 5 seconds apart. Always let the phone ring at least 6 times before hanging up and writing "no answer" on the call sheet.
- o) Both primary and secondary contact numbers are shown on the overtime sheet. Primary numbers will always be called. Secondary numbers are shown for convenience sake and are not required to be called. Be consistent. If you call the secondary number for one person, call them for all.
- p) Show equal consideration to all members when hiring overtime. Each member deserves an equal chance to work. If you have time to let one member's spouse call him to call you back, treat all the same. Favoritism has no place in the hiring process.
- q) Only members assigned to Operations Division are eligible for regular overtime in Operations Division. New members who have not completed training and members assigned to other divisions are not eligible. Members are not eligible for regular overtime on their own shift.

### 11-2 Emergency Recall

- a) Emergency recall hiring will be handled differently. If an entire shift is needed to be recalled, or all off duty personnel, the Incident Commander should request the dispatcher to initiate a recall of a particular shift or shifts through the "Code Red" system. When the Incident Commander needs a certain number of personnel (less than a full shift), he should contact the investigator on call and request that the investigator initiate a recall of personnel until he has contacted the required number. Members living in the immediate Texarkana area will be called before those who travel any significant distance. No particular order of calling is required in an emergency recall. Any members who can be reached will be hired.

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- e) Members shall use care in selecting outside employment to ensure that the employment does not create a conflict of interest with regard to their Fire Department employment.
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#### 12-2 Flower Fund

- a) A flower fund has been established in the Fire Department. This fund shall be maintained to provide flowers in accordance with these guidelines.
- b) When the balance in the fund is depleted, the Battalion Chiefs in charge of each crew and division will collect a contribution from each participating member. The particular amount of the contribution will be determined by the Fire Chief. Participation by members is voluntary.
- c) The flower fund will be administered by the Fire Department Administrative Coordinator. The Administrative Coordinator will receive and deposit all contributions, make payments, and place orders. In the absence of the Administrative Coordinator, the Fire Chief or a member designated by the Fire Chief will administer the fund.
- d) Flowers will be sent to the funeral of a current member, the immediate family of a current member, or a retired member. For purposes of this section, immediate family is defined as husband, wife, son, daughter, father, mother, brother, sister, father-in-law, or mother-in-law.
- e) If requested by the family of the deceased, a contribution may be made to a chosen charity in lieu of sending flowers.
- f) Members who become aware of a death in one of these categories shall notify the Battalion Chief on duty. The Battalion Chief shall notify the Fire Chief so that necessary arrangements can be made.

#### 12-3 Nepotism

- a) City personnel guidelines regulate nepotism within the City government. Refer to the personnel guidelines for exact wording.
- b) Within the Fire Department, the nepotism rules will be applied as follows:
  - i) Two related members will not be allowed to work at the same station.
  - ii) Two related Captains will not be allowed to work on the same crew.
  - iii) No member shall supervise, directly or indirectly, a related member.
- c) As long as the requirements in 3-9.02 above are not violated, related members may work on the same shift. Operations Chiefs should make a reasonable effort to accommodate related members when a related member is eligible for overtime on his relative's shift.
- d) Related members will not normally be permanently assigned to the same crew. While legal, it would present scheduling problems if the restrictions had to be dealt with on a regular basis.

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- a) In order to maintain consistency between City personnel guidelines and Fire Department policies while maintaining an awareness of differences in Fire Department schedules, the following policy will be followed in regard to attending training or college & university classes on duty days.
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  - ii) Regular college classes may not be attended on duty regardless of job relationship except for classes that are required by the department.
  - iii) Shorter seminars (one or two day) that are job related will be considered on an individual basis by the Fire Chief.
- b) Exceptions to the above policy may be made if the Fire Chief considers a particular class beneficial to the department as a whole and the exception is reasonable.

12-5 Public Service Leave

- a) A member called to jury duty or subpoenaed to testify as a witness will receive public service leave during the time of the court appearance.
- b) If a member is not selected for a jury, the member will return to work immediately after being dismissed by the judge.
- c) If a member is selected to serve on a jury, the member will return to work after the completion of the trial and dismissal by the judge.
- d) A member called as a witness will return to work as soon as released by the judge.
- e) The above guidelines are general. Obviously, if a member is selected for a jury but does not have to report for an extended period of time, he should work when scheduled in the interim. Common sense must be used in applying these guidelines.
- f) All members shall document court appearance requirements by providing a copy of the juror summons or the subpoena.

12-6 Member Telephone Numbers

- a) All members are required to provide their home telephone number for contact during off duty hours.
- b) Normally, member phone numbers will be posted at all fire stations and in the Operations Chief's office.
- c) If a member requests in writing, his phone number will be omitted from the lists posted at the fire stations. It will still be included on the list posted at the Operations Chief's office.

- d) Member's phone numbers are not to be released to callers. If a request is received for a member phone number, advise the caller that the number cannot be released. Offer to take the caller's name and phone number and relay the information to the member as soon as possible. Always maintain a professional and courteous attitude when dealing with this situation.

[illegible]

[illegible]



[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

| Names         | Count | Shifts | O/U B1 | 2016   |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |  |  |  |  |  |  |
|---------------|-------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--|--|--|--|--|--|
| McKinnon, B   | 2     | 78     | -3     | 1-Mar  | 19-Mar |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |  |  |  |  |  |  |
|               | 0     |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |  |  |  |  |  |  |
|               | 0     | 81     | 0      |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |  |  |  |  |  |  |
| Mixon, Jimmy  | 0     |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |  |  |  |  |  |  |
|               | 0     | 81     | 0      |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |  |  |  |  |  |  |
| Moore, D      | 3     |        |        | 16-May | 2-Jun  | 21-Jul |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |  |  |  |  |  |  |
|               | 20    | 98     | 17     | 25-Jan | 31-Jan | 3-Feb  | 12-Feb | 7-Mar  | 27-Apr | 29-Apr | 6-May  | 9-May  | 21-May | 30-May | 2-Jun  | 11-Jun | 17-Jun | 26-Jun | 2-Jul  | 11-Jul | 26-Jul | 29-Jul | 16-Aug |  |  |  |  |  |  |
| Newman, D     | 1     |        |        | 27-Aug |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |  |  |  |  |  |  |
|               | 2     | 82     | 1      | 13-May | 11-Aug |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |  |  |  |  |  |  |
| Norwood, M    | 1     |        |        | 21-May |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |  |  |  |  |  |  |
|               | 1     | 81     | 0      | 26-Jan |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |  |  |  |  |  |  |
| Page, S       | 0     |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |  |  |  |  |  |  |
|               | 0     | 81     | 0      |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |  |  |  |  |  |  |
| Peeples, L    | 5     |        |        | 8-Feb  | 17-Apr | 14-May | 10-Jun | 24-Aug |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |  |  |  |  |  |  |
|               | 1     | 77     | -4     | 27-May |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |  |  |  |  |  |  |
| Phillips, C   | 3     |        |        | 7-Jan  | 7-Mar  | 6-May  |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |  |  |  |  |  |  |
|               | 3     | 81     | 0      | 1-Apr  | 10-Apr | 14-Apr |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |  |  |  |  |  |  |
| Raschke, R    | 0     |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |  |  |  |  |  |  |
|               | 4     | 85     | 4      | 7-Jan  | 26-May | 2-Jul  | 23-Jul |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |  |  |  |  |  |  |
| Rich, D       | 0     |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |  |  |  |  |  |  |
|               | 0     | 81     | 0      |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |  |  |  |  |  |  |
| Robertson, S  | 5     |        |        | 29-Apr | 27-May | 2-Jul  | 13-Jul | 14-Jul |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |  |  |  |  |  |  |
|               | 4     | 80     | -1     | 29-Apr | 3-Jun  | 18-Jun | 24-Jul |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |  |  |  |  |  |  |
| Robison, B    | 1     |        |        | 9-May  |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |  |  |  |  |  |  |
|               | 5     | 85     | 4      | 5-Mar  | 8-Apr  | 18-Jun | 22-Jun | 30-Jul |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |  |  |  |  |  |  |
| Rogers, S     | 0     |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |  |  |  |  |  |  |
|               | 0     | 81     | 0      |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |  |  |  |  |  |  |
| Shelton, L    | 0     |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |  |  |  |  |  |  |
|               | 0     | 81     | 0      |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |  |  |  |  |  |  |
| Sikes, A      | 0     |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |  |  |  |  |  |  |
|               | 0     | 81     | 0      |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |  |  |  |  |  |  |
| Smith, K      | 1     |        |        | 15-Feb |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |  |  |  |  |  |  |
|               | 16    | 96     | 15     | 12-Apr | 15-Apr | 26-Apr | 12-May | 27-May | 2-Jun  | 11-Jun | 17-Jun | 25-Jun | 26-Jun | 2-Jul  | 8-Jul  | 29-Jul | 13-Aug | 25-Aug | 31-Aug |        |        |        |        |  |  |  |  |  |  |
| Smith, M      | 0     |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |  |  |  |  |  |  |
|               | 5     | 86     | 5      | 30-Jan | 8-Feb  | 19-Mar | 14-Apr | 17-Apr |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |  |  |  |  |  |  |
| Smith, N      | 2     |        |        | 26-Jan | 6-Jul  |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |  |  |  |  |  |  |
|               | 1     | 80     | -1     | 19-Jul |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |  |  |  |  |  |  |
| Stringer, J   | 19    |        |        | 25-Jan | 12-Feb | 12-Apr | 15-Apr | 27-Apr | 12-May | 21-May | 27-May | 11-Jun | 14-Jun | 23-Jun | 26-Jun | 2-Jul  | 26-Jul | 29-Jul | 13-Aug | 25-Aug | 28-Aug | 31-Aug |        |  |  |  |  |  |  |
|               | 0     | 62     | -19    |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |  |  |  |  |  |  |
| Taylor, J     | 9     |        |        | 22-Jan | 24-Feb | 1-Mar  | 12-Apr | 9-May  | 24-May | 14-Jun | 26-Jul | 22-Aug |        |        |        |        |        |        |        |        |        |        |        |  |  |  |  |  |  |
|               | 3     | 75     | -6     | 11-Feb | 5-Apr  | 7-Jul  |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |  |  |  |  |  |  |
| Thompson, B   | 1     |        |        | 26-Jan |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |  |  |  |  |  |  |
|               | 0     | 80     | -1     |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |  |  |  |  |  |  |
| Weerts, C     | 1     |        |        | 5-Mar  |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |  |  |  |  |  |  |
|               | 2     | 82     | 1      | 8-Apr  | 9-May  |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |  |  |  |  |  |  |
| Whitehurst, B | 0     |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |  |  |  |  |  |  |
|               | 0     | 81     | 0      |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |  |  |  |  |  |  |
| Wilkie, C     | 0     |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |  |  |  |  |  |  |
|               | 0     | 81     | 0      |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |  |  |  |  |  |  |
| Ytzen, D      | 1     |        |        | 11-Jun |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |  |  |  |  |  |  |
|               | 0     | 80     | -1     |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |  |  |  |  |  |  |
| Craig, K      | 0     |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |  |  |  |  |  |  |
|               | 0     | 81     | 0      |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |  |  |  |  |  |  |
| Ragsdale, J   | 0     |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |  |  |  |  |  |  |
|               | 0     | 81     | 0      |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |  |  |  |  |  |  |
| Rogers, B     | 0     |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |  |  |  |  |  |  |
|               | 0     | 81     | 0      |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |  |  |  |  |  |  |
| Williams, J   | 0     |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |  |  |  |  |  |  |
|               | 0     | 81     | 0      |        |        |        |        |        |        |        |        |        |        |        |        | </     |        |        |        |        |        |        |        |  |  |  |  |  |  |

**§ 553.31****29 CFR Ch. V (7–1–11 Edition)**

in the case of public safety employees as discussed below in section (3)), as well as all the facts and circumstances in a particular case, in determining whether employment in a second capacity is substantially different from the regular employment.

(3) For example, if a public park employee primarily engaged in playground maintenance also from time to time cleans an evening recreation center operated by the same agency, the additional work would be considered hours worked for the same employer and subject to the Act's overtime requirements because it is not in a *different capacity*. This would be the case even though the work was *occasional or sporadic*, and, was not regularly scheduled. Public safety employees taking on any kind of security or safety function within the same local government are never considered to be employed in a *different capacity*.

(4) However, if a bookkeeper for a municipal park agency or a city mail clerk occasionally referees for an adult evening basketball league sponsored by the city, the hours worked as a referee would be considered to be in a different general occupational category than the primary employment and would not be counted as hours worked for overtime purposes on the regular job. A person regularly employed as a bus driver may assist in crowd control, for example, at an event such as a winter festival, and in doing so, would be deemed to be serving in a different capacity.

(5) In addition, any activity traditionally associated with teaching (e.g., coaching, career counseling, etc.) will not be considered as employment in a *different capacity*. However, where personnel other than teachers engage in such teaching-related activities, the work will be viewed as employment in a *different capacity*, provided that these activities are performed on an occasional or sporadic basis and all other requirements for this provision are met. For example, a school secretary could substitute as a coach for a basketball team or a maintenance engineer could provide instruction on auto repair on an occasional or sporadic basis.

**§ 553.31 Substitution—section 7(p)(3).**

(a) Section 7(p)(3) of the FLSA provides that two individuals employed in any occupation by the same public agency may agree, solely at their option and with the approval of the public agency, to substitute for one another during scheduled work hours in performance of work in the same capacity. The hours worked shall be excluded by the employer in the calculation of the hours for which the substituting employee would otherwise be entitled to overtime compensation under the Act. Where one employee substitutes for another, each employee will be credited as if he or she had worked his or her normal work schedule for that shift.

(b) The provisions of section 7(p)(3) apply only if employees' decisions to substitute for one another are made freely and without coercion, direct or implied. An employer may suggest that an employee substitute or "trade time" with another employee working in the same capacity during regularly scheduled hours, but each employee must be free to refuse to perform such work without sanction and without being required to explain or justify the decision. An employee's decision to substitute will be considered to have been made at his/her sole option when it has been made (i) without fear of reprisal or promise of reward by the employer, and (ii) exclusively for the employee's own convenience.

(c) A public agency which employs individuals who substitute or "trade time" under this subsection is not required to keep a record of the hours of the substitute work.

(d) In order to qualify under section 7(p)(3), an agreement between individuals employed by a public agency to substitute for one another at their own option must be approved by the agency. This requires that the agency be aware of the arrangement prior to the work being done, i.e., the employer must know what work is being done, by whom it is being done, and where and when it is being done. Approval is manifest when the employer is aware of the substitution and indicates approval in whatever manner is customary.





U.S. Department of Labor  
Employment Standards Administration  
Wage and Hour Division  
Washington, D.C. 20210

November 23, 2004

FLSA2004-23

Dear **Name\***,

This is in response to your letter requesting an opinion letter concerning the issue of "donating" and "exchanging" time under section 7(p)(3) of the Fair Labor Standards Act (FLSA) for firefighters employed by the **Name\***. We regret the long delay in responding.

A firefighter suffered an injury and was unable to work for an extended period. Her fellow firefighters decided to work her regular shift to ensure that her pay and benefits would continue uninterrupted. The employer, after becoming aware of this practice, disallowed it, and stated that the injured firefighter would be required to repay all the donated time. A discussion between you and a member of my staff on March 9, 2004, revealed that this employee has not worked for about four months, and during that time up to nine of her co-workers voluntarily substituted in her place during her scheduled shifts. On average, each of the firefighters substituted one 24 hour shift on her behalf.

You ask whether a group of firefighters may "donate" time to another firefighter by working in her place during her regular shift schedule in order for her to receive regular pay. The FLSA does not use the terms "donate" or "exchange," but rather uses the term "substitute." Generally, the FLSA and the implementing regulations provide that public agency employees may agree to substitute for each other and that the pay of both the substituting and substituted employee is unaffected. These provisions would permit the scenario described in your letter as long as the "substitution" comports with the statutory and regulatory substitution requirements set out below.

Section 7(p)(3) of the FLSA provides that two individuals employed in the same capacity by the same public agency may agree, solely at their option and with the approval of the public agency, to substitute for one another during scheduled work hours. 29 U.S.C. §207(p)(3). It further states that the hours worked by the substituting employee shall be excluded by the public agency in the calculation of the hours for which the substituting employee is entitled to overtime compensation under the Act. The implementing regulations provide that when "one employee substitutes for another, each employee will be credited as if he or she had worked his or her normal work schedule for that shift." 29 CFR §553.31(a).

The regulations limit the application of section 7(p)(3) to situations where the "employees' decisions to substitute for one another are made freely and without coercion, direct or implied. An employer may suggest that an employee substitute or 'trade time' with another employee working in the same capacity during regularly scheduled hours, but each employee must be free to refuse to perform such work without sanction and without being required to explain or justify the decision. An employee's decision to substitute will be considered to have been made at his/her sole option when it has been made (i) without fear of reprisal or promise of reward by the employer, and (ii) exclusively for the employee's own convenience." 29 CFR §553.31(b).

The implementing regulations also provide guidance on satisfying the statutory requirement for a public agency to approve an agreement between employees to substitute for one another. This approval requirement is satisfied "when the employer is aware of the substitution and indicates approval in whatever manner is customary." 29 CFR §553.31(d).

Finally, there is no provision in section 7(p)(3) or its implementing regulations that could be construed to require one individual to "repay" the other individual who agrees to a work substitution arrangement. Previous opinion letters issued by the Wage and Hour Division, dated January 2, 1987 and December 13, 1993, have stated consistently that there is no FLSA requirement that an employee substitute in turn in order to pay back the other employee. This is a matter left for the parties to resolve.

You also ask whether a firefighter may substitute shifts with more than one firefighter at any one time.



U.S. Department of Labor  
Employment Standards Administration  
Wage and Hour Division  
Washington, D.C. 20210

Neither section 7(p)(3) nor its implementing regulations limit the number of substitutions between employees. See January 2, 1987 opinion letter. However, as mentioned above, an agreement between individuals employed by a public agency to substitute for one another at their own option must be approved by the agency. Additionally, section 7.7 of the collective bargaining agreement between the **Name\*** and the **Name\*** Professional Fire Fighters Union Local 3174 is consistent with this requirement by noting that employees "may exchange shifts if advance approval is obtained from the Fire Chief, and there shall be no liability for overtime pay as a result of the shift exchange." Thus, while both section 7(p)(3) and the collective bargaining agreement require employer approval to substitute work performed by one employee for another employee, neither prohibits a public agency from limiting the number of times work substitutions can be exchanged.

This opinion is based exclusively on the facts and circumstances described in your request and is given on the basis of your representation, explicit or implied, that you have provided a full and fair description of all the facts and circumstances which would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your request might require a different conclusion than the one expressed herein. You have represented that this opinion is not sought by a party to pending private litigation concerning the issue addressed herein. You have also represented that this opinion is not sought in connection with an investigation or litigation between a client or firm and the Wage and Hour Division or the Department of Labor.

We trust that the above is responsive to your inquiry.

Sincerely,

Alfred B. Robinson, Jr.  
Acting Administrator

*Note: \* The actual name(s) was removed to preserve privacy.*

**TTFD-Schlotter, Eric**

**From:** Melissa Cranford <cranford@laborcounsel.net>  
**Sent:** Wednesday, July 22, 2015 10:35 AM  
**To:** TEX-Powell, Jim  
**Subject:** SWAP time issue

CONFIDENTIAL COMMUNICATION: PROTECTED BY ATTORNEY-CLIENT PRIVILEGE

Dear Jim:

Per our conversation of yesterday, please be advised that the City has a large area of discretion in regulating the practice of shift swapping in the fire department. Please find some of the options we discussed below, from most restrictive to least:

1. Prohibit employees from engaging in shift swapping. (The only caution I would add, is that it needs to be applied uniformly and in both the police and fire departments.)
2. Prohibit employees from paying workers directly. (This is probably a good limitation for a number of reasons, as the City does have some exposure in allowing an individual to work if it results in either a minimum wage violation or an overtime deficit because of additional time worked for which the employee would not receive a time and a half equivalent. Allowing the extra shifts also drives up the potential cost of overtime if paid in accordance with the FLSA and the City's payroll practices. Further, by allowing an employee to pay a co-worker out of pocket to work instead of a time-for-time swap results likely results in a non-payment of payroll taxes and proportional retirement benefits.)
3. Require a minimum number of hours to be worked by each employee per pay period or per month. (This restriction is also backed up by the guidelines for the Affordable Care Act. Under the ACA, to be considered a full-time employee and eligible for employee sponsored coverage, employees must work 30 hours per week. Employees who are not working 30 hours per week, but are accepting benefits may be engaging in fraudulent conduct under the insurance plan. Employers who knowingly allow the employee's conduct may also encounter liability through the plan documents.)
4. Require a minimum number of shifts to be worked per pay period or per month.
5. Require that shift swap be paid back within a pay period.
6. Require approval from supervisor to engage in shift swapping
7. Prohibit shift swapping between ranks. (i.e., only drivers may work for drivers.)

These are some of the most obvious and common limitations, but a combination of any of these rules may also be instituted. Please let me know what questions you might have in forming a policy.

Kindest regards,

Melissa H. Cranford



Approved;

C. P. Birmingham, Fire Chief

Texarkana, Texas  
December 15th, 1954To: C. P. Birmingham  
Chief Fire Department  
Texarkana, Texas

We; the undersigned members of the Texarkana, Texas Fire Department, desire to make the following agreement. It is agreed and understood by and between each of the undersigned that in the event any of us should become sick or disabled to the extent that we are unable to carry out our duties in the Fire Department., and after all sick leave has been exhausted by the man affected that we agree to "double" for him. Providing however, that the following provisions are complied with.

(1) No member is to be actively engaged in gainfull employment while receiving the benefits of this agreement. If the members of this agreement feel that this provision is being violated or abused they can by a majority vote "expell" the member in question.

(2) No member is required to work (double) during his vacation or specified (regular) day off.. However this provision is optional and should a man elect to work during these periods he can do so. Should a member desire ~~not~~ to work during these periods he is required to make up the time at a later date. Each mans cooperation will contribute to the success of this agreement.

agreement

(3) The members of this ~~xxxx~~ request the Chief and Department Officers to allow the men that are doubling to work at the station where the vacancy exists, as a result of man being off sick or disable. However this request is made with the thought in mind of maintaining the efficiency of the Department at all times.

EACH UNDERSIGNED MEMBER IS ENTITLED TO RECEIVE DOUBLING BENEFITS OF 180 WORKING DAYS (not to exceed 180 work days)

|          |                    |                        |          |
|----------|--------------------|------------------------|----------|
| Resigned | <i>[Signature]</i> | <i>E. D. Dixon</i>     | Retired  |
| Deceased | <i>[Signature]</i> | <i>A. H. Jamell</i>    | Retired  |
| 3        | <i>[Signature]</i> | <i>H. D. Schlink</i>   | Retired  |
| 4        | <i>[Signature]</i> | <i>G. F. Slaton</i>    |          |
| 5        | <i>[Signature]</i> | <i>Joe A. Burnett</i>  | Resigned |
| 6        | <i>[Signature]</i> | <i>G. I. Bennett</i>   |          |
| 7        | <i>[Signature]</i> | <i>J. H. Hughes</i>    | Resigned |
| Deceased | <i>[Signature]</i> | <i>Joe H. Gill</i>     |          |
| 9        | <i>[Signature]</i> | <i>Joe E. Benjamin</i> | Retired  |
| Retired  | <i>[Signature]</i> | <i>B. W. Galt</i>      |          |
| Retired  | <i>[Signature]</i> | <i>H. E. McSee</i>     |          |
| 12       | <i>[Signature]</i> | <i>B. J. Chapman</i>   | Retired  |
| Resigned | <i>[Signature]</i> | <i>J. H. L. Brown</i>  | Resigned |
| Retired  | <i>[Signature]</i> | <i>B. J. Fox</i>       |          |
| 15       | <i>[Signature]</i> | <i>Joe E. Pope</i>     | Deceased |
| 16       | <i>[Signature]</i> | <i>Edward Benzig</i>   |          |
| Resigned | <i>[Signature]</i> | <i>Clown R. Fin</i>    | Deceased |

Additional signatures to be made on the reverse side.

REGULAR MEETING  
DECEMBER 28, 1954  
7:00 P.M.

The City Council of the City of Texarkana, Texas, met in Regular Session in the Council Chambers of the Municipal Building, December 28, 1954 at 7:00 P.M. Mayor A. P. Miller, Jr. present and presiding.

CALL TO ORDER

Chief of Police Leon Arnold called the meeting to order.

ROLL CALL

On roll call the following Aldermen were present:

|                                        |                                       |
|----------------------------------------|---------------------------------------|
| Hon. J. R. Bryant, Alderman Ward 1     | Hon. N. S. Petty, Alderman Ward 5     |
| Hon. A. P. LeGrand, Alderman Ward 2    | Hon. C. E. Hervey, Alderman Ward 6    |
| Hon. Paul Blankenship, Alderman Ward 3 | Hon. Geo. McCoppin, Alderman at large |
| Hon. J. W. Poore, Jr., Alderman Ward 4 |                                       |

\* \* \* \* \*

\* \* \* \* \*

LIGHT, WATER AND FIRE

Alderman Petty discussed the matter of off duty firemen which was placed in his Committee at the last meeting.

ACTION TAKEN

Motion was made by Alderman Petty, seconded by Alderman Bryant, that firemen in the Fire Department of the City of Texarkana, Texas, shall be permitted to engage in agreements to double for sick or disabled fellow firemen, not sick, injured or disabled in line of duty, said doubling to be on a volunteer basis, without any compulsion from anyone. The sick, injured or disabled firemen shall be carried on the payroll of the City of Texarkana, Texas, after his sick leave has been exhausted so long as there is some qualified fireman of the Fire Department of the City of Texarkana, Texas, working for him during his tour of duty, and the period of time for such doubling shall not exceed 180 working days. For the purposes of clarity, if a fellow fireman agrees to double for the sick, injured or disabled employee, fails to present himself for work, the sick, injured or disabled firemen shall be considered absent without leave. If a fellow fireman presents himself for work and begins work, the fellow fireman will be considered in line of duty for all purposes, except pay purposes. If the fellow fireman violates any civil service rule while doubling for a sick, injured or disabled fireman, the fellow fireman shall be subject to such disciplinary action as though he were on his regular tour of duty.

On roll call the following Aldermen voted:

Yeas: Bryant, LeGrand, Blankenship, Poore, Petty, Hervey, McCoppin  
Yeas: 7  
Nays: None



**McKINNEY FIRE DEPARTMENT**  
ADMINISTRATIVE DIRECTIVE

|                            |                |
|----------------------------|----------------|
| Issued 08/09/2013          | Archived:      |
| Effective: 08/09/2013      |                |
| Revised: 05/21/15          |                |
| Authorized by: D T Kistner | Date: 05/21/15 |

## Trade-Out 1.028

| Related Directives/SOG/Memo's | Related Forms |
|-------------------------------|---------------|
|                               |               |

### 1.028.01 **PURPOSE:**

It is the purpose of this policy to outline and define the Trade-out Policy for the McKinney Fire Department.

### 1.028.02 **SCOPE:**

It is the policy of the McKinney Fire Department to allow shift personnel to trade with each other on a limited basis while meeting the needs of the Department. It shall be the responsibility of all members and Fire Department employees to be familiar, understand, and implement this directive.

### 1.028.03 **DEFINITIONS:**

**Trade-out** – By mutual agreement, one individual of equal classification is voluntarily working for another with the concurrence of their supervisors.

**Company Officer** – the officer (s) for whom a person works and officially reports.

### 1.028.04 **POLICY:**

- A. Company officers are responsible for their personnel; they have the authority to approve or deny trade-out requests.
- B. All trade-outs shall be on a time-for-time basis only.
- C. Trade-out shall be allowed on an “as needed” basis, regulated by the company officer. The members involved in the trade-out will be within the same classification and have the necessary knowledge and expertise to perform all the duties of the position. (e.g., Captain for

Captain, Driver for Driver, Firefighter for Firefighter). Duties, functions, and activities of a particular assignment shall not be compromised.

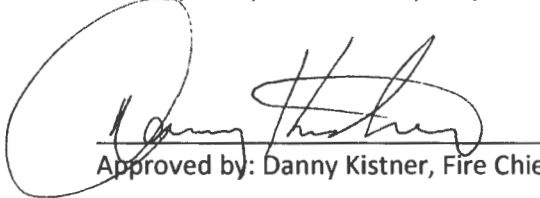
- D. Members are responsible for their particular shift. Members cannot delegate responsibility for their work shift to another. When a substitute does not or cannot report as agreed, the responsibility for securing another substitute remains with the member originally scheduled to work. If a substitute cannot be secured, the regularly scheduled member shall report for work as scheduled. If a substitute calls in sick or must leave due to illness or family emergency, the sick time will be charged to the regularly scheduled member.
- E. Trade-out records will be the responsibility of the members trading time. The company officer will be responsible for recording the trade on the Central Calendar as well as keeping all records in the stations trade-out log. Disputes should be settled at the company officer's level, then up the chain of command as required.
- F. Member will not be eligible for trade-outs while on probation for fire recruit or disciplinary probation.

**1.028.04      SUSPENSION:**

- A. Trade-out leave shall be considered a privilege, and as such, may be suspended. Any individual placed on trade-out suspension shall not give or receive new trade-outs for the duration of the suspension. Any outstanding time to be received or given by the suspended individual shall only be allowed upon approval of the Battalion Chief.

**1.028.05      EXCEPTIONS:**

- A. Any exceptions to this policy shall be at the discretion of the Fire Chief or designee.



Approved by: Danny Kistner, Fire Chief

|                                      |                                      |
|--------------------------------------|--------------------------------------|
| <b>Nacogdoches Fire &amp; Rescue</b> | <b>104.3</b>                         |
| <b>Standard Operating Procedure</b>  | <b>Leave Time – Exchange of Time</b> |
| Originally Issued: 00-00-00          | Approved By:                         |
| Last Revision: 07-13-11              |                                      |

|                   |                                                                                                                                                                                                                                                                                         |
|-------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>OBJECTIVE:</b> | The objective of this section is to establish guidelines regarding exchange of time that are in addition to those leave guidelines established in the City of Nacogdoches Personnel Policies guidebook. The following information is specific for Nacogdoches Fire & Rescue operations. |
|-------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

### **PHILOSOPHY**

Exchange of time between members increases flexibility among firefighters, improves employee morale and has a direct relationship to decreased use of sick and emergency leave.

### **STANDARD**

- I. Exchange of Time
  - A. Members may have another member work for them for a total of 96 hours each month. Exchange of time must meet other conditions of this section.
  - B. Exchanges of time are just that, exchanges of time. Members may work for others who can reasonably be expected to repay them with time (see subsection I(2) below for special circumstances). Members are not authorized to exchange time for remuneration other than like time itself.
  - C. All exchanges must be documented on the Department's Exchange of Time Agreement form and must be approved prior to the occurrence of the exchange.
  - D. A station officer has the authority and responsibility for approving or not approving Exchange of time request for Driver/Engineers and Firefighters.
  - E. With due cause, a BC may disapprove an Exchange of Time that was approved by a Captain.
  - F. A Battalion Fire Chief (BC) has the authority and responsibility for approving or not approving Exchange of time request for Captains.
  - G. With due cause, a BC may disapprove an Exchange of Time that was approved by a Captain.
  - H. Exchanges permitted:
    1. Battalion Fire Chief for Battalion Fire Chief
    2. Captain for Captain or Driver/Engineer
    3. Driver/Engineer for Captain, Driver/Engineer, or Firefighter
    4. Firefighter for Firefighter or Driver/Engineer
  - I. Exchange of Time form: The Exchange of Time form is to be filled out before the exchange of time takes place. This document is to cover any possible questions about why an employee was working other than their normal shift. Both parties must sign the form before the exchange takes place.
  - J. Special Circumstances:
    1. If an employee exhausts all leave time due to a major illness or accident, other members may at their own choice exchange time for that employee without the affected employee having to replace the time. Such situations must be approved by the Fire Chief



2. From time to time other situations occur that make non-traditional exchange of time appropriate (working outside of permitted ranks, extended family illness, etc.). Variances of this policy to accommodate those occasions require approval of the fire chief.
- K. Qualifying Situations:
1. An employee may not work for another employee on Exchange of Time after being absent due to sickness until they have completed their next shift assignment.
  2. If an Exchange of Time request was previously signed before an employee is off sick, it is the responsibility of the member who was to work to get someone else to take their place or notify the member for whom they were to work for that they cannot work. Any disciplinary action, docked pay, or charged leave time will be against the employee who was to work for another employee.
  3. Anyone on Firefighter Probation status is not eligible to work for another employee but they may have someone else work in their place.
  4. An employee on the same shift cannot take Vacation or Comp-time to Exchange Time with someone on their particular shift.
  5. An employee working overtime cannot get someone to work for him/her.
- L. Exceptions: Exceptions to this policy may be made in extenuating circumstances. Members who feel they have a need for an exception shall present their request in writing to their BC. The final decision will come from the Fire Chief.

## Legal Basis

### Texas Local Government Code

#### **Section 142.001. GENERAL PROVISIONS RELATING TO HOURS OF LABOR AND VACATION OF MEMBERS OF FIRE AND POLICE DEPARTMENTS IN MUNICIPALITIES.**

(d) Sections 142.0013, 142.0015, and 142.0017 do not prevent a fire fighter or police officer from working extra hours when exchanging hours of work with another fire fighter or police officer with the consent of the department head.

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### **29 CFR §553.31(a).**

#### **Title 29: Labor**

#### **Subtitle B: Regulations Relating to Labor (Continued)**

#### **CHAPTER V: WAGE AND HOUR DIVISION, DEPARTMENT OF LABOR**

#### **SUBCHAPTER A: REGULATIONS**

#### **PART 553: APPLICATION OF THE FAIR LABOR STANDARDS ACT TO EMPLOYEES OF STATE AND LOCAL GOVERNMENTS**

#### **Subpart A: General**

553.31 – Substitution - section 7(p)(3).

(a) Section 7(p)(3) of the FLSA provides that two individuals employed in any occupation by the same public agency may agree, solely at their option and with the approval of the public agency, to substitute for one another during scheduled work hours in performance of work in the same capacity. The hours worked shall be excluded by the employer in the calculation of the hours for which the substituting employee would otherwise be entitled to overtime compensation under the Act. Where one employee substitutes for another, each employee will be credited as if he or she had worked his or her normal work schedule for that shift.

(b) The provisions of section 7(p)(3) apply only if employees' decisions to substitute for one another are made freely and without coercion, direct or implied. An employer may suggest that an employee

substitute or trade time with another employee working in the same capacity during regularly scheduled hours, but each employee must be free to refuse to perform such work without sanction and without being required to explain or justify the decision. An employee's decision to substitute will be considered to have been made at his/her sole option when it has been made (i) without fear of reprisal or promise of reward by the employer, and (ii) exclusively for the employee's own convenience.

(c) A public agency which employs individuals who substitute or trade time under this subsection is not required to keep a record of the hours of the substitute work.

(d) In order to qualify under section 7(p)(3), an agreement between individuals employed by a public agency to substitute for one another at their own option must be approved by the agency. This requires that the agency be aware of the arrangement prior to the work being done, i.e., the employer must know what work is being done, by whom it is being done, and where and when it is being done. Approval is manifest when the employer is aware of the substitution and indicates approval in whatever manner is customary.

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |            |                           |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|---------------------------|
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |            |                           |
| <b>Exchange of Time Agreement</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |            |                           |
| <p>In accordance with Chapter 142 of the Texas Local Government Code, firefighters are eligible to exchange time for time with other firefighters with approval of the department head. Exchanges must be hour for hour unless otherwise approved by the Fire Chief (ex: extended illness, etc.). Exchanges for any remuneration other than time are not authorized.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |            |                           |
| Member Giving Exchange                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |            | Person Receiving Exchange |
| Date of Exchange                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Begin Time | End Time                  |
| This agreement is for a total exchange of _____ hours.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |            |                           |
| <b>CERTIFICATION</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |            |                           |
| <ul style="list-style-type: none"> <li>The member <u>giving the exchange</u> is responsible for reporting to the assigned station on the date and time shown to work.</li> <li>The member <u>giving the exchange</u> will be charged leave time or docked pay to cover any and all overtime cost as a result of failing to fulfill the terms of this Agreement and may be subject to disciplinary action.</li> <li>The member <u>giving the exchange</u> certifies that they are capable of performing the duties of the person they are working for.</li> <li>The member <u>giving the exchange</u> shall not be absent due to emergency or illness on their last shift prior to the exchange.</li> <li>The member <u>giving the exchange</u> is not on firefighter probationary status.</li> <li>Members may only receive 96 hours per month in exchanges unless approved by the Fire Chief.</li> <li>Exchanges must be approved in advance and may be denied for the good of the Department or other valid reason by the shift commander.</li> </ul> |            |                           |
| Member Receiving Exchange                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |            | Date                      |
| Member Giving Exchange                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |            | Date                      |
| Officer Authorizing Exchange                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |            | Date                      |



# Standard Operating Procedures/Guidelines

Revision Number

2

## Shift Adjustment Policy

Date Issued: 10/19/2012 • Date Revised: 09/09/2016

**Purpose:** This policy will serve as the guideline for personnel wishing to perform mutually agreed-upon shift adjustment(s). This policy will only address mutual shift adjustment(s) or "time-for-time" agreements. Effective with this policy, shift adjustments based on "time-for-cash" or "time-for-services" agreements **will no longer be an option.**

**Scope:** The *Shift Adjustment Policy (aka: Traded Hours/Shift Trade/Time Trade)* SOP/SOG applies to all members within the Operational field of the Longview Fire Department.

**Definitions:** TRO (Traded Hours Off) is the payroll code for the time off an employee is using.

TRW (Traded Hours Worked) is the payroll code for the time worked for another employee.

### I. Policy

- A.** An employee will be allowed no more than 10 shifts or 240 hours of TRO (Traded Hours Off) per calendar year. In addition, no employee will be allowed more than 10 shifts or 240 hours of TWO (Traded Hours Worked) per calendar year.
- B.** Employees participating in a mutually agreed-upon shift adjustment must be completely capable of fulfilling the expected job-duties of the individual with whom they are replacing.
- C.** Firehouse will be properly documented to reflect a shift adjustment taking place with the proper payroll codes TRW or TRO as the employee's Activity Code for that particular time/shift as well as the other mutually agreeing party.
- D.** When an employee wishes to arrange a shift adjustment they will notify their immediate supervisor not less than 24-hours prior to the scheduled date that the adjustment is to occur.
- E.** The Station Officer and/or Battalion Chief retain the authority to approve/deny any shift adjustment being requested at their discretion with reasonable justification.
- F.** Once a shift adjustment has been mutually agreed-upon at the individual-level and further approved at the supervisory-level, the responsibility of ensuring that the work expectation is met becomes that of the individual who agreed to cover the position. In the event that circumstances arise (sick, emergency, etc.) that prevent the adjustment from taking place as arranged, the responsibility to have the position covered remains with the individual who was expected to

work and any subsequent replacements must also meet all applicable work expectations.

- G.** The Training Section Chief must authorize (prior to Operational approval) all shift adjustments involving Apprentices and non-checked off Firefighter/Medics.
- H.** Violations of the Shift Adjustment Policy by exceeding the guidelines within the calendar year shall result in disciplinary action (Class II offense) and restriction from participating in future shift adjustments for a period of twelve months.

APPROVED:

  
J.P. Steelman, Fire Chief

# BURLESON FIRE DEPARTMENT



104.06

## Exchange of Time

### **Purpose**

The purpose of this policy is to establish the procedures to be followed when exchanging time with another employee.

### **Policy**

The Burleson Fire Department will allow exchanges of time when all stated procedures are followed.

### **Procedures**

The following conditions and guidelines will designate when a trade out will be allowed:

1. A Burleson Cobweb form must be completed online prior to trade date, to be placed on the calendar, and immediate supervisor notified by employee.
2. A new employee will not be eligible for exchange of time until they complete their probation.
3. An employee will be responsible for making up any mandatory training missed, if the trade alters any scheduled training or any planned special events.
4. At all times, persons in each assigned apparatus positions must have completed the appropriate qualifications in the Task Books (SOP 102.02, 102.03, 102.04).





# LUFKIN FIRE DEPARTMENT

## TRADE OUT POLICY

ADMINISTRATIVE  
DIRECTIVE  
125

5.7.m

| Issued/Revised: 02/15/2012, 02/10/2014<br>Effective: 02/15/2012, 03/12/2014<br>Reviewed: 01/14/2014 | <u>Related Directives/Memos/SOP</u>               | <u>Related Forms</u>        |
|-----------------------------------------------------------------------------------------------------|---------------------------------------------------|-----------------------------|
|                                                                                                     | AD 150 Sick Leave Policy<br>AD 190 General Orders | Trade Out Form at BC Office |

### 125.01 PURPOSE

To provide a standardized policy for managing trade outs within the department. This Directive details the guidelines for the following scenarios:

- A. Battalion Chief's Discretion
- B. Planned Trade Out
- C. Unplanned Trade Out
- D. Sick leave use by scheduled working employee
- E. Unexcused absence

### 125.02 BATTALION CHIEF'S DISCRETION

It shall be at the Battalion Chief's discretion whether to accept or deny the trading of a shift or any portion of a shift with another member or employee whether it is planned or unplanned. A trade out request form must be filled out and signed by both parties and the Battalion Chief prior to allowing a planned trade out. Failure to adhere to the following procedures may result in loss of trade out privileges and/or possible disciplinary action depending on circumstances, frequency, and/or severity.

It is the responsibility of the replacement to disclose to the affected Battalion Chief any lack of qualifications and/or capabilities with regard to their ability to perform all of the duties of the requesting employee. Disclosure is to take place prior to approval or disapproval of the trade-out.

### 125.03 PLANNED TRADE OUT:

A planned trade out is defined as one in which all paperwork has been completed and signed by the shift before the trade-out is to take place.

The required paperwork is the form on the clipboard at the office of the Battalion Chief. It must be completed and all required signatures obtained, as well as approved by the Battalion Chief. The trade-out should be placed on the department electronic calendar by the Battalion Chief or their designee, so that it will be noted when morning assignments are being completed.

Persons trading out must be of the **SAME** EMS certification level for the Lt. and FF positions. All persons trading out must be within one rank of each other. It should also be understood that if the person working is not trained to fill in a specialized position of the requesting employee, then the trade out will be refused on that basis.

This is the **PREFERRED** method of trading shifts.

### 125.04 UNPLANNED TRADE OUT:

The department recognizes that occasionally unforeseen personal events arise and employees need to be off within reasonable parameters and frequencies. When the concerned parties are unable to complete the required paperwork prior to the date the trade out is to occur the

Attachment: 2016-116 ATTH 11 City of Lufkin FD Policy (1545 : 2016-116 RES revising fire department swap time policy)

following procedure **MUST** be followed **WITHOUT** deviation.

- A. The person requesting the trade will contact their Battalion Chief (or designee) prior to the designated shift and request the trade. If the trade is approved, then the working employee will contact the affected Battalion Chief and verify that they will report for duty in place of the requesting employee.
- B. If the requestor is unable to contact their Battalion Chief they are to contact the on duty Battalion Chief and submit their request under the same procedure and in accordance with all other policies and procedures of the department.
- C. As soon as possible, on the shift in question, the working employee will complete all required paperwork.
- D. Failure to follow these procedures may result in the loss of trade out privileges which may be invoked by a Battalion Chief or the Fire Chief.

**125.05 SICK LEAVE USE BY REPLACEMENT EMPLOYEE:**

If an employee has been approved to work for another employee and then finds that they are sick and unable to work the shift then they are directed to call and attempt to find a replacement. If they are unable to find a replacement then they are directed to conform to the normal **sick leave procedure (AD 150)**. The person who was scheduled to work will be debited vacation, not the person who agreed to work the shift. The trade-out will need to be resolved between the affected employees.

**125.06 UNEXCUSED ABSENCE:** If the preceding policy is not followed, the employee will be considered to be AWOL, and appropriate departmental disciplinary policies will be adhered to. (See General Orders 190.29)



**Ted Lovett, Fire Chief**



|                                 |           |              |
|---------------------------------|-----------|--------------|
| STANDARD OPERATIONAL GUIDELINES | SECTION 6 | SUBSECTION B |
| EMPLOYEE SUBSTITUTIONS          |           | AUGUST 2013  |

Par. 01 **Purpose**

A. To establish appropriate policy, to be used by Paris Fire Department personnel, for regulating shift trades.

Par. 02 **Substitution Matrix**

A. The following applies:

1. A Deputy Chief may substitute for another Deputy Chief or for a “qualified” Captain.
  - a. *Qualified* – refers to the capabilities/experience of an employee who has previous experience stepping-up to the higher rank and can competently complete those duties at the higher ranking level (e.g., a Captain which has previously stepped up to the Deputy Chief position and has had Incident Command experience would be “qualified” to repay a Deputy Chief for a time trade).
2. A Captain may substitute for another Captain, a Driver Engineer, or for a Deputy Chief (if qualified).
3. A Driver Engineer may substitute for another Driver Engineer, a Firefighter, or a Captain (if qualified and then only at the discretion of that shift’s Deputy Chief), but **NOT** for a Deputy Chief.
4. A Firefighter may substitute for another Firefighter, or a Driver Engineer,
5. A Probationary Firefighter (PF) may substitute for another PF or a Firefighter, but only as allowed by the shift’s Deputy Chief of whom the substitution will be on.

Par. 03 **Prerequisites**

A. Substitutions are a privilege and are not to be abused and of equal rank wherever possible.

1. Substitutions are an equal time-for-time trade.
2. Substitutions do not qualify for step-up or any salary compensation.
  - a. An employee substituting for another employee at a higher ranking level does so without remuneration.
3. An employee may NOT pay cash or offer other considerations for future substitutions.
  - a. Monetary reimbursement for time already owed, however, may be permitted, but only with special permission of the Fire Chief.
  4. Each and every substitution must be verified by both shift’s Deputy Chief’s prior to a trade.
    - a. Deputy Chief’s must ensure that apparatus staffing and/or special skill needs are not jeopardized.
    - b. Once a trade has been verified with the DC’s involved, the substitute employee then becomes responsible for the duty.
      - aa. If the substitute employee fails to report for the substitute shift, that person (the substitute employee) will be considered AWOL and subject to loss in pay
      - bb. If, however, the proposed trade has not been verified with the Deputy Chief’s, then the person originally scheduled to work the shift will be responsible for the duty and, if the duty is not met, will be considered AWOL and subject to loss in pay.
5. A person substituting for an employee whose duties include driving/operating apparatus must have the Driver/Operator Certification.

|                                        |                  |                     |
|----------------------------------------|------------------|---------------------|
| <b>STANDARD OPERATIONAL GUIDELINES</b> | <b>SECTION 6</b> | <b>SUBSECTION B</b> |
| <b>EMPLOYEE SUBSTITUTIONS</b>          |                  | <b>AUGUST 2013</b>  |

6. An employee of rank, who is working as a substitute, will be used in a position of rank instead of utilizing “step-up” for another employee to fill the position.
  - a. An exception may be for training purposes as authorized by the Fire Chief.

**CITY OF SHERMAN FIRE DEPARTMENT**  
**STANDARD OPERATING PROCEDURES**  
 103 Exchange Time

Issued: 10/2001  
 Revised 01/2013  
 Page 1 of 4

**OBJECTIVE:** To establish guidelines for the substitution of time for members of the Sherman Fire Department

**103.01 EXCHANGE TIME**

- 103.01.01 Exchange time is voluntary and is a agreement between two members of the department. Members are responsible for tracking exchange time and "pay back" of time.
- 103.01.02 Exchange time shall not result in overtime, out of classification pay, mileage pay or other costs to the City of Sherman
- 103.01.03 The Station Officer being affected by the trade may approve substitution for all exchanges within the same rank and classification. Exchanges out of rank or classification must be approved by the Shift Commander. Once the Station Officer approves an exchange time he must notify the Shift Commander as soon as possible of the trade.
- 103.01.04 The request for substitution must be submitted no later than one (1) hour prior to the trade beginning. Request for exchange time must be completed on the Department Exchange time form. **Request via e-mail and verbal request** will not be accepted. In case of an emergency situation the affected Station Officer shall complete an exchange time form by proxy and note on the form that the form was approved without signature. (01/2013).
- 103.01.05 Members may exchange time with members who do not hold the same qualifications only if the Company efficiency will not be unduly affected by the trade time. Minimum Company efficiency will be defined as three EMT-P personnel at sub stations and a minimum of one EMT-P at Central Station.
- 103.01.06 Members may stay over or relieve early another member up to a maximum of 1.0 hours without having to complete an exchange time form. Approval must be granted from the Station Officer, who must then inform the Shift Commander. (01/2013)

*Approved and in effect. J J Jones, Fire Chief*

**CITY OF SHERMAN FIRE DEPARTMENT**  
**STANDARD OPERATING PROCEDURES**  
 103 Exchange Time

Issued: 10/2001  
 Revised 01/2013  
 Page 2 of 4

103.01.06.01 If, during the one (1) hour early relief or late relief, the member is required to respond to an incident, the member shall complete a request for overtime. (01/2013).

103.01.07 Sick leave by either member involved in the exchange time, prior or immediately after a trade time will result of forfeiture of trade time privileges for a period of three (3) months on the first occurrence. A second occurrence will result in forfeiture of trade time privileges for a period of six (6) months. This may be appealed to the Fire Chief.

103.01.08 It is understood that members trading time are expected to maintain any continuing education requirements missed at their own expense.

103.01.09 Battalion Chiefs desiring to exchanging time must obtain approval from the Fire Chief.

103.01.10 Exchange time must be completed (paid back) within the same calendar year (01/2013). Each member shall work the required number of shifts each calendar year, including approved leaves.(01/2013).

103.01.11 Under no circumstance shall a "Cash Sub" be allowed. Trade time is for time only and no other form of compensation shall be permitted. (01/2013).

## **103.02 RESPONSIBILITY**

103.02.01 When the exchange time has been approved by both members and approved by the supervisor, the employee who has agreed to work shall be responsible for the duty shift. When the employee who has agreed to work is unable to report as agreed, the responsibility for securing another substitute and getting the approval of the Shift Commander, remains his/her responsibility. (09/08).

*Approved and in effect. J J Jones, Fire Chief*

**CITY OF SHERMAN FIRE DEPARTMENT**  
**STANDARD OPERATING PROCEDURES**  
 103 Exchange Time

Issued: 10/2001  
 Revised 01/2013  
 Page 3 of 4

- 103.02.02 If the member who has agreed to work utilizes sick leave to cover the exchange time he will be required to verify the illness according to departmental policy. The member will be charged Sick Leave for the agreed hours and will be placed on trade time restriction for a period of three (3) months on the first occurrence. This may be appealed to the Fire Chief. (09/08).
- 103.02.03 A second occurrence will result in a forfeiture of exchange time privileges for a period of six (6) months. This may be appealed to the Fire Chief.
- 103.02.04 If the member who has agreed to work does not report for duty, that member will be considered to be in violation of Departmental Standard Operating Procedures and may be subject to disciplinary action. (09/08)
- 103.02.05 If the exchange time was not approved or submitted on the Department Trade Time Form, the responsibility for the duty hours remains with the person normally assigned to that shift. (09/08)
- 103.02.05 Members who are working exchange time, for any period of time, are considered "On Duty" and are subject to all department rules and regulations as well as City of Sherman Personnel Policies and Procedures. (10/08)
- 103.02.06 Members who are working exchange time are considered "On Duty" for purposes of protection under Worker Compensation and other like benefits. (10/08).

*Approved and in effect. J J Jones, Fire Chief*

**CITY OF SHERMAN FIRE DEPARTMENT**  
**STANDARD OPERATING PROCEDURES**  
 103 Exchange Time

Issued: 10/2001  
 Revised 01/2013  
 Page 4 of 4

**Sherman Fire Department**  
 Exchange Time Form

Name of member regularly scheduled for duty: \_\_\_\_\_

Name of member who will be working: \_\_\_\_\_

Date exchange will occur: \_\_\_\_\_

Hours exchange will occur: \_\_\_\_\_

Name of affected supervisor: \_\_\_\_\_

The undersigned members have agreed to trade time. Both members understand that a trade of time should be paid back. Both members participating in the exchange of time understand this is voluntary and in accordance with department policy.

\_\_\_\_\_  
 Supervisor Signature

\_\_\_\_\_  
 Member Signature  
 (Regularly scheduled for duty)

\_\_\_\_\_  
 Member Signature  
 (Member who will be working)

\_\_\_\_\_  
 (Date form submitted to supervisor)

*Approved and in effect. J J Jones, Fire Chief*

Tyler

## RULES & REGULATIONS

### SECTION 33: TRADING OF TIME

Personnel are allowed to trade time rank for rank with their supervisor's permission. District Chiefs may approve other than rank for rank trading of time in cases of emergencies or unusual circumstances. Members are not allowed to pay someone to work for them.



**TTFD-Schlotter, Eric**

**From:** Jennifer Otey <jotey@ci.duncanville.tx.us>  
**Sent:** Thursday, July 30, 2015 8:48 AM  
**To:** TEX-Powell, Jim  
**Subject:** RE: Civil Service Fire Department - Swap Time

**Trading Work Time**

7.9 A trade or trading time is defined as any exchange of time within one shift between two members of the department. Employees involved in the trade scenario are making an agreement between themselves and not the city or department.

7.9.1 Trades can be taken for the enhancement of education, community service, and personal matters. The number of trades per individual or per shift will be at the discretion of the Station Officers. However, no shift trades shall be allowed if it will cause the employee to work more than (48) forty-eight consecutive hours without time off.

**7.9.2 The Fire Department is not responsible for any controversy or discrepancies over trade time, owed, to be paid back, or when trade time is to be paid back.**

7.9.3 All trades will be documented on a Trade Form and approved by the Station Officer of the on-duty shift prior to the trade become a bona-fide trade. Trade forms are located at each fire station.

7.9.4 Trades shall be between individuals of equal rank and capabilities.

7.9.5 Any employee who assumes a tour of duty for another also undertakes all responsibilities for that tour of duty.

7.9.6 Failure to report for a trade shall be considered absence without leave and will result in disciplinary action.

7.9.7 Trade time does not impact the FLSA twenty-eight day cycle.

7.9.8 Trade time can only be used when the person requesting the trade is scheduled to be on duty for his/her assigned shift. Trade time cannot be used for days when 114 the individual is not scheduled to be on duty, i.e. you cannot use a trade day if you are scheduled to be on vacation, ESL, holiday, and you cannot use a trade day if you are off on sick leave or workers compensation leave.

**Jennifer Otey**  
**HR Manager**

**From:** TEX-Powell, Jim [mailto:Jim.Powell@txkusa.org]

**Sent:** Wednesday, July 29, 2015 4:46 PM

**To:** scollard@paristexas.gov; rivy@cityoflufkin.com; Denise Myers; pearls@ci.nacogdoches.tx.us; lstdidham@nbtexas.org; rray@tylertexas.com; jrogers@tylertexas.com; jpittman@tylertexas.com; cjohnston@marshalltexas.net; wgraves@marshalltexas.net; craigl@ci.sherman.tx.us; jvaughn@coppelltx.gov; lnorris@gptx.org; kshields@ci.desoto.tx.us; Janet.goad@midlothian.tx.us; dlee@lancaster-tx.com; Jennifer Otey

**Subject:** Civil Service Fire Department - Swap Time

Our Fire Department is Civil Service and participates in "swap time," the trading of work shifts among firefighters. I am wanting to know if any of you have a policy regarding swap time. If so, please share. Thanks. jim

Jim Powell, CPM

## 19.7 – SUB CALLS

- A. Trading or exchanging of on-duty work time between members shall be known as a “sub call”. Sub calls shall be by mutual agreement between the members concerned. Each member will be individually responsible for sub time they owe and sub time owed to them. A sub call is the exchange of on-duty time; cash transactions related to sub calls are prohibited. A member who is away from duty on a properly approved sub call where the sub actually works the member’s scheduled duty period shall be considered as present for duty for pay purposes. Members scheduled for duty are the members paid for such duty.
1. A member may be off with a sub only during the member’s regularly scheduled duty period.
  2. A member who subs for another cannot qualify for overtime pay during the period of the sub call.
- B. Sub calls shall be applicable only to members assigned to 24-hour shift duty, Fire Prevention Specialist assigned to the Fire Prevention Division, and members below the classification of Battalion Chief assigned to the Communications Section.
- C. Sub calls are a privilege and are **not** an earned right; abuse of sub calls is cause for this privilege to be revoked. A prime factor to be considered prior to approving a sub call request is operational effectiveness.
- D. Members are allowed to trade time, rank for rank, with their supervisor’s permission. Battalion Chiefs must approve out of rank subs between Firefighters and Drivers and between Lieutenants and Captains. Sub calls for Fire Prevention Specialists must be approved by the Fire Marshal. Assistant Chiefs must approve subs between Captains and Battalion Chiefs.
- E. Sub calls are ineligible for sick leave. If a member becomes ill and unable to work prior to or while serving as a sub, it shall be his/her responsibility to obtain another sub or notify the individual for who he/she was subbing. If another sub cannot be arranged or if the individual who arranged the sub cannot come in and finish the shift, the member who arranged the sub will be charged vacation leave for the remainder of the shift. When vacation time is utilized in these situations, a memo initiated by the member’s immediate supervisor shall be forwarded through the chain-of-command to the Chief of Department for notification purposes.

- F. Members who are injured in the line of duty are eligible for injury leave and Worker's Compensation benefits. This also applies to members injured in the line of duty while subbing. However, if the injured member is unable to work the remainder of the shift due to an injury while serving as a sub, it shall be his/her responsibility to obtain another sub or notify the individual for whom he/she was subbing. If another sub cannot be arranged or if the individual who arranged the sub cannot come in and finish the shift, the member who arranged the sub will be charged vacation leave for the remainder of the shift. When vacation time is utilized in these situations, a memo initiated by the member's immediate supervisor shall be forwarded through the chain-of-command to the Chief of Department for notification purposes.
- G. Sub calls requiring a member to work more than forty-eight (48) continuous hours on an MICU are not allowed. Sub calls for more than two (2) of the member's consecutive shifts must be approved by the Battalion Chief. Such requests must be justified and submitted to the Battalion Chief. The Battalion Chief will determine any impact the request would have on operational effectiveness and forward the request to the Assistant Chief, Operations for notification purposes only.

## City of Texarkana, Texas

Version: G

Update Date: 11/8/2016 10:12 AM

**Briefing Sheet**

**Lead Department:** Parks, Recreation & Health **Action Officer:** Robby Robertson,  
Ordinance No. 2016-126 amending budget expenditures for the fiscal year  
ending September 30, 2017 to appropriate funding in the amount of One Million  
Three Hundred Fifty-Three Thousand Two Hundred Dollars (\$1,353,200) for  
projects included in the previously approved Capital Improvement Program.

**Subject:** (CIP).

**Briefing:** 11/14/2016 **Public Hearing:** **Second Briefing:** **Council Vote:** 11/14/2016

**Item Schedule**

Schedule 3: No briefing required (one week)

**Updates/History of Briefing:****Executive Summary and Background Information:**

Expenditures for the 2017 Bond Fund were not appropriated in the original budget for the fiscal year ending September 30, 2017. Therefore, an appropriation of seven hundred and seventy-nine thousand dollars (\$779,000) is needed to proceed with the ball field lighting projects previously approved in the Capital Improvement Plan (CIP). An appropriation of five hundred twenty-five thousand dollars (\$509,761) is also needed to proceed with the design of three other projects previously approved in the CIP; Cowhorn Creek Corridor, Forest Lake Estates Street Reconstruction, and Fire Department Training Center Building Improvements/Streets Building and Parking Lot Improvements. A 5% contingency in the amount of sixty four thousand four hundred thirty-nine and 00/100 dollars (\$64,439.00) is included for any additional services that may be needed. The General Fund will loan one million three hundred fifty three thousand two hundred dollars (\$1,353,200) to the 2017 Bond Fund until the bond issuance is completed and then the General Fund will be reimbursed.

Please see attachments for your review of the vendor quote for the ball field lights and for each design contract.

**Potential Options:**

Approve or deny this request.

**Fiscal Implications:**

The General Fund will loan one million three hundred fifty three thousand two hundred dollars (\$1,353,200) to the 2017 Bond Fund until the bond issuance is completed.

**Staff Recommendation:**

## City of Texarkana, Texas

The staff recommends that the budget for the fiscal year ending September 30, 2017 should be amended to reflect the appropriation of one million three hundred fifty three thousand two hundred dollars (\$1,353,200) in the 2017 Bond Fund.

### Advisory Board/Committee Review:

None

### Board/Committee Recommendation:

None

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

Not Applicable

### Attachments

- a. 2016-126 ORD Amending Budget FY 17 for CIP (DOC)
- b. 2016-126 ATTH 01 Techline Texas Buy Board Quote (PDF)
- c. 2016-126 ATTH 02 Forest Lake Estates Street Reconstruction Contract (PDF)
- d. 2016-126 ATTH 03 Cowhorn Creek Corridor Project Contract (PDF)
- e. 2016-126 ATTH 04 Fire Department and Street Department Improvements Contract (PDF)
- f. 2016-126 ATTH 05 CIP Execution – FY17 (PDF)
- g. 2016-126 ATTH 06 Goals & Perspectives (DOCX)
- h. 2016-126 ORD Budget Amendment FY 2017 CIP signed (PDF)

### Staff Coordination

|                            |                    |                        |                      |
|----------------------------|--------------------|------------------------|----------------------|
| Parks, Recreation & Health | Robby Robertson    | Department Head Review |                      |
| Completed                  | 11/02/2016 2:02 PM |                        |                      |
| Public Works Department    | Kyle Dooley        | Review                 | Completed            |
| 11/03/2016 2:50 PM         |                    |                        |                      |
| Assistant City Manager     | Shirley Jaster     | Assistant City Manager |                      |
| Review                     | 11/03/2016 4:34 PM |                        |                      |
| Finance Department         | Kristin Peoples    | Review                 | Completed 11/07/2016 |
| 4:19 PM                    |                    |                        |                      |
| Public Information Officer | Lisa Thompson      | PIO Review             | Completed            |
| 11/07/2016 4:23 PM         |                    |                        |                      |
| City Manager               | John Whitson       | City Manager Review    | Completed 11/09/2016 |
| 4:49 PM                    |                    |                        |                      |
| City Council               | Jennifer Evans     | Meeting                | Completed 11/14/2016 |
| 6:00 PM                    |                    |                        |                      |

### Meeting History

**ORDINANCE NO. 2016-126**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEXARKANA, TEXAS, AMENDING BUDGET EXPENDITURES FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2017 TO APPROPRIATE FUNDING IN THE AMOUNT OF ONE MILLION THREE HUNDRED FIFTY-THREE THOUSAND TWO HUNDRED DOLLARS (\$1,353,200) FOR PROJECTS INCLUDED IN THE PREVIOUSLY APPROVED CAPITAL IMPROVEMENT PLAN (CIP); AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, expenditures for the 2017 Bond Fund were not appropriated in the original budget for the fiscal year ending September 30, 2017; and

**WHEREAS**, the City of Texarkana, Texas, (the “Issuer”) intends to issue debt for the Ball Field Lighting project, Forest Lake Estates Street Reconstruction project, Cowhorn Creek Corridor project, the Fire Department Training Center Building Improvements project, and the Streets Building and Parking Lot Improvements project (collectively, the “Projects”) and further intends to make certain capital expenditures with respect to the Projects and currently desires and expects to reimburse the capital expenditures with proceeds of such debt; and

**WHEREAS**, under Treas. Reg. § 1.150-2 (the “Regulation”), to fund such reimbursement with proceeds of tax-exempt obligations, the Issuer must declare its expectation to make such reimbursement; and

**WHEREAS**, the Issuer desires to preserve its ability to reimburse the capital expenditures with proceeds of tax-exempt obligations; and

**WHEREAS**, an appropriation of One Million Three Hundred Fifty-Three Thousand Two Hundred Dollars (\$1,353,200) is needed to proceed with projects previously approved in the Capital Improvement Plan; and

**WHEREAS**, the General Fund will loan One Million Three Hundred Fifty-Three Thousand Two Hundred Dollars (\$1,353,200) to the 2017 Bond Fund until the bond issuance is completed; and

**WHEREAS**, from the design options and cost estimates developed by Techline Sports Lighting, the City Council finds and determines that it would be in the City's best interest to amend Seven Hundred Seventy-Nine Thousand Dollars (\$779,000) to the budget estimate of the City's expenditures; and

**WHEREAS**, Halff and Associates, Inc. submitted a proposal for the design and preparation of construction plans for Forest Lake Estates Street Reconstruction Project in an amount not to exceed Three Hundred Thirty-One Thousand One Hundred Dollars (\$331,100); and

**WHEREAS,** MTG Engineers and Surveyors, Inc. submitted a proposal for the design and preparation of construction plans for Cowhorn Creek Corridor Project in an amount not to exceed Ninety Thousand Five Hundred Forty-Six Dollars (\$90,546); and

**WHEREAS,** KSA submitted a proposal for the design and preparation of construction plans for the Fire Department Training Center Building Improvements/Streets Building and Parking Lot Improvements in an amount not to exceed Eighty-Eight Thousand One Hundred Fifteen Dollars (\$88,115); and

**WHEREAS,** a five percent (5%) contingency in the amount of Sixty-Four Thousand Four Hundred Thirty-Nine Dollars (\$64,439) is included for any additional services; and

**WHEREAS,** the 2017 Bond Fund will reimburse the General Fund in the amount of One Million Three Hundred Fifty-Three Thousand Two Hundred Dollars (\$1,353,200) when the 2017 bond issuance is completed and bond proceeds are received; and

**WHEREAS,** the budget for the fiscal year ending September 30, 2017 should be amended to reflect the appropriation of One Million Three Hundred Fifty-Three Thousand Two Hundred Dollars (\$1,353,200) in the 2017 Bond Fund.

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

**SECTION 1:** That the budget estimate of the 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, 2016 and ending September 30, 2017, be amended to reflect additional expenditures appropriated of One Million Three Hundred Fifty-Three Thousand Two Hundred Dollars (\$1,353,200) in the 2017 Bond Fund.

**SECTION 2:** That the City Manager be and is hereby authorized to enter into a contract with Techline Sports Lighting for the Ball Field Lighting Project in amount not to exceed Seven Hundred Seventy-Nine Thousand Dollars (\$779,000).

**SECTION 3:** That the City Manager be and is hereby authorized to enter into a contract with Halff and Associates, Inc. for the design and preparation of construction plans for the Forest Lake Estates Street Reconstruction Project in amount not to exceed Three Hundred Thirty-One Thousand One Hundred Dollars (\$331,100.00).

**SECTION 4:** That the City Manager be and is hereby authorized to enter into a contract with MTG Engineers and Surveyors, Inc. for the design and preparation of construction plans for the Cowhorn Creek Corridor Project in an amount not to exceed Ninety Thousand Five Hundred Forty-Six Dollars (\$90,546).

**SECTION 5:** That the City Manager be and is hereby authorized to enter into a contract with KSA for the design and preparation of construction plans for the Fire Department Training



Center Building Improvements and the Street Department Building and Parking Lot Improvements in amount not to Eighty-Eight Thousand One Hundred Fifteen Dollars (\$88,115).

**SECTION 6:** That the Issuer reasonably expects to reimburse capital expenditures with respect to the Projects with proceeds of debt hereafter to be incurred by the Issuer, and that this ordinance shall constitute a declaration of official intent under the Regulation. The maximum principal amount of obligations expected to be issued for the Projects is One Million Three Hundred Fifty-Three Thousand Two Hundred Dollars (\$1,353,200).

**SECTION 7:** That 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 **14<sup>th</sup> day of November, 2016.**

ATTEST:

\_\_\_\_\_  
JENNIFER EVANS, CITY SECRETARY

\_\_\_\_\_  
BOB BRUGGEMAN, MAYOR

**BuyBoard Contract #423-13**

**City of Texarkana - 10/04/16**

**Grady T. Wallace and Spring Lake Park - Base Bid**

**\*\*50/30 FC Avg Maintained Light Level on All Fields\*\***

**\*\*\* Includes Demo and Removal of All Old Poles \*\*\***

**Includes 30 Year Warranty with 2 Group Relamps**

| Quantity | Description                                                                            |
|----------|----------------------------------------------------------------------------------------|
| 6        | 60 Foot Mounting Height Steel Poles                                                    |
| 10       | 70 Foot Mounting Height Steel Poles                                                    |
| 10       | 80 Foot Mounting Height Steel Poles                                                    |
| 2        | 5 Fixture Crossarms                                                                    |
| 11       | 6 Fixture Crossarms                                                                    |
| 1        | 7 Fixture Crossarms                                                                    |
| 1        | 5/5 Fixture Crossarms                                                                  |
| 1        | 6/6 Fixture Crossarms                                                                  |
| 5        | 8/8 Fixture Crossarms                                                                  |
| 5        | 10/10 Fixture Crossarms                                                                |
| 285      | 1500 Watt Metal Halide Integral Ballast Luminaires                                     |
| 285      | Standard Lenses                                                                        |
| 285      | Standard External Visors                                                               |
| 285      | 1500 watt metal halide lamps                                                           |
| 26       | Prewiring for Poles and Integral Ballast Crossarms                                     |
| 9        | 90 Watt - LED - Security Light w/ Mounting Bracket (400 watt Metal Halide Replacement) |
| 2        | EcoLink Wireless Control System - Base Station                                         |
| 5        | EcoLink Wireless Control System - Wireless Node(s) - Wall Mount Near Contactor Cabinet |

**Total Turnkey Install = \$679,000.00**

**\* Deduct 10% if Project Ships by end of year 2016**

**\*\* If both Alternates are selected, total turnkey install with 30 Year Warranty will be \$779,000.00 (Softball Field and T-Ball Field.)**

**Notes: \* Price includes poles, prewired crossarms and light fixtures.**

**\* Price firm for 60 days.**

**\* Allow 5-6 weeks for delivery and 3-4 weeks for installation.**

**\* Turnkey installation includes:**

- Installing main distribution panel, breakers, contactors and switching (If needed) based on 480 volt three phase service being available within 150' of field.  
- Install individual conduit and wiring for each pole sized accordingly. No more than 3% voltage drop shall be allowed.

- All wiring to be copper type THHN.

- Includes all permits, fees and inspections associated with the project.

- All electrical installation to meet National Electric Code requirements.

\* Standard turnkey and partial install foundations assume 2000 psi soil conditions. Any other conditions that may be present upon installation (i.e. rock, water, etc.) that cause additional foundation design or modification (i.e. rebar, casing, etc.) may require additional charges.

\* Pole locations must also be accessible and not obstructed by fencing, buildings, etc.

**\* EcoLink Wireless Control Systems include the first 24 months of communication costs.**

\* Price above does not include SALES or USE taxes.

\* A tax exemption certificate must be filed with Techline if applicable.

\* All work to be performed that requires a license, including but not limited to electrical & plumbing will be performed by individuals currently licensed in the proper jurisdiction. All proposals are based in bids by licensed individuals anticipated to perform the work.

## AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES ON A DEFINED SCOPE OF SERVICES BASIS

This Agreement for Professional Engineering Services, hereinafter called "Agreement," is entered into by the City of Texarkana, Texas, a Home Rule City, duly authorized to act by the City Council of said Client, hereinafter called "Client," and **Halff Associates, Inc.**, a Texas corporation, acting through a duly authorized officer, herein called "Engineer," relative to Engineer providing professional engineering services to the Client. Client and Engineer when mentioned collectively shall be referred to as the "Parties".

### W I T N E S S E T H:

For the mutual promises and benefits herein described, the Client and Engineer agree as follows:

- 1. Term of Agreement.** This Agreement shall become effective on the date of its execution by both Parties, and shall continue in effect thereafter until terminated as provided herein.
- 2. Services to be Performed by Engineer.** Engineer shall provide to the Client basic engineering services as described in the scope of services attachment and fully incorporated herein as "**Attachment I**" which services may include, but will not be limited to, those services normally rendered by an engineer to a Home Rule City. Engineer shall perform its obligations under this agreement as an independent contractor and not as an agent or fiduciary of any other party.
- 3. Compensation** - Client agrees to pay monthly invoices or their undisputed portions within 30 days of receipt. Payment later than 30 days shall include interest at 1 percent (1%) per month or lesser maximum enforceable interest rate, from the date the Client received the invoice until the date Engineer receives payment. Such interest is due and payable when the overdue payment is made.  
It is understood and agreed by the Parties that Engineer's receipt of payment(s) from Client is not contingent upon Client's receipt of payment, funding, reimbursement or any other remuneration from others.  
Time-related charges will be billed as specified in this Agreement. Unless stated otherwise in this Agreement, direct expenses, subcontracted services and direct costs will be billed at actual cost plus a service charge of 10 percent. Mileage will be billed at current IRS rates.
- 4. Client's Obligations.** The Client agrees that it will (i) designate a specific person to act as the Client's representative, (ii) provide Engineer with any previous studies, reports, data, budget constraints, special Client requirements, or other pertinent information known to the Client, when necessitated by a project, (iii) Client agrees to provide site access, and to provide those services described in the attached Scope of Services assist Engineer in obtaining access to property necessary for performance of Engineer's work for the Client, (iv) make prompt payments in response to Engineer's statements and (v) respond in a timely fashion to requests from Engineer. Engineer is entitled to rely upon and use, without independent verification and without liability, all information and services provided by the Client or the Client's representatives.
- 5. Termination of Work** - Either the Client or the Engineer may terminate this Agreement at any time with or without cause upon giving the other Party ten (10) calendar days' prior written notice. Client agrees that termination of Engineer for Client's convenience shall only be utilized in good faith, and shall not be utilized if either the purpose or the result of such termination is the performance of all or part of Engineer's services under this Agreement by Client or by another service provider. Following Engineer's receipt of such termination notice the Client shall, within ten (10) calendar days of Client's receipt of Engineer's final invoice, pay the Engineer for all services rendered and all costs incurred up to the date of Engineer's receipt of such notice of termination.
- 6. Ownership of Documents** - Upon Engineer's completion of services and receipt of payment in full, Engineer shall grant to Client a non-exclusive license to possess the final drawings and instruments produced in connection with Engineer's performance of the work under this Agreement, if any. Said drawings and instruments may be copied, duplicated, reproduced and used by Client for the purpose of constructing, operating and maintaining the improvements. Client agrees that such documents are not intended or represented to be suitable for reuse by Client or others for purposes outside the Scope of Services of this Agreement. Notwithstanding the foregoing, Client understands and agrees that any and all computer programs, GIS applications, proprietary data or processes, and certain other items related to the services performable

under this Agreement are and shall remain the sole and exclusive property of Engineer and may not be used or reused, in any form, by Client without the express written authorization of Engineer. Client agrees that any reuse by Client, or by those who obtain said information from or through Client, without written verification or adaptation by Engineer, will be at Client's sole risk and without liability or legal exposure to Engineer or to Engineer's employees, agents, representatives, officers, directors, affiliates, shareholders, owners, members, managers, attorneys, subsidiary entities, advisors, subconsultants or independent contractors or associates. Engineer may reuse all drawings, reports, data and other information developed in performing the services described by this Agreement in Engineer's other activities.

**7. Notices.** Any notices to be given hereunder by either party to the other may be affected either by personal delivery, in writing, or by registered or certified mail.

**8. Sole Parties and Entire Agreement.** This Agreement shall not create any rights or benefits to anyone except the Client and Engineer, and contains the entire agreement between the parties. Oral modifications to this Agreement shall have no force or effect.

**9. Indemnification.** Engineer does hereby agree to, indemnify Client and its officials, officers, agents, representatives, employees and invitees from and against liability, claims, suits, demands and/or causes of action, (including, but not limited to, reasonable attorney's fees and costs of litigation), which arise by reason of death or injury to property or persons but only to the extent caused by the negligent act or omission or willful misconduct of Engineer, Engineer's employees, agents, representatives, officers, directors, affiliates, shareholders, owners, members, managers, attorneys, subsidiary entities, advisors, subconsultants or independent contractors or associates.

In the event that the Client and Engineer are alleged or found to be concurrently negligent, the Parties agree that all liability shall be calculated on a comparative basis of fault and responsibility and that neither Party shall be required to defend or indemnify the other Party for that Party's negligent or intentional acts, errors or omissions.

**10. Insurance.** Engineer shall, at its own expense, purchase, maintain and keep in force throughout the duration of this Agreement and for a period of three years thereafter, professional liability insurance. The limits of liability shall be \$1,000,000 per claim and in the aggregate. For coverage provided on a claims-made basis, Engineer agrees to use its best efforts to maintain this policy for a period of four (4) years after the cessation of any work for the Client or shall purchase the extended reporting period or "tail" coverage insurance providing equivalent coverage for the same period of time. Engineer shall submit to the Client a certificate of insurance prior to commencing any work for the Client.

**11. Prompt Performance by Engineer.** All services provided by Engineer hereunder shall be performed in accordance with the degree of care and skill ordinarily exercised under similar circumstances by competent members of the engineering profession in the State of Texas applicable to such engineering services contemplated by this Agreement.

**12. Client Objection to Personnel.** If at any time after entering into this Agreement, the Client has any reasonable objection to any of Engineer's personnel, or any personnel, professionals and/or consultants retained by Engineer, Engineer shall promptly propose substitutes to whom the Client has no reasonable objection, and Engineer's compensation shall be equitably adjusted to reflect any difference in Engineer's costs occasioned by such substitution.

**13. Assignment and Delegation.** Neither the Client nor Engineer may assign their rights or delegate their duties without the written consent of the other party. This Agreement is binding on the Client and Engineer to the fullest extent permitted by law. Nothing herein is to be construed as creating any personal liability on the part of any Client officer, employee or agent.

**14. Jurisdiction and Venue** - This Agreement shall be administered under the substantive laws of the State Texas (and not its conflicts of law principles) which shall be used to govern all matters arising out of, or relating to, this Agreement and all of the transactions it contemplates, including without limitation, its validity, interpretation, construction, performance and enforcement. Exclusive venue shall lie in **Bowie** County, Texas.

**15. Integration, Merger and Severability** – This Agreement and the Scope of Services, including fee and schedule are fully incorporated herein and represent the entire understanding of Client and Engineer. No prior oral or written understanding shall be of any force or effect with respect to those matters covered herein. The Agreement may not be modified or altered except in writing signed by both Parties. This Agreement constitutes, represents and is intended by the Parties to be the complete and final statement and expression of all of the terms and arrangements between the Parties to this Agreement with respect to the matters provided for in this Agreement. This Agreement supersedes any and all prior or contemporaneous agreements, understandings, negotiations, and discussions between the Parties and all such matters are merged into this Agreement. Should any one or more of the provisions contained in this Agreement be determined by a court of competent jurisdiction or by legislative pronouncement to be void, invalid, illegal, or unenforceable in any respect, such voiding, invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be considered as if the entirety of such void, invalid, illegal, or unenforceable provision had never been contained in this Agreement.

**16. Exclusivity of Remedies** – The Parties acknowledge and agree that the remedies set forth in this Agreement, including those set forth in Article 9. Indemnification and Article 20. Agreed Remedies are and shall remain the Parties' sole and exclusive remedy with respect to any claim arising from, or out of, or related to, the subject matter of this Agreement. The Parties agree that Engineer is to have no liability or responsibility whatsoever to Client for any claim(s) or loss(es) of any nature, except as set forth in this Agreement. No Party shall be able to avoid the limitations expressly set forth in this Agreement by electing to pursue some other remedy.

**17. Timeliness of Performance** - Engineer shall perform its professional services with due and reasonable diligence consistent with sound professional practices.

**18. Dispute Resolution.** In the event of any disagreement or conflict concerning the interpretation of this Agreement, and such disagreement cannot be resolved by the signatories hereto, the signatories agree to schedule a series of no less than two meetings of senior personnel of Client and Engineer in which the disagreement or conflict will be discussed. The first of such meetings will be scheduled as soon as possible following identification of such disagreement or conflict and the second meeting must occur within thirty (30) days following the initial meeting. Subsequent meetings, if any may be scheduled upon mutual agreement of the parties. The parties agree that these two meetings are conditions precedent to the institution of legal proceedings unless such meetings will adversely affect the rights of one or more of the parties as such rights relate to statutes of limitation or repose.

**19. Signatories.** The Client and Engineer mutually warrant and represent that the representation of each who is executing this Agreement on behalf of the Client or Engineer, respectively, has full authority to execute this Agreement and bind the entity so represented.

**20. AGREED REMEDIES - IN RECOGNITION OF THE RELATIVE RISKS AND BENEFITS OF THE PROJECT TO BOTH THE CLIENT AND THE ENGINEER, AND ACKNOWLEDGING THAT THE ALLOCATION OF RISKS AND LIMITATIONS OF REMEDIES ARE BUSINESS UNDERSTANDINGS BETWEEN THE PARTIES AND THESE RISKS AND REMEDIES SHALL APPLY TO ALL POSSIBLE LEGAL THEORIES OF RECOVERY. CLIENT FURTHER AGREES, TO THE FULLEST EXTENT PERMITTED BY LAW, AND NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS AGREEMENT OR ANY REFERENCE TO INSURANCE OR THE EXISTENCE OF APPLICABLE INSURANCE COVERAGE, THAT THE TOTAL LIABILITY, IN THE AGGREGATE, OF THE ENGINEER AND ENGINEER'S OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND SUBCONSULTANTS TO THE CLIENT OR TO ANYONE CLAIMING BY, THROUGH OR UNDER THE CLIENT, FOR ANY AND ALL CLAIMS, LOSSES, COSTS OR DAMAGES WHATSOEVER ARISING OUT OF, RESULTING FROM, OR IN ANY WAY RELATED TO, THE SERVICES UNDER THIS AGREEMENT FROM ANY CAUSE OR CAUSES OF THE ENGINEER OR THE ENGINEER'S OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND SUBCONSULTANTS, SHALL NOT EXCEED THE ENGINEER'S FEE FOR THE SERVICES PERFORMED UNDER THIS AGREEMENT OR \$50,000, WHICHEVER IS GREATER. INCREASED LIMITS MAY BE NEGOTIATED FOR ADDITIONAL FEE.**

Further, it is the intent of the Parties to this Agreement that Engineer's services under this Agreement shall not subject Engineer's individual employees, officers or directors to any personal legal exposure for claims and risks associated with the services performed or performable under this Agreement.

**21. WAIVER** - Any failure by Engineer to require strict compliance with any provision of this Agreement shall not be construed as a waiver of such provision, and Engineer may subsequently require strict compliance at any time, notwithstanding any prior failure to do so.

**IN WITNESS WHEREOF**, the parties, having read and understood this Agreement, have executed such in duplicate copies, each of which shall have full dignity and force as an original, on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**HALFF ASSOCIATES, INC.**

**CITY OF TEXARKANA, TEXAS**

By: \_\_\_\_\_  
Signature

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

## **ATTACHMENT I**

Consisting of:

EXHIBIT “A” – SCOPE OF WORK

EXHIBIT “B” – CLARIFICATIONS AND EXCLUSIONS

EXHIBIT “C” - COMPENSATION



**EXHIBIT "A"**  
**SCOPE OF WORK**  
**for**  
**Construction Plans, Specifications and Estimates**  
**Forest Lake Estates Street Reconstruction**  
**Texarkana, Texas**

**1. Description:**

The project will involve the reconstruction of six (6) residential and commercial streets. They are as follows:

Forest Lake Drive – From N State Line Ave to dead end west of Lakeridge Drive

Treasure Hill Road – From Forest Lake Drive to dead end cul-de-sac

Wood Bridge Drive – From Forest Lake Drive to dead end cul-de-sac

Lakeridge Drive – From Ridgecrest Place north to dead end cul-de-sac

Ridge Row Circle – From Lakeridge Drive to dead end cul-de-sac

Ridgecrest Place – From start of concrete section (250' east of North Hills Drive) to dead end cul-de-sac

Streets will be reconstructed to the same width as existing and with reinforced concrete paving sections in accordance with each street's classification and to the minimum thicknesses recommended by the geotechnical investigation and approved by the City of Texarkana ("the City"). Sidewalks and driveway returns within street rights-of-way will be constructed as well. Also included are drainage improvements, water and sanitary sewer mains crossing the limits of the street reconstruction, and where necessary to meet existing grades and elevations, and water and sanitary sewer service lines.

- 2. Assumptions:** Halff Associates, Inc. ("the Consultant") services shall include only services that are normal and customary and are not represented as including special services or those requiring expertise that is greater than that provided by other service providers. A list of clarifications and exclusions is included as Exhibit "B".

**3. Work Plan:**

**A. Surveying:** The Consultant shall provide surveying services, which, in general, may be defined as normal services applicable to a project of this type. The following particulars will also apply.

- (1) Horizontal and vertical control shall be established such that all points of construction shall be within 500 feet of a benchmark. Control should not be subject to loss during construction. Fire hydrants and similar appurtenances are not to be used for control. The surveyor shall establish temporary control throughout the length of the project.

- (2) Topographic features will be surveyed along with any and all other features needed for design, review, permitting, construction, and inspection of the project. Coverage will extend beyond the proposed rights-of-way far enough to integrate the design with the adjacent properties.
- (3) Existing property corners, iron pins, etc. shall be tied in order to establish existing rights-of-way. Prior to surveying on private property, the surveyor shall secure written permission from the property owners and/or tenant and shall provide the City a copy of said written permission. Should only oral permission be granted, the surveyor shall document the permission granted by letter to the property owner/tenant, with a copy to the City. If permission cannot be obtained, the City will assist or other arrangements will be worked out.
- (4) Channel cross sections 200 feet north and south of the existing bridge structure at Forest Lake Drive shall be tied in order to determine potential channel improvements and to establish the horizontal grade line of the various storm events.
- (5) Temporary or Permanent Easements – The Consultant does not expect that temporary construction easements or new permanent utility or drainage easements will be required for the construction of this project. Existing utility and drainage easements are in place according to the existing subdivision plat, and shall be used for the same purposes post-construction. However, if easements are necessary, the Consultant can prepare the necessary survey exhibits to accompany the City easement template and secure property owner signatures as an additional service and fee.

**B. Construction Plans:** The Consultant shall develop construction plans for review, permitting, bidding, construction, inspection and record keeping. In general, construction plans shall be consistent with normal practice for projects of this nature. The following particulars will also apply. The construction plans will consist of numerous sheets ordered as follows:

- (1) Cover Sheet and Sheet Index: The cover sheet shall include a location map. Additionally, the cover sheet shall show the project name, project number, date, City logo, Consultant's name, address, and telephone number and other items as may be specified. Following the title sheet shall be a sheet index with drawings numbered consecutively and without subscripts.
- (2) Project Layout Sheet(s): The project layout sheet(s) will be drawn to a scale of 1" = 50' (maximum) and laid out with the north arrow up or to the right. The purpose of the project layout is to depict the project in a simplified view. Major items of work will be shown without excessive detail. Additionally, survey control points shall be shown.
- (3) Project General Notes and Legend: These sheets will include a listing of abbreviations, legend, and general notes.
- (4) Typical Sections: Typical sections shall be drawn to scales of 1" = 5' h and 1" = 2' v and shall depict a view looking north or east. As a minimum,

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typical sections will be drawn showing the relationship of the proposed street and existing and proposed improvements. Typical sections will include existing roadways, utilities, right-of-way lines, etc., along with all proposed utility and highway improvements and will depict all significant items of work.

- (5) Removal Sheets: Removal sheets will match the layout of the Project Layout Sheets, and shall define and quantify the limits of removal of all existing improvements that shall be removed or abandoned in place, as required by new construction. These sheets will also show all trees within the right-of-way, or limits of construction, that are to be removed or protected during construction.
- (6) Plan and Profile Sheets: Plan and profile sheets will be arranged from south to north and from west to east, with the north arrow up or to the right on the sheet. Plan-profile sheets will be drawn to scales of 1" = 20' H and 1" = 4' V. Stationing will be from south to north or west to east with the beginning station being set at approximately 1+00. Each plan and profile sheet will include no more than 500 feet of street; thus, leaving ample margins both left and right. The plan and profile station will align vertically on the sheet with the proposed centerline drawn parallel to the profile grid. When there is a centerline curvature, the plan and profile should be drawn so that as much of the plan view is in alignment as possible. Plan and profile sheets shall depict all existing and proposed items pertinent to the project. All modifications or necessary utility main reconstruction shall be shown in plan view on the plan and profile sheets.
- (7) Cul-De-Sac Grading and Geometry Sheets: Cul-de-sac grading and geometry sheets will identify all points of the cul-de-sac geometry necessary for construction layout. These sheets will also show sufficient proposed top of curb and gutter line spot elevations necessary for proper pavement grading. These points of interest will reference the street centerline data.
- (8) Detail Sheets: The City's standard details available online and as provided by the City will be used as a beginning point in developing standard details for this project. They will be reviewed and modified for this project. Where other agency standards are used, they shall be reduced as necessary to fit on the City's standard sheet format with complete title block.
- (9) Miscellaneous: Construction plans will also address erosion control, traffic control (including detours, road closures, signing, barricading, etc.), pavement markings and signage, railroad crossing, and all other improvements. There is an existing at-grade KCS railroad crossing on Forest Lake Drive. The City of Texarkana has a Quiet Zone agreement in place for this crossing. The proposed crossing design and channelization devices shall meet all requirements of the existing agreement.
- (10) Cross Sections: Cross sections shall be drawn to scales of 1" = 10' H and 1" = 5' V on sheets of 1" grids H and V. They shall be arranged from bottom to top of the sheet looking up station and shall show existing and proposed features and improvements. Generally, no more than eight (8) sections per sheet are to be plotted. Each section should extend beyond the easement

and rights-of-way a sufficient distance to clearly show the relationship between the proposed improvements and the existing properties. Full sections will be drawn at critical locations, such as steep driveways, retaining walls, and at maximum spacings of 50 feet.

- (11) Review Plans: Preliminary plans shall then be prepared and submitted at the 60% milestone. Final plans shall also be prepared and submitted at the 100% milestone. Also, the Consultant may submit plan sheets or working drawings to the City for review and comment to reduce the number of revisions that otherwise would be required. During development of the plans, the Consultant shall attend meetings as needed. The Consultant shall, in company with the City, perform at least one plans-in-hand review.
- (12) Design: The design of the project shall be in general accordance with the City of Texarkana ordinances, standard details, and good engineering practices. During the design phase, the Consultant shall contact various utility companies and obtain information relating to existing utility lines. The design should avoid major utility relocations, where practical. When required, proposed relocations or replacements will be shown in plan and profile.
- (13) Deliverables: The Consultant shall provide prints of construction plans for review and permitting. Five (5) sets of half-size plans and electronic files in PDF format will be submitted to the City for each review stage. The Consultant will provide utility companies with half-size copies of 60% plans for review. The Consultant will provide electronic files in PDF format to the City for use by City staff and for contractor bidding.
- (14) General: Construction plans shall be furnished full-size and half-size. Overall dimensions of full size construction plans shall be 22" x 34". The City's standard format shall be used. Up to four (4) full-size and four (4) half-size final construction plans shall be furnished to the City. Up to two (2) full-size and three (3) half-size final construction plans shall be furnished to the Contractor. Electronic files in PDF and DGN or DWG format shall be provided to the Contractor for use during construction.
- (15) Generic Sheet List: Following is a general list of plan sheets that are anticipated for the construction package.
  - (a) Cover Sheet
  - (b) Project General Notes, Sheet Index and Legend
  - (c) Typical Paving Sections
  - (d) Project Layout Sheet(s)
  - (e) Demolition Plans
  - (f) Paving Plan and Profile Sheets
  - (g) Cul-De-Sac Grading and Geometry Sheets
  - (h) Sanitary Sewer & Water Main Profile Sheet(s)
  - (i) Storm Sewer Profile Sheet(s)
  - (j) Drainage Area Map
  - (k) Drainage Area Calculations
  - (l) City of Texarkana Standard Details
  - (m) Miscellaneous Project Details

- (n) TxDOTD Standard Details
- (o) Erosion Control Plans
- (p) Pavement Markings and Signage Plans and Details
- (q) Traffic Control and Sequencing Plans
- (r) Roadway Cross Sections

- C. Specifications:** The Consultant shall prepare a project manual and technical specifications required for bidding and constructing the project. The project manual will be provided in the City's standard format. Only specifications amending or supplementing TxDOTD specifications need be furnished. Project manual, specifications, bid items and quantities shall be furnished on hard copy and by electronic file.
- D. Estimates:** Engineer's Opinion of Probable Construction Costs ("OPCC") will be developed at each milestone submittal.
- E. Public Meetings:** The Consultant shall not be required to attend public meetings for this project.
- F. City Council Coordination:** The Consultant shall prepare the necessary exhibits and a roll drawing to present to the City Council. The Consultant will also attend one (1) City Council meeting to discuss the project if necessary.
- G. Construction Control Staking:** The Contractor will provide construction staking.
- H. Bidding, Construction, Closure:**
- (1) Bidding – During the bidding phase, the Consultant will prepare bid documents and assist the City in advertising the project for bids. The consultant will address technical questions and prepare addenda and issue to the bidders. The Consultant shall attend a pre-bid meeting and prepare minutes. The Consultant will tabulate bids and make recommendation for award of contract.
  - (2) Construction:
    - (a) Attend a pre-construction meeting and document with written minutes.
    - (b) Visit the project site at appropriate intervals as construction proceeds to observe and report on the progress and quality of the executed work (up to four (4) visits). In performing these services the Consultant will endeavor to protect the City against defects and deficiencies in the work of the Contractor. However, the Consultant cannot guarantee the performance of the Contractor, nor be responsible for the actual supervision of the construction operations or for the safety measures that the Contractor takes or should take. The City shall be responsible for providing daily construction inspection.
    - (c) Review shop drawings and Contractor submittals.
    - (d) Review laboratory test reports on materials and equipment.
    - (e) Prepare and negotiate Change Orders between the Contractor and the City.
    - (f) Prepare record drawings from information supplied by the Contractor.
    - (g) Attend final inspection and prepare a punch list report.

(3) **Closure** – The Consultant shall prepare “record” plans, incorporating all changes and known variations to provide the City the best possible set of record drawings. The final record drawings shall be furnished on mylar or paper and on CD. GIS shape files shall also be furnish to the City on CD.

- I. Geotechnical Investigation:** The Consultant will subcontract with E TTL Engineers & Consultants Inc. to provide sub-surface investigations in the form of boring logs. A total of 15 borings shall be drilled to a depth of 5' at locations specified by the Consultant and approved by the City. Sampling of the existing pavement section and soil substrata will be continuous for the upper 5 feet. Groundwater observations will be made for the duration of field operations. The resulting geotechnical report shall include foundation recommendations for the design and construction of the proposed project, as well as rigid and flexible pavement thickness recommendations.
- J. Miscellaneous:** Miscellaneous services not provided for herein and not generally associated with a project of this type will be paid for under an amendment to this Agreement and for an additional fee.

#### 4. Schedule:

- A.** Completion of design surveys and geotechnical investigation: 45 calendar days from date of written authorization to begin work.
- B.** Completion/furnishing 60% preliminary plans, specifications, bid quantities, and construction cost estimate: 60 calendar days from date of written authorization to begin.
- C.** Completion/furnishing 100% final plans, specifications, bid quantities, and construction cost estimate: 90 calendar days from date of written authorization to begin, excluding City review time.
- D.** Bidding services: 45 calendar days from city's approval of final plans.
- E.** Construction services: In accordance with construction schedule
- F.** Closure: 60 calendar days from the date of construction completion.



**EXHIBIT "B"**  
**CLARIFICATIONS AND EXCLUSIONS**  
**for**  
**Construction Plans, Specifications and Estimates**  
**Forest Lake Estates Street Reconstruction**  
**Texarkana, Texas**

The following services are not included within this Scope of Work, but are available upon request as "Additional Services".

- (1) Subdivision Platting.
- (2) Storm Water Pollution Prevention Plan (SWPPP) or Storm Water Quality Management Plan (SWQMP).
- (3) Construction Inspection.
- (4) Traffic engineering report or studies.
- (5) Subsurface Utility Exploration Services (SUE).
- (6) Right-of-Way acquisition services.
- (7) Quality control and material testing services during construction.
- (8) Structural design including retaining walls.
- (9) Water & Wastewater Design or Modeling, & Utility Design (except for replacement of water & wastewater mains crossing proposed street improvements and long service laterals as identified in this proposal).
- (10) Street Lighting Design
- (11) Sanitary and/or storm sewer lift station.
- (12) Landscape design or irrigation design.
- (13) Preparation of easements or dedication exhibits, temporary right-of-way, or servitudes.
- (14) Filing fees and permit fees.
- (15) Environmental impact statements and assessments.
- (16) Wetlands identification or analysis.
- (17) Construction staking.
- (18) Construction administration, except as specifically identified in this proposal.
- (19) Floodplain studies or reclamation plans.
- (20) Review of Engineers certificates. Halff Associates shall not be required to execute any documents subsequent to the signing of this Agreement that in any way might, in the sole judgment of the Halff Associates, increase the Halff Associates risk or the availability or cost of his or her professional or general liability insurance.

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**EXHIBIT "C"**  
**COMPENSATION**  
**for**  
**Construction Plans, Specifications and Estimates**  
**Forest Lake Estates Street Reconstruction**  
**Texarkana, Texas**

Exhibit "C" defines the basis of compensation to the Consultant for the services rendered.

- A. Basic Fee Services** – The basic fee for the services as described in Exhibit "A" will be **\$247,300** which includes printing, direct costs and computer charges normally associated with production of these services.

The basis of compensation for Basic Fee services shall be as follows:

1. \$134,000 for Phase I – Preliminary Design Phase (60% submittal)
2. \$89,300 for Phase II – Final Design Phase (100% submittal)
3. \$24,000 for Construction Phase Services

Basic Fee Services are lump sum and will be billed monthly based on actual completion of the tasks and may include partial payments of the total amounts designated for each item.

- B. Special Services** – Special Services are lump sum and will be billed monthly, based on actual completion of the tasks and may include partial payments of the total amounts designated for each item. The table on the following page summarizes special services fees.

| <b>TASK DESCRIPTION</b>                                        | <b>FEE</b>      |
|----------------------------------------------------------------|-----------------|
| 1. Topographic Survey                                          | \$48,600        |
| 2. Boundary Determination                                      | \$13,100        |
| 3. Survey Travel Time/Expense                                  | \$5,300         |
| 4. Geotechnical Investigation                                  | \$12,800        |
| 5. City Council Meeting                                        | \$2,000         |
| 6. Reimbursable Expenses (Printing, Deliveries, Mileage, etc.) | \$2,000         |
| <b>TOTAL SPECIAL SERVICES</b>                                  | <b>\$83,800</b> |

The total maximum fee for all services is **\$331,100**.

- C. Easement Preparation and Acquisition (if necessary)** – The preparation and acquisition of any easements for this project will be considered an additional service. The Consultant will provide easement preparation and acquisition services at a rate of **\$3,000 per easement**. The Consultant will only proceed with this task upon written approval of the number of easements and price from the City.

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

# **SHORT FORM OF AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES**

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly by



**National Society of  
Professional Engineers®**

**ASCE** *American Society  
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AMERICAN COUNCIL OF ENGINEERING COMPANIES

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AMERICAN SOCIETY OF CIVIL ENGINEERS

This Agreement has been prepared for use with the Standard General Conditions of the Construction Contract (No. C-700, 2002 Edition) of the Engineers Joint Contract Documents Committee. Their provisions are interrelated, and a change in one may necessitate a change in the other.

**SPECIAL NOTE ON USE OF THIS FORM:**

This abbreviated Agreement form is intended for use only for professional services of limited scope and complexity. It does not address the full range of issues of importance on most projects. In most cases, Owner and Engineer will be better served by the Standard Form of Agreement Between Owner and Engineer for Professional Services (No. E-500, 2002 Edition), or one of the several special purpose EJCDC professional services agreement forms.

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1420 King Street, Alexandria, VA 22314

American Council of Engineering Companies  
1015 15th Street N.W., Washington, DC 20005

American Society of Civil Engineers  
1801 Alexander Bell Drive, Reston, VA 20191-4400

# SHORT FORM OF AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

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

City of Texarkana, Texas (“Owner”)

and MTG Engineers & Surveyors, Inc. (“Engineer”)

Engineer agrees to provide the services described below to Owner for Cowhorn Creek Trail (“Project”).

Description of Engineer’s Services: As described in Attachment No. 1

Owner and Engineer further agree as follows:

## 1.01 Basic Agreement

A. Engineer shall provide, or cause to be provided, the services set forth in this Agreement, and Owner shall pay Engineer for such Services as set forth in Paragraph 9.01.

## 2.01 Payment Procedures

A. *Preparation of Invoices.* Engineer will prepare a monthly invoice in accordance with Engineer’s standard invoicing practices and submit the invoice to Owner.

B. *Payment of Invoices.* Invoices are due and payable within 30 days of receipt. If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer’s invoice, the amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, Engineer may, without liability, after giving seven days written notice to Owner, suspend services under this Agreement until Engineer has been paid in full all amounts due for services, expenses, and other related charges. Payments will be credited first to interest and then to principal.

## 3.01 Additional Services

A. If authorized by Owner, or if required because of changes in the Project, Engineer shall furnish services in addition to those set forth above.

B. Owner shall pay Engineer for such additional services as follows: For additional services of Engineer’s

employees engaged directly on the Project an amount equal to the cumulative hours charged to the Project by each class of Engineer’s employees times standard hourly rates for each applicable billing class; plus reimbursable expenses and Engineer’s consultants’ charges, if any.

## 4.01 Termination

A. The obligation to provide further services under this Agreement may be terminated:

1. For cause,
  - a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the Agreement’s terms through no fault of the terminating party.
  - b. By Engineer:
    - 1) upon seven days written notice if Engineer believes that Engineer is being requested by Owner to furnish or perform services contrary to Engineer’s responsibilities as a licensed professional; or
    - 2) upon seven days written notice if the Engineer’s services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer’s control.

3) Engineer shall have no liability to Owner on account of such termination.

c. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under paragraph 4.01.A.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its failure and proceeds diligently to cure such failure within no more than 30 days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience, by Owner effective upon the receipt of notice by Engineer.

B. The terminating party under paragraphs 4.01.A.1 or 4.01.A.2 may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Project site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

## 5.01 Controlling Law

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

## 6.01 Successors, Assigns, and Beneficiaries

A. Owner and Engineer each is hereby bound and the partners, successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by paragraph 6.01.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

## 7.01 General Considerations

A. The standard of care for all professional engineering and related services performed or furnished by Engineer under

this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services. Engineer and its consultants may use or rely upon the design services of others, including, but not limited to, contractors, manufacturers, and suppliers.

B. Engineer shall not at any time supervise, direct, or have control over any contractor's work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, for safety precautions and programs incident to a contractor's work progress, nor for any failure of any contractor to comply with laws and regulations applicable to contractor's work.

C. Engineer neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the contract between Owner and such contractor.

D. Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any contractor's agents or employees or any other persons (except Engineer's own employees) at the Project site or otherwise furnishing or performing any of construction work; or for any decision made on interpretations or clarifications of the construction contract given by Owner without consultation and advice of Engineer.

E. The general conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (No. C-700, 2002 Edition).

F. All design documents prepared or furnished by Engineer are instruments of service, and Engineer retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed.

G. To the fullest extent permitted by law, Owner and Engineer (1) waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project, and (2) agree that Engineer's total liability to Owner under this Agreement shall be limited to \$50,000 or the total amount of compensation received by Engineer, whichever is greater.

H. The parties acknowledge that Engineer's scope of services does not include any services related to a Hazardous Environmental Condition (the presence of asbestos, PCBs, petroleum, hazardous substances or waste, and radioactive materials). If Engineer or any other party encounters a Hazardous Environmental Condition, Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (i) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Hazardous



Environmental Condition; and (ii) warrants that the Site is in full compliance with applicable Laws and Regulations.

### 8.01 Total Agreement

A. This Agreement (consisting of pages 1 to 4 inclusive together with any expressly incorporated appendix), constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

Attachment: 2016-126 ATTH 03 Cowhorn Creek Corridor Project Contract (1560 : 2016-126 ORD budget amendment-FY 2017 CIP)

**9.01 Payment (Hourly Rates Plus Reimbursable Expenses)**

A. Using the procedures set forth in paragraph 2.01, Owner shall pay Engineer as follows:

1. An amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times standard hourly rates for each applicable billing class for all services performed on the Project, plus reimbursable expenses and Engineer's consultants' charges, if any.

2. Engineer's Standard Hourly Rates are attached as Appendix 1.

3. The total compensation for services and reimbursable expenses is a not to exceed amount of \$90,546.00

B. The Engineer's compensation is conditioned on the time to complete construction not exceeding 6 months. Should the time to complete construction be extended beyond this period, total compensation to Engineer shall be appropriately adjusted.

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

OWNER: CITY OF TEXARKANA, TEXAS

ENGINEER: MTG ENGINEERS &  
SURVEYORS, INC.

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date Signed: \_\_\_\_\_

Date Signed: \_\_\_\_\_

License or Certificate No. and State F-354

Address for giving notices:

Address for giving notices:

City of Texarkana, Texas

MTG Engineers & Surveyors, Inc.

P.O. Box 1967

5930 Summerhill Road

Texarkana, TX 75504

Texarkana, TX 75503

# Attachment No. 1

## Cowhorn Creek Trail

### Scope of Work

- A. Project Agreement Intent: Professional engineering and surveying services for the Cowhorn Creek Trail Extension (project) to include all services required for the design of the project as described below:

Project Limits – Along Cowhorn Creek Road from Kennedy Lane to Moores Lane (FM 2240), including:

- a. Linear Park encompassing the property south of the Texarkana Convention Center including
    - i. Trail amenities such as benches, lighting and other features along the Cowhorn Creek segment of the trail.
  - b. Trail from Cowhorn Creek west along Kennedy Lane to Cowhorn Creek Road.
  - c. Trail along Cowhorn Creek Road from Kennedy Lane to Interstate 30 including
    - i. Mid-block crosswalk from Central Mall to the Texarkana Convention Center.
  - d. Trail interstate crossing utilizing the existing bridge structure and reconfiguring traffic lanes and providing a positive barrier to separate the travel lanes from the trail.
  - e. Trail from Interstate 30 to existing Christus St. Michael's trail.
  - f. Trail from the existing Christus St. Michael's Trail at Galleria Oak to Moores Lane.
  - g. Traffic Signals at the intersection of Cowhorn Creek Road and the S Cowhorn Creek Loop Road.
  - h. Traffic Signal reconstruction at the intersection of Cowhorn Creek Road and the N Cowhorn Creek Loop Road.
  - i. Traffic Signals at the intersection of Cowhorn Creek Road and Galleria Oaks.
- B. Services of the Engineer:
- a. Design Phase:
    - i. Data Acquisition and Digital Terrain Model: Engineer will compile data from existing available sources and compile/combine for use in schematic design and geotechnical investigations.
    - ii. Schematic Design Phase (30% Design): Engineer will perform a schematic design (horizontal and vertical alignments), utilizing to the fullest extent practical existing rights-of-way. During this phase the Engineer will initiate discussions with private land owners regarding the potential of easements or rights-of way for the trail. The schematic will be provided for Owner approval and will be the basis for final design.

- iii. Final Survey and Rights-of-Way Exhibits: Engineer will perform topographic survey of the project area for final design purposes. Easement or rights-of-way exhibit surveys and exhibits will be prepared in a format suitable for use by the Owner in completing the acquisition process. Engineer will contact property owners and negotiate with property owners for donation of rights-of-way/easements for the project.
- iv. Final Design Phase: Based on the approved schematic, Engineer will perform final design of the project inclusive of all details necessary for the construction of the project. Interim meetings/submissions will be provided to the owner for review and comment. The interim meetings/submissions will be at the 75% and 95% complete level. Included in the 95% submission will be project specifications and bid documents. 100% complete documents will be produced after receiving owner comments on the 95% complete submission and will include all documents required for bidding of the project including a FEMA No-Rise Certification for the portion of the project located within the limits of the FEMA floodplain.
- v. Bidding Phase: Engineer will support the owner in providing Request for Information responses and attending/conducting a pre-bid meeting during the bidding phase.
- vi. Construction Phase – Not applicable.
- vii. Post Construction Phase – Not applicable.
- b. Additional Services Requiring Owner's Authorization in Advance:
  - i. Third Party Geotechnical Investigation: Engineer will coordinate any required third part accomplishment of geotechnical investigations for the project.

C. Owner's Responsibilities:

- a. Data Acquisition and Digital Terrain Model: Owner shall review and concur with the adequacy of the digital terrain model for use by the Engineer in Schematic Horizontal and Vertical Alignment Design.
- b. Schematic Design: Owner shall review, comment, and subsequently approve Schematic Horizontal and Vertical Alignment design for use by the engineer in further design and exhibit production for Easement/Right-of-Way acquisition process.
- c. Final Survey and Rights-of-Way Exhibits: Owner shall review, comment, and subsequently approve final digital terrain model based on field surveys and Rights-of-Way exhibits. Owner will assist the engineer, as necessary with legal services to support obtaining any easements/rights-of-way necessary for the construction of the project.
- d. Final Design Phase: Owner shall review, comment, and subsequently approve Final Design, Specifications, Bid Documents and No-Rise certifications prior to bidding phase.

## APPENDIX 1

|  <b>MTG ENGINEERS &amp; SURVEYORS</b><br><b>CIVIL *** ENVIRONMENTAL *** SURVEYING</b><br><b>2017 HOURLY RATE SCHEDULE</b> |      |                                                |              |              |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|------------------------------------------------|--------------|--------------|
| CATEGORY                                                                                                                                                                                                   | CODE | SERVICE DESCRIPTION/CLASSIFICATION             | CHARGE UNITS | CHARGE RATE  |
| ENGINEERS<br>ASSOCIATES,<br>& E.I.T.s                                                                                                                                                                      | PPE  | PRINCIPAL PROFESSIONAL ENGINEER                | HOURLY       | \$ 186.00    |
|                                                                                                                                                                                                            | APE  | ASSOCIATE PROFESSIONAL ENGINEER                | HOURLY       | \$ 140.00    |
|                                                                                                                                                                                                            | EIT  | ENGINEER-IN-TRAINING                           | HOURLY       | \$ 99.00     |
| GIS, DESIGN &<br>CAD<br>TECHNICIANS                                                                                                                                                                        | GT   | GIS TECHNICIAN                                 | HOURLY       | \$ 90.00     |
|                                                                                                                                                                                                            | DT   | DESIGN TECHNICIAN                              | HOURLY       | \$ 75.00     |
|                                                                                                                                                                                                            | CT   | CAD TECHNICIAN                                 | HOURLY       | \$ 65.00     |
| ADMINISTRATIVE<br>& DOCUMENTS                                                                                                                                                                              | AP   | ADMINISTRATIVE PROFESSIONAL                    | HOURLY       | \$ 60.00     |
|                                                                                                                                                                                                            | DP   | DOCUMENT PROCESSING                            | HOURLY       | \$ 50.00     |
| RPLS, SURVEY<br>TECHNICIANS &<br>SURVEY CREW                                                                                                                                                               | LS   | REGISTERED PUBLIC LAND SURVEYOR                | HOURLY       | \$ 95.00     |
|                                                                                                                                                                                                            | ST   | SURVEY TECHNICIAN                              | HOURLY       | \$ 67.50     |
|                                                                                                                                                                                                            | SC   | SURVEY CREW *                                  | HOURLY       | \$ 126.50    |
| CAE, CAD &<br>DOCUMENT<br>WORK STATIONS                                                                                                                                                                    | CAE  | COMPUTER AIDED ENGINEER WORK STATION           | HOURLY       | \$ 9.60      |
|                                                                                                                                                                                                            | CAD  | COMPUTER AIDED DRAFTER WORK STATION            | HOURLY       | \$ 6.50      |
|                                                                                                                                                                                                            | DOC  | COMPUTER AIDED DOCUMENT WORK STATION           | HOURLY       | \$ 2.20      |
| PLOTTERING,<br>COPYING &<br>SCANNING                                                                                                                                                                       | SMP  | SMALL MEDIA MONO PRINTING/PLOTTERING (<11X17)  | SHEET        | \$ 0.20      |
|                                                                                                                                                                                                            | MMP  | MEDIUM MEDIA MONO PRINTING/PLOTTERING (11X17)  | SHEET        | \$ 0.25      |
|                                                                                                                                                                                                            | LMP  | LARGE MEDIA MONO PRINTING/PLOTTERING (22X34)   | SHEET        | \$ 3.75      |
|                                                                                                                                                                                                            | SPC  | SMALL MEDIA COLOR PRINTING/PLOTTERING (<11X17) | SHEET        | \$ 0.60      |
|                                                                                                                                                                                                            | MPC  | MEDIUM MEDIA COLOR PRINTING/PLOTTERING (11X17) | SHEET        | \$ 1.15      |
|                                                                                                                                                                                                            | LPC  | LARGE MEDIA COLOR PRINTING/PLOTTERING (22X34)  | SHEET        | \$ 7.50      |
|                                                                                                                                                                                                            | SMR  | SMALL MEDIA MONO COPYING (<11X17)              | SHEET        | \$ 0.16      |
|                                                                                                                                                                                                            | MMR  | MEDIUM MEDIA MONO COPYING (11X17)              | SHEET        | \$ 0.22      |
|                                                                                                                                                                                                            | LMR  | LARGE MEDIA MONO COPYING (22X34)               | SHEET        | \$ 3.80      |
|                                                                                                                                                                                                            | SMS  | SMALL MEDIA SCANNING (<11X17)                  | SHEET        | \$ 0.20      |
|                                                                                                                                                                                                            | MMS  | MEDIUM MEDIA SCANNING (11X17)                  | SHEET        | \$ 1.75      |
|                                                                                                                                                                                                            | LMS  | LARGE MEDIA SCANNING (22X34)                   | SHEET        | \$ 5.70      |
| SUPPORT<br>VEHICLES                                                                                                                                                                                        | 2WV  | 2 WHEEL DRIVE VEHICLE                          | MILE         | Govt Rate    |
|                                                                                                                                                                                                            | 4WV  | 4 WHEEL DRIVE VEHICLE                          | MILE         | Govt + \$.05 |
|                                                                                                                                                                                                            | RTV  | ROUGH TERRAIN VEHICLE                          | DAY          | \$ 125.00    |
|                                                                                                                                                                                                            | BT   | BOAT                                           | DAY          | \$ 117.50    |

\* Crew is fully equipped with survey equipment which, on an as-needed basis, may include Network Connected (cellular) GPS, Robotic Total Stations, Electronic Data Collectors, Auto-Levels, Crew Truck and standard equipment.



# AIA<sup>®</sup> Document B101<sup>™</sup> – 2007

## Standard Form of Agreement Between Owner and Architect

**AGREEMENT** made as of the \_\_\_\_\_ day of November in the year 2016  
(In words, indicate day, month and year.)

**BETWEEN** the Architect's client identified as the Owner:  
(Name, legal status, address and other information)

City of Texarkana, Texas  
PO Box 1967  
Texarkana, TX 75504  
Telephone Number: 903.798.3900  
Fax Number: 903.798.3448

and the Architect:  
(Name, legal status, address and other information)

KSA  
8875 Synergy Drive  
McKinney, TX 75070  
Telephone Number: 972.542.2995  
Fax Number: 972.542.6750

for the following Project:  
(Name, location and detailed description)

Fire Training Center Classroom, Parking Lot, and Service Center Renovation and  
Expansion  
Texarkana, Texas

The Owner and Architect agree as follows.

### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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## EXHIBIT A INITIAL INFORMATION

## ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Article 1 and in optional Exhibit A, Initial Information:

*(Complete Exhibit A, Initial Information, and incorporate it into the Agreement at Section 13.2, or state below Initial Information such as details of the Project's site and program, Owner's contractors and consultants, Architect's consultants, Owner's budget for the Cost of the Work, authorized representatives, anticipated procurement method, and other information relevant to the Project.)*

Professional Services consisting of architectural, engineering, mechanical, electrical, plumbing design, surveying and geotechnical investigation for the City of Texarkana, Texas for the design of the following projects:

- 1) **Fire training center classroom**  
 60' x 40' metal building with a 30' x 40' classroom with interior finishes and an eave height of 10-12 ft  
 Two (2) bathrooms to comply with the American with Disabilities Act (ADA)  
 Office with window to outside training area  
 No windows to the front outside of security fence  
 Floors to be stained concrete  
 Cabinet in the training room with sink to accommodate coffee pot  
 Roll up door to accommodate a pickup truck  
 Large storage area  
 Two (2) exterior pedestrian doors  
 Sidewalk  
 Colors to match existing; no brick or stone
- 2) **Asphalt Parking lot**  
 Asphalt parking lot with open ditch drainage

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Striping  
 ADA parking, if needed  
 Preserve as many trees as possible

- 3) **40' x 40' open air covered parking for equipment**  
 Add on to existing covered parking matching roof height and pitch  
 Concrete foundation and slab to be included underneath the covering
- 4) **Service Center offices**  
 Demolish interior of existing space and provide new more efficient layout  
 Two (2) offices approx 12'x15' each  
 Men and women bathrooms (ADA compliant)  
 Break room/conference room with four (4) or five (5) computer data ports  
 Large foreman's office to accommodate 12 desks, six (6) on each side with data ports  
 Replace existing roof  
 New flooring, walls, ceiling, paint and HVAC  
 Additional space is available if needed to extend the building approximately 30 ft.
- 5) **Service Center offices (Expansion)**  
 Addition of a 20 x 30' bay if needed to provide space for program items in item 4

§ 1.2 The Owner's anticipated dates for commencement of construction and Substantial Completion of the Work are set forth below:

- .1 Commencement of construction date:

To be determined.

- .2 Substantial Completion date:

To be determined.

§ 1.3 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services and the Architect's compensation.

## ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide the professional services as set forth in this Agreement.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.5 The Architect shall maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost:

(Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)

.1 General Liability

\$1,000,000 Each Occurrence  
\$ 300,000 Damage to Rented Premises  
\$ 10,000 Medical Expenses  
\$1,000,000 Personal and Adv. Injury  
\$2,000,000 General Aggregate  
\$2,000,000 Products-Comp/Op Agg.

.2 Automobile Liability

\$1,000,000 Combined Single Limit  
\$ 2,500 PIP-Basic

.3 Workers' Compensation

\$1,000,000 E.L. Each Accident  
\$1,000,000 E.L. Disease-Each Employee  
\$1,000,000 E.L. Disease-Policy Limit

.4 Professional Liability

\$1,000,000 Per Claim  
\$2,000,000 Annual Aggregate

### ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution made without the Architect's approval.

§ 3.1.5 The Architect shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

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§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

### § 3.2 SCHEMATIC DESIGN PHASE SERVICES

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and the proposed procurement or delivery method and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project's requirements agreed upon with the Owner, the Architect shall prepare and present for the Owner's approval a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain other environmentally responsible design services under Article 4.

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule and budget for the Cost of the Work.

§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.

### § 3.3 DESIGN DEVELOPMENT PHASE SERVICES

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work.

§ 3.3.3 The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval.

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### § 3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct the Work the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms.

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work.

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval.

### § 3.5 BIDDING OR NEGOTIATION PHASE SERVICES

#### § 3.5.1 GENERAL

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

#### § 3.5.2 COMPETITIVE BIDDING

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project by

- .1 procuring the reproduction of Bidding Documents for distribution to prospective bidders;
- .2 distributing the Bidding Documents to prospective bidders, requesting their return upon completion of the bidding process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to prospective bidders;
- .3 organizing and conducting a pre-bid conference for prospective bidders;
- .4 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda; and
- .5 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 3.5.2.3 The Architect shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

#### § 3.5.3 NEGOTIATED PROPOSALS

§ 3.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents.

§ 3.5.3.2 The Architect shall assist the Owner in obtaining proposals by

- .1 procuring the reproduction of Proposal Documents for distribution to prospective contractors, and requesting their return upon completion of the negotiation process;
- .2 organizing and participating in selection interviews with prospective contractors; and



- .3 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

§ 3.5.3.3 The Architect shall consider requests for substitutions, if the Proposal Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective contractors.

## § 3.6 CONSTRUCTION PHASE SERVICES

### § 3.6.1 GENERAL

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™–2007, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201–2007, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.3, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

### § 3.6.2 EVALUATIONS OF THE WORK

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.3.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

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§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201–2007, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

### § 3.6.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

### § 3.6.4 SUBMITTALS

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review.

§ 3.6.4.2 In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to the provisions of Section 4.3, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

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### § 3.6.5 CHANGES IN THE WORK

§ 3.6.5.1 The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to the provisions of Section 4.3, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

### § 3.6.6 PROJECT COMPLETION

§ 3.6.6.1 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When the Work is found to be substantially complete, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

## ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Additional Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2.

*(Designate the Additional Services the Architect shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)*

| Additional Services                                   | Responsibility<br>(Architect, Owner<br>or<br>Not Provided) | Location of Service Description<br>(Section 4.2 below or in an exhibit<br>attached to this document and<br>identified below) |
|-------------------------------------------------------|------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------|
| § 4.1.1 Programming (B202™-2009)                      | Owner                                                      |                                                                                                                              |
| § 4.1.2 Multiple preliminary designs                  | Not Provided                                               |                                                                                                                              |
| § 4.1.3 Measured drawings                             | Not Provided                                               |                                                                                                                              |
| § 4.1.4 Existing facilities surveys                   | Not Provided                                               |                                                                                                                              |
| § 4.1.5 Site Evaluation and Planning (B203™-2007)     | Not Provided                                               |                                                                                                                              |
| § 4.1.6 Building Information Modeling<br>(E202™-2008) | Not Provided                                               |                                                                                                                              |
| § 4.1.7 Civil engineering                             | Architect                                                  |                                                                                                                              |
| § 4.1.8 Landscape design                              | Not Provided                                               |                                                                                                                              |
| § 4.1.9 Architectural Interior Design (B252™-2007)    | Not Provided                                               |                                                                                                                              |
| § 4.1.10 Value Analysis (B204™-2007)                  | Not Provided                                               |                                                                                                                              |
| § 4.1.11 Detailed cost estimating                     | Not Provided                                               |                                                                                                                              |

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|          |                                                           |              |  |
|----------|-----------------------------------------------------------|--------------|--|
| § 4.1.12 | On-site Project Representation (B207™–2008)               | Not Provided |  |
| § 4.1.13 | Conformed construction documents                          | Not Provided |  |
| § 4.1.14 | As-Designed Record drawings                               | Not Provided |  |
| § 4.1.15 | As-Constructed Record drawings                            | Not Provided |  |
| § 4.1.16 | Post occupancy evaluation                                 | Not Provided |  |
| § 4.1.17 | Facility Support Services (B210™–2007)                    | Not Provided |  |
| § 4.1.18 | Tenant-related services                                   | Not Provided |  |
| § 4.1.19 | Coordination of Owner's consultants                       | Not Provided |  |
| § 4.1.20 | Telecommunications/data design                            | Not Provided |  |
| § 4.1.21 | Security Evaluation and Planning (B206™–2007)             | Not Provided |  |
| § 4.1.22 | Commissioning (B211™–2007)                                | Not Provided |  |
| § 4.1.23 | Extensive environmentally responsible design              | Not Provided |  |
| § 4.1.24 | LEED® Certification (B214™–2012)                          | Not Provided |  |
| § 4.1.25 | Fast-track design services                                | Not Provided |  |
| § 4.1.26 | Historic Preservation (B205™–2007)                        | Not Provided |  |
| § 4.1.27 | Furniture, Furnishings, and Equipment Design (B253™–2007) | Not Provided |  |
| 4.1.28   | Surveying                                                 | Architect    |  |
| 4.1.29   | Geotechnical Investigation                                | Architect    |  |

§ 4.2 Insert a description of each Additional Service designated in Section 4.1 as the Architect's responsibility, if not further described in an exhibit attached to this document.

- 4.1.9 Civil Engineering
- 4.1.28 Surveying
- 4.1.29 Geotechnical Investigation

§ 4.3 Additional Services may be provided after execution of this Agreement, without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.3 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.3.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following services until the Architect receives the Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the Owner's request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;
- .3 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 Preparing digital data for transmission to the Owner's consultants and contractors, or to other Owner authorized recipients;
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- .7 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .8 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .9 Evaluation of the qualifications of bidders or persons providing proposals;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or
- .11 Assistance to the Initial Decision Maker, if other than the Architect.



§ 4.3.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Architect, and the Owner shall have no further obligation to compensate the Architect for those services:

- .1 Reviewing a Contractor's submittal out of sequence from the submittal schedule agreed to by the Architect;
- .2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker;
- .5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom; or
- .6 To the extent the Architect's Basic Services are affected, providing Construction Phase Services 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion identified in Initial Information, whichever is earlier.

§ 4.3.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 Two ( 2 ) reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor
- .2 Nine ( 9 ) visits to the site by the Architect over the duration of the Project during construction
- .3 One ( 1 ) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 One ( 1 ) inspections for any portion of the Work to determine final completion

§ 4.3.4 If the services covered by this Agreement have not been completed within Twelve ( 12 ) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

## ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

§ 5.2 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.4 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.



§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.6 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants maintain professional liability insurance as appropriate to the services provided.

§ 5.7 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.8 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.9 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.10 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor and the Architect's consultants through the Architect about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Architect of any direct communications that may affect the Architect's services.

§ 5.11 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

§ 5.12 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

## ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work or from any estimate of the Cost of the Work or evaluation prepared or agreed to by the Architect.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the program and scope of the Project; and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requests detailed cost estimating services, the Architect shall provide such services as an Additional Service under Article 4.

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§ 6.4 If the Bidding or Negotiation Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, through no fault of the Architect, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect, without additional compensation, shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. The Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

#### ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the author of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license

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granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

## ARTICLE 8 CLAIMS AND DISPUTES

### § 8.1 GENERAL

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2007, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

### § 8.2 MEDIATION

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

*(Check the appropriate box. If the Owner and Architect do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)*

☐ Arbitration pursuant to Section 8.3 of this Agreement

☒ Litigation in a court of competent jurisdiction

☐ Other (Specify)

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**§ 8.3 ARBITRATION**

§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

§ 8.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.

§ 8.3.2 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

§ 8.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

**§ 8.3.4 CONSOLIDATION OR JOINDER**

§ 8.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 8.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 8.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

**ARTICLE 9 TERMINATION OR SUSPENSION**

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

Init.



§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 9.7.

§ 9.7 Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect.

§ 9.8 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 11.9.

#### ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2007, General Conditions of the Contract for Construction.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

§ 10.8 If the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.



**ARTICLE 11 COMPENSATION**

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

*(Insert amount of, or basis for, compensation.)*

| \$73,950.00 Lump Sum

§ 11.2 For Additional Services designated in Section 4.1, the Owner shall compensate the Architect as follows:  
*(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)*

|                                   |                                                                                                                                  |
|-----------------------------------|----------------------------------------------------------------------------------------------------------------------------------|
| 4.1.9 Civil Engineering           | Fee included in basic services amount                                                                                            |
| 4.1.28 Topographic Survey         | \$ 7,735 ( Topographic Survey only; no boundary or replat)                                                                       |
| 4.1.29 Geotechnical Investigation | \$ 6,430 (Geotechnical Investigation for new fire training building; parking lot; equipment storage and service center addition) |
| Total Additional Services         | \$14,165                                                                                                                         |

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Architect as follows:

*(Insert amount of, or basis for, compensation.)*

| By amendment.

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus percent ( %), or as otherwise stated below:

| Not applicable.

§ 11.5 Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows:

*(Table deleted)*

|                                                     |             |
|-----------------------------------------------------|-------------|
| 1. Fire training center classroom                   | \$25,800.00 |
| 2. Asphalt parking lot                              | \$12,000.00 |
| 3. 40' x 40' open air covered parking for equipment | \$6,750.00  |
| 4. Service center offices                           | \$18,900.00 |
| 5. Service center offices (Expansion)               | \$10,500.00 |
| TOTAL                                               | \$73,950.00 |

§ 11.6 When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.5 based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent estimate of the Cost of the Work for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.  
*(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

| Not applicable.

**Employee or Category**

**Rate**

Init.

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**§ 11.8 COMPENSATION FOR REIMBURSABLE EXPENSES**

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 Architect's Consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses; and
- .11 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus Fifteen percent ( 15.00 %) of the expenses incurred.

**§ 11.9 COMPENSATION FOR USE OF ARCHITECT'S INSTRUMENTS OF SERVICE**

If the Owner terminates the Architect for its convenience under Section 9.5, or the Architect terminates this Agreement under Section 9.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Architect's Instruments of Service solely for purposes of completing, using and maintaining the Project as follows:

\$12,000.00

**§ 11.10 PAYMENTS TO THE ARCHITECT**

§ 11.10.1 An initial payment of Zero Dollars and Zero Cents (\$ 0.00 ) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid Thirty ( 30 ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

*(Insert rate of monthly or annual interest agreed upon.)*

12.00 % per annum

§ 11.10.3 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.10.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

**ARTICLE 12 SPECIAL TERMS AND CONDITIONS**

Special terms and conditions that modify this Agreement are as follows:

None.

Init.



**ARTICLE 13 SCOPE OF THE AGREEMENT**

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents listed below:

- .1 AIA Document B101™-2007, Standard Form Agreement Between Owner and Architect
- .2
- .3 Other documents:  
(List other documents, if any, including Exhibit A, Initial Information, and additional scopes of service, if any, forming part of the Agreement.)

None.

This Agreement entered into as of the day and year first written above.

**OWNER**

**CITY OF TEXARKANA, TEXAS**

(Signature)

John Whitson, City Manager

(Printed name and title)

Date: \_\_\_\_\_

**ARCHITECT**

**KSA**

(Signature)

Mitchell L. Fortner, P.E., President

(Printed name and title)

Date: 11/3/2016

Init.

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User Notes:

(2035836011)



# CIP Execution – FY17

Design Phase +



| City of Texarkana, Texas CIP Action Plan |                                                     |               |               |
|------------------------------------------|-----------------------------------------------------|---------------|---------------|
|                                          |                                                     | \$ 13,412,451 | \$22,238,776  |
| Project Number                           | Project Name                                        | FY17 Projects | FY18 Projects |
| <a href="#"><u>1590</u></a>              | Roof Replacement-Fire Stations                      | \$ 326,227    |               |
| <a href="#"><u>1000</u></a>              | Forest Lake Concrete Reconstruction                 | \$ 6,214,846  |               |
| <a href="#"><u>1570</u></a>              | Playground Replacement (All Parks)                  | \$ 342,538    |               |
| <a href="#"><u>1550</u></a>              | Ball Field Lights Fields 1 & 2 (SLP)                | \$ 239,206    |               |
| <a href="#"><u>1400</u></a>              | Walton Drive and Pavilion Drainage Improvements     | \$ 428,635    |               |
| <a href="#"><u>1580</u></a>              | Roof Replacement-City Buildings                     | \$ 652,454    |               |
| <a href="#"><u>1600</u></a>              | Roof Replacement-Parks/Public Works                 | \$ 521,963    |               |
| <a href="#"><u>1270</u></a>              | PD Training Center Parking Lot Reconstruction       | \$ 615,054    |               |
| <a href="#"><u>1530</u></a>              | Fire Training Field Phase 2 Enhancement             | \$ 430,076    |               |
| <a href="#"><u>1540</u></a>              | SLP Lake Dredging                                   | \$ 706,825    |               |
| <a href="#"><u>1560</u></a>              | Ball Field Lights ( 5 Fields) Wallace Park Softball | \$ 592,591    |               |
| <a href="#"><u>1050</u></a>              | Courthouse Square Initiative                        | \$ 349,675    |               |
| <a href="#"><u>1340</u></a>              | Building and Parking Improvments - Public Works     | \$ 806,375    |               |
| <a href="#"><u>1370</u></a>              | Cowhorn Creek Linear Park Trail                     | \$ 1,185,989  |               |
| <a href="#"><u>1300</u></a>              | Airport Terminal (Texas Share)                      |               | \$ 1,176,047  |
| <a href="#"><u>1040</u></a>              | Perot Theatre Restoration & Art Park                |               | \$ 14,109,133 |
| <a href="#"><u>1520</u></a>              | Fire Station Relocation                             |               | \$ 6,953,596  |

|                      | City of Texarkana, Texas CIP Action Plan            | \$ 13,412,451 | \$22,238,776  |
|----------------------|-----------------------------------------------------|---------------|---------------|
| Project Number       | Project Name                                        | FY17 Projects | FY18 Projects |
| <a href="#">1590</a> | Roof Replacement-Fire Stations                      | \$ 326,227    |               |
| <a href="#">1000</a> | Forest Lake Concrete Reconstruction                 | \$ 6,214,846  |               |
| <a href="#">1570</a> | Playground Replacement (All Parks)                  | \$ 342,538    |               |
| <a href="#">1550</a> | Ball Field Lights Fields 1 & 2 (SLP)                | \$ 239,206    |               |
| <a href="#">1400</a> | Walton Drive and Pavilion Drainage Improvements     | \$ 428,635    |               |
| <a href="#">1580</a> | Roof Replacement-City Buildings                     | \$ 652,454    |               |
| <a href="#">1600</a> | Roof Replacement-Parks/Public Works                 | \$ 521,963    |               |
| <a href="#">1270</a> | PD Training Center Parking Lot Reconstruction       | \$ 615,054    |               |
| <a href="#">1530</a> | Fire Training Field Phase 2 Enhancement             | \$ 430,076    |               |
| <a href="#">1540</a> | SLP Lake Dredging                                   | \$ 706,825    |               |
| <a href="#">1560</a> | Ball Field Lights ( 5 Fields) Wallace Park Softball | \$ 592,591    |               |
| <a href="#">1050</a> | Courthouse Square Initiative                        | \$ 349,675    |               |
| <a href="#">1340</a> | Building and Parking Improvments - Public Works     | \$ 806,375    |               |
| <a href="#">1370</a> | Cowhorn Creek Linear Park Trail                     | \$ 1,185,989  |               |
| <a href="#">1300</a> | Airport Terminal (Texas Share)                      |               | \$ 1,176,047  |
| <a href="#">1040</a> | Perot Theatre Restoration & Art Park                |               | \$ 14,109,133 |
| <a href="#">1520</a> | Fire Station Relocation                             |               | \$ 6,953,596  |

| City of Texarkana, Texas CIP Action Plan |                                                     |               |               |
|------------------------------------------|-----------------------------------------------------|---------------|---------------|
|                                          |                                                     | \$ 13,412,451 | \$22,238,776  |
| Project Number                           | Project Name                                        | FY17 Projects | FY18 Projects |
| <a href="#">1590</a>                     | Roof Replacement-Fire Stations                      | \$ 326,227    |               |
| <a href="#">1000</a>                     | Forest Lake Concrete Reconstruction                 | \$ 6,214,846  |               |
| <a href="#">1570</a>                     | Playground Replacement (All Parks)                  | \$ 342,538    |               |
| <a href="#">1550</a>                     | Ball Field Lights Fields 1 & 2 (SLP)                | \$ 239,206    |               |
| <a href="#">1400</a>                     | Walton Drive and Pavilion Drainage Improvements     | \$ 428,635    |               |
| <a href="#">1580</a>                     | Roof Replacement-City Buildings                     | \$ 652,454    |               |
| <a href="#">1600</a>                     | Roof Replacement-Parks/Public Works                 | \$ 521,963    |               |
| <a href="#">1270</a>                     | PD Training Center Parking Lot Reconstruction       | \$ 615,054    |               |
| <a href="#">1530</a>                     | Fire Training Field Phase 2 Enhancement             | \$ 430,076    |               |
| <a href="#">1540</a>                     | SLP Lake Dredging                                   | \$ 706,825    |               |
| <a href="#">1560</a>                     | Ball Field Lights ( 5 Fields) Wallace Park Softball | \$ 592,591    |               |
| <a href="#">1050</a>                     | Courthouse Square Initiative                        | \$ 240,675    |               |
| <a href="#">1340</a>                     | Building and Parking Improvments - Public Works     | \$831,797     |               |
| <a href="#">1370</a>                     | Cowhorn Creek Linear Park Trail                     | \$ 1,185,989  |               |
| <a href="#">1300</a>                     | Airport Terminal (Texas Share)                      |               | \$ 1,176,047  |
| <a href="#">1040</a>                     | Perot Theatre Restoration & Art Park                |               | \$ 14,109,133 |
| <a href="#">1520</a>                     | Fire Station Relocation                             |               | \$ 6,953,596  |

| City of Texarkana, Texas CIP Action Plan |                                                                     | \$ 13,412,451 | \$22,238,776  |
|------------------------------------------|---------------------------------------------------------------------|---------------|---------------|
| Project Number                           | Project Name                                                        | FY17 Projects | FY18 Projects |
| <a href="#">1590</a>                     | Roof Replacement-Fire Stations                                      | \$ 326,227    |               |
| <a href="#">1000</a>                     | Forest Lake Concrete Reconstruction                                 | \$ 6,214,846  |               |
| <a href="#">1570</a>                     | Playground Replacement (All Parks)                                  | \$ 342,538    |               |
| <a href="#">1550</a>                     | Ball Field Lights Fields 1 & 2 (SLP) + T-Ball & Multi-Purpose Field | \$ 239,206    |               |
| <a href="#">1400</a>                     | Walton Drive and Pavilion Drainage Field Improvements               | \$ 428,635    |               |
| <a href="#">1580</a>                     | Roof Replacement-City Buildings                                     | \$ 652,454    |               |
| <a href="#">1600</a>                     | Roof Replacement-Parks/Public Works                                 | \$ 521,963    |               |
| <a href="#">1270</a>                     | PD Training Center Parking Lot Reconstruction                       | \$ 615,054    |               |
| <a href="#">1530</a>                     | Fire Training Field Phase 2 Enhancement                             | \$ 430,076    |               |
| <a href="#">1540</a>                     | SLP Lake Dredging                                                   | \$ 706,825    |               |
| <a href="#">1560</a>                     | Ball Field Lights ( 5 Fields) Wallace Park Softball                 | \$ 592,591    |               |
| <a href="#">1050</a>                     | Courthouse Square Initiative                                        | \$ 240,675    |               |
| <a href="#">1340</a>                     | Building and Parking Improvments - Public Works                     | \$ 831,797    |               |
| <a href="#">1370</a>                     | Cowhorn Creek Linear Park Trail                                     | \$ 779,000    |               |
| <a href="#">1300</a>                     | Airport Terminal (Texas Share)                                      | \$ 1,176,047  |               |
| <a href="#">1040</a>                     | Perot Theatre Restoration & Art Park                                | \$ 4,109,133  |               |
| <a href="#">1520</a>                     | Fire Station Relocation                                             |               | \$ 6,953,596  |

\$831,797  
\$779,000  
 \$ 52,797

| City of Texarkana, Texas CIP Action Plan |                                                     |               |               |
|------------------------------------------|-----------------------------------------------------|---------------|---------------|
|                                          |                                                     | \$ 13,412,451 | \$22,238,776  |
| Project Number                           | Project Name                                        | FY17 Projects | FY18 Projects |
| <a href="#">1590</a>                     | Roof Replacement-Fire Stations                      | \$ 326,227    |               |
| <a href="#">1000</a>                     | Forest Lake Concrete Reconstruction                 | \$ 6,214,846  |               |
| <a href="#">1570</a>                     | Playground Replacement (All Parks)                  | \$ 342,538    |               |
| <a href="#">1550</a>                     | Ball Field Lights Fields 1 & 2 (SLP)                | \$ 239,206    |               |
| <a href="#">1400</a>                     | Walton Drive and Pavilion Drainage Improvements     | \$ 428,635    |               |
| <a href="#">1580</a>                     | Roof Replacement-City Buildings                     | \$ 652,454    |               |
| <a href="#">1600</a>                     | Roof Replacement-Parks/Public Works                 | \$ 521,963    |               |
| <a href="#">1270</a>                     | PD Training Center Parking Lot Reconstruction       | \$ 615,054    |               |
| <a href="#">1530</a>                     | Fire Training Field Phase 2 Enhancement             | \$ 430,076    |               |
| <a href="#">1540</a>                     | SLP Lake Dredging                                   | \$ 706,825    |               |
| <a href="#">1560</a>                     | Ball Field Lights ( 5 Fields) Wallace Park Softball | \$ 592,591    |               |
| <a href="#">1050</a>                     | Courthouse Square Initiative                        | \$ 349,675    |               |
| <a href="#">1340</a>                     | Building and Parking Improvments - Public Works     | \$ 806,375    |               |
| <a href="#">1370</a>                     | Cowhorn Creek Linear Park Trail                     | \$ 1,185,989  |               |
| <a href="#">1300</a>                     | Airport Terminal (Texas Share)                      |               | \$ 1,176,047  |
| <a href="#">1040</a>                     | Perot Theatre Restoration & Art Park                |               | \$ 14,109,133 |
| <a href="#">1520</a>                     | Fire Station Relocation                             |               | \$ 6,953,596  |



| City of Texarkana, Texas CIP Action Plan |                                                     | \$ 13,412,451 | \$22,238,776  |
|------------------------------------------|-----------------------------------------------------|---------------|---------------|
| Project Number                           | Project Name                                        | FY17 Projects | FY18 Projects |
| <a href="#">1590</a>                     | Roof Replacement-Fire Stations                      | \$ 326,227    |               |
| <a href="#">1000</a>                     | Forest Lake Concrete Reconstruction                 | \$ 6,214,846  | \$638,136     |
| <a href="#">1570</a>                     | Playground Replacement (All Parks)                  | \$ 342,538    |               |
| <a href="#">1550</a>                     | Ball Field Lights Fields 1 & 2 (SLP)                | \$ 239,206    |               |
| <a href="#">1400</a>                     | Walton Drive and Pavilion Drainage Improvements     | \$ 428,635    |               |
| <a href="#">1580</a>                     | Roof Replacement-City Buildings                     | \$ 652,454    |               |
| <a href="#">1600</a>                     | Roof Replacement-Parks/Public Works                 | \$ 521,963    |               |
| <a href="#">1270</a>                     | PD Training Center Parking Lot Reconstruction       | \$ 615,054    |               |
| <a href="#">1530</a>                     | Fire Training Field Phase 2 Enhancement             | \$ 430,076    | \$ 28,000     |
| <a href="#">1540</a>                     | SLP Lake Dredging                                   | \$ 706,825    |               |
| <a href="#">1560</a>                     | Ball Field Lights ( 5 Fields) Wallace Park Softball | \$ 592,591    |               |
| <a href="#">1050</a>                     | Courthouse Square Initiative                        | \$ 349,675    |               |
| <a href="#">1340</a>                     | Building and Parking Improvments - Public Works     | \$ 806,375    | \$ 84,866     |
| <a href="#">1370</a>                     | Cowhorn Creek Linear Park Trail                     | \$ 1,185,989  | \$124,818     |
| <a href="#">1300</a>                     | Airport Terminal (Texas Share)                      |               | \$ 1,178,847  |
| <a href="#">1040</a>                     | Perot Theatre Restoration & Art Park                |               | \$ 14,109,133 |
| <a href="#">1520</a>                     | Fire Station Relocation                             |               | \$ 6,953,596  |

| City of Texarkana, Texas CIP Action Plan |                                                     |               |               |
|------------------------------------------|-----------------------------------------------------|---------------|---------------|
|                                          |                                                     | \$ 13,412,451 | \$22,238,776  |
| Project Number                           | Project Name                                        | FY17 Projects | FY18 Projects |
| <a href="#">1590</a>                     | Roof Replacement-Fire Stations                      | \$ 326,227    |               |
| <a href="#">1000</a>                     | Forest Lake Concrete Reconstruction                 | \$ 6,214,846  | \$638,136     |
| <a href="#">1570</a>                     | Playground Replacement (All Parks)                  | \$ 342,538    |               |
| <a href="#">1550</a>                     | Ball Field Lights Fields 1 & 2 (SLP)                | \$ 239,206    |               |
| <a href="#">1400</a>                     | Walton Drive and Pavilion Drainage Improvements     | \$ 428,635    |               |
| <a href="#">1580</a>                     | Roof Replacement-City Buildings                     | \$ 652,454    |               |
| <a href="#">1600</a>                     | Roof Replacement-Parks/Public Works                 | \$ 521,963    |               |
| <a href="#">1270</a>                     | PD Training Center Parking Lot Reconstruction       | \$ 615,054    |               |
| <a href="#">1530</a>                     | Fire Training Field Phase 2 Enhancement             | \$ 430,076    | \$ 28,000     |
| <a href="#">1540</a>                     | SLP Lake Dredging                                   | \$ 706,825    |               |
| <a href="#">1560</a>                     | Ball Field Lights ( 5 Fields) Wallace Park Softball | \$ 592,591    |               |
| <a href="#">1050</a>                     | Courthouse Square Initiative                        | \$ 349,675    |               |
| <a href="#">1340</a>                     | Building and Parking Improvments - Public Works     | \$ 806,375    | \$ 84,866     |
| <a href="#">1370</a>                     | Cowhorn Creek Linear Park Trail                     | \$ 1,185,989  | \$124,818     |
| <a href="#">1300</a>                     | Airport Terminal (Texas Share)                      |               | \$875,820     |
| <a href="#">1040</a>                     | Perot Theatre Restoration & Art Park                |               |               |
| <a href="#">1520</a>                     | Fire Station Relocation                             |               | \$ 6,953,596  |

| City of Texarkana, Texas CIP Action Plan |                                                     |               |               |
|------------------------------------------|-----------------------------------------------------|---------------|---------------|
|                                          |                                                     | \$ 13,412,451 | \$22,238,776  |
| Project Number                           | Project Name                                        | FY17 Projects | FY18 Projects |
| <a href="#">1590</a>                     | Roof Replacement-Fire Stations                      | \$ 326,227    |               |
| <a href="#">1000</a>                     | Forest Lake Concrete Reconstruction                 | \$ 6,214,846  | \$638,136     |
| <a href="#">1570</a>                     | Playground Replacement (All Parks)                  | \$ 342,538    |               |
| <a href="#">1550</a>                     | Ball Field Lights Fields 1 & 2 (SLP)                | \$ 239,206    |               |
| <a href="#">1400</a>                     | Walton Drive and Pavilion Drainage Improvements     | \$ 428,635    |               |
| <a href="#">1580</a>                     | Roof Replacement-City Buildings                     | \$ 652,454    |               |
| <a href="#">1600</a>                     | Roof Replacement-Parks/Public Works                 | \$ 521,963    |               |
| <a href="#">1270</a>                     | PD Training Center Parking Lot Reconstruction       | \$ 615,054    |               |
| <a href="#">1530</a>                     | Fire Training Field Phase 2 Enhancement             | \$ 430,076    | \$ 28,000     |
| <a href="#">1540</a>                     | SLP Lake Dredging                                   | \$ 706,825    |               |
| <a href="#">1560</a>                     | Ball Field Lights ( 5 Fields) Wallace Park Softball | \$ 592,591    |               |
| <a href="#">1050</a>                     | Courthouse Square Initiative                        | \$ 349,675    |               |
| <a href="#">1340</a>                     | Building and Parking Improvments - Public Works     | \$ 806,375    | \$ 84,866     |
| <a href="#">1370</a>                     | Cowhorn Creek Linear Park Trail                     | \$ 1,185,989  | \$124,818     |
| <a href="#">1300</a>                     | Airport Terminal (Texas Share)                      |               | \$875,820     |
| <a href="#">1040</a>                     | Perot Theatre Restoration & Art Park                |               | \$509,761     |
| <a href="#">1520</a>                     | Fire Station Relocation                             |               |               |

| City of Texarkana, Texas CIP Action Plan |                                                     |               |               | \$ 13,412,451 | \$22,238,776 |
|------------------------------------------|-----------------------------------------------------|---------------|---------------|---------------|--------------|
| Project Number                           | Project Name                                        | FY17 Projects | FY18 Projects |               |              |
| <a href="#">1590</a>                     | Roof Replacement-Fire Stations                      | \$ 326,227    |               |               |              |
| <a href="#">1000</a>                     | Forest Lake Concrete Reconstruction                 | \$ 6,214,846  |               | \$638,136     |              |
| <a href="#">1570</a>                     | Playground Replacement (All Parks)                  | \$ 342,538    |               |               |              |
| <a href="#">1550</a>                     | Ball Field Lights Fields 1 & 2 (SLP)                | \$ 239,206    |               |               |              |
| <a href="#">1400</a>                     | Walton Drive and Pavilion Drainage Improvements     | \$ 428,635    |               |               |              |
| <a href="#">1580</a>                     | Roof Replacement-City Buildings                     | \$ 652,454    |               |               |              |
| <a href="#">1600</a>                     | Roof Replacement-Parks/Public Works                 | \$ 521,963    |               |               |              |
| <a href="#">1270</a>                     | PD Training Center Parking Lot Reconstruction       | \$ 615,054    |               |               |              |
| <a href="#">1530</a>                     | Fire Training Field Phase 2 Enhancement             | \$ 430,076    |               | \$ 28,000     |              |
| <a href="#">1540</a>                     | SLP Lake Dredging                                   | \$ 706,825    |               |               |              |
| <a href="#">1560</a>                     | Ball Field Lights ( 5 Fields) Wallace Park Softball | \$ 592,591    |               |               |              |
| <a href="#">1050</a>                     | Courthouse Square Initiative                        | \$ 349,675    |               |               |              |
| <a href="#">1340</a>                     | Building and Parking Improvments - Public Works     | \$ 806,375    |               | \$ 84,866     |              |
| <a href="#">1370</a>                     | Cowhorn Creek Linear Park Trail                     | \$ 1,185,989  |               | \$124,818     |              |
| <a href="#">1300</a>                     | Airport Terminal (Texas Share)                      |               |               |               |              |
| <a href="#">1040</a>                     | Perot Theatre Restoration & Art Park                |               |               | \$875,820     |              |
| <a href="#">1520</a>                     | Fire Station Relocation                             |               |               | \$509,761     |              |
|                                          |                                                     |               |               | \$366,055     |              |

|                               | <b>CIP</b>       | <b>Bids</b>      | <b>Advanced<br/>Funding</b> |
|-------------------------------|------------------|------------------|-----------------------------|
| <b>Ball Field Lights</b>      | <b>\$831,797</b> | <b>\$779,000</b> |                             |
| <b>Design</b>                 | <b>\$875,820</b> | <b>\$509,761</b> |                             |
| <b>Subtotal</b>               |                  |                  | <b>\$1,288,761</b>          |
| <b>Contingency</b>            |                  |                  | <b>\$64,439</b>             |
| <b>Total Advanced Funding</b> |                  |                  | <b>\$1,353,200</b>          |

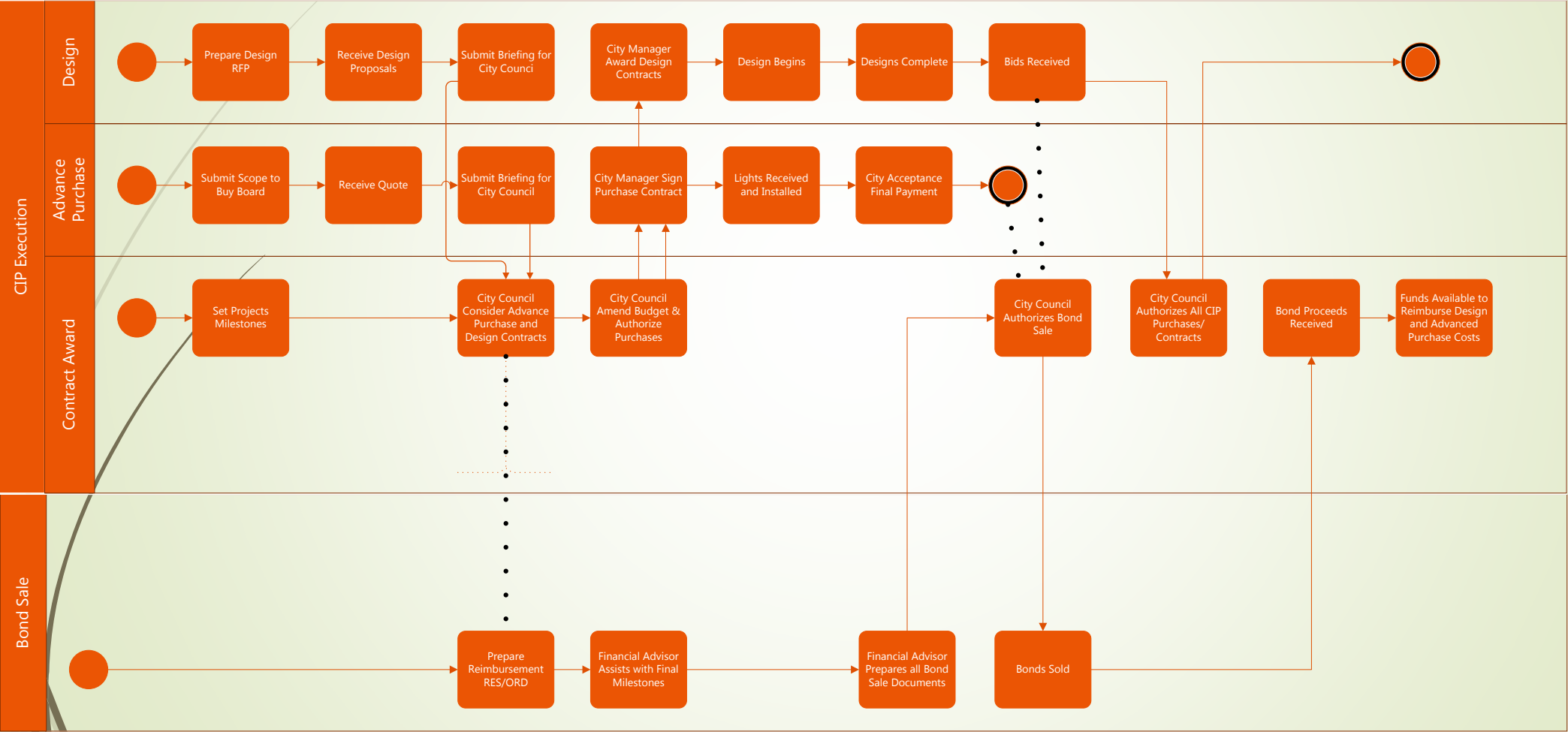


|                        | CIP       | Bids      | Advanced<br>Funding |
|------------------------|-----------|-----------|---------------------|
| Ball Field Lights      | \$831,797 | \$779,000 |                     |
| Design                 | \$875,820 | \$509,761 |                     |
| Subtotal               |           |           | \$1,288,761         |
| Contingency            |           |           | \$64,439            |
| Total Advanced Funding |           |           | \$1,353,200         |

**\$1,707,617    \$1,288,761**

**\$- 418,856**

Process for Providing (Reimbursable) funding of Design Phase of CIP Projects  
And  
Advanced (Reimbursable) Funding of Sports Fields Lighting CIP Projects



## City of Texarkana, Texas

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

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

## Perspectives and Goals Additional Comments:

NONE

## Resource Impact:

Staff time required if item is approved: High

## Other Potential Impacts:

NONE APPLICABLE

## Public Information Plan:

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

Other:

**ORDINANCE NO. 2016-126**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEXARKANA, TEXAS, AMENDING BUDGET EXPENDITURES FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2017 TO APPROPRIATE FUNDING IN THE AMOUNT OF ONE MILLION THREE HUNDRED FIFTY-THREE THOUSAND TWO HUNDRED DOLLARS (\$1,353,200) FOR PROJECTS INCLUDED IN THE PREVIOUSLY APPROVED CAPITAL IMPROVEMENT PLAN (CIP); AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, expenditures for the 2017 Bond Fund were not appropriated in the original budget for the fiscal year ending September 30, 2017; and

**WHEREAS**, the City of Texarkana, Texas, (the "Issuer") intends to issue debt for the Ball Field Lighting project, Forest Lake Estates Street Reconstruction project, Cowhorn Creek Corridor project, the Fire Department Training Center Building Improvements project, and the Streets Building and Parking Lot Improvements project (collectively, the "Projects") and further intends to make certain capital expenditures with respect to the Projects and currently desires and expects to reimburse the capital expenditures with proceeds of such debt; and

**WHEREAS**, under Treas. Reg. § 1.150-2 (the "Regulation"), to fund such reimbursement with proceeds of tax-exempt obligations, the Issuer must declare its expectation to make such reimbursement; and

**WHEREAS**, the Issuer desires to preserve its ability to reimburse the capital expenditures with proceeds of tax-exempt obligations; and

**WHEREAS**, an appropriation of One Million Three Hundred Fifty-Three Thousand Two Hundred Dollars (\$1,353,200) is needed to proceed with projects previously approved in the Capital Improvement Plan; and

**WHEREAS**, the General Fund will loan One Million Three Hundred Fifty-Three Thousand Two Hundred Dollars (\$1,353,200) to the 2017 Bond Fund until the bond issuance is completed; and

**WHEREAS**, from the design options and cost estimates developed by Techline Sports Lighting, the City Council finds and determines that it would be in the City's best interest to amend Seven Hundred Seventy-Nine Thousand Dollars (\$779,000) to the budget estimate of the City's expenditures; and

**WHEREAS**, Halff and Associates, Inc. submitted a proposal for the design and preparation of construction plans for Forest Lake Estates Street Reconstruction Project in an amount not to exceed Three Hundred Thirty-One Thousand One Hundred Dollars (\$331,100); and

Attachment: 2016-126 ORD Budget Amendment FY 2017 CIP signed (1560 : 2016-126 ORD budget amendment-FY 2017 CIP)



**WHEREAS**, MTG Engineers and Surveyors, Inc. submitted a proposal for the design and preparation of construction plans for Cowhorn Creek Corridor Project in an amount not to exceed Ninety Thousand Five Hundred Forty-Six Dollars (\$90,546); and

**WHEREAS**, KSA submitted a proposal for the design and preparation of construction plans for the Fire Department Training Center Building Improvements/Streets Building and Parking Lot Improvements in an amount not to exceed Eighty-Eight Thousand One Hundred Fifteen Dollars (\$88,115); and

**WHEREAS**, a five percent (5%) contingency in the amount of Sixty-Four Thousand Four Hundred Thirty-Nine Dollars (\$64,439) is included for any additional services; and

**WHEREAS**, the 2017 Bond Fund will reimburse the General Fund in the amount of One Million Three Hundred Fifty-Three Thousand Two Hundred Dollars (\$1,353,200) when the 2017 bond issuance is completed and bond proceeds are received; and

**WHEREAS**, the budget for the fiscal year ending September 30, 2017 should be amended to reflect the appropriation of One Million Three Hundred Fifty-Three Thousand Two Hundred Dollars (\$1,353,200) in the 2017 Bond Fund.

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

**SECTION 1:** That the budget estimate of the 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, 2016 and ending September 30, 2017, be amended to reflect additional expenditures appropriated of One Million Three Hundred Fifty-Three Thousand Two Hundred Dollars (\$1,353,200) in the 2017 Bond Fund.

**SECTION 2:** That the City Manager be and is hereby authorized to enter into a contract with Techline Sports Lighting for the Ball Field Lighting Project in amount not to exceed Seven Hundred Seventy-Nine Thousand Dollars (\$779,000).

**SECTION 3:** That the City Manager be and is hereby authorized to enter into a contract with Halff and Associates, Inc. for the design and preparation of construction plans for the Forest Lake Estates Street Reconstruction Project in amount not to exceed Three Hundred Thirty-One Thousand One Hundred Dollars (\$331,100.00).

**SECTION 4:** That the City Manager be and is hereby authorized to enter into a contract with MTG Engineers and Surveyors, Inc. for the design and preparation of construction plans for the Cowhorn Creek Corridor Project in an amount not to exceed Ninety Thousand Five Hundred Forty-Six Dollars (\$90,546).

**SECTION 5:** That the City Manager be and is hereby authorized to enter into a contract with KSA for the design and preparation of construction plans for the Fire Department Training



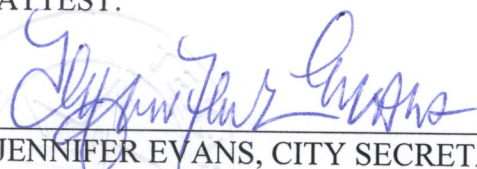
Center Building Improvements and the Street Department Building and Parking Lot Improvements in amount not to Eighty-Eight Thousand One Hundred Fifteen Dollars (\$88,115).

**SECTION 6:** That the Issuer reasonably expects to reimburse capital expenditures with respect to the Projects with proceeds of debt hereafter to be incurred by the Issuer, and that this ordinance shall constitute a declaration of official intent under the Regulation. The maximum principal amount of obligations expected to be issued for the Projects is One Million Three Hundred Fifty-Three Thousand Two Hundred Dollars (\$1,353,200).

**SECTION 7:** That 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 14<sup>th</sup> day of November, 2016.

ATTEST:

  
JENNIFER EVANS, CITY SECRETARY

  
BOB BRUGGEMAN, MAYOR

6:37 p.m.

## City of Texarkana, Texas

Version: B

Update Date: 11/8/2016 9:22 AM

## Briefing Sheet

**Lead Department:** Finance Department      **Action Officer:** Kristin Peeples,  
Ordinance No. 2016-127 amending budgeted revenue and expenditures for the  
fiscal year ending September 30, 2017 for the Public Safety Radio Equipment  
**Subject:** fund.

**Briefing:** 12/12/2016      **Public Hearing:**      **Second Briefing:**      **Council Vote:** 11/14/2016

## Item Schedule

Schedule 3: No briefing required (one week)

## Updates/History of Briefing:

Not Applicable

## Executive Summary and Background Information:

The original budget document for the fiscal year ending September 30, 2017 did not include revenue and expenditure appropriations for the Public Safety Radio Equipment Fund. This fund will be used to set aside revenue and expenditures associated with the maintenance of the public safety radio equipment that was recently purchased. Outside agencies will be billed on a monthly basis per radio and the City of Texarkana, Texas will also contribute to the fund through internal transfers from the General Fund that will begin in the fiscal year ending September 30, 2018. Any unused fund balance will be set aside in this fund to meet future maintenance costs associated with the equipment.

## Potential Options:

- Approve
- Deny

## Fiscal Implications:

To properly appropriate revenue and expenditures for the public safety radio equipment 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

## City of Texarkana, Texas

### Attachments

- a. 2016-127 ORD Amending FY 2017 Budget for Radio Equip Fund (DOC)
- b. 2016-127 ATTH 01 Public Safety Radio Equipment Cost Calculations (PDF)
- c. 2016-127 Goals & Perspectives (DOCX)

### Staff Coordination

|                            |                     |                        |                        |            |
|----------------------------|---------------------|------------------------|------------------------|------------|
| Finance Department         | Kristin Peeples     | Department Head Review | Completed              |            |
|                            | 10/26/2016 10:20 AM |                        |                        |            |
| Finance Department         | Kristin Peeples     | Finance Review         | Completed              | 10/26/2016 |
| 10:20 AM                   |                     |                        |                        |            |
| Police                     | Dan Shiner          | Review                 | Completed              | 10/26/2016 |
| 10:28 AM                   |                     |                        |                        |            |
| Assistant City Manager     |                     | Shirley Jaster         | Assistant City Manager |            |
| Review                     | Completed           | 10/26/2016 11:27 AM    |                        |            |
| Public Information Officer |                     | Lisa Thompson          | PIO Review             | Completed  |
|                            | 10/26/2016 11:33 AM |                        |                        |            |
| City Manager               | John Whitson        | City Manager Review    | Completed              | 11/08/2016 |
| 10:44 AM                   |                     |                        |                        |            |
| City Council               | Jennifer Evans      | Meeting                | Completed              | 11/14/2016 |
| 6:00 PM                    |                     |                        |                        |            |

### Meeting History

**ORDINANCE NO. 2016 - 127**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEXARKANA, TEXAS, AMENDING THE BUDGETED REVENUE AND EXPENDITURES FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2017 FOR THE PUBLIC SAFETY RADIO EQUIPMENT FUND; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, revenue and expenditures were not originally budgeted for the Public Safety Radio Equipment Fund for the fiscal year ending September 30, 2017; and

**WHEREAS**, it is beneficial to set aside the revenue and expenditures associated with the maintenance of the public safety radio equipment into a separate fund; and

**WHEREAS**, the budget for the fiscal year ending September 30, 2017 should be amended to reflect the anticipated revenue of **THIRTY-SEVEN THOUSAND DOLLARS (\$37,000)** and anticipated expenditures of **SIXTEEN THOUSAND DOLLARS (\$16,000)**.

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

**SECTION 1:** That the budget estimate of the 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, 2016 and ending September 30, 2017, be amended to reflect additional revenue of **THIRTY-SEVEN THOUSAND DOLLARS (\$37,000)** and additional expenditures of **SIXTEEN THOUSAND DOLLARS (\$16,000)**.

**SECTION 2:** That 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 **14<sup>th</sup> day of November, 2016**.

ATTEST:

\_\_\_\_\_  
JENNIFER EVANS, CITY SECRETARY

\_\_\_\_\_  
BOB BRUGGEMAN, MAYOR

## Public Safety Radio System

|                                  | Approx #<br>Radios | Annual Cost<br>Per Radio | Annual Cost   | ***           | FY 17         | FY 18         | FY 19          | FY 20          | FY 21          | FY 22          | FY 23          | FY 24          | FY 25          | FY 26         |
|----------------------------------|--------------------|--------------------------|---------------|---------------|---------------|---------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|---------------|
| Tex, TX Police                   | 170                | 180                      | 30,600        | -             | -             | 30,600        | 30,600         | 30,600         | 30,600         | 30,600         | 30,600         | 30,600         | 30,600         | 30,600        |
| Tex, TX Fire                     | 68                 | 180                      | 12,240        | -             | -             | 12,240        | 12,240         | 12,240         | 12,240         | 12,240         | 12,240         | 12,240         | 12,240         | 12,240        |
| Tex, TX Public Works             | 22                 | 180                      | 3,960         | -             | -             | 3,960         | 3,960          | 3,960          | 3,960          | 3,960          | 3,960          | 3,960          | 3,960          | 3,960         |
| Total Tex, TX                    | 260                | 540                      | 46,800        | -             | -             | 46,800        | 46,800         | 46,800         | 46,800         | 46,800         | 46,800         | 46,800         | 46,800         | 46,800        |
| BCSO                             | 104                | 180                      | 18,720        | 14,040        | 18,720        | 18,720        | 18,720         | 18,720         | 18,720         | 18,720         | 18,720         | 18,720         | 18,720         | 18,720        |
| DA                               | 8                  | 180                      | 1,440         | 1,080         | 1,440         | 1,440         | 1,440          | 1,440          | 1,440          | 1,440          | 1,440          | 1,440          | 1,440          | 1,440         |
| Probation                        | 11                 | 180                      | 1,980         | 1,485         | 1,980         | 1,980         | 1,980          | 1,980          | 1,980          | 1,980          | 1,980          | 1,980          | 1,980          | 1,980         |
| OEM                              | 28                 | 180                      | 5,040         | 3,780         | 5,040         | 5,040         | 5,040          | 5,040          | 5,040          | 5,040          | 5,040          | 5,040          | 5,040          | 5,040         |
| Nash                             | 27                 | 180                      | 4,860         | 3,645         | 4,860         | 4,860         | 4,860          | 4,860          | 4,860          | 4,860          | 4,860          | 4,860          | 4,860          | 4,860         |
| Wake Village                     | 21                 | 180                      | 3,780         | 2,835         | 3,780         | 3,780         | 3,780          | 3,780          | 3,780          | 3,780          | 3,780          | 3,780          | 3,780          | 3,780         |
| Hooks                            | 16                 | 180                      | 2,880         | 2,160         | 2,880         | 2,880         | 2,880          | 2,880          | 2,880          | 2,880          | 2,880          | 2,880          | 2,880          | 2,880         |
| TISD                             | 8                  | 180                      | 1,440         | 1,080         | 1,440         | 1,440         | 1,440          | 1,440          | 1,440          | 1,440          | 1,440          | 1,440          | 1,440          | 1,440         |
| LEISD                            | 6                  | 180                      | 1,080         | 810           | 1,080         | 1,080         | 1,080          | 1,080          | 1,080          | 1,080          | 1,080          | 1,080          | 1,080          | 1,080         |
| TAMU-T                           | 5                  | 180                      | 900           | 675           | 900           | 900           | 900            | 900            | 900            | 900            | 900            | 900            | 900            | 900           |
| TC                               | 15                 | 180                      | 2,700         | 2,025         | 2,700         | 2,700         | 2,700          | 2,700          | 2,700          | 2,700          | 2,700          | 2,700          | 2,700          | 2,700         |
| TWU                              | 21                 | 180                      | 3,780         | 2,835         | 3,780         | 3,780         | 3,780          | 3,780          | 3,780          | 3,780          | 3,780          | 3,780          | 3,780          | 3,780         |
| Outside Users                    | 270                | 2,160                    | 48,600        | 36,450        | 48,600        | 48,600        | 48,600         | 48,600         | 48,600         | 48,600         | 48,600         | 48,600         | 48,600         | 48,600        |
| <b>Total Revenue Generated</b>   |                    |                          | <b>95,400</b> | <b>36,450</b> | <b>95,400</b> | <b>95,400</b> | <b>95,400</b>  | <b>95,400</b>  | <b>95,400</b>  | <b>95,400</b>  | <b>95,400</b>  | <b>95,400</b>  | <b>95,400</b>  | <b>95,400</b> |
| Maintenance Cost                 |                    |                          | Varies        | -             | 42,054        | 43,359        | 44,806         | 46,237         | 47,815         | 49,479         | 51,203         | 52,925         | 54,809         |               |
| Connection Cost                  |                    |                          | 15,900        | 15,900        | 15,900        | 15,900        | 15,900         | 15,900         | 15,900         | 15,900         | 15,900         | 15,900         | 15,900         |               |
| <b>Total Exp for Maintenance</b> |                    |                          | <b>15,900</b> | <b>15,900</b> | <b>57,954</b> | <b>59,259</b> | <b>60,706</b>  | <b>62,137</b>  | <b>63,715</b>  | <b>65,379</b>  | <b>67,103</b>  | <b>68,825</b>  | <b>70,709</b>  |               |
| <b>Fund Balance</b>              |                    |                          |               | <b>20,550</b> | <b>57,996</b> | <b>94,136</b> | <b>128,830</b> | <b>162,093</b> | <b>193,777</b> | <b>223,798</b> | <b>252,095</b> | <b>278,670</b> | <b>303,362</b> |               |

\*\*\* Based on billing starting January 1, 2017



## City of Texarkana, Texas

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

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

## Perspectives and Goals Additional Comments:

NONE

## Resource Impact:

Staff time required if item is approved: High

## Other Potential Impacts:

NONE APPLICABLE

## Public Information Plan:

|                                     |                                        |                          |                                      |
|-------------------------------------|----------------------------------------|--------------------------|--------------------------------------|
| <input type="checkbox"/>            | Newspaper Notice (Required by Statute) | <input type="checkbox"/> | Public Hearing (Required by Statute) |
| <input checked="" type="checkbox"/> | Public Forum/Input Session             | <input type="checkbox"/> | Press Release                        |
| <input type="checkbox"/>            | E-News Distribution                    | <input type="checkbox"/> | Website Notice                       |
| <input type="checkbox"/>            | Social Media (Twitter, Facebook, etc.) | <input type="checkbox"/> | Special Mailing                      |
| <input type="checkbox"/>            | Flyers Posted                          | <input type="checkbox"/> | Banners Posted                       |
| <input type="checkbox"/>            | Survey                                 | <input type="checkbox"/> | Automated Phone Call                 |
| <input type="checkbox"/>            | None Required                          | <input type="checkbox"/> |                                      |

Other:

## City of Texarkana, Texas

Version:

Update Date: 10/26/2016 8:48 AM

**Briefing Sheet**

**Lead Department:** Finance Department      **Action Officer:** Kristin Peeples,  
Resolution No. 2016-125 approving and authorizing the City Manager to  
execute the agreement between the City and Valley View Consulting, L.L.C. to  
provide professional investment advisory services for the City's investable funds  
**Subject:** for a period of two (2) years.

**Briefing:** 11/28/2016      **Public Hearing:** 11/28/2016      **Second Briefing:** December 12, 2016      **Council Vote:** 1/9/2017

**Item Schedule**Schedule 1: Brief twice - vote once (six weeks)**Updates/History of Briefing:**

Not Applicable

**Executive Summary and Background Information:**

The City has maintained an agreement with Valley View Consulting, L.L.C. since November 22, 2010, to provide professional investment advisory services with respect to the City's investable funds. The agreement also includes a provision for assistance in soliciting, evaluating, and completing bids for bank depository services. During the term of this agreement, Valley View has assisted the City in updating its Investment Policy to assure continued compliance with the requirements of the Public Funds Investment Act. They have prepared and presented a quarterly investment report to the Investment Committee, which is then posted to the City's website. They have assisted staff in investing available funds at the best available rate, assisted in development of cash flow models to determine levels of investable funds, and assisted staff in the preparation and issuance of a bank depository services request. The current fiscal year to date portfolio average as of September 30, 2016 was 0.42% for the combined City and Water Department funds. These averages are above the current annual yield for the City's primary depository bank by 0.12%. With an average portfolio of \$39 million, the additional interest income approximates \$45,000 per year.

**Potential Options:**

- Approve
- Deny

**Fiscal Implications:**

The annual fee will be .06% of average book value and will be due and payable at the end of each investment quarter.

**Staff Recommendation:**

Staff recommends approval.

**Advisory Board/Committee Review:**

## City of Texarkana, Texas

None

### Board/Committee Recommendation:

Not Applicable

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

Not Applicable

### Attachments

- a. 2016-125 RES Investment Advisory Contract (DOC)
- b. 2016-125 EXH 'A' Investment Advisory Contract (PDF)
- c. 2016-125 Goals & Perspectives (DOCX)

### Staff Coordination

|                            |                    |                        |                        |            |
|----------------------------|--------------------|------------------------|------------------------|------------|
| Finance Department         | Kristin Peeples    | Department Head Review | Completed              |            |
|                            | 10/26/2016 8:48 AM |                        |                        |            |
| Finance Department         | Kristin Peeples    | Finance Review         | Completed              | 10/26/2016 |
|                            | 8:48 AM            |                        |                        |            |
| Purchasing and Contracting |                    | Sharon Moore           | Purchasing Review      |            |
|                            | Completed          | 10/26/2016 8:55 AM     |                        |            |
| Assistant City Manager     |                    | Shirley Jaster         | Assistant City Manager |            |
| Review                     | Completed          | 10/26/2016 11:28 AM    |                        |            |
| Public Information Officer |                    | Lisa Thompson          | PIO Review             | Completed  |
|                            | 10/26/2016 1:17 PM |                        |                        |            |
| City Manager               | John Whitson       | City Manager Review    | Completed              | 11/08/2016 |
|                            | 10:08 AM           |                        |                        |            |
| City Council               | Jennifer Evans     | Meeting                | Completed              | 11/14/2016 |
|                            | 6:00 PM            |                        |                        |            |

### Meeting History

**RESOLUTION NO. 2016 – 125**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEXARKANA, TEXAS, AUTHORIZING THE CITY MANAGER TO APPROVE THE AGREEMENT BY AND BETWEEN THE CITY OF TEXARKANA, TEXAS, AND VALLEY VIEW CONSULTING, L.L.C., TO PROVIDE PROFESSIONAL INVESTMENT ADVISORY SERVICES WITH RESPECT TO THE CITY OF TEXARKANA, TEXAS' INVESTABLE FUNDS FOR A PERIOD OF TWO YEARS; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, from time to time the City of Texarkana, Texas, has money available for investment and finds it prudent to consult with professional investors for the best possible advice in order to give the City quality investments to receive optimum returns on the City's money while maintaining appropriate levels of safety as required under the City's investment policy; and

**WHEREAS**, Valley View Consulting, L.L.C. is an experienced, respected, and professional investment advisory consultant recommended by staff to invest available City of Texarkana, Texas, funds for a period of two years at an annual fee of 0.06% of average book value for all combined funds as described in attached **Exhibit 'A'**.

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

**SECTION 1:** That the agreement between the City of Texarkana, Texas and Valley View Consulting, L.L.C. to provide professional investment advisory services to invest available City of Texarkana, Texas, funds for a period of two years at an annual fee of 0.06% of average book value for all combined funds, a copy of which is attached hereto as **Exhibit 'A'**, is hereby approved.

**SECTION 2:** That the City Manager is hereby authorized to execute said agreement to provide services as herein described above.

**SECTION 3:** 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 **9<sup>th</sup>** day of **January, 2017**.

ATTEST:

\_\_\_\_\_  
JENNIFER EVANS, CITY SECRETARY

\_\_\_\_\_  
BOB BRUGGEMAN, MAYOR

Attachment: 2016-125 RES Investment Advisory Contract [Revision 1] (1559 : 2016-125 RES Investment Advisory Contract)

**AGREEMENT  
BY AND BETWEEN  
CITY OF TEXARKANA, TEXAS  
AND  
VALLEY VIEW CONSULTING, L.L.C.**

It is understood and agreed that the City of Texarkana (the *Investor*) will have from time to time money available for investment (*Investable Funds*) and Valley View Consulting, L.L.C. (*Advisor*) has been requested to provide professional services to the Investor with respect to the Investable Funds. This agreement (the *Agreement*) constitutes the understanding of the parties with regard to the subject matter hereof.

1. This Agreement shall apply to any and all Investable Funds of the Investor from time to time during the period in which this Agreement shall be effective.
2. The Advisor agrees to provide its professional services to direct and coordinate all programs of investing as may be considered and authorized by the Investor.
3. The Advisor agrees to perform the following duties:
  - a) Assist the Investor in developing cash flow projections,
  - b) Suggest appropriate investment strategies to achieve the Investor's objectives,
  - c) Advise the Investor on market conditions, general information and economic data,
  - d) Analyze risk/return relationships between various investment alternatives,
  - e) Attend occasional meetings as requested by the Investor,
  - f) Assist in the selection, purchase, and sale of investments. The Advisor shall not have discretionary investment authority over the Investable Funds and the Investor shall make all decisions regarding purchase and sale of investments. All funds shall be invested consistent with the Texas Public Funds Investment Act, Chapter 2256 Government Code and the Investor's Investment Policy. The eligible investments are listed in the Investor's Investment Policy,
  - g) Advise on the investment of bond funds as to provide the best possible rate of return to the Investor in a manner which is consistent with the proceedings of the Investor authorizing the investment of the bond funds or applicable federal rules and regulations,
  - h) Assist the Investor in creating investment reports in compliance with State legislation and the Investor's Investment Policy,
  - i) Assist the Investor in creating monthly portfolio accounting reports, and
  - j) Assist the Investor with primary depository bank selection.



4. The Investor agrees to:

- a) Compensate the Advisor for any and all services rendered and expenses incurred as set forth in Appendix A attached hereto,
- b) Provide the Advisor with the schedule of estimated cash flow requirements related to the Investable Funds, and will promptly notify the Advisor as to any changes in such estimated cash flow projections,
- c) Allow the Advisor to rely upon all information regarding schedules, investment policies and strategies, restrictions, or other information regarding the Investable Funds as provided to it by the Investor and that the Advisor shall have no responsibility to verify, through audit or investigation, the accuracy or completeness of such information,
- d) Recognize that there is no assurance that recommended investments will be available or that such will be able to be purchased or sold at the price recommended by the Advisor, and
- e) Not require the Advisor to place any order on behalf of the Investor that is inconsistent with any recommendation given by the Advisor or the policies and regulations pertaining to the Investor.

5. In providing the investment services in this Agreement, it is agreed that the Advisor shall have no liability or responsibility for any loss or penalty resulting from any investment made or not made in accordance with the provisions of this Agreement, except that the Advisor shall be liable for its own gross negligence or willful misconduct; nor shall the Advisor be responsible for any loss incurred by reason of any act or omission of any financial institution or broker/dealer, selected with reasonable care by the Advisor and approved by the Investor, or of the Investor's custodian or safekeeping agent. Furthermore, the Advisor shall not be liable for any investment made which causes the interest on the Investor's obligations to become included in the gross income of the owners thereof.

6. The fee due to the Advisor in providing services pursuant to this Agreement shall be calculated in accordance with Appendix A attached hereto, and shall become due and payable as specified. Any and all expenses for which the Advisor is entitled to reimbursement in accordance with Appendix A attached hereto shall become due and payable at the end of each calendar quarter in which such expenses are incurred.

7. This Agreement shall remain in effect until December 31, 2018, with the option of the Investor to extend this Agreement in additional one or two year increments. Provided, however, the Investor or Advisor may terminate this Agreement upon thirty (30) days written notice to the other party. In the event of such termination, it is understood and agreed that only the amounts due to the Advisor for services provided and expenses incurred to and including the date of termination will be due and payable. No penalty will be assessed for termination of this Agreement. In the event this Agreement is terminated, all investments and/or funds held by the Advisor shall be returned to the Investor as soon as practicable. In addition, the parties hereto agree that upon termination of this Agreement the

Advisor shall have no continuing obligation to the Investor regarding the investment of funds or performing any other services contemplated herein.

8. The Advisor reserves the right to offer and perform these and other services for various other clients. The Investor agrees that the Advisor may give advice and take action with respect to any of its other clients, which may differ from advice given to the Investor. The Investor agrees to coordinate with and avoid undue demands upon the Advisor to prevent conflicts with the performance of the Advisor towards its other clients.

9. The Advisor shall not assign this Agreement without the express written consent of the Investor.

10. Investor acknowledges that:

- 1) \_\_\_\_ Investor was provided a written copy of Form ADV Part 2 not less than 48 hours prior to entering into this written contract, or
- 2) \_\_\_\_ Investor received a written copy of Form ADV Part 2 at the time of entering into this contract and has the right to terminate this contract without penalty within five business days after entering into this contract.
- 3) \_\_X\_\_ Investor is renewing an expiring contract and has received in the past, and offered annually, a written copy of Form ADV Part 2.

When accepted by the Investor, it, together with Appendix A attached hereto, will constitute the entire Agreement between the Investor and Advisor for the purposes and the consideration herein specified. Acceptance will be indicated with the return of one executed copy to Advisor.

Respectfully submitted,



Richard G. Long, Jr.  
Manager, Valley View Consulting, L.L.C.

This agreement is hereby agreed to and executed on behalf of City of Texarkana, Texas.

By \_\_\_\_\_  
City of Texarkana

Date: \_\_\_\_\_

## APPENDIX A

## FEE SCHEDULE AND EXPENSE ITEMS

In consideration for the services rendered by Advisor in connection with the investment of the Investable Funds for the Investor, it is understood and agreed that its annual fee will 0.06% (six basis points) of average Book Value

The applicable portion of said fee shall be due and payable at the end of each investment quarter.

Should the Investor issue debt and select a bond proceeds investment strategy that incorporates a flexible repurchase agreement or other structured investment, fees will be determined by any applicable I.R.S. guidelines and industry standards.

Said fee includes all costs of services related to this Agreement, and all travel and business expenses related to attending regularly scheduled occasional meetings. With pre-trip Investor approval, the Advisor may also request reimbursement for special meeting or event travel and business expenses. The obligation of the Advisor to pay expenses shall not include any costs incident to litigation, mandamus action, test case or other similar legal actions.

Any other fees retained by Advisor in the performance of its duties shall be disclosed to the Investor.

## City of Texarkana, Texas

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

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

## Perspectives and Goals Additional Comments:

NONE

## Resource Impact:

Staff time required if item is approved: Medium

## Other Potential Impacts:

NONE APPLICABLE

## Public Information Plan:

|                                                                 |                                                                          |
|-----------------------------------------------------------------|--------------------------------------------------------------------------|
| <input type="checkbox"/> Newspaper Notice (Required by Statute) | <input checked="" type="checkbox"/> Public Hearing (Required by Statute) |
| <input type="checkbox"/> Public Forum/Input Session             | <input type="checkbox"/> Press Release                                   |
| <input type="checkbox"/> E-News Distribution                    | <input type="checkbox"/> Website Notice                                  |
| <input type="checkbox"/> Social Media (Twitter, Facebook, etc.) | <input type="checkbox"/> Special Mailing                                 |
| <input type="checkbox"/> Flyers Posted                          | <input type="checkbox"/> Banners Posted                                  |
| <input type="checkbox"/> Survey                                 | <input type="checkbox"/> Automated Phone Call                            |
| <input type="checkbox"/> None Required                          | <input type="checkbox"/>                                                 |

Other:

## City of Texarkana, Texas

Version: A

Update Date: 11/29/2016 11:43 AM

**Briefing Sheet**

**Lead Department:** Public Works Department      **Action Officer:** Kyle Dooley  
**Subject:** Resolution No. 2016-132 approving and authorizing the City Manager to enter into an agreement with Waste Management of Texas, Inc. for refuse collection.  
**Briefing:** 11/28/2016      **Public Hearing:** 11/28/2016      **Second Briefing:** December 12, 2016      **Council Vote:** 1/9/2017

**Item Schedule**Schedule 1: Brief twice - vote once (six weeks)**Updates/History of Briefing:**

During the Public Hearing at the City Council meeting on 11/28/2016, Councilmember Veal-Gooch asked staff to share with Council a history of the recent refuse collection contracts and what the residential rates during that time has been. This timeline has been added as 2016-132 ATTH 04 in the briefing packet and has been emailed to all Councilmembers. Also, Ms. Mary Bruce had a question about larger items that could not fit in the trash bins. She wanted to know if there was a certain time that these items could be picked up. Staff explained that the bulky waste pickup service is the service that Ms. Bruce could utilize to get these items picked up. This service is provided once per week with the regular trash pickup for items up to one cubic yard in size.

**Executive Summary and Background Information:**

The city's refuse collection contract with Waste Management of Texas, Inc., expires on February 28, 2017. Council authorized the City Manager to enter into contract negotiations with Waste Management of Texas, Inc., through Resolution 2016-085.

Staff has negotiated and is recommending approval of a 5 year agreement with Waste Management of Texas, Inc. The proposed agreement would start on March 1, 2017. All services provided by Waste Management in the current contract are provided for in the proposed agreement.

As part of the proposed agreement, the City will receive 250 free haul offs of 30 yard roll-off bins annually to be used for our demolition program, neighborhood clean-ups, or other city projects. If all 250 annual hauls were used, at \$314.59 per haul off, the City could possibly avoid approximately \$78,000 in cost. Over the past year, our demolition program alone has used approximately 150 haul offs.

Another part of the proposed agreement deals with the special grit waste container that TWU uses at the South Stateline Waste Treatment Plant. Currently, there is a \$133.32 per month rental charge for that container. With the proposed agreement, there is no fee for that container.

Also, as part of the proposed agreement, the City will have cost savings of \$150,000 annually on the curbside bulky waste collection service. The cost for this bulky waste pickup service was added through an amendment to the current contract in 2010. The cost for this service was \$12,500 per month and, as per the amendment, had been directly billed to the City for the past six years. The



## City of Texarkana, Texas

bulky waste collection service is still provided in the proposed agreement, but the service cost is not planned to be funded through the General Fund. All costs of refuse collection have now been included in the proposed rates.

Residential rates would see an increase as part of the proposed agreement. The residential rate is currently \$17.35 per month and is proposed to go to \$17.85 per month in the new agreement. This would be a \$0.50 increase per month, or \$6.00 per year, additional cost to residential customers. The commercial rates would also see a small increase with the proposed agreement. Since commercial pickup has so many options, staff has included a current and proposed rate sheet for comparison.

### Potential Options:

- Approve City Manager to enter into an agreement with Waste Management of Texas, Inc., for refuse collection.
- Do not approve City Manager to enter into an agreement with Waste Management of Texas, Inc., for refuse collection.

---

### Fiscal Implications:

Please see the current and proposed residential and commercial rate sheets.

### 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. 2016-132 RES Authorizing City Manager to enter into a contract with Waste Management (DOC)
- b. 2016-132 ATTH 01 WM Proposed Agreement (DOC)
- c. 2016-132 ATTH 02 Texarkana Current Residential and Commercial Rates (PDF)
- d. 2016-132 ATTH 03 Texarkana Proposed Residential and Commercial Rates (PDF)
- e. 2016-132 ATTH 04 Timeline of Services for Texarkana Municipal Solid Waste Contracts (DOCX)
- f. 2016-132 Goals & Perspectives (DOCX)

---

### Staff Coordination

Public Works Department  
Completed

Kyle Dooley  
11/03/2016 2:03 PM

Department Head Review

### City of Texarkana, Texas

|                            |                    |                     |                        |            |
|----------------------------|--------------------|---------------------|------------------------|------------|
| Finance Department         | Kristin Peebles    | Finance Review      | Completed              | 11/03/2016 |
| 2:13 PM                    |                    |                     |                        |            |
| Purchasing and Contracting |                    | Sharon Moore        | Purchasing Review      |            |
|                            | Completed          | 11/03/2016 3:49 PM  |                        |            |
| Assistant City Manager     |                    | Shirley Jaster      | Assistant City Manager |            |
| Review                     | Completed          | 11/03/2016 4:18 PM  |                        |            |
| Public Information Officer |                    | Lisa Thompson       | PIO Review             | Completed  |
|                            | 11/08/2016 4:26 PM |                     |                        |            |
| City Manager               | John Whitson       | City Manager Review | Completed              | 11/09/2016 |
| 4:51 PM                    |                    |                     |                        |            |
| City Council               | Jennifer Evans     | Meeting             | Completed              | 11/14/2016 |
| 6:00 PM                    |                    |                     |                        |            |

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### Meeting History

**RESOLUTION NO. 2016 – 132**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEXARKANA, TEXAS, APPROVING AND AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH WASTE MANAGEMENT OF TEXAS, INC., FOR REFUSE COLLECTION; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, Ordinance No. 125-01 authorized the City Manager to enter into an agreement with Waste Management for refuse collection; and

**WHEREAS**, the term on the current refuse collection contract with Waste Management of Texas, Inc., signed on May 26, 2001, ends on February 28, 2017.

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

**SECTION 1:** That the agreement between the City of Texarkana, Texas, and Waste Management of Texas, Inc. for refuse collection for the City be and is hereby approved. A copy of said agreement is attached hereto and incorporated herein as “**ATTH 01**”.

**SECTION 2:** That the City Manager be and is hereby authorized to enter into an agreement with Waste Management of Texas, Inc. for refuse collection for the City.

**SECTION 3:** 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 **28<sup>th</sup> day of November, 2017**.

ATTEST:

\_\_\_\_\_  
JENNIFER EVANS, CITY SECRETARY

\_\_\_\_\_  
BOB BRUGGEMAN, MAYOR

**EXHIBIT "A"****MUNICIPAL SOLID WASTE COLLECTION  
AND TRANSPORTATION AGREEMENT****(Residential/Polycarts, Commercial, Industrial and Recycling)**

This Municipal Solid Waste Collection and Transportation Agreement (this "Agreement") is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2016, between the City of Texarkana, Texas ("City"), a municipal corporation, and Waste Management of Texas, Inc. ("Contractor"), a Texas corporation, acting by and through its duly authorized representative.

**WITNESSETH:**

**WHEREAS**, City desires to grant to Contractor the exclusive right to operate and maintain the service of collection and transportation of residential, commercial and industrial garbage and trash, and residential recycling, over, upon, along and across the present and future boundary limits of the City, subject to the terms of this Agreement; and

**WHEREAS**, Contractor desires to operate and maintain the service of collection and transportation of residential, commercial and industrial garbage and trash, and residential recycling, over, upon, along and across the present and future boundary limits of the City, subject to the terms of this Agreement.

**NOW, THEREFORE**, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, the parties hereto agree as follows:

**1. DEFINITIONS:**

- 1.01. **Bag:** An "Approved green waste bag" (defined in City's Code of Ordinances, sec. 22-1), as approved by the City water utilities compost facility, means a nonplastic biodegradable bag with a typical capacity of 33 gallons.
- 1.02. **Bulky Waste:** White Goods, furniture, bundled brush greater than four (4) feet in length or four (4) inches in diameter, auto parts, and other oversized wastes which are customary to ordinary housekeeping operations of a Residential Unit and whose large size precludes or complicates its handling by normal solid waste collection, processing or disposal methods.
- 1.03. **City:** The City of Texarkana, Texas.
- 1.04. **Commercial Unit:** All commercial businesses and establishments, including, but not limited to, stores, offices, restaurants, warehouses, and

other non-manufacturing facilities, premises, locations or entities, public or private, within the corporate limits of the City.

- 1.05. **Commercial Hand Collect Unit:** A retail or light commercial type of business, which generates no more than one (1) cubic yard of Solid Waste per week.
- 1.06. **Commercial Waste:** All types of Solid Waste generated by stores, offices, restaurants, warehouses, and other non-manufacturing activities, excluding Residential Waste and Industrial Waste.
- 1.07. **Commercial Service Provider:** A commercial business enterprise or commercial service provider providing services to Residential Units.
- 1.08. **Compactor:** Any container, regardless of size, which has a compaction mechanism, whether stationary or mobile.
- 1.09. **Construction and Demolition Debris:** Waste building materials resulting from construction, remodeling, repair, or demolition operations that are directly or indirectly the by-products of construction work or that result from demolition of buildings or other structures, but specifically excluding inert debris, land-clearing debris, yard debris, or used asphalt, asphalt mixed with dirt, sand, gravel, rock, concrete, or similar materials.
- 1.10. **Container:** An “Approved green waste container or can” (defined in City’s Code of Ordinances, sec. 22-1), which shall have suitable handles on the Container and a capacity of not more than 50 gallons or 50 pounds when full.
- 1.11. **Contract Administrator:** That person, or his designee, designated by the City to administer and monitor the provisions of this Agreement.
- 1.12. **Contractor:** Waste Management of Texas, Inc.
- 1.13. **Customer:** The owner or tenant of a Residential Unit, Commercial Unit and/or Industrial Unit, as the case may be, located within the City, and identified by the City as being eligible for and in need of the services provided by the Contractor under this Agreement.
- 1.14. **Dead Animals:** Animals or portions thereof that have expired from any cause except those slaughtered or killed for human use.
- 1.15. **Disposal Site:** A duly permitted sanitary landfill selected by Contractor.
- 1.16. **Dumpster:** Metal receptacle designed to be lifted and emptied mechanically for use only at Commercial Units or Industrial Units.
- 1.17. **Garbage:** Solid Waste consisting of putrescible or animal and vegetable



waste materials resulting from the handling, preparation, cooking, and consumption of food, including waste materials from markets, storage facilities, handling and sale of produce and other food products, and all Dead Animals of less than ten pounds (10 lbs.) in weight, except those slaughtered for human consumption.

- 1.18. **Greenwaste or Yard Waste:** grass or weed clippings, leaves, plant clippings, stock and limbs not over 4 inches in diameter or exceeding 4 feet in length, and specifically excluding debris resulting from the services of a Commercial Service Provider.
- 1.19. **Hazardous Waste:** Any Solid Waste identified or listed as a hazardous waste by the administrator of the Environmental Protection Agency under the Federal Solid Waste Disposal Act as amended by RCRA, 42 U.S.C. §6901, *et. seq.*, as amended.
- 1.20. **Industrial Unit:** All industrial businesses and establishments, including manufacturing facilities, premises, locations or entities, public or private, within the corporate limits of the City.
- 1.21. **Industrial Waste:** Solid Waste resulting from or incidental to any process of industry or manufacturing, or mining or agricultural operations.
- 1.22. **Medical Waste.** Waste generated by health care related facilities and associated with health care activities, not including Garbage or Rubbish generated from offices, kitchens, or other non-health-care activities. The term includes Special Waste from health care-related facilities which is comprised of animal waste, bulk blood and blood products, microbiological waste, pathological waste, and sharps as those terms are defined in 25 TAC §1.132 (relating to Definitions). The term does not include medical waste produced on farmland and ranchland, nor does the term include artificial, nonhuman materials removed from a patient and requested by the patient, including, but not limited to, orthopedic devices and breast implants.
- 1.23. **Polycart:** A rubber-wheeled receptacle with a maximum capacity of 90 - 96 gallons constructed of plastic, metal and/or fiberglass, designed for automated or semi-automated solid waste collection systems, and having a tight fitting lid capable of preventing entrance into the container by small animals. The weight of a Polycart and its contents shall not exceed 175 lbs.
- 1.24. **Non-Recyclables:** Any materials in the Single Stream Materials that are not Recyclables as set forth in Schedule B.
- 1.25. **Recyclable Cart:** A rubber-wheeled receptacle with a maximum capacity of 60 - 65 gallons constructed of plastic, metal and/or fiberglass, designed for automated or semi-automated recyclable collection systems, and having a tight fitting lid capable of preventing entrance into the container by small

animals.

- 1.26. **Recyclable Material or Recyclables:** A material that has been recovered or diverted from the non-hazardous waste stream for purposes of reuse, recycling, or reclamation, a substantial portion of which is consistently used in the manufacture of products that may otherwise be produced using raw or virgin materials. Recyclable Material is not solid waste. However, Recyclable Material may become Solid Waste at such time, if any, as it is abandoned or disposed of rather than recycled, whereupon it will be solid waste, with respect to the party actually abandoning or disposing of such material.
- 1.27. **Refuse:** Same as Rubbish.
- 1.28. **Residential Unit:** A residential dwelling within the service area of the City occupied by a person or group of persons comprising not more than four families, or an apartment complex comprising 7 or fewer units. A Residential Unit shall be deemed occupied when either water or domestic light and power services are being supplied thereto. A condominium dwelling, whether of single or multi-level construction, consisting of four units, shall be treated as a Residential Unit, except that each single-family dwelling within any such Residential Unit shall be billed separately as a Residential Unit. Any condominium or apartment complex that uses Dumpsters rather than Polycarts shall be considered a Commercial Unit.
- 1.29. **Residential Waste:** All Refuse, Garbage and Rubbish and other Solid Waste generated by a Customer at a Residential Unit.
- 1.30. **Residue or Residual:** Material that cannot be safely or effectively processed; material that, after processing, cannot be effectively marketed for sale in its current state; and/or Non-Recyclables, each of which will be disposed.
- 1.31. **Roll-off Bin:** Container provided to a Commercial Unit or Industrial Unit by Contractor measuring 20, 30, or 40 cubic yards, intended for high-volume refuse generating Commercial Units or Industrial Units, and capable of pickup and transport to a Landfill by loading of container onto rear of transporting vehicle, but excluding a Compactor.
- 1.32. **Rubbish:** Nonputrescible Solid Waste (excluding ashes), consisting of both combustible and noncombustible waste materials. Combustible rubbish includes paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, or similar materials; noncombustible rubbish includes glass, crockery, tin cans, aluminum cans, metal furniture, and similar materials that will not burn at ordinary incinerator temperatures (1,600 degrees Fahrenheit to 1,800 degrees Fahrenheit).
- 1.33. **Single Stream Materials:** The materials placed by Customers in their

Recyclable Carts.

- 1.34. **Solid Waste:** Garbage, Rubbish, Refuse, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities. The term does not include:
- a) Solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under Texas Water Code, Chapter 26;
  - b) Solid, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvement;
  - c) Waste materials that result from activities associated with the exploration, development, or production of oil or gas or geothermal resources and other substance or material regulated by the applicable state or federal agency, unless the waste, substance, or material results from activities associated with gasoline plants, natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants and is hazardous waste as defined by the administrator of the EPA under the federal Solid Waste Disposal Act, as amended by RCRA, as amended (42 USC, §§6901 *et seq.*), or
  - d) Unacceptable Waste.
- 1.35. **Special Waste:** Waste that requires special handling and management due to the nature of the waste, including, but not limited to, the following: (A) containerized waste (e.g. a drum, barrel, portable tank, box, pail, etc.), (B) waste transported in bulk tanker, (C) liquid waste, (D) sludge waste, (E) waste from an industrial process, (F) waste from a pollution control process, (G) Residue and debris from the cleanup of a spill or release of chemical, or (H) any other waste defined by Texas law, rule or regulation as "Special Waste."
- 1.36. **Stable Matter:** All manure and other waste matter normally accumulated in or about a stable, or any animal, livestock or poultry enclosure, and resulting from the keeping of animals, poultry, or livestock.
- 1.37. **Unacceptable Waste:** Any waste, the acceptance and handling of which by Contractor would cause a violation of any permit, condition, legal or regulatory requirement, substantial damage to Contractor's equipment or

facilities, or present a danger to the health or safety of the public or Contractor's employees, including, but not limited to, Hazardous Waste, Special Waste (except as otherwise provided herein), untreated Medical Waste, Dead Animals weighing ten pounds (10 lbs.) or greater, solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit, soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements.

- 1.38. **Unusual Accumulations:** As to Residential Units, any Waste placed curbside for collection in excess of the volumes permitted by this Agreement, or placed outside a Polycart, and as to Commercial or Industrial Units, any Waste located outside the Dumpster, Roll-off Bin or Compactor regularly used for such collection service, or any Waste that overfills or exceeds the tonnage limit for the Dumpster or Roll-off Bin.
- 1.39. **Waste:** All Residential Waste, Commercial Waste, and Industrial Waste to be collected by Contractor pursuant to this Agreement. The term "Waste" specifically excludes Unacceptable Waste.
- 1.40. **White Goods:** Refrigerators which have CFCs removed by a certified technician, stoves and ranges, water heaters, freezers, swing sets, bicycles (without tires) scrap metal, copper, and other similar domestic and commercial large appliances.

## 2. GRANT OF EXCLUSIVE FRANCHISE:

Contractor is hereby granted the exclusive right and privilege within the boundary limits of the City to conduct business for the purpose of collection and disposal of Waste, and collection of Recyclable Materials from Residential Units, Commercial Units, and Industrial Units, subject to the terms hereof, including any alteration and extension of said boundary limits after the Commencement Date.

## 3. TERM:

The term of this Agreement shall commence March 1, 2017 ("Commencement Date"), and continue to remain in full force and effect for a period of five (5) years ending on February 28, 2022. The initial 5-year term shall automatically be extended for successive additional 5-year terms unless either party notifies the other party in writing, not less than one (1) year prior to the expiration of the initial 5-year term or any successive five year term, of its intention to terminate this Agreement. Any such written notice shall be served by certified mail, return receipt requested. Within thirty (30) days following completion of the third year of this Agreement, the parties shall initiate a meeting with one another to review performance data, effectiveness of Customer education, and other issues identified by either Contractor or City prior to such meeting.

#### 4. RATES:

Contractor is authorized to charge, and shall receive from the City, the rates set forth on Schedule "A" attached hereto and incorporated herein by reference ("Base Rates"). The Base Rates are subject to adjustment as set forth in Section 9 below.

#### 5. CONTRACTOR SERVICES:

##### 5.01. Residential Collection

##### (a) Residential/Commercial Hand Collect Collection:

- (i) Contractor shall collect Residential Waste generated at a Residential Unit and placed in that Residential Unit's Polycart one (1) time per week during the term of this Agreement.
- (ii) Contractor shall collect Commercial Waste placed in a Polycart from a Commercial Hand Collect Unit once per week.
- (iii) Construction Debris generated at a Residential Unit by a Commercial Service Provider shall be deemed Commercial Waste, and shall be collected pursuant to Section 5.03 below. Construction Debris generated at a Residential Unit by the owner or tenant of that Residential Unit, and not utilizing the services of a Commercial Service provided, shall be subject to the Bulky Waste limitations set forth in this Agreement.
- (iv) Notwithstanding any provision in this Agreement to the contrary, consistent with Section 22 of City's Code of Ordinances, Contractor shall collect Waste placed in a plastic bag and placed at curbside not to exceed 10 bags per collection at each Residential Unit beginning on the day after Christmas and for the next 6 days thereafter.

- (b) Bulky Waste Collection: Contractor shall provide a once per week collection service to Residential Units for collection of Bulky Waste. Contractor agrees to collect up to, but not to exceed, one (1) cubic yard of Bulky Waste per week from each Residential Unit. Contractor shall have no obligation to collect any Bulky Waste in excess of the above volumes, or any Construction Debris produced by a Commercial Service Provider hired by a Customer and generated and located at that Residential Unit. Bulky Waste shall be placed within three (3) feet of the curb, swale, paved surface of the roadway, closest accessible roadway, or other location agreed to by Contractor and Customer, which will provide safe and efficient accessibility to Contractor's collection crew and vehicle.



- (c) **Greenwaste Collection:** Contractor shall provide a once per week collection service to Residential Units for collection of Greenwaste. All limbs shall be cut into lengths not exceeding 4 feet and shall be securely tied into bundles not to exceed 40 pounds. Leaves, grass, and trimmings must be placed in a Bag or Container. Contractor has no obligation to collect any Greenwaste not properly bagged, bundled, or placed in a Container. Contractor agrees to tag and date improperly placed Greenwaste to notify the resident as to the proper method of setting out Greenwaste. If resident fails to dispose of or properly bundle, bag or contain such material within 10 days of notice, Contractor will refer the matter to the City as a violation of the City's Code of Ordinances. Contractor shall deliver the Greenwaste to the City's facility on South State Line Avenue for composting so long as that facility remains operational.

Greenwaste shall be placed within three (3) feet of the curb, swale, paved surface of the roadway, closest accessible roadway, or other location agreed to by Contractor and Customer, which will provide safe and efficient accessibility to Contractor's collection crew and vehicle.

- (d) **Recyclable Collection:** Contractor shall provide once per week collection of Recyclables placed in Recyclable Carts from Residential Units. The specifications for Recyclable Materials and list of Recyclable Materials that are acceptable for collection are set forth in Schedule B attached hereto and incorporated by reference. Contractor shall not be required to collect any Recyclable Materials that are not placed in a Recycling Cart. In addition, Contractor shall not be required to collect Recyclable Materials if the Customer does not segregate the Recyclable Materials from the Waste generated at that residence.
- (e) **Carts:**
- (i) Contractor shall provide one (1) Polycart and one (1) Recycling Cart (collectively, the "Carts") to each Residential Unit. Carts shall be placed by the Customer of a Residential Unit in a location that is readily accessible to Contractor and its collection equipment, not to exceed three (3) feet from the curb or edge of the travel portion of the street, road or alley, and not to be located in a manner that will block the driveway or mailbox or otherwise inhibit proper servicing. The City may aid Contractor in resolving problems of Cart location by the Customer. Customers shall not overload Carts, and the Carts shall be loaded such that the lids shall close securely.
  - (ii) Contractor shall not be required to collect (i) any Residential Waste that is not placed in a Polycart, (ii) any Residential Waste

from a Polycart that is overloaded, or (iii) a Polycart that is not properly placed curbside.

- (iii) The Carts furnished by the Contractor hereunder shall remain the property of Contractor, and the Customer will have no interest in the Carts. The Carts shall remain at the location of the Residential Unit where delivered by Contractor. Additional Carts will be available for residential Customers at an additional charge set forth in Schedule A attached hereto. Any Cart removed from a Residential Unit shall be deemed lost. If a Cart is damaged from normal wear and tear or from Contractor's handling of the equipment, Contractor agrees to replace such Cart with a replacement Cart at no cost. City shall have neither responsibility nor liability to Contractor for any loss or damage to the Carts. Nothing shall prevent Contractor from recouping the cost of any lost Cart directly from a responsible person. Contractor shall have no obligation to replace a lost Cart unless Customer requests and pays for a new Cart prior to Contractor's delivery of the replacement Cart.

- 5.02. **Commercial and Industrial Collection:** Contractor shall have the exclusive right to collect and transport Commercial Waste and Industrial Waste from the Commercial Units and Industrial Units, respectively, utilizing Dumpsters, Compactors or Roll Off Bins, at such frequency as shall be reasonably requested by such Commercial Unit Customer or Industrial Unit Customer. The Dumpster, Compactor or Roll Off Bin shall be located on a concrete pad to accommodate equipment and at a location reasonably acceptable to Contractor. Contractor may, at its sole option, require Commercial Customers and Industrial Customers to enter into individual contracts with Contractor, subject to the terms of this Agreement. The rates that Commercial and Industrial Customers will be charged are set forth in Schedule A. Commercial and Industrial Customers shall not move, alter, or overfill, or allow any third parties to do so, the Dumpsters, Roll-Off Bins or Compactors. Contractor has the right to assess overage charges due to Customer's overfilling the waste equipment.

Contractor will provide, upon a Commercial or Industrial Unit Customer's request, (a) rubber tire casters for containers (4-yard container maximum size), and/or (b) collection of Dumpsters or Roll-Off Bins on days other than regularly scheduled collection days. Contractor shall communicate these charges and services to the Texarkana Water Utilities (TWU), who shall include the charges in the invoices to such Customers.

Contractor has the right to offer Commercial and Industrial Unit Customers Recyclables collection, but Contractor is not obligated to do.

5.03. **Recyclables Collection.**

(a) City shall not divert, retract, or withdraw, or discontinue collection of any material listed as a Recyclable in Schedule B unless City and Contractor mutually agree to such action. City and Contractor shall not allow scavenging of any Recyclables from the Single Stream Materials. Any additions to the list of acceptable Recyclables in Schedule B will require the parties' mutual agreement. Contractor shall be entitled to all proceeds from Recyclables as additional consideration to offset the expenses associated with recycling collection.

(b) Contractor or the recycling facility may reject a load of Recyclables if it contains Residue or Unacceptable Waste, and in such case, the load will be disposed.

(c) Contractor makes no representations as to the marketability of the Recyclables and may dispose of Recyclables when no reasonable commercial market exists. Contractor shall provide City with written notice no more than 20 days after the decision is made to begin disposing of a Recyclable due to market conditions along with information and/or documentation substantiating such decision. Should no commercially reasonable available market for a Recyclable exist, such Recyclable shall be classified as a Non-Recyclable until such time as a commercially reasonable available market exists. Contractor reserves the right to add or delete materials from the list of Recyclables based upon changes in market conditions, uncontrollable circumstances, governmental restraint, or changes in laws, rules, regulations, or ordinances, or changes in the enforcement thereof, and Contractor will provide written notice of any such change to the City.

(d) Contractor shall work with City to develop a Recyclables Collection plan for apartment complexes and commercial businesses and shall present its draft plan at the meeting described in section 3 of this Agreement. Neither party has the obligation to implement such a plan unless mutually agreed in writing.

5.04. **Unusual Accumulations Collection:** Contractor shall have no obligation to collect Unusual Accumulations, and may assess an overage charge for the collection of any Unusual Accumulations. Contractor has the right to take photographic evidence of Unusual Accumulations.

5.05. **Special Waste:** Contractor is not required to accept, transport or manage any Special Waste, unless it is specifically identified in a written agreement between Contractor and Customer. Contractor may collect, and will have the right to impose, a surcharge for the transportation and disposal of Special Waste, depending on the quantities and any physical characteristics of the Special Waste and any special handling, regulatory compliance or

increased concern for worker safety or environmental protection occasioned by the material.

5.06. **Unacceptable Waste:** Contractor shall not be obligated to collect Unacceptable Waste. Title to Unacceptable Waste shall not pass to Contractor, and liability for any unacceptable Waste shall remain with the generator of such Waste.

5.07 **Customer Education:** At no charge to City, Contractor, in its discretion, shall cooperate with the City, where and when practical, to educate Customers encouraging and promoting proper Waste disposal and recycling as required by this Agreement, including educating Residential Unit Customers to assure proper and timely Cart set out, and proper recycling techniques to minimize commingling.

**Commented [MR1]:** Added language consistent with obligations on page 17.

5.08 **Additional Services:** Contractor agrees to provide the following equipment and services to the City on an annual basis at no charge to the City:

(i) Contractor will provide up to three (3) eight-yard front end load Dumpsters to the City free of charge during City sponsored annual softball and baseball tournaments. Contractor will provide daily service of these three Dumpsters, as needed, during those tournaments at no charge to the City.

(ii) Contractor will provide Recyclables Cart(s) as necessary and requested by City, and collection service at City-owned facilities:

(iii) Contractor will provide the City with 250, 30-yard Roll-Off Bin hauls annually for house demolition, neighborhood clean-ups, or other City projects.

(iv) Contractor will provide one 20-yard container to the Texarkana Water Utilities (TWU). The container will be located at the South Stateline waste treatment plant and will be used to dispose of special grit waste. Contractor will provide up to ten (10) hauls of this container annually free of charge so long as the haul does not exceed a ton (10) ton maximum weight per haul. For any hauls exceeding the 10 designated free hauls annually, TWU agrees to pay the then current haul rate according to Schedule A. TWU will be required to meet all Contractor requirements to properly profile the waste, including analytical or lab associated fees. If TWU fails to comply with this paragraph, Contractor has the right to cease providing a container to TWU and this paragraph will become void.

(v) There shall be no disposal charge to residents of Texarkana, Texas who self-haul Bulky Waste generated at their residence to New Boston Landfill for disposal. Fees shall be charged for disposal of construction or remodeling waste.

Contractor shall have the right to verify the resident's current address within the City limits.

(vi) If all of the services set out in subsections (i) through (v) above are not used by the City during any given year, the free services cannot be carried over and applied to the next year or any year thereafter.

Commented [MR2]: WMTX requires re-insertion language.

## 6. COLLECTION OPERATION:

- 6.01. **Hours of Operation:** Collections shall be made during the hours agreed to by the parties, subject to future reasonable modifications agreed to by both parties. No collection shall be made on Sunday. Collection of Commercial Waste and Industrial Waste shall be collected at such hours as may be determined by Contractor.
- 6.02. **Routes of Collection:** Collection routes shall be established by the Contractor as reasonably approved by City. City shall provide Contractor with maps of the City containing sufficient detail for Contractor to design collection routes. Contractor shall provide to the City route maps for approval by the City, which approval shall not be unreasonably withheld.
- 6.03. **Holidays:** The following shall be holidays for purposes of this Agreement:

Thanksgiving Day  
Christmas Day

Contractor may decide to observe any or all of the above-mentioned holidays by suspension or collection service on the holiday, but the Contractor shall be responsible for providing make-up collection for residential routes that occur on specified holidays. Make-up days shall be the next business day following the holiday.

- 6.04. **Complaints:** Customer complaints shall be directed by the City to Contractor, and Contractor shall promptly resolve such complaint based on the nature of the complaint. Contractor shall be responsible for maintaining a log of complaints based on the information provided to Contractor by the City, and shall provide the City, on a monthly basis, with copies of all complaints indicating the date and hour of the complaint, nature of the complaint, and the manner and timing of its resolution. Any alleged missed pickups will be investigated and, if such allegations are verified, Contractor shall arrange for collection on the next business day after receipt of such complaint. If the missed pickup is a result of Customer related acts or omissions, the City shall take appropriate action to cause such Customer to properly set out such Waste.
- 6.05. **Collection Equipment:** Contractor, at its sole cost and expense, agrees to furnish all trucks, equipment, machines, and labor which are reasonably necessary to adequately, efficiently, and properly collect and transport



garbage from Customers serviced by Contractor in accordance with this Agreement. Collection of Solid Waste shall be made using sealed packer-type trucks, and such equipment shall not be allowed to leak nor scatter any waste within the limits of the City nor while in route to the Disposal Site.

All motor vehicles used in performance of the obligations herein created shall be clearly marked with the Contractor's name, telephone number and unit number legible from 150 feet. All collection equipment shall be maintained in a first class, safe, and efficient working condition throughout the term of this Agreement. Such vehicles shall be maintained and painted as often as necessary to preserve and present a well-kept appearance, and Contractor shall have a regular preventative maintenance program. City may inspect Contractor's vehicles at any time to insure compliance of equipment with this Agreement. Such vehicles shall be washed and painted or repainted as often as necessary to keep them in a neat and sanitary condition.

- 6.06. **Disposal:** The Contractor shall deliver Waste collected to a duly permitted Disposal Site operated in compliance with rules stipulated by the applicable state agency and/or the U.S. Environmental Protection Agency.
- 6.07. **Spillage:** The Contractor shall not be responsible for scattered Refuse unless the same has been caused by Contractor, in which case all scattered Refuse shall be picked up immediately by Contractor.
- 6.08. **Vicious Animals:** Employees of the Contractor shall not be required to expose themselves to the dangers of vicious animals in order to accomplish Refuse collection service. Contractor shall immediately notify the City, in writing, of such danger and the inability to make collection because of such danger.
- 6.09. **Protection From Scattering:** Each vehicle shall be equipped with a cover which may be net with mesh not greater than one and one-half (1-1/2) inches, or tarpaulin, or fully enclosed metal top to prevent leakage, blowing or scattering of refuse onto public or private property. Such cover shall be kept in good order and used to cover the load going to and from the Disposal Site, during loading operations, or when parked if contents are likely to be scattered. Vehicles shall not be overloaded so as to scatter Refuse.
- 6.10. **Point of Contact:** All dealings and contacts between Contractor and the City shall be directed between the Manager for Public Sector Solutions for Contractor, or such other individual identified by Contractor, and the Contract Administrator designated by the City.

#### 7. LICENSE AND TAXES:

Contractor shall obtain at its sole expense all licenses and permits required by the City

and the State, and shall maintain same in full force and effect.

#### 8. BILLING:

(a) City shall provide billing and bill collection services to all Residential Units during the term of this Agreement. City shall provide billing and bill collection services for all Commercial and Industrial Units that use Dumpsters or Polycarts for waste or recycling services. Contractor shall provide billing and bill collection services to Commercial Units and Industrial Units that use Roll-Off Bins and/or Compactors for collection of waste.

Within 30 days of the end of each month during which collection services are provided by Contractor hereunder, Contractor shall submit to the City an invoice setting forth sums due by the City to Contractor for services rendered under this Agreement to Residential Units and Commercial and Industrial Units that receive services using Dumpsters or Polycarts. City shall pay Contractor's invoices for services provided to Residential Unit and Commercial Customers within thirty (30) days after City's receipt of invoice. All past due invoices shall bear interest as allowed by law.

Contractor shall invoice directly those Commercial Units and Industrial Units that use Roll-Off Bins and Compactors. Contractor shall require payment of such invoices within thirty (30) days after receipt of invoice by the Customer, with past due invoices bearing interest as allowed by law.

(b) The City shall notify Contractor in writing of any Residential Unit, Commercial Unit, or Industrial Unit Customer that has failed to pay the City for waste collection services, and Contractor shall have the right to suspend service to such Customer until notified by the City to resume such services. Contractor shall have the right to suspend service to any Commercial Unit or Industrial Unit that uses Roll-Off Bins or Compactors that is delinquent in payment to Contractor. If Contractor suspends service to a Customer for failure to timely pay Contractor's invoices, Contractor has the right to charge a service reactivation fee and/or finance charges or late payment fees if such service to the Customer is reinstated.

(c) The City shall be entitled to receive a ten percent (10%) franchise fee (the "Franchise Fee") for all services rendered by Contractor hereunder. The City shall retain the Franchise Fee prior to payment of Contractor's invoices based on payments actually received by the City. Contractor shall pay the City its ten percent (10%) Franchise Fee based on payments actually received from Commercial and Industrial Unit Customers that Contractor direct bills for Roll-Off Bin services. Contractor shall pay the fee to the City within 45 days after the last day of the month of Contractor's actual receipt of such monies. Contractor's rates on Schedule A include the City's ten percent (10%) franchise fee.

#### 9. MODIFICATION TO RATES

9.01 **CPI Adjustment**: Base Rates charged by Contractor for services will remain fixed

as set forth on Schedule "A" and will not be adjusted for changes in the CPI (as hereinafter defined), until September 30, 2017. Commencing on October 1, 2017, and continuing annually on each anniversary date of the Commencement Date of this Agreement, Base Rates for services shall be adjusted by the same percentage as the Consumer Price Index, US City Average for All Urban Consumers, Garbage and Trash Collection, Not Seasonally Adjusted, Base Period December 1983 = 100 (published by the United States Bureau of Labor Statistics, Consumer Price Index) (the "C.P.I.") shall have increased during the twelve months preceding the index published in May 2017 and each May thereafter. In the event the U.S. Department of Labor, Bureau of Labor Statistics ceases to publish the C.P.I., the parties hereto agree to substitute another equally authoritative measure of change in the purchasing power of the U.S. dollar as may be then available so as to carry out the intent of this provision.

**9.02 Fuel Adjustment:** Contractor shall calculate the percentage of change in the cost of diesel fuel during the prior 12 month period beginning May 1, 2017, using the weekly average price of diesel fuel, as determined by reference to the Energy Information Administration of the US Department of Energy ("EIA/DOE")'s Weekly Retail On Highway Diesel Prices for the Gulf Coast, published on the last Monday of each April ("Fuel Index"). The EIA/DOE currently publishes these prices on their website at the following location: <http://tonto.eia.doe.gov/oog/info/wohdp/diesel.asp>. Contractor shall calculate the percentage of change in the price of diesel fuel between (i) the average price of diesel fuel from the aforesaid website published for the last Monday of April of the then immediately prior year (the "Initial Fuel Base") and (ii) the average price of diesel fuel from the aforesaid website for the 52 weeks period immediately prior to the last Monday of April of the current year (the average being calculated by adding together the weekly fuel price for each of the 52 prior weeks, divided by 52) (the "Current Fuel Base"). The Initial Fuel Base that will be used and that will take effect on the date this Amendment is signed shall be \$2.20 per gallon. The percentage change in the Initial Fuel Base and Current Fuel Base shall be multiplied by 14%, and the product thereof shall be the "Fuel Adjustment Component." The Fuel Adjustment Component and the CPI component shall be (i) added together, and (ii) then multiplied by the then current Base Rate to determine the adjustment in the Base Rate commencing January 1 of the current Contract Year. (Example: If the price of diesel fuel on the last Monday of April of any given year is \$2.50, and the average price of fuel over the next 52 weeks is \$2.75, the difference of 25 cents is an increase of 10%. That 10% increase is then multiplied by 14 percent, which equals 1.4%. The fuel adjustment feature of the rate adjustment will be 1.4%, which is then added to the CPI portion of the index to get the final annual rate adjustment).

**9.03 Additional Adjustments:** Contractor may request an increase in Base Rates from time to time during the term of this Agreement, upon giving at least thirty (30) days' written notice to the City, to offset a change in condition that is outside of Contractor's control, and that increases the Contractor's costs, such as a change in federal, state or local laws, rules, regulations, or ordinances. Simultaneously with the notice, Contractor shall submit to the City documentation substantiating the increase required by the federal, state or law, rule, regulation or ordinance. Contractor agrees that in the event it seeks to secure an increase in fees based on the provisions of this paragraph, the City shall have a

review period of thirty (30) days following receipt of both the notice and substantiating documentation to either approve or object to said increase in fees. If the City objects to said increase in fees within the thirty (30) day review period, then City and Contractor will negotiate in good faith for a period of thirty (30) days in an attempt to reach a resolution satisfactory to both City and Contractor. If, however, a resolution satisfactory to both City and Contractor is not reached, either City or Contractor shall have the right to deem the matter a disagreement for purposes of mediation as described in paragraph 17 of this Agreement, and any requested increase in Base Rates shall not go into effect until after a final decision is reached through mediation or court order, as applicable.

#### 10. CITY'S OBLIGATIONS:

The City agrees to perform all obligations required of the City pursuant to the terms of this Agreement, including, but not limited, the following:

- (a) The City shall designate the Contract Administrator, who shall communicate City decisions to Contractor on a timely basis from time to time as required under this Agreement;
- (b) The City shall provide the total number of Residential Units to the Contractor no later than the 25<sup>th</sup> day of each month (i.e., the total house count that will receive Contractor services). Contractor has the right to rely upon the total house count, and will use the monthly Residential Unit total in its next invoice to the City as set forth in Section 8. Any errors in the house count numbers provided by the City are deemed waived and any claim arising therefrom released by the City if not corrected by the City within 180 days of month in which the improper house count information was delivered by the City to Contractor. Contractor has the right to confirm the City's house count, but is not obligated to do so;
- (c) The City shall timely pay Contractor pursuant to the terms of this Agreement;
- (d) The City shall timely inform Contractor of complaints made by Customers;
- (e) The City shall work with Contractor in good faith to resolve complex Customer service issues; and
- (f) The City shall cooperate with Contractor, within the City's discretion as to where and when practical, to educate Customers to encourage, promote and obtain proper Waste disposal and recycling as required by this Agreement, including educating Residential Unit Customers to assure proper and timely Cart set out, and proper recycling techniques to minimize commingling.

#### 11. COMPLIANCE WITH LAWS:

Contractor, its officers, agents, employees, contractors, and subcontractors, shall abide by

and comply with all existing laws and laws which may be enacted by the federal, state, and local governments. It is expressly agreed that nothing in this Agreement shall be construed in any manner to abridge the right of City to pass or enforce necessary police and health regulation for the protection of its inhabitants. It is further agreed and understood that, if the City calls the attention of Contractor to any such violations on the part of the Contractor, its officers, agents, employees, contractors, or subcontractors, then Contractor shall immediately desist from such activity and correct such violation.

**12. OFFICE:**

Contractor shall maintain an office or such other facility through which it may be contacted by telephone without charge. Such office shall be equipped with sufficient telephones and shall have a responsible person in charge between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday and any other day that is a makeup collection day.

**13. ENFORCEMENT AGAINST THIRD PARTIES:**

City grants unto Contractor the right to seek an injunction against any third party which is believed to be infringing on the rights of Contractor to this Agreement, including Contractor's exclusive franchise rights granted herein. By granting this right to Contractor, the City in no way reduces its right or obligation to enforce this Agreement or any other City ordinance relating to the collection and disposal of Waste. Furthermore, Contractor shall have all rights and remedies available to it under Texas law to collect delinquent payment of Costs owed to Contractor by Commercial Unit and Industrial Unit Customers. The City agrees to take all steps necessary and permitted by law to require Customers to comply with the terms of this Agreement.

**14. TRANSFERABILITY OF AGREEMENT:**

Other than by operation of law, no assignment of the Agreement or any right accruing under the Agreement shall be made in whole or in part by the Contractor without the express written consent of the City. Upon the assignment, the assignee shall assume the liability of the Contractor. Notwithstanding anything contained herein to the contrary, Contractor shall be permitted to assign this Agreement to an affiliate of Contractor without the City's consent.

**15. LANDFILL CAPACITY:**

During the term of this Agreement, Contractor shall have and maintain at all times adequate disposal capacity for the City's needs.

**16. TERMINATION:**

Except as otherwise provided herein, if either party defaults in the performance of any of the covenants or conditions contained herein, and fails to cure such default within thirty (30) days after the non-defaulting party has given the defaulting party written notice of such default (or if such default is of a nature that it cannot be cured within such thirty (30) day period, the defaulting party fails to commence the curing of such default within such thirty (30) day period, and fails to thereafter diligently pursue the curing thereof) (the "Cure Period"), the non-defaulting party may: (a) terminate this Agreement as of any date which the non-defaulting party



may select, provided said date is at least thirty (30) days after the expiration of the Cure Period; (b) cure the default at the expense of the defaulting party; and/or (c) have recourse to any other right or remedy to which it may be entitled by law, including, but not limited to, the right to all damages or losses suffered as a result of such termination. In the event either party waives default by the other party, such waiver shall not be construed or determined to be a continuing waiver of the same or any subsequent breach or default.

**17. DISPUTE RESOLUTION:**

The parties shall endeavor to settle all disputes under, or relating to, this Agreement by amicable negotiations. Except as otherwise provided herein, any claim, dispute, disagreement or controversy that arises among the parties under or relating to this Agreement that is not amicably settled shall be submitted to mediation. The parties shall agree to choose a mediator credentialed by the Texas Mediator Credentialing Association. Each party shall bear its own costs incurred arising from the mediation proceeding and shall equally share responsibility for compensating the mediator. If the parties remain unable to resolve the controversy through mediation, then either party may pursue its claim, dispute, disagreement or controversy in court.

**18. FORCE MAJEURE:**

The performance of this Agreement may be suspended and the obligations of either party excused in the event of and during the period that such performance is prevented or delayed by a Force Majeure occurrence. "Force Majeure" shall mean:

- (a) An act of God, including hurricanes, tornadoes, landslides, lightning, earthquakes, weather conditions, fire, flood, explosion, sabotage or similar occurrence, acts of a public enemy, extortion, war, blockade or insurrection, riot, civil disturbance, strike or other labor disturbances, governmental actions or regulations, governmental requests or requisitions for national defense, or breakdown or injury to, or shortage in, facilities used for the handling, processing or transportation of Solid Waste or any other cause beyond the reasonable control of either party;
- (b) The order or judgment of any federal, State, or local court, administrative agency or governmental body (excluding decisions of federal courts interpreting federal tax laws, and decisions of State courts interpreting State tax laws) if it is not also the result of the willful misconduct or negligent action or inaction of the party relying thereon; provided that neither the contesting in good faith of any such order or judgment nor the failure to so contest shall constitute or be construed as a measure of willful misconduct or negligent action or inaction of such party;
- (c) The suspension, termination, interruption, denial, or non-renewal of any permit or approval, through no fault of Contractor, which is essential to the operation of Contractor; or
- (d) A Change in Law. "Change in Law" means (i) the adoption, promulgation, or modification or reauthorization after the date of this Agreement of any law, regulation, order, statute, ordinance, rule or binding judicial or administrative ruling that was not adopted, promulgated, modified or reissued on or before the date of this Agreement, or

(ii) the imposition of any material conditions in connection with the issuance, renewal, or modification of any permit, license, registration, notice of intent or approval after the date of this Agreement, which in the case of either (a) or (b) establishes requirements affecting a party's operation under this Agreement more burdensome than the requirements that are applicable to such party and in effect as of the date of this Agreement. A change in any federal, State, county, or other tax law or workers' compensation law shall not be a Change of Law. However, in the event that a federal, State or local entity imposes a fee, charge or tax after the date of this Agreement that applies to a party's operations per se, such fee, charge or tax shall be treated as a Change in Law.

#### 19. EVIDENCE OF INSURANCE:

Contractor shall procure and maintain for the duration of the Agreement, with a carrier reasonably acceptable to City, insurance against claims for injuries to persons or damages to property, which may arise from or in conjunction with the performance of the work hereunder by the Contractor, its agents, representatives, employees, or subcontractors. The policy or policies shall name the City as an additional insured, subject to Contractor's indemnities set forth herein, and shall contain a clause that the insurer will not cancel or decrease the insurance coverage without first giving the City thirty (30) days notice in writing. The cost of such insurance shall be borne by the Contractor and a Certificate of Insurance evidencing that such insurance has been procured and is in force will be forwarded to the City before commencement of work hereunder.

##### Minimum Limits of Insurance:

| Type Coverage                                    | Per Occurrence Minimum                                              | Aggregate Minimum   |
|--------------------------------------------------|---------------------------------------------------------------------|---------------------|
| Workers Compensation                             | As required by law and shall cover all employees including drivers. | As required by law. |
| Comprehensive & General Public Liability         | \$1,000,000                                                         | \$1,000,000         |
| Property Damage                                  | \$1,000,000                                                         | \$1,000,000         |
| Comprehensive Auto Liability<br>Bodily Injury    | \$1,000,000                                                         |                     |
| Comprehensive Auto Liability-<br>Property Damage | \$500,000                                                           |                     |

**20. INDEMNITY:**

The Contractor shall indemnify City against any claims, actions, or suits, including court costs and reasonable attorneys' fees, to the extent caused by Contractor's negligent or willful misconduct in providing the services required by this Agreement. Upon obtaining knowledge of any matter giving rise to possible indemnification, the City shall notify the Contractor immediately. The Contractor shall defend or contest any such claim or demand. The Contractor may defend or contest any such claim or demand in the name of the City. The City shall provide such cooperation in connection therewith as the Contractor may reasonably request and shall make available to the Contractor or its representatives all records and other materials reasonably required in such defense. So long as the Contractor is contesting or defending any such claim or demand with ordinary care and in good faith, no amount shall be deemed to be due hereunder unless the City has been required by order or judgment of any court to pay any sum arising from the subject matter of the suit.

**21. OWNERSHIP:**

Title to Waste shall pass to Contractor when placed in Contractor's collection vehicle. Title to Unacceptable Waste shall remain with the generator of such Unacceptable Waste.

**22. SEVERABILITY:**

Should any portion of this Agreement be deemed invalid or unenforceable to any extent, the parties hereto agree that such provision shall be amended to the minimum extent necessary to make such provision enforceable, and the remainder of this Agreement shall not be affected thereby.

**23. PRIOR AGREEMENTS:**

This Agreement contains the entire agreement between the parties hereto with respect to the matter set forth herein, and upon the Commencement Date supersedes all prior agreements between the parties. No provision of any other document, including any request for proposal, shall be deemed incorporated herein, it being the intent of the parties that this Agreement sets forth the full agreement of the parties with respect to the services described herein. No change, alteration or amendment will be binding on either party unless set forth in a document duly approved by resolution of the City Council of the City of Texarkana, Texas, and executed by all parties hereto.

**24. RECORDS:**

City and Contractor agree to maintain at their respective places of business adequate records relating to the performance of their respective duties under this Agreement. Such records shall be made available at any time during reasonable business hours for inspection by the other party, at the inspecting party's expense, and upon reasonable advance notice; provided, however, only records directly relating to this Agreement and necessary to substantiate invoicing must be disclosed to the other party. On a monthly basis, Contractor shall provide City with

mutually agreed upon performance data in electronic format for services performed under this Agreement.

**25. CHOICE OF LAW; VENUE; GOVERNMENTAL IMMUNITY; LIMITATION ON DAMAGES:**

This Agreement shall be construed in accordance with the laws of the State of Texas. In the event suit is filed by either party as a result of the performance or non-performance of the terms set forth in this Agreement, the prevailing party shall recover its attorney fees that are equitable and just and court costs. Venue of any such action shall be in Bowie County, Texas. Notwithstanding anything contained herein, nothing in this Agreement shall be construed to waive City's governmental immunity. Contractor expressly agrees that any action by Contractor against City for damages shall be limited to the following: (i) the balance due and owed by City to Contractor under this Agreement and any amendments thereto, and any amount owed as compensation for the increased cost to perform the work as a direct result of City-caused delays; (ii) the amount owed for additional work Contractor is directed to perform by City in connection with this Agreement; and (iii) interest as allowed by law, including interest as calculated under Chapter 2251, Texas Government Code. Contractor expressly agrees that any action by Contractor against City for damages shall not include consequential damages, except as expressly allowed above, and exemplary damages. This limitation of damages shall not impair either party from seeking specific performance or injunctive relief.

**26. NOTICES:**

All notices or other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be considered as properly given (i) if mailed to the intended addressee by first class United States mail, postage prepaid, registered or certified with return receipt requested, (ii) by delivering same in person to the intended addressee, (iii) by delivery to an independent third party commercial delivery service for same day or next day delivery and providing for evidence of receipt at the office of the intended addressee, or (iv) by prepaid telegram, telex, e-mail, or facsimile to the addressee. Notice so mailed shall be effective upon its deposit with the United States Postal Service or any successor thereto; notice sent by such a commercial delivery service shall be effective upon delivery to such commercial delivery service; notice given by personal delivery shall be effective only if and when received by the addressee; and notice given by other means shall be effective only if and when received at the office or designated place or machine of the intended addressee. Notwithstanding anything contained herein to the contrary, any notice of default or termination notice under this agreement must be both faxed and mailed by Certified Mail, Return Receipt Requested to the other party to constitute proper notice hereunder. For purposes of notice, the addresses of the parties shall be as set forth below; provided, however, that either party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days' notice to the other party in the manner set forth herein.

If to the City, at: City of Texarkana, Texas  
 220 Texas Blvd P. O. Box 1967  
 Texarkana, Texas 75501 Texarkana, Texas 75504  
 Fax 903-798-3448  
 ATTN: City Manager

with a copy to: Atchley, Russell, Waldrop & Hlavinka, L.L.P.  
 1710 Moores Lane  
 Texarkana, Texas 75503  
 Fax 903-792-5801  
 ATTN: City Attorney

If to the Contractor at: Waste Management of Texas, Inc.  
 520 E. Corporate Dr., Suite 100  
 Lewisville, Texas 75067  
 Fax (866) 281-0559

with a copy to: Waste Management  
 9708 Giles  
 Austin, TX 78754  
 Fax (512) 272 6289  
 Attn: Senior Legal Counsel; and  
  
 CT Corporation System  
 350 North St. Paul Street  
 Dallas, Texas 75201

or such other addresses as the parties may hereafter specify by written notice delivered in accordance herewith.

## 27. DISCRIMINATION PROHIBITED:

Contractor, in the execution, performance, or attempted performance of this Agreement, shall not discriminate against any person or persons because of sex, race, religion, color, or national origin. Contractor must be an equal opportunity employer.

## 28. DISASTER OR STORM EVENT SERVICES

For purposes of the Agreement, “**Disaster or Storm Event**” shall mean an event, such as a tornado, hurricane, wildfire, ice or hail storm, war, riot, act of terrorism, or other Act of God that results in (a) the generation of higher than normal volumes of Bulky Waste, Solid Waste, or Greenwaste by Residential Units, Commercial Units, or Industrial Units and that (b) requires additional equipment, manpower, or resources from Contractor beyond that which is intended and included within this Agreement. “**Disaster or Storm Debris**” shall mean debris, such as Bulky Waste, Solid Waste, or Greenwaste generated by or at Residential Units, Commercial



Units, or Industrial Units as a direct result of a Disaster or Storm Event and that require collection and disposal and/or handling. This Agreement excludes the collection, handling, or disposal of Disaster or Storm Debris by Contractor. The City has the right to contract with any contractor or entity of its choice, or as may be required by the Federal Emergency Management Agency, to provide Disaster or Storm Debris services within the City. Contractor may offer to provide Disaster or Storm Debris collection services and rates to the City, but the City is under no obligation to accept Contractor's proposal.

**CITY:**

CITY OF TEXARKANA, TEXAS

\_\_\_\_\_  
 BY: John A. Whitson, ICMA-CM  
 City Manager

**CONTRACTOR:**

WASTE MANAGEMENT OF TEXAS, INC.

\_\_\_\_\_  
 BY: \_\_\_\_\_  
 ITS: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
 Jennifer Evans, CAP  
 City Secretary

**APPROVED AS TO FORM:**

\_\_\_\_\_  
 Jeffery C. Lewis, J.D.  
 City Attorney

**City of Texarkana, Texas**  
**Schedule A**  
Effective March 1, 2017

**RESIDENTIAL RATES (Includes 10% Franchise Fee)**

|                   |         |
|-------------------|---------|
| Residential Rates | \$17.85 |
| Extra Trash Cart  | \$10.17 |

**COMMERCIAL HAND COLLECT (Includes 10% Franchise Fee)**

|                         | 1XWK    | 2XWK |
|-------------------------|---------|------|
| Poly Cart-PU (1 Toter)  | \$25.00 | N/A  |
| Poly Cart-PU (2 Toter)  | \$42.00 | N/A  |
| Poly Cart-PU (3 toters) | \$59.00 | N/A  |
| Recycling PU (1 toter)  | \$3.35  | N/A  |

**COMMERCIAL RATES (Includes 10% Franchise Fee)**

| Container Size / Type | FREQUENCY PER WEEK |        |        |        |        |        |      | EXTRA PU |
|-----------------------|--------------------|--------|--------|--------|--------|--------|------|----------|
|                       | 1XWK               | 2XWK   | 3XWK   | 4XWK   | 5XWK   | 6XWK   | 7XWK |          |
| 2 Yard FEL Container  | 94.90              | 142.29 | 166.02 | 189.84 | 213.48 | 261.10 | N/A  | 61.64    |
| 3 Yard FEL Container  | 113.85             | 170.89 | 199.28 | 227.85 | 256.25 | 313.22 | N/A  | 73.98    |
| 4 Yard FEL Container  | 132.90             | 199.28 | 232.56 | 265.79 | 299.03 | 365.47 | N/A  | 86.32    |
| 6 Yard FEL Container  | 172.62             | 260.46 | 301.31 | 345.20 | 389.19 | 473.92 | N/A  | 112.13   |
| 8-Yard FEL Container  | 199.22             | 265.79 | 345.25 | 499.22 | 544.50 | 629.46 | N/A  | 129.46   |

See Other Charges Or Notes Below

**COMMERCIAL FRONT LOAD COMPACTORS\* (Includes 10% Franchise Fee)**

| Size                         | 1x       | 2x       | 3x       | 4x         | 5x         | 6x         | 7x  | XPU |
|------------------------------|----------|----------|----------|------------|------------|------------|-----|-----|
| 96-Gallon Toter (RECYCLE)    | \$3.35   | N/A      | N/A      | N/A        | N/A        | N/A        | N/A | N/A |
| 6-Yard FEL Cardboard Recycle | \$53.65  | N/A      | N/A      | N/A        | N/A        | N/A        | N/A | N/A |
| 8 Yard FEL Cardboard Recycle | \$64.38  | N/A      | N/A      | N/A        | N/A        | N/A        | N/A | N/A |
| 4 Yard FEL Compactor         | \$232.68 | \$465.36 | \$698.03 | \$930.72   | \$1,163.40 | \$1,396.08 | N/A | N/A |
| 6Yard FEL Compactor          | \$274.38 | \$548.78 | \$823.16 | \$1,097.55 | \$1,371.93 | \$1,646.31 | N/A | N/A |
| 8 Yard FEL Compactor         | \$315.55 | \$631.08 | \$946.63 | \$1,262.16 | \$1,577.71 | \$1,893.25 | N/A | N/A |

See Other Charges Or Notes Below

**ROLL-OFF RATES (Includes 10% Franchise Fee)**

| Container Size / Type | Delivery Rate | Rental Rate | BY Month or Day Rate | Hauling Charge (Per Pull + Disp) | Haul Rate per Pull | Disposal Rate per ton |
|-----------------------|---------------|-------------|----------------------|----------------------------------|--------------------|-----------------------|
| 20 Yard (Open-Top)    | \$108.80      | \$5.11      | Day                  | N/A                              | \$290.38           | \$36.30               |
| 25 Yard (Open-Top)    | \$108.80      | \$5.11      | Day                  | N/A                              | \$290.38           | \$36.30               |
| 30 Yard (Open-Top)    | \$108.80      | \$5.11      | Day                  | N/A                              | \$314.59           | \$36.30               |
| 40 Yard (Open-Top)    | \$108.80      | \$5.11      | Day                  | N/A                              | \$338.79           | \$36.30               |
| 30 Yard (Compactor)   | \$108.80      | \$ 386.23   | Month                | N/A                              | \$314.59           | \$36.30               |
| 33 Yard (Compactor)   | \$108.80      | \$ 386.23   | Month                | N/A                              | \$338.79           | \$36.30               |
| 34 Yard (Compactor)   | \$108.80      | \$ 386.23   | Month                | N/A                              | \$338.79           | \$36.30               |
| 35 Yard (Compactor)   | \$108.80      | \$ 386.23   | Month                | N/A                              | \$338.79           | \$36.30               |
| 40 Yard (Compactor)   | \$108.80      | \$ 386.23   | Month                | N/A                              | \$338.79           | \$36.30               |
| 42 Yard (Compactor)   | \$108.80      | \$ 386.23   | Month                | N/A                              | \$338.79           | \$36.30               |
| TRIP CHARGE RATE:     |               |             | N/A                  |                                  |                    |                       |

**NOTES**

All Residents must set up any new services through the Texarkana Water Utilities by calling (903) 798-3812.  
Additional services or equipment, such as casters, lock bars, extra pick-ups may be charged at reasonable rates. A lock bar is currently charged at \$75.00.  
Charge for lost or stolen cart \$70. No charge for a damaged cart that is returned to Contractor for a Replacement Cart.

**SCHEDULE B  
RECYCLABLES SPECIFICATIONS**

**RECYCLABLES shall be loose, not bagged, and include the following:**

|                                                                                           |                                                                                                                                                                                               |
|-------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Aluminum food and beverage containers - empty                                             | All other office paper without wax liners                                                                                                                                                     |
| Ferrous (Iron, steel, tin) cans – empty                                                   | PET plastic containers with the symbol #1 – with screw tops only - empty                                                                                                                      |
| HDPE natural rigid plastic containers with the symbol #2 (milk and water bottles) – empty | HDPE pigmented rigid plastic containers with the symbol #2 (detergent, shampoo bottles, etc.) – empty                                                                                         |
| Mixed Rigid Plastic tubs or containers with symbols #3, #4, #5, #6, #7 – empty            | Magazines, glossy inserts and pamphlets                                                                                                                                                       |
| Old corrugated cardboard containers/boxes/sheets                                          | Cereal boxes; detergent, gift and snack boxes                                                                                                                                                 |
| Catalogs, Printer paper, Copier paper, telephone books, mail                              | Aseptic gable-top milk and juice cartons                                                                                                                                                      |
|                                                                                           | Rigid Plastics (unnumbered) such as milk/soda crates, plastic buckets, plastic laundry baskets, etc. that fit into the Polycart and are no more than 30” long and no more than 10 pounds each |

All materials not specifically listed above as Recyclables are Non-Recyclables.

**RECYCLABLES do NOT include the following:**

|                                                                                                                         |                                                                                                                                                                                                                                                                                             |
|-------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Bagged materials (even if containing Recyclables)                                                                       | Glass (clear, brown, green or any other color)                                                                                                                                                                                                                                              |
| Mirrors                                                                                                                 | Window or auto glass                                                                                                                                                                                                                                                                        |
| Light Bulbs, microwave trays                                                                                            | Ceramics                                                                                                                                                                                                                                                                                    |
| Porcelain                                                                                                               | Plastics unnumbered                                                                                                                                                                                                                                                                         |
| Plastic bags                                                                                                            | Wire/metal hangers                                                                                                                                                                                                                                                                          |
| Expanded polystyrene or polystyrene foam (e.g., foam packing peanuts)                                                   | Household items such as cooking pots, toasters, etc.                                                                                                                                                                                                                                        |
| Glass cookware/bakeware                                                                                                 | Wet fiber                                                                                                                                                                                                                                                                                   |
| Flexible packaging and multi-laminated materials                                                                        | Fiber containing, or that has been in contact with, food debris or other contaminating material                                                                                                                                                                                             |
| Excluded Materials                                                                                                      | Tissues, paper towels or other material that has been in contact with food                                                                                                                                                                                                                  |
| Any recyclable materials, or pieces of recyclable materials, less than 2” in size in any dimension                      | Materials: (a) that contain chemical or other properties deleterious, or capable of causing material damage, to any part of Company's property, its personnel or the public; and/or (b) that may materially impair the strength or the durability of the Company's structures or equipment. |
| Household metal cooking pots, pans, and utensils which are no more than 30 inches long and not more than 50 pounds each |                                                                                                                                                                                                                                                                                             |

## MUNICIPAL SOLID WASTE COLLECTION AND TRANSPORTATION AGREEMENT

### (Residential/Polycarts, Commercial, Industrial and Recycling)

This Municipal Solid Waste Collection and Transportation Agreement (this "Agreement") is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2016, between the City of Texarkana, Texas ("City"), a municipal corporation, and Waste Management of Texas, Inc. ("Contractor"), a Texas corporation, acting by and through its duly authorized representative.

### W I T N E S S E T H:

**WHEREAS**, City desires to grant to Contractor the exclusive right to operate and maintain the service of collection and transportation of residential, commercial and industrial garbage and trash, and residential recycling, over, upon, along and across the present and future boundary limits streets, alleys, bridges, and public properties of the City, subject to the terms of this Agreement; and

**WHEREAS**, Contractor desires to operate and maintain the service of collection and transportation of residential, commercial and industrial garbage and trash, and residential recycling, over, upon, along and across the present and future boundary limits streets, alleys, bridges, and public properties of the City, subject to the terms of this Agreement.

**NOW, THEREFORE**, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, the parties hereto agree as follows:

#### 1. DEFINITIONS:

- 1.01. **Bag:** An "Approved green waste bag" (defined in City's Code of Ordinances, sec. 22-1), as approved by the City water utilities compost facility, means a nonplastic biodegradable bag with a typical capacity of 33 gallons.
- 1.02. **Bulky Waste:** White Goods, furniture, bundled brush greater than four (4) feet in length or four (4) inches in diameter, auto parts, and other oversized wastes which are customary to ordinary housekeeping operations of a Residential Unit and whose large size precludes or complicates its handling by normal solid waste collection, processing or disposal methods.
- 1.03. **City:** The City of Texarkana, Texas.
- 1.04. **Commercial Unit:** All commercial businesses and establishments, including, but not limited to, stores, offices, restaurants, warehouses, and other non-manufacturing facilities, premises, locations or entities, public or

private, within the corporate limits of the City.

- 1.05. **Commercial Hand Collect Unit:** A retail or light commercial type of business, which generates no more than one (1) cubic yard of Solid Waste per week.
- 1.06. **Commercial Waste:** All types of Solid Waste generated by stores, offices, restaurants, warehouses, and other non-manufacturing activities, excluding Residential Waste and Industrial Waste.
- 1.07. **Commercial Service Provider:** A commercial business enterprise or commercial service provider providing services to Residential Units.
- 1.08. **Compactor:** Any container, regardless of size, which has a compaction mechanism, whether stationary or mobile.
- 1.09. **Construction and Demolition Debris:** Waste building materials resulting from construction, remodeling, repair, or demolition operations that are directly or indirectly the by-products of construction work or that result from demolition of buildings or other structures, but specifically excluding inert debris, land-clearing debris, yard debris, or used asphalt, asphalt mixed with dirt, sand, gravel, rock, concrete, or similar materials.
- 1.10. **Container:** An “Approved green waste container or can” (~~as~~ defined in ~~the City’s Code of Ordinances, section 22-1~~), which shall have suitable handles on the Container and a capacity of not more than 50 gallons or 50 pounds when full.
- 1.11. **Contract Administrator:** That person, or his designee, designated by the City to administer and monitor the provisions of this Agreement.
- 1.12. **Contractor:** Waste Management of Texas, Inc.
- 1.13. **Customer:** The owner or tenant of a Residential Unit, Commercial Unit and/or Industrial Unit, as the case may be, located within the City, and identified by the City as being eligible for and in need of the services provided by the Contractor under this Agreement.
- 1.14. **Dead Animals:** Animals or portions thereof that have expired from any cause except those slaughtered or killed for human use.
- 1.15. **Disposal Site:** A duly permitted sanitary landfill selected by Contractor.
- 1.16. **Dumpster:** Metal receptacle designed to be lifted and emptied mechanically for use only at Commercial Units or Industrial Units.
- 1.17. **Garbage:** Solid Waste consisting of putrescible or animal and vegetable waste materials resulting from the handling, preparation, cooking, and

consumption of food, including waste materials from markets, storage facilities, handling and sale of produce and other food products, and all Dead Animals of less than ten pounds (10 lbs.) in weight, except those slaughtered for human consumption.

- 1.18. **Greenwaste or Yard Waste:** grass or weed clippings, leaves, plant clippings, stock and limbs not over 4 inches in diameter or exceeding 4 feet in length, and specifically excluding debris resulting from the services of a Commercial Service Provider.
- 1.19. **Hazardous Waste:** Any Solid Waste identified or listed as a hazardous waste by the administrator of the Environmental Protection Agency under the Federal Solid Waste Disposal Act as amended by RCRA, 42 U.S.C. §6901, *et. seq.*, as amended.
- 1.20. **Industrial Unit:** All industrial businesses and establishments, including manufacturing facilities, premises, locations or entities, public or private, within the corporate limits of the City.
- 1.21. **Industrial Waste:** Solid Waste resulting from or incidental to any process of industry or manufacturing, or mining or agricultural operations.
- 1.22. **Medical Waste.** Waste generated by health care related facilities and associated with health care activities, not including Garbage or Rubbish generated from offices, kitchens, or other non-health-care activities. The term includes Special Waste from health care-related facilities which is comprised of animal waste, bulk blood and blood products, microbiological waste, pathological waste, and sharps as those terms are defined in 25 TAC §1.132 (relating to Definitions). The term does not include medical waste produced on farmland and ranchland ~~as defined in Agricultural Code, §252.001 (6) (Definitions Farmland or ranchland)~~, nor does the term include artificial, nonhuman materials removed from a patient and requested by the patient, including, but not limited to, orthopedic devices and breast implants.
- 1.23. **Polycart:** A rubber-wheeled receptacle with a maximum capacity of 90 - 96 gallons constructed of plastic, metal and/or fiberglass, designed for automated or semi-automated solid waste collection systems, and having a tight fitting lid capable of preventing entrance into the container by small animals. The weight of a Polycart and its contents shall not exceed 175 lbs.
- 1.24. **Non-Recyclables:** Any materials in the Single Stream Materials that are not Recyclables as set forth in Schedule B.
- 1.25. **Recyclable Cart:** A rubber-wheeled receptacle with a maximum capacity of 60 - 65 gallons constructed of plastic, metal and/or fiberglass, designed for automated or semi-automated recyclable collection systems, and having



a tight fitting lid capable of preventing entrance into the container by small animals.

- 1.26. **Recyclable Material or Recyclables:** A material that has been recovered or diverted from the non-hazardous waste stream for purposes of reuse, recycling, or reclamation, a substantial portion of which is consistently used in the manufacture of products that may otherwise be produced using raw or virgin materials. Recyclable Material is not solid waste. However, Recyclable Material may become Solid Waste at such time, if any, as it is abandoned or disposed of rather than recycled, whereupon it will be solid waste, with respect to the party actually abandoning or disposing of such material.
- 1.27. **Refuse:** Same as Rubbish.
- 1.28. **Residential Unit:** A residential dwelling within the service area of the City occupied by a person or group of persons comprising not more than four families, or an apartment complex comprising 7 or fewer units. ~~why seven?~~ A Residential Unit shall be deemed occupied when either water or domestic light and power services are being supplied thereto. A condominium dwelling, whether of single or multi-level construction, consisting of four units, shall be treated as a Residential Unit, except that each single-family dwelling within any such Residential Unit shall be billed separately as a Residential Unit. Any condominium or apartment complex that uses Dumpsters rather than Polycarts shall be considered a Commercial Unit.
- 1.29. **Residential Waste:** All Refuse, Garbage and Rubbish and other Solid Waste generated by a Customer at a Residential Unit.
- 1.30. **Residue or Residual:** Material that cannot be safely or effectively processed; material that, after processing, cannot be effectively marketed for sale in its current state; and/or Non-Recyclables, each of which will be disposed.
- 1.31. **Roll-off Bin:** Container provided to a Commercial Unit or Industrial Unit by Contractor measuring 20, 30, or 40 cubic yards, intended for high-volume refuse generating Commercial Units or Industrial Units, and capable of pickup and transport to a Landfill by loading of container onto rear of transporting vehicle, but excluding a Compactor.
- 1.32. **Rubbish:** Nonputrescible Solid Waste (excluding ashes), consisting of both combustible and noncombustible waste materials. Combustible rubbish includes paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, or similar materials; noncombustible rubbish includes glass, crockery, tin cans, aluminum cans, metal furniture, and similar materials that will not burn at ordinary incinerator temperatures

(1,600 degrees Fahrenheit to 1,800 degrees Fahrenheit).

- 1.33. **Single Stream Materials:** The materials placed by Customers in their Recyclable Carts.
- 1.34. **Solid Waste:** Garbage, Rubbish, Refuse, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities. The term does not include:
  - a) Solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under Texas Water Code, Chapter 26;
  - b) Solid, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvement;
  - c) Waste materials that result from activities associated with the exploration, development, or production of oil or gas or geothermal resources and other substance or material regulated by the applicable state or federal agency, unless the waste, substance, or material results from activities associated with gasoline plants, natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants and is hazardous waste as defined by the administrator of the EPA under the federal Solid Waste Disposal Act, as amended by RCRA, as amended (42 USC, §§6901 *et seq.*), or
  - d) Unacceptable Waste.
- 1.35. **Special Waste:** Waste that requires special handling and management due to the nature of the waste, including, but not limited to, the following: (A) containerized waste (e.g. a drum, barrel, portable tank, box, pail, etc.), (B) waste transported in bulk tanker, (C) liquid waste, (D) sludge waste, (E) waste from an industrial process, (F) waste from a pollution control process, (G) Residue and debris from the cleanup of a spill or release of chemical, or (H) any other waste defined by Texas law, rule or regulation as "Special Waste."
- 1.36. **Stable Matter:** All manure and other waste matter normally accumulated in or about a stable, or any animal, livestock or poultry enclosure, and resulting from the keeping of animals, poultry, or livestock.
- 1.37. **Unacceptable Waste:** Any waste, the acceptance and handling of which

by Contractor would cause a violation of any permit, condition, legal or regulatory requirement, substantial damage to Contractor's equipment or facilities, or present a danger to the health or safety of the public or Contractor's employees, including, but not limited to, Hazardous Waste, Special Waste (except as otherwise provided herein), untreated Medical Waste, Dead Animals weighing ten pounds (10 lbs.) or greater, solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit, soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements.

- 1.38. **Unusual Accumulations:** As to Residential Units, any Waste placed curbside for collection in excess of the volumes permitted by this Agreement, or placed outside a Polycart, and as to Commercial or Industrial Units, any Waste located outside the Dumpster, Roll-off Bin or Compactor regularly used for such collection service, or any Waste that overfills or exceeds the tonnage limit for the Dumpster or Roll-off Bin.
- 1.39. **Waste:** All Residential Waste, Commercial Waste, and Industrial Waste to be collected by Contractor pursuant to this Agreement. The term "Waste" specifically excludes Unacceptable Waste.
- 1.40. **White Goods:** Refrigerators which have CFCs removed by a certified technician, stoves and ranges, water heaters, freezers, swing sets, bicycles (without tires) scrap metal, copper, and other similar domestic and commercial large appliances.

## 2. GRANT OF EXCLUSIVE FRANCHISE:

Contractor is hereby granted the exclusive right and privilege within the boundary corporate limits of the City to conduct business for the purpose of collection and disposal of Waste, and collection of Recyclable Materials from Residential Units, Commercial Units, and Industrial Units, subject to the terms hereof, including any alteration and extension of said boundary limits after the Commencement Date~~tracts, territories and areas hereafter annexed to or acquired by City.~~

## 3. TERM:

The term of this Agreement shall commence March 1, 2017 ("Commencement Date"), and continue to remain in full force and effect for a period of five (5) years ending on February 28, 2022. The initial 5-year term shall automatically be extended for successive additional 5-year terms unless either party notifies the other party in writing, not less than one (1) year prior to the expiration of the initial 5-year term or any successive five year term, of its intention to terminate this Agreement. Any such written notice shall be served by certified mail, return receipt requested. Within thirty (30) days following completion of the third year of this Agreement, the parties~~Contractor~~ shall initiate a meeting with one another~~City~~ to review

performance data, effectiveness of Customer education, and other issues identified by either Contractor or City prior to such meeting.

#### 4. RATES:

Contractor is authorized to charge, and shall receive from the City, the rates set forth on Schedule "A" attached hereto and incorporated herein by reference ("Base Rates"). The Base Rates are subject to adjustment as set forth in Section 9 below.

#### 5. CONTRACTOR SERVICES:

##### 5.01. **Residential Collection**

##### (a) **Residential/Commercial Hand Collect Collection:**

- (i) Contractor shall collect Residential Waste generated at a Residential Unit and placed in that Residential Unit's Polycart one (1) time per week during the term of this Agreement.
- (ii) Contractor shall collect Commercial Waste placed in a Polycart from a Commercial Hand Collect Unit once per week.
- (iii) Construction Debris generated at a Residential Unit by a Commercial Service Provider shall be deemed Commercial Waste, and shall be collected pursuant to Section 5.03 below. Construction Debris generated at a Residential Unit by the owner or tenant of that Residential Unit, and not utilizing the services of a Commercial Service provided, shall be subject to the Bulky Waste limitations set forth in this Agreement.

(iv) Notwithstanding any provision in this Agreement to the contrary, consistent with Section 22 of City's Code of Ordinances, Contractor shall collect Waste placed in a plastic bag and placed at curbside not to exceed 10 bags per collection at each Residential Unit beginning on the day after Christmas and for the next 6 days thereafter, during the Christmas holiday.

- (b) **Bulky Waste Collection:** Contractor shall provide a once per week collection service to Residential Units for collection of Bulky Waste. Contractor agrees to collect up to, but not to exceed, one (1) cubic yard of Bulky Waste per week from each Residential Unit. Contractor shall have no obligation to collect any Bulky Waste in excess of the above volumes, or any Construction Debris produced by a Commercial Service Provider hired by a Customer and generated and located at that Residential Unit. Bulky Waste shall be placed within three (3) feet of the curb, swale, paved surface of the roadway, closest accessible roadway, or other location

agreed to by Contractor and Customer, ~~which that~~ will provide safe and efficient accessibility to Contractor's collection crew and vehicle.

- (c) **Greenwaste Collection:** Contractor shall provide a once per week collection service to Residential Units for collection of Greenwaste. All limbs shall be cut into lengths not exceeding 4 feet and shall be securely tied into bundles not to exceed 40 pounds. Leaves, grass, and trimmings must be placed in ~~a Bag or Containers and may not exceed 40 pounds in weight.~~ Contractor has no obligation to collect any Greenwaste not properly bagged, ~~or~~ bundled, ~~or placed in a Container.~~ Contractor agrees to tag and date improperly placed Greenwaste to notify the resident as to the proper method of setting out Greenwaste. If resident fails to dispose of or properly bundle, ~~or bag~~ or contain such material within 10 days of notice, Contractor will refer the matter to the City as a violation of the City's Code of Ordinances. Contractor shall deliver the Greenwaste to the City's facility on South State Line Avenue for composting so long as that facility remains operational.

Greenwaste shall be placed within three (3) feet of the curb, swale, paved surface of the roadway, closest accessible roadway, or other location agreed to by Contractor and Customer, ~~which that~~ will provide safe and efficient accessibility to Contractor's collection crew and vehicle.

- (d) **Recyclable Collection:** Contractor shall provide once per week collection of Recyclables placed in Recyclable Carts from Residential Units. The specifications for Recyclable Materials and list of Recyclable Materials that are acceptable for collection are set forth in Schedule B attached hereto and incorporated by reference. Contractor shall not be required to collect any Recyclable Materials that are not placed in a Recycling Cart. In addition, Contractor shall not be required to collect Recyclable Materials if the Customer does not segregate the Recyclable Materials from the Waste generated at that residence.

(e) **Carts:**

- (i) Contractor shall provide one (1) Polycart and one (1) Recycling Cart (collectively, the "Carts") to each Residential Unit. Carts shall be placed by the Customer of a Residential Unit in a location that is readily accessible to Contractor and its collection equipment, not to exceed three (3) feet from the curb or edge of the travel portion of the street, road or alley, and not to be located in a manner that will block the driveway or mailbox or otherwise inhibit proper servicing. The City ~~may shall~~ aid Contractor in resolving problems of Cart location by the Customer. Customers shall not overload Carts, and the Carts shall be loaded such that the lids shall close securely.

- (ii) Contractor shall not be required to collect (i) any Residential Waste that is not placed in a Polycart, (ii) any Residential Waste from a Polycart that is overloaded, or (iii) a Polycart that is not properly placed curbside.
- (iii) The Carts furnished by the Contractor hereunder shall remain the property of Contractor, and the Customer will have no interest in the Carts. The Carts shall remain at the location of the Residential Unit where delivered by Contractor. Additional Carts will be available for residential Customers at an additional charge set forth in Schedule A attached hereto. of \$9.78 per Cart per month. (is this total cost or is it a charge per month? Likely should be listed only in Schedule A). Any Cart removed from a Residential Unit shall be deemed lost. If a Cart is damaged from normal wear and tear or from Contractor's handling of the equipment, Contractor agrees to replace such Cart with a replacement Cart at no cost. City shall have neither responsibility nor liability to Contractor for any loss or damage to the Carts. Nothing shall prevent Contractor from recouping the cost of any lost Cart directly from a responsible person. The Customer shall be responsible for all other loss or damage to the Carts; City shall compensate Contractor \$70.00 for a replacement Polycart or Recycling Cart, and shall provide by ordinance the method by which costs or charges for lost, damaged, or additional carts are borne by the Customer. The city is not the customer, the residents and businesses are the customers. Financial recovery of lost carts should be a pursuit of the contractor with the actual customer. The city does not provide the carts, maintain the carts, or account for the carts. By ordinance we likely regulate placement of the carts for pick up by the contractor. If a Customer's Cart is lost, Customer shall promptly request and pay Contractor for a new Cart prior to Contractor's delivery of the replacement Cart. Contractor shall have no obligation to replace a lost Cart unless Customer requests and pays for a new Cart prior to Contractor's delivery of the replacement Cart.

- 5.02. **Commercial and Industrial Collection:** Contractor shall have the exclusive right to collect and transport Commercial Waste and Industrial Waste from the Commercial Units and Industrial Units, respectively, utilizing Dumpsters, Compactors or Roll Off Bins, at such frequency as shall be reasonably requested by such Commercial Unit Customer or Industrial Unit Customer. The Dumpster, Compactor or Roll Off Bin shall be located on a concrete pad to accommodate equipment and at a location reasonably acceptable to Contractor. Contractor may, at its sole option, require Commercial Customers and Industrial Customers to enter into



individual contracts with Contractor, subject to the terms of this Agreement. The rates that Commercial and Industrial Customers will be charged are set forth in Schedule A. Commercial and Industrial Customers shall not move, alter, or overfill, or allow any third parties to do so, the Dumpsters, Roll-Off Bins or Compactors. Contractor has the right to assess overage charges due to Customer's overfilling the waste equipment.

Contractor will provide, upon a Commercial or Industrial Unit Customer's request, (a) rubber tire casters for containers (4-yard container maximum size), and/or (b) collection of Dumpsters or Roll-Off Bins on days other than regularly scheduled collection days. Contractor shall communicate these charges and services to the Texarkana Water Utilities (TWU), who shall include the charges in the invoices to such Customers.

Contractor has the right to offer Commercial and Industrial Unit Customers Recyclables collection, but Contractor is not obligated to do.

5.03. **Recyclables Collection.**

(a) City shall not divert, retract, or withdraw, or discontinue collection of any material listed as a Recyclable in Schedule B unless City and Contractor mutually agree to such action. City and Contractor shall not allow scavenging of any Recyclables from the Single Stream Materials. Any additions to the list of acceptable Recyclables in Schedule B will require the parties' mutual agreement. Contractor shall be entitled to all proceeds from Recyclables as additional consideration to offset the expenses associated with recycling collection.

(b) Contractor or the recycling facility may reject a load of Recyclables if it contains Residue or Unacceptable Waste, and in such case, the load will be disposed.

(c) Contractor makes no representations as to the marketability of the Recyclables and may dispose of Recyclables when no reasonable commercial market exists. Contractor shall provide City with written notice no more than 20 days after the decision is made to begin disposing of a Recyclable due to market conditions along with information and/or documentation substantiating such decision. Should no commercially reasonable available market for a Recyclable exist, such Recyclable shall be classified as a Non-Recyclable until such time as a commercially reasonable available market exists. Contractor reserves the right to add or delete materials from the list of Recyclables based upon changes in market conditions, uncontrollable circumstances, governmental restraint, or changes in laws, rules, regulations, or ordinances, or changes in the enforcement thereof, and Contractor will provide written notice of any such change to the City.

(d) Contractor shall work with City to develop/implement a Recyclables Collection plan for apartment complexes and commercial businesses for office use and shall present its draft plan at the meeting described in section 3 of this Agreement. Neither party has the obligation to implement such a plan unless mutually agreed in writing.

5.04. **Unusual Accumulations Collection:** Contractor shall have no obligation to collect Unusual Accumulations, and may assess an overage charge for the collection of any Unusual Accumulations. Contractor has the right to take photographic evidence of Unusual Accumulations.

5.05. **Special Waste:** Contractor is not required to accept, transport or manage any Special Waste, unless it is specifically identified in a written agreement between Contractor and Customer. Contractor may collect, and will have the right to impose, a surcharge for the transportation and disposal of Special Waste, depending on the quantities and any physical characteristics of the Special Waste and any special handling, regulatory compliance or increased concern for worker safety or environmental protection occasioned by the material.

5.06. **Unacceptable Waste:** Contractor shall not be obligated to collect Unacceptable Waste. Title to Unacceptable Waste shall not pass to Contractor, and liability for any unacceptable Waste shall remain with the generator of such Waste.

5.07 **Customer Education:** At no charge to City, Contractor, in its discretion, shall cooperate with the City, where and when practical, to educate Customers encouraging and promoting proper Waste disposal and recycling as required by this Agreement, including educating Residential Unit Customers to assure proper and timely Cart set out, and proper recycling techniques to minimize commingling.

**Commented [MR1]:** Added language consistent with obligations on page 17.

5.078 **-Additional Services:** Contractor agrees to provide the following equipment and services to the City on an annual basis at no charge to the City:

(i) Contractor will provide up to three (3) eight-yard front end load Dumpsters to the City free of charge during City sponsored annual softball and baseball tournaments. Contractor will provide daily service of these three Dumpsters, as needed, during those tournaments at no charge to the City.

(ii) Contractor will provide at least one Recyclables Cart(s) as necessary and requested by City, - specified below and collection service at the following City-owned facilities:

~~City Hall, 220 Texas Blvd. — 4 Carts — 4 Carts~~

(iv) Contractor will provide one 20-yard container to the Texarkana Water Utilities (TWU). The container will be located at the South Stateline waste treatment plant and will be used to dispose of special grit waste. ~~Contractor will charge the Texarkana Water Utilities (TWU) a \$133.32 per month rental charge for the container.~~ Contractor will provide up to ten (10) hauls of this container annually free of charge so long as the haul does not exceed a ton (10) ton maximum weight per haul. For any hauls exceeding the 10 designated free hauls annually, TWU agrees to pay the then current haul rate according to Schedule A. ~~The~~ TWU will be required to meet all Contractor requirements to properly profile the waste, including analytical or lab associated fees. If TWU fails to comply with this paragraph, Contractor has the right to cease providing a container to TWU and this paragraph will become void.

(v) There shall be no disposal charge to residents of Texarkana, Texas who self-haul Bulky Waste generated at their residence to New Boston Landfill for disposal. Fees shall be charged for disposal of construction or remodeling waste. Contractor shall have the right to verify the resident's current address within the City limits.

by the City during any given year, the free services cannot be carried over and applied to the next year or any year thereafter.

Commented [MR2]: WMTX requires re-insertion language.

## 6. COLLECTION OPERATION:

6.01. **Hours of Operation:** Collections shall be made during the hours agreed to by the parties, subject to future reasonable modifications agreed to by both parties. No collection shall be made on Sunday. Collection of Commercial Waste and Industrial Waste shall be collected at such hours as may be determined by Contractor.

6.03. **Holidays:** The following shall be holidays for purposes of this Agreement:

~~New Year's Day~~  
Christmas Day

Contractor may decide to observe any or all of the above-mentioned holidays by suspension or collection service on the holiday, but the Contractor shall be responsible for providing make-up collection for residential routes that occur on specified holidays. Make-up days shall be the next business day following the holiday.

6.04. **Complaints:** Customer complaints shall be directed by the City to Contractor, and Contractor shall promptly resolve such complaint based on

the nature of the complaint. Contractor shall be responsible for maintaining a log of complaints based on the information provided to Contractor by the City, and shall provide the City, on a monthly basis, with copies of all complaints indicating the date and hour of the complaint, nature of the complaint, and the manner and timing of its resolution. Any alleged missed pickups will be investigated and, if such allegations are verified, Contractor shall arrange for collection on the next business day after receipt of such complaint. If the missed pickup is a result of Customer related acts or omissions, the City shall take appropriate action to cause such Customer to ~~subsequently~~ properly set out such Waste.

- 6.05. **Collection Equipment:** Contractor, at its sole cost and expense, agrees to furnish, all trucks, equipment, machines, and labor which are reasonably necessary to adequately, efficiently, and properly collect and transport garbage from Customers serviced by Contractor in accordance with this Agreement. Collection of Solid Waste shall be made using sealed packer-type trucks, and such equipment shall not be allowed to leak nor scatter any waste within the limits of the City nor while in route to the Disposal Site.

All motor vehicles used in performance of the obligations herein created shall be clearly marked with the Contractor's name, telephone number and unit number legible from 150 feet. ~~No advertising shall be permitted on vehicles.~~ All collection equipment shall be maintained in a first class, safe, and efficient working condition throughout the term of this Agreement. Such vehicles shall be maintained and painted as often as necessary to preserve and present a well-kept appearance, and Contractor shall have a regular preventative maintenance program. City may inspect Contractor's vehicles at any time to insure compliance of equipment with this Agreement. ~~Vehicles are to be washed on the inside and sanitized with a suitable disinfectant and deodorant a minimum of once a month.~~ Such vehicles shall be washed and painted or repainted as often as necessary to keep them in a neat and sanitary condition.

- 6.06. **Disposal:** The Contractor shall deliver Waste collected to a duly permitted Disposal Site operated in compliance with rules stipulated by the applicable state agency and/or the U.S. Environmental Protection Agency.
- 6.07. **Spillage:** The Contractor shall not be responsible for scattered Refuse unless the same has been caused by Contractor, in which case all scattered Refuse shall be picked up immediately by Contractor.
- 6.08. **Vicious Animals:** Employees of the Contractor shall not be required to expose themselves to the dangers of vicious animals in order to accomplish Refuse collection service. Contractor shall immediately notify the City, in writing, of such ~~danger condition~~ and ~~of his the~~ inability to make collection ~~because of such danger~~.
- 6.09. **Protection From Scattering:** Each vehicle shall be equipped with a cover

which may be net with mesh not greater than one and one-half (1-1/2) inches, or tarpaulin, or fully enclosed metal top to prevent leakage, blowing or scattering of refuse onto public or private property. Such cover shall be kept in good order and used to cover the load going to and from the Disposal Site, during loading operations, or when parked if contents are likely to be scattered. Vehicles shall not be overloaded so as to scatter Refuse.

- 6.10. **Point of Contact:** All dealings and contacts between Contractor and the City shall be directed between the Manager for Public Sector Solutions for Contractor, or such other individual identified by Contractor, and the Contract Administrator designated by the City.

#### 7. LICENSE AND TAXES:

Contractor shall obtain at its sole expense all licenses and permits required by the City and the State, and shall maintain same in full force and effect.

#### 8. BILLING:

(a) City shall provide billing and bill collection services to all Residential Units during the term of this Agreement. City shall provide billing and bill collection services for all Commercial and Industrial Units that use Dumpsters or Polycarts for waste or recycling services. Contractor shall provide billing and bill collection services to Commercial Units and Industrial Units that use Roll-Off Bins and/or Compactors for collection of waste.

Within 30 days of the end of each month during which collection services are provided by Contractor hereunder, Contractor shall submit to the City an invoice setting forth sums due by the City to Contractor for services rendered under this Agreement to Residential Units and Commercial and Industrial Units that receive services using Dumpsters or Polycarts. City shall pay Contractor's invoices for services provided to Residential Unit and Commercial Customers within thirty (30) days after City's receipt of invoice. All past due invoices shall bear interest as allowed by law.

Contractor shall invoice directly those Commercial Units and Industrial Units that use Roll-Off Bins and Compactors. ~~C, and contractor shall require payment of~~ such invoices ~~shall be paid~~ within thirty (30) days after receipt of invoice by the Customer, ~~with past due invoices bearing interest as allowed by law.~~ ~~In addition, the City pays Contractor's invoices for services provided to Residential Unit and Commercial Customers within thirty (30) days after City's receipt of invoice. All past due invoices shall bear interest at the highest rate permitted by law.~~

(b) The City shall notify Contractor in writing of any Residential Unit, Commercial Unit, or Industrial Unit Customer that has failed to pay the City for waste collection services, and Contractor shall have the right to suspend service to such Customer until notified by the City to resume such services. Contractor shall have the right to suspend service to any Commercial Unit or Industrial Unit that uses Roll-Off Bins or Compactors

that is delinquent in payment to Contractor. If Contractor suspends service to a Customer for failure to timely pay Contractor's invoices, Contractor has the right to charge a service reactivation fee and/or finance charges or late payment fees if such service to the Customer is reinstated.

(c) The City shall be entitled to receive a ~~ten+0~~ percent (10%) franchise fee (the "Franchise Fee") for all services rendered by Contractor hereunder. The City shall retain the Franchise Fee prior to payment of Contractor's invoices based on payments actually received by the City. Contractor shall pay the City its ~~ten+0~~ percent (10%) Franchise Fee based on payments actually received from Commercial and Industrial Unit Customers that Contractor direct bills for Roll-Off Bin services. Contractor shall pay the fee to the City within 45 days after the last day of the month of Contractor's actual receipt of such monies. Contractor's rates on Schedule A include the City's ten percent (10%) franchise fee.

#### 9. MODIFICATION TO RATES: ~~\_\_\_\_\_~~

9.01 **CPI Adjustment:** ~~For the new rates to be effective on October 1<sup>st</sup> each year, the City and TWU need to have final rates as early as possible. How early could these final numbers be provided so they could be part of our budget process? \_\_\_\_\_~~ Base Rates charged by Contractor for services will remain fixed as set forth on Schedule "A" and will not be adjusted for changes in the CPI (as hereinafter defined), until September 30, 2017. ~~—Commencing on October 1, 2017, and continuing annually on each anniversary date of the Commencement Date of this Agreement, Base Rates for services shall be adjusted by the same percentage as the Consumer Price Index, US City Average for All Urban Consumers, Garbage and Trash Collection, Not Seasonally Adjusted, Base Period December 1983 = 100 (published by the United States Bureau of Labor Statistics, Consumer Price Index) (the "C.P.I.") shall have increased during the preceding published twelve months preceding the index published in May 2017 and each May thereafter.~~ In the event the U.S. Department of Labor, Bureau of Labor Statistics ceases to publish the C.P.I., the parties hereto agree to substitute another equally authoritative measure of change in the purchasing power of the U.S. dollar as may be then available so as to carry out the intent of this provision.

-9.02 **Fuel Adjustment:** Contractor shall calculate the percentage of change in the cost of diesel fuel during the prior 12 month period beginning ~~May 1, October 1,~~ 2017, using the weekly average price of diesel fuel, as determined by reference to the Energy Information Administration of the US Department of Energy ("EIA/DOE")'s Weekly Retail On Highway Diesel Prices for the Gulf Coast, published on the last Monday of each ~~April/June of the Contract Year~~ ("Fuel Index"). The EIA/DOE currently publishes these prices on their website at the following location: <http://tonto.eia.doe.gov/oog/info/wohdp/diesel.asp>. Contractor shall calculate the percentage of change in the price of diesel fuel between (i) the average price of diesel fuel from the aforesaid website published for the last Monday of ~~April/June~~ of the then immediately prior year (the "Initial Fuel Base") and (ii) the average price of diesel fuel from the aforesaid website for the 52 weeks period immediately prior to the last Monday of ~~December-April~~ of the current year (the average being calculated by adding together

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the weekly fuel price for each of the 52 prior weeks, divided by 52) (the "Current Fuel Base"). The Initial Fuel Base that will be used and that will take effect on the date this Amendment is signed shall be \$2.20 per gallon. The percentage change in the Initial Fuel Base and Current Fuel Base shall be multiplied by 14%, and the product thereof shall be the "Fuel Adjustment Component." The Fuel Adjustment Component and the CPI component shall be (i) added together, and (ii) then multiplied by the then current Base Rate to determine the adjustment in the Base Rate commencing January 1 of the current Contract Year. (Example: If the price of diesel fuel on the last Monday of ~~April~~ June of any given year is \$2.50, and the average price of fuel over the next 52 weeks is \$2.75, the difference of 25 cents is an increase of 10%. That 10% increase is then multiplied by 14 percent, which equals 1.4%. The fuel adjustment feature of the rate adjustment will be 1.4%, which is then added to the CPI portion of the index to get the final annual rate adjustment).

9.03 **Additional Adjustments:-** Contractor may request an increase in Base Rates from time to time during the term of this Agreement, upon giving at least thirty (30) days' written notice to the City, to offset a change in condition that is outside of Contractor's control, and that increases the Contractor's costs, such as a change in federal, state or local laws, rules, regulations, or ordinances. Simultaneously with the notice, Contractor shall submit to the City documentation substantiating the increase required by the federal, state or law, rule, regulation or ordinance. Contractor agrees that in the event it seeks to secure an increase in fees based on the provisions of this paragraph, the City shall have a review period of thirty (30) days following receipt of both the notice and substantiating documentation to either approve or object to said increase in fees. If the City objects to said increase in fees within the thirty (30) day review period, then City and Contractor will negotiate in good faith for a period of thirty (30) days in an attempt to reach a resolution satisfactory to both City and Contractor. If, however, a resolution satisfactory to both City and Contractor is not reached, either City or Contractor shall have the right to deem the matter a disagreement for purposes of mediation as described in paragraph 17 of this Agreement, and any requested increase in Base Rates shall not go into effect until after a final decision is reached through mediation or court order, as applicable.

Contractor shall also be entitled to request an increase in Base Rates from time to time during the term of this Agreement, and upon giving at least thirty (30) sixty (60) days' written notice to the City, to offset any change in conditions ~~that is outside of Contractor's control~~, and that which increases the Contractor's costs, such as including but not limited to, increases in disposal costs, increases in landfill fees, changes in the ordinances under which the Contractor is to operate, or a changes in federal, state or local laws, rules, or regulations, or ordinances. Contractor shall submit to the City dDocumentation substantiatingpporting the of such requested increases shall be submitted to the City the increase required by the federal, state or law, rule, regulation or ordinance simultaneously with the notice request. City shall review the request within the sixty day notice period and either approve or not approve the request. If Contractor chooses to deem City's non approval as a disagreement for purposes of paragraph 17 of this Agreement, Contractor shall give City notice of such disagreement within thirty (30) days of Contractor receiving notice of City's non approval, at its request.

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## 10. CITY'S OBLIGATIONS:

The City agrees to perform all obligations required of the City pursuant to the terms of this Agreement, including, but not limited, the following:

- (a) The City shall designate the Contract Administrator, who shall communicate City decisions to Contractor on a timely basis from time to time as required under this Agreement;
- (b) The City shall provide the total number of Residential Units to the Contractor no later than the 25<sup>th</sup> day of each month (i.e., the total house count that will receive Contractor services). Contractor has the right to rely upon the total house count, and will use the monthly Residential Unit total in its next invoice to the City as set forth in Section 8. Any errors in the house count numbers provided by the City are deemed waived and any claim arising therefrom released by the City if not corrected by the City within 180 days of month in which the improper house count information was delivered by the City to Contractor. Contractor has the right to confirm the City's house count, but is not obligated to do so;
- (c) The City shall timely pay Contractor pursuant to the terms of this Agreement;
- (d) The City shall timely inform Contractor of complaints made by Customers;
- (e) The City shall work with Contractor in good faith to resolve complex Customer service issues; and
- (f) The City shall cooperate with Contractor, within the City's discretion as to where and when practical, to educate e-Customers to encourage, promote and obtain proper Waste disposal and recycling as required by this Agreement, including educating Residential Unit Customers to assure proper and timely Cart set out, and proper recycling techniques to minimize commingling.

#### 11. COMPLIANCE WITH LAWS:

Contractor, its officers, agents, employees, contractors, and subcontractors, shall abide by and comply with all existing laws and laws which may be enacted by the federal, state, and local governments. It is expressly agreed that nothing in this Agreement shall be construed in any manner to abridge the right of City to pass or enforce necessary police and health regulation for the protection of its inhabitants. It is further agreed and understood that, if the City calls the attention of Contractor to any such violations on the part of the Contractor, its officers, agents, employees, contractors, or subcontractors, then Contractor shall immediately desist from such activity and correct such violation.

#### 12. OFFICE:

Contractor shall maintain an office or such other facility through which it may be contacted by telephone without charge. Such office shall be equipped with sufficient telephones and shall have a responsible person in charge between the hours of 8:00 a.m. and 5:00 p.m.,

Monday through Friday and any other day that is a makeup collection day.

**13. ENFORCEMENT AGAINST THIRD PARTIES:**

City grants unto Contractor the right to seek an injunction against any third party which is believed to be infringing on the rights of Contractor to this Agreement, including Contractor's exclusive franchise rights granted herein. By granting this right to Contractor, the City in no way reduces its right or obligation to enforce this Agreement or any other City ordinance relating to the collection and disposal of Waste. Furthermore, Contractor shall have all rights and remedies available to it under Texas law to collect delinquent payment of Costs owed to Contractor fees by ~~City and/or~~ Commercial Unit and Industrial Unit Customers. The City agrees to take all steps necessary and permitted by law to require Customers to comply with the terms of this Agreement.

**14. TRANSFERABILITY OF AGREEMENT:**

Other than by operation of law, no assignment of the Agreement or any right accruing under the Agreement shall be made in whole or in part by the Contractor without the express written consent of the City, ~~which consent shall not be unreasonably withheld.~~ Upon the assignment, the assignee shall assume the liability of the Contractor. Notwithstanding anything contained herein to the contrary, Contractor shall be permitted to assign this Agreement to an affiliate of Contractor without the City's consent.

**15. LANDFILL CAPACITY:**

During the term of this Agreement, Contractor shall have and maintain at all times during the term hereof, adequate disposal capacity for the City's needs.

**16. TERMINATION:**

Except as otherwise provided herein, if either party defaults in the performance of any of the covenants or conditions contained herein, and fails to cure such default within thirty (30) days after the non-defaulting party has given the defaulting party written notice of such default (or if such default is of a nature that it cannot be cured within such thirty (30) day period, the defaulting party fails to commence the curing of such default within such thirty (30) day period, and fails to thereafter diligently pursue the curing thereof) (the "Cure Period"), the non-defaulting party may: (a) terminate this Agreement as of any date which the non-defaulting party may select, provided said date is at least thirty (30) days after the expiration of the Cure Period; (b) cure the default at the expense of the defaulting party; and/or (c) have recourse to any other right or remedy to which it may be entitled by law, including, but not limited to, the right to all damages or losses suffered as a result of such termination. In the event either party waives default by the other party, such waiver shall not be construed or determined to be a continuing waiver of the same or any subsequent breach or default.

**17. DISPUTE RESOLUTION:**

The parties shall endeavor to settle all disputes under, or relating to, this Agreement by amicable negotiations. Except as otherwise provided herein, any claim, dispute, disagreement or

controversy that arises among the parties under or relating to this Agreement that is not amicably settled shall be submitted to mediation. The parties shall agree to choose a mediator credentialed by the Texas Mediator Credentialing Association. ~~SELECTION OF MEDIATOR~~ Each party shall bear its own costs incurred arising from the mediation proceeding and shall equally share responsibility for compensating the mediator. If the parties remain unable to resolve the controversy through mediation, then either party may pursue its ~~their~~ claim, dispute, disagreement or controversy in ~~a court with proper venue in the state within which the services are being performed.~~

#### 18. FORCE MAJEURE:

The performance of this Agreement may be suspended and the obligations of either party excused in the event of and during the period that such performance is prevented or delayed by a Force Majeure occurrence. "Force Majeure" shall mean:

- (a) An act of God, including hurricanes, tornadoes, landslides, lightning, earthquakes, weather conditions, fire, flood, explosion, sabotage or similar occurrence, acts of a public enemy, extortion, war, blockade or insurrection, riot, civil disturbance, strike or other labor disturbances, governmental actions or regulations, governmental requests or requisitions for national defense, or breakdown or injury to, or shortage in, facilities used for the handling, processing or transportation of Solid Waste or any other cause beyond the reasonable control of either party;
- (b) The order or judgment of any federal, State, or local court, administrative agency or governmental body (excluding decisions of federal courts interpreting federal tax laws, and decisions of State courts interpreting State tax laws) if it is not also the result of the willful misconduct or negligent action or inaction of the party relying thereon; provided that neither the contesting in good faith of any such order or judgment nor the failure to so contest shall constitute or be construed as a measure of willful misconduct or negligent action or inaction of such party;
- (c) The suspension, termination, interruption, denial, or non-renewal of any permit or approval, through no fault of Contractor, which is essential to the operation of ~~the~~ Contractor; or
- (d) A Change in Law. "Change in Law" means (i) the adoption, promulgation, or modification or reauthorization after the date of this Agreement of any law, regulation, order, statute, ordinance, rule or binding judicial or administrative ruling that was not adopted, promulgated, modified or reissued on or before the date of this Agreement, or (ii) the imposition of any material conditions in connection with the issuance, renewal, or modification of any permit, license, registration, notice of intent or approval after the date of this Agreement, which in the case of either (a) or (b) establishes requirements affecting a party's operation under this Agreement more burdensome than the requirements that are applicable to such party and in effect as of the date of this Agreement. A change in any federal, State, county, or other tax law or workers' compensation law shall not be a Change of Law. However, in the event that a federal, State or local entity imposes a fee, charge or tax after the date of this Agreement that applies to a party's operations per se,

such fee, charge or tax shall be treated as a Change in Law.

**19. EVIDENCE OF INSURANCE:**

Contractor shall procure and maintain for the duration of the Agreement, with a carrier reasonably acceptable to City, insurance against claims for injuries to persons or damages to property, which may arise from or in conjunction with the performance of the work hereunder by the Contractor, its agents, representatives, employees, or subcontractors. The policy or policies shall name the City as an additional insured, subject to Contractor's indemnities set forth herein, and shall contain a clause that the insurer will not cancel or decrease the insurance coverage without first giving the City thirty (30) days notice in writing. The cost of such insurance shall be borne by the Contractor and a Certificate of Insurance evidencing that such insurance has been procured and is in force will be forwarded to the City before commencement of work hereunder.

Minimum Limits of Insurance:

| Type Coverage                                    | Per Occurrence Minimum                                              | Aggregate Minimum   |
|--------------------------------------------------|---------------------------------------------------------------------|---------------------|
| Workers Compensation                             | As required by law and shall cover all employees including drivers. | As required by law. |
| Comprehensive & General Public Liability         | \$1,000,000                                                         | \$1,000,000         |
| Property Damage                                  | \$1,000,000                                                         | \$1,000,000         |
| Comprehensive Auto Liability<br>Bodily Injury    | \$1,000,000                                                         |                     |
| Comprehensive Auto Liability-<br>Property Damage | \$500,000                                                           |                     |

**20. INDEMNITY:**

The Contractor shall indemnify City against any claims, actions, or suits, including court costs and reasonable attorneys' fees, to the extent caused by Contractor's negligent or willful misconduct in providing the services required by this Agreement. Upon obtaining knowledge of any matter giving rise to possible indemnification, the City shall notify the Contractor immediately. The Contractor shall defend or contest any such claim or demand. The Contractor ~~may shall have the right to~~ defend or contest any such claim or demand in the name of the City. The City shall provide such cooperation in connection therewith as the Contractor may reasonably request and shall make available to the Contractor or its representatives all records

and other materials reasonably required in such defense. So long as the Contractor is contesting or defending any such claim or demand with ordinary care and in good faith, no amount shall be deemed to be due hereunder unless the City has been required by order or judgment of any court to pay any sum arising from the subject matter of the suit.

21. **OWNERSHIP:**

Title to Waste shall pass to Contractor when placed in Contractor's collection vehicle. Title to Unacceptable Waste shall remain with the generator of such Unacceptable Waste.

22. **SEVERABILITY:**

Should any portion of this Agreement be deemed invalid or unenforceable to any extent, the parties hereto agree that such provision shall be amended to the minimum extent necessary to make such provision enforceable, and the remainder of this Agreement shall not be affected thereby.

23. **PRIOR AGREEMENTS:**

This Agreement contains the entire agreement between the parties hereto with respect to the matter set forth herein, and upon the Commencement Date supersedes all prior agreements between the parties. No provision of any other document, including any request for proposal, shall be deemed incorporated herein, it being the intent of the parties that this Agreement sets forth the full agreement of the parties with respect to the services described herein. No change, alteration or amendment will be binding on either party unless set forth in a document duly approved by resolution of the City Council of the City of Texarkana, Texas, and executed by all parties hereto.

24. **RECORDS:**

City and Contractor agree to maintain at their respective places of business adequate records relating to the performance of their respective duties under this Agreement. Such records shall be made available at any time during reasonable business hours for inspection by the other party, at the inspecting party's expense, and upon reasonable advance notice; provided, however, only records directly relating to this Agreement and necessary to substantiate invoicing must be disclosed to the other party. On a monthly basis, Contractor shall provide City with mutually agreed upon performance data in electronic format for services performed under this Agreement.

25. **CHOICE OF LAW; ATTORNEY'S FEES AND VENUE; GOVERNMENTAL IMMUNITY; LIMITATION ON DAMAGES:**

This Agreement shall be construed in accordance with the laws of the State of Texas. In the event suit is filed by either party as a result of the performance or non-performance of the

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terms set forth in this Agreement, the prevailing party shall recover its attorney fees that are equitable and just and court costs. V, with venue of any such action to shall be in Bowie County, Texas. Notwithstanding anything contained herein, nothing in this Agreement shall be construed to waive City's governmental immunity. Contractor expressly agrees that any action by Contractor against City for damages shall be limited to the following: (i) the balance due and owed by City to Contractor under this Agreement and any amendments thereto, and any amount owed as compensation for the increased cost to perform the work as a direct result of City-caused delays; (ii) the amount owed for additional work Contractor is directed to perform by City in Code-connection with this Agreement; and (iii) interest as allowed by law, including interest as calculated under Chapter 2251, Texas Government Code. Contractor expressly agrees that any action by Contractor against City for damages shall not include consequential damages, except as expressly allowed above, and exemplary damages. This limitation of damages shall not impair either party from seeking specific performance or injunctive relief.

## 26. NOTICES:

All notices or other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be considered as properly given (i) if mailed to the intended addressee by first class United States mail, postage prepaid, registered or certified with return receipt requested, (ii) by delivering same in person to the intended addressee, (iii) by delivery to an independent third party commercial delivery service for same day or next day delivery and providing for evidence of receipt at the office of the intended addressee, or (iv) by prepaid telegram, telex, e-mail, or facsimile to the addressee. Notice so mailed shall be effective upon its deposit with the United States Postal Service or any successor thereto; notice sent by such a commercial delivery service shall be effective upon delivery to such commercial delivery service; notice given by personal delivery shall be effective only if and when received by the addressee; and notice given by other means shall be effective only if and when received at the office or designated place or machine of the intended addressee. Notwithstanding anything contained herein to the contrary, any notice of default or termination notice under this agreement must be both faxed and (i)-mailed by Certified Mail, Return Receipt Requested and (ii) faxed to the other alleged defaulting party to constitute proper notice hereunder. For purposes of notice, the addresses of the parties shall be as set forth below; provided, however, that either party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days' notice to the other party in the manner set forth herein.

If to the City, at:

\_\_\_\_ City of Texarkana, Texas  
 \_\_\_\_ 220 Texas Blvd P. O. Box 1967

\_\_\_\_  
 \_\_\_\_ Texarkana, Texas 75501 Texarkana, Texas 75504  
 \_\_\_\_ Fax 903-798-3448

\_\_\_\_ with a copy to:

\_\_\_\_ Atchley, Russell, Waldrop & Hlavinka, L.L.P.  
 \_\_\_\_ 1710 Moores Lane  
 \_\_\_\_ Texarkana, Texas 75503

Fax 903-792-5801  
ATTN: City Attorney

If to the Contractor at:

Waste Management of Texas, Inc.  
520 E. Corporate Dr., Suite 100  
Lewisville, Texas 75067  
Fax (866) 281-0559

with a copy to:

Waste Management  
9708 Giles  
Austin, TX 78754  
Fax (512) 272 6289  
Attn: Senior Legal Counsel; and

CT Corporation System  
350 North St. Paul Street  
Dallas, Texas 75201  
Fax

or such other addresses as the parties may hereafter specify by written notice delivered in accordance herewith.

**27. DISCRIMINATION PROHIBITED:**

Contractor, in the execution, performance, or attempted performance of this Agreement, shall not discriminate against any person or persons because of sex, race, religion, color, or national origin. Contractor must be an equal opportunity employer.

**298. DISASTER OR STORM EVENT SERVICES  
STORM DEBRIS OTHER COLLECTION AND DISPOSAL SERVICES:**

~~Contractor and City understand and agree that, in the event of a hurricane, tornado, flood, ice storm, windstorm, thunderstorm, natural disaster, or other unusual event that generates solid waste tonnages above normal volumes, Contractor shall have no obligation under this Agreement to collect any waste or debris not otherwise provided for in this Agreement, resulting from such event ("Storm Event"). Notwithstanding any provision in this Agreement, the City has the right to request a proposal from Contractor or another supplier for other Storm Event collection and disposal services not provided for in this Agreement.~~

CITY:

CONTRACTOR:

CITY OF TEXARKANA, TEXAS

WASTE MANAGEMENT OF TEXAS, INC.

BY: John A. Whitson, ICMA-CM  
Mayer City Manager

BY: \_\_\_\_\_  
ITS: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Jennifer Evans, CAP  
City Secretary,  
City of Texarkana, Texas

APPROVED AS TO FORM:

\_\_\_\_\_  
Jeffery C. Lewis, J.D.  
City Attorney

**SCHEDULE "A"**  
**Base Rates**



|



**SCHEDULE B  
RECYCLABLES SPECIFICATIONS**

**RECYCLABLES shall be loose, not bagged, and include the following:**

|                                                                                           |                                                                                                                                                                                               |
|-------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Aluminum food and beverage containers - empty                                             | All other office paper without wax liners                                                                                                                                                     |
| Ferrous (Iron, steel, tin) cans – empty                                                   | PET plastic containers with the symbol #1 – with screw tops only - empty                                                                                                                      |
| HDPE natural rigid plastic containers with the symbol #2 (milk and water bottles) – empty | HDPE pigmented rigid plastic containers with the symbol #2 (detergent, shampoo bottles, etc.) – empty                                                                                         |
| Mixed Rigid Plastic tubs or containers with symbols #3, #4, #5, #6, #7 – empty            | Magazines, glossy inserts and pamphlets                                                                                                                                                       |
| Old corrugated cardboard containers/boxes/sheets                                          | Cereal boxes; detergent, gift and snack boxes                                                                                                                                                 |
| Catalogs, Printer paper, Copier paper, telephone books, mail                              | Aseptic gable-top milk and juice cartons                                                                                                                                                      |
|                                                                                           | Rigid Plastics (unnumbered) such as milk/soda crates, plastic buckets, plastic laundry baskets, etc. that fit into the Polycart and are no more than 30” long and no more than 10 pounds each |

All materials not specifically listed above as Recyclables are Non-Recyclables.

**RECYCLABLES do NOT include the following:**

|                                                                                                                         |                                                                                                                                                                                                                                                                                             |
|-------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Bagged materials (even if containing Recyclables)                                                                       | Glass (clear, brown, green or any other color)                                                                                                                                                                                                                                              |
| Mirrors                                                                                                                 | Window or auto glass                                                                                                                                                                                                                                                                        |
| Light Bulbs, microwave trays                                                                                            | Ceramics                                                                                                                                                                                                                                                                                    |
| Porcelain                                                                                                               | Plastics unnumbered                                                                                                                                                                                                                                                                         |
| Plastic bags                                                                                                            | Wire/metal hangers                                                                                                                                                                                                                                                                          |
| Expanded polystyrene or polystyrene foam (e.g., foam packing peanuts)                                                   | Household items such as cooking pots, toasters, etc.                                                                                                                                                                                                                                        |
| Glass cookware/bakeware                                                                                                 | Wet fiber                                                                                                                                                                                                                                                                                   |
| Flexible packaging and multi-laminated materials                                                                        | Fiber containing, or that has been in contact with, food debris or other contaminating material                                                                                                                                                                                             |
| Excluded Materials                                                                                                      | Tissues, paper towels or other material that has been in contact with food                                                                                                                                                                                                                  |
| Any recyclable materials, or pieces of recyclable materials, less than 2” in size in any dimension                      | Materials: (a) that contain chemical or other properties deleterious, or capable of causing material damage, to any part of Company's property, its personnel or the public; and/or (b) that may materially impair the strength or the durability of the Company's structures or equipment. |
| Household metal cooking pots, pans, and utensils which are no more than 30 inches long and not more than 50 pounds each |                                                                                                                                                                                                                                                                                             |

# CITY of Texarkana Texas

## Effective January 1, 2016

6.2.c

### RESIDENTIAL RATES

|                          |                |                                                                             |
|--------------------------|----------------|-----------------------------------------------------------------------------|
| <b>RESIDENTIAL RATES</b> | <b>\$17.35</b> | <b>Includes 96 gal. Trash cart, 65 Gal. recycle cart, Yard waste pickup</b> |
| <b>Extra cart</b>        | <b>\$9.78</b>  | <b>For each additional cart</b>                                             |

### COMMERCIAL RATES

| Container Size / Type                   | FREQUENCY PER WEEK |          |          |            |            |            |      |          |
|-----------------------------------------|--------------------|----------|----------|------------|------------|------------|------|----------|
|                                         | 1XWK               | 2XWK     | 3XWK     | 4XWK       | 5XWK       | 6XWK       | 7XWK | EXTRA F  |
| Commercial Hand-PU (1 Toter)            | \$22.75            | N/A      | N/A      | N/A        | N/A        | N/A        | N/A  | N/A      |
| Commercial Hand-PU (2 Toters)           | \$34.09            | N/A      | N/A      | N/A        | N/A        | N/A        | N/A  | N/A      |
| Commercial Hand-PU (3 Toters)           | \$42.67            | N/A      | N/A      | N/A        | N/A        | N/A        | N/A  | N/A      |
| 2 Yard FEL Container                    | \$91.25            | \$136.82 | \$159.63 | \$182.54   | \$205.27   | \$251.06   | N/A  | \$59.27  |
| 3 Yard FEL Container                    | \$109.47           | \$164.32 | \$191.62 | \$219.09   | \$246.39   | \$301.17   | N/A  | \$71.13  |
| 4 Yard FEL Container                    | \$127.79           | \$191.62 | \$223.62 | \$255.57   | \$287.53   | \$351.41   | N/A  | \$83.00  |
| 6 Yard FEL Container                    | \$165.98           | \$250.44 | \$289.72 | \$331.92   | \$374.22   | \$455.69   | N/A  | \$107.82 |
| 8 Yard FEL Container                    | \$191.56           | \$255.57 | \$331.97 | \$480.02   | \$523.56   | \$605.25   | N/A  | \$124.44 |
| 96-Gallon Toter (RECYCLE)               | \$3.22             | N/A      | N/A      | N/A        | N/A        | N/A        | N/A  | N/A      |
| 6-Yard FEL Container/Cardboard          | \$51.59            | N/A      | N/A      | N/A        | N/A        | N/A        | N/A  | N/A      |
| 8 Yard FEL Container/Cardboard          | \$61.90            | N/A      | N/A      | N/A        | N/A        | N/A        | N/A  | N/A      |
| 2 Yard FEL Compactor                    | N/A                | N/A      | N/A      | N/A        | N/A        | N/A        | N/A  | N/A      |
| 3 Yard FEL Compactor                    | N/A                | N/A      | N/A      | N/A        | N/A        | N/A        | N/A  | N/A      |
| 4 Yard FEL Compactor                    | \$223.73           | \$447.46 | \$671.18 | \$894.92   | \$1,118.65 | \$1,342.38 | N/A  | N/A      |
| 6 Yard FEL Compactor                    | \$263.83           | \$527.67 | \$791.50 | \$1,055.34 | \$1,319.16 | \$1,582.99 | N/A  | N/A      |
| 8 Yard FEL Compactor                    | \$303.41           | \$606.81 | \$910.22 | \$1,213.62 | \$1,517.03 | \$1,820.43 | N/A  | N/A      |
| 10 Yard FEL Compactor                   | N/A                | N/A      | N/A      | N/A        | N/A        | N/A        | N/A  | N/A      |
| <b>REDELIVERY RATE FOR NON-PAYMENT:</b> |                    |          | N/A      |            |            |            |      |          |

### ROLL-OFF RATES

| Container Size / Type    | Delivery Rate | Rental Rate | BY Month or Day Rate | Hauling Charge (Per Pull Total or Haul + Disp) | Haul Rate per Pull | Disposal Rate per ton |
|--------------------------|---------------|-------------|----------------------|------------------------------------------------|--------------------|-----------------------|
| 20 Yard (Open-Top)       | \$108.80      | \$5.11      | Day Rate             | Per Pull                                       | \$290.38           | \$36.30               |
| 25 Yard (Open Top)       | \$108.80      | \$5.11      | Day Rate             | Per Pull                                       | \$290.38           | \$36.30               |
| 30 Yard (Open-Top)       | \$108.80      | \$5.11      | Day Rate             | Per Pull                                       | \$314.59           | \$36.30               |
| 40 Yard (Open-Top)       | \$108.80      | \$5.11      | Day Rate             | Per Pull                                       | \$338.79           | \$36.30               |
| 30 Yard (Compactor)      | \$108.80      | \$386.23    | Month                | Per Pull                                       | \$314.59           | \$36.30               |
| 33 Yard (Compactor)      | \$108.80      | \$386.23    | Month                | Per Pull                                       | \$338.79           | \$36.30               |
| 34 Yard Compactor0       | \$108.80      | \$386.23    | Month                | Per Pull                                       | \$338.79           | \$36.30               |
| 35 Yard (Compactor)      | \$108.80      | \$386.23    | Month                | Per Pull                                       | \$338.79           | \$36.30               |
| 40 Yard (Compactor)      | \$108.80      | \$386.23    | Month                | Per Pull                                       | \$338.79           | \$36.30               |
| 42 Yard (Compactor)      | \$108.80      | \$386.23    | Month                | Per Pull                                       | \$338.79           | \$36.30               |
| <b>TRIP CHARGE RATE:</b> |               |             | N/A                  |                                                |                    |                       |

Attachment: 2016-132 ATTH 02 Texarkana Current Residential and Commercial Rates (1568 : 2016-132 RES Waste Management Contract)

## City of Texarkana, Texas

## Schedule A

Effective March 1, 2017

## RESIDENTIAL RATES (Includes 10% Franchise Fee)

|                   |         |  |
|-------------------|---------|--|
| Residential Rates | \$17.85 |  |
| Extra Trash Cart  | \$10.17 |  |

## COMMERCIAL HAND COLLECT (Includes 10% Franchise Fee)

|                         | 1XWK    | 2XWK |
|-------------------------|---------|------|
| Poly Cart-PU (1 Toter)  | \$25.00 | N/A  |
| Poly Cart-PU (2 Toter)  | \$42.00 | N/A  |
| Poly Cart-PU (3 toters) | \$59.00 | N/A  |
| Recycling PU (1 toter)  | \$3.35  | N/A  |

## COMMERCIAL RATES (Includes 10% Franchise Fee)

| Container Size / Type | FREQUENCY PER WEEK |        |        |        |        |        |      |         |
|-----------------------|--------------------|--------|--------|--------|--------|--------|------|---------|
|                       | 1XWK               | 2XWK   | 3XWK   | 4XWK   | 5XWK   | 6XWK   | 7XWK | EXTRA P |
| 2 Yard FEL Container  | 94.90              | 142.29 | 166.02 | 189.84 | 213.48 | 261.10 | N/A  | 61.64   |
| 3 Yard FEL Container  | 113.85             | 170.89 | 199.28 | 227.85 | 256.25 | 313.22 | N/A  | 73.98   |
| 4 Yard FEL Container  | 132.90             | 199.28 | 232.56 | 265.79 | 299.03 | 365.47 | N/A  | 86.32   |
| 6 Yard FEL Container  | 172.62             | 260.46 | 301.31 | 345.20 | 389.19 | 473.92 | N/A  | 112.13  |
| 8-Yard FEL Container  | 199.22             | 265.79 | 345.25 | 499.22 | 544.50 | 629.46 | N/A  | 129.46  |

See Other Charges Or Notes Below

## COMMERCIAL FRONT LOAD COMPACTORS\* (Includes 10% Franchise Fee)

| Size                         | 1x       | 2x       | 3x       | 4x         | 5x         | 6x         | 7x  | XPU |
|------------------------------|----------|----------|----------|------------|------------|------------|-----|-----|
| 96-Gallon Toter (RECYCLE)    | \$3.35   | N/A      | N/A      | N/A        | N/A        | N/A        | N/A | N/A |
| 6-Yard FEL Cardboard Recycle | \$53.65  | N/A      | N/A      | N/A        | N/A        | N/A        | N/A | N/A |
| 8 Yard FEL Cardboard Recycle | \$64.38  | N/A      | N/A      | N/A        | N/A        | N/A        | N/A | N/A |
| 4 Yard FEL Compactor         | \$232.68 | \$465.36 | \$698.03 | \$930.72   | \$1,163.40 | \$1,396.08 | N/A | N/A |
| 6Yard FEL Compactor          | \$274.38 | \$548.78 | \$823.16 | \$1,097.55 | \$1,371.93 | \$1,646.31 | N/A | N/A |
| 8 Yard FEL Compactor         | \$315.55 | \$631.08 | \$946.63 | \$1,262.16 | \$1,577.71 | \$1,893.25 | N/A | N/A |

See Other Charges Or NotesBelow

## ROLL-OFF RATES (Includes 10% Franchise Fee)

| Container Size / Type | Delivery Rate | Rental Rate | BY Month or Day Rate | Hauling Charge (Per Pull + Disp) | Haul Rate per Pull | Disposal Rate per ton |
|-----------------------|---------------|-------------|----------------------|----------------------------------|--------------------|-----------------------|
| 20 Yard (Open-Top)    | \$108.80      | \$5.11      | Day                  | N/A                              | \$290.38           | \$36.30               |
| 25 Yard (Open-Top)    | \$108.80      | \$5.11      | Day                  | N/A                              | \$290.38           | \$36.30               |
| 30 Yard (Open-Top)    | \$108.80      | \$5.11      | Day                  | N/A                              | \$314.59           | \$36.30               |
| 40 Yard (Open-Top)    | \$108.80      | \$5.11      | Day                  | N/A                              | \$338.79           | \$36.30               |
| 30 Yard (Compactor)   | \$108.80      | \$ 386.23   | Month                | N/A                              | \$314.59           | \$36.30               |
| 33 Yard (Compactor)   | \$108.80      | \$ 386.23   | Month                | N/A                              | \$338.79           | \$36.30               |
| 34 Yard (Compactor)   | \$108.80      | \$ 386.23   | Month                | N/A                              | \$338.79           | \$36.30               |
| 35 Yard (Compactor)   | \$108.80      | \$ 386.23   | Month                | N/A                              | \$338.79           | \$36.30               |
| 40 Yard (Compactor)   | \$108.80      | \$ 386.23   | Month                | N/A                              | \$338.79           | \$36.30               |
| 42 Yard (Compactor)   | \$108.80      | \$ 386.23   | Month                | N/A                              | \$338.79           | \$36.30               |

TRIP CHARGE RATE:

## NOTES

All Residents must set up any new services through the Texarkana Water Utilities by calling (903) 798-3812.

Additional services or equipment, such as casters, lock bars, extra pick-ups may be charged at reasonable rates. A lock bar is currently charged at \$75.00.

Charge for lost or stolen cart \$70. No charge for a damaged cart that is returned to Contractor for a Replacement Cart.

Attachment: 2016-132 ATTH 03 Texarkana Proposed Residential and Commercial Rates (1568 : 2016-132 RES Waste Management Contract)

## **Timeline of Services for Texarkana Municipal Solid Waste Contracts**

### **1998 - Waste Management assumed ongoing contract from Western Waste**

#### Services Provided by Contract

- Two times per week trash service in bags or customer-provided cans
- One time per week recycling in 18-gallon bins
- 9,000 cubic yards of free disposal at the New Boston Landfill
- 10% franchise fee on residential and commercial services

### **2001 - New Contract signed with Waste Management**

#### Services Provided by Contract

- Two times per week trash service in bags or customer-provided cans
- One time per week recycling in 18-gallon bins
- 10% franchise fee on residential and commercial services

#### Services added by Contract

- Added Every-Other-Week Yard Waste Service
- 10,000 cubic yards of free disposal at New Boston Landfill, up from 9,000 cubic yards in previous contract

### **2004 - First Amendment to 2001 Waste Management Contract**

#### Services added by Amendment

- Added Commercial Cardboard Recycling

### **2010 – Second Amendment to 2001 Waste Management Contract**

Extended Contract from 11/30/2011 to 2/28/2017

#### Services Provided by Amendment

- One time per week trash service in 96-gallon contractor supplied carts
- One time per week recycling service in 65-gallon contractor supplied carts
- One time per week yard waste (increased from every other week)
- Franchise rates added for roll off services with the City receiving a 10% franchise fee

- 12,500 cubic yards of free disposal at New Boston Landfill

## 2010 – Addendum to Second Amendment to 2001 Waste Management Contract

### Services Provided by Addendum

- Contract amendment added curbside bulky waste collection one time per week at an additional cost of \$12,500 per month (\$150,000 annually) billed directly to the City
- Provided free recycling services to designated City facilities

## 2010 – 2016 Residential Rates for Refuse Collection

In the chart below, the residential rates from 2010 to 2016 are listed. The only changes in the annual rates since 2010 have been based on CPI and/or fuel surcharge changes. The changes are allowed for and are automatic in the current and proposed contracts.

| Waste Management      | 2010    | 2011    | 2012    | 2013    | 2014    | 2015    | 2016    |
|-----------------------|---------|---------|---------|---------|---------|---------|---------|
| Residential Rates     | \$16.12 | \$16.52 | \$16.97 | \$16.97 | \$17.21 | \$17.54 | \$17.35 |
| Annual % Inc. or Dec. |         | 2.50%   | 2.70%   | 0.00%   | 1.40%   | 1.90%   | -1.10%  |

The proposed monthly residential rate for 2017 is \$17.85. This rate increase is based solely on the proposed changes in the way the curbside bulky waste collection service is paid for. Instead of the service being paid for by the city, the proposed contract includes the cost for this service in the monthly residential rate.

## 2017 – Proposed Contract with Waste Management

Services remain unchanged in the proposed contract from the current services provided.

### Additional highlights

- City receives 250 free hauls offs of 30 yard roll-off bins annually
- No fee for special grit waste container that TWU uses at the South Stateline Waste Treatment Plant (\$133.32/month savings)

## City of Texarkana, Texas

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

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

## Perspectives and Goals Additional Comments:

NONE

## Resource Impact:

Staff time required if item is approved: No Additional

## Other Potential Impacts:

NONE APPLICABLE

## Public Information Plan:

|                                     |                                        |                          |                                      |
|-------------------------------------|----------------------------------------|--------------------------|--------------------------------------|
| <input type="checkbox"/>            | Newspaper Notice (Required by Statute) | <input type="checkbox"/> | Public Hearing (Required by Statute) |
| <input checked="" type="checkbox"/> | Public Forum/Input Session             | <input type="checkbox"/> | Press Release                        |
| <input type="checkbox"/>            | E-News Distribution                    | <input type="checkbox"/> | Website Notice                       |
| <input type="checkbox"/>            | Social Media (Twitter, Facebook, etc.) | <input type="checkbox"/> | Special Mailing                      |
| <input type="checkbox"/>            | Flyers Posted                          | <input type="checkbox"/> | Banners Posted                       |
| <input type="checkbox"/>            | Survey                                 | <input type="checkbox"/> | Automated Phone Call                 |
| <input checked="" type="checkbox"/> | None Required                          | <input type="checkbox"/> |                                      |

Other:



## City of Texarkana, Texas

Version: C

Update Date: 11/7/2016 1:07 PM

# Briefing Sheet

**Lead Department:** Public Works Department    **Action Officer:** Dusty Henslee,  
Ordinance No. 2016-133 authorizing the City Manager to enter into a contract  
with Four Thirteen Inc. for the construction of the Texarkana, Texas Gateway  
**Subject:** Welcome sign.

**Public**                      **Second**                      **Council**  
**Briefing:** 11/28/2016    **Hearing:** 11/28/2016    **Briefing:** December 12,    **Vote:** 2016    1/9/2017

## Item Schedule

Schedule 1: Brief twice - vote once (six weeks)

## Updates/History of Briefing:

NOT APPLICABLE

## Executive Summary and Background Information:

Date Invitation for Bids (IFB) Mailed: October 16, 2016 (ATTH 01)

IFB Bid Number: 17-1901-03

Dates Published in Texarkana Gazette: October 16, 2016 and October 23, 2016

Bids Received from:

Four Thirteen Inc.

TEC, Inc.

Dynamic Sign Solutions and Marketing, LLC

Bid Opening Date: November 3, 2016

Lowest Responsive Bidder: Four Thirteen Inc. (ATTH 03)

Contractor's past performance with the city: Satisfactory

Budget: Funds for the construction of the Texarkana, Texas Welcome Sign were not appropriated in FY17 budget. An appropriation of \$79,779.00 from the General Fund is requested to fund the construction of the Welcome Sign.

Policy Exceptions: None

Scope of Work: Construct Welcome Sign on Eastbound Interstate 30 at King's Highway (F.M. 989)

## Potential Options:

- Approve the budget amendment
- Disapprove the budget amendment

## Fiscal Implications:

Funds are requested from the General Fund

## Staff Recommendation:

Staff Recommends Approval

## City of Texarkana, Texas

**Advisory Board/Committee Review:**

NONE

**Board/Committee Recommendation:**

NOT APPLICABLE

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

NOT APPLICABLE

**Attachments**

- a. 2016-133 ORD Texarkana Welcome Sign (DOC)
- b. 2016-133 ATTH 01 DPW 17-1901-03 Gateway Sign Contract Documents (PDF)
- c. 2016-133 ATTH 02 DPW 17-1901-03 Gateway Sign Plans (PDF)
- d. 2016-133 ATTH 03 EXHIBIT A BID COMPARISON (PDF)
- e. 2016-133 ATTH 04 Goals & Perspectives (DOCX)
- f. 2016-133 ORD Contract for Gateway Welcome Sign signed (PDF)

**Staff Coordination**

|                            |                    |                        |
|----------------------------|--------------------|------------------------|
| Public Works Department    | Kyle Dooley        | Department Head Review |
| Completed                  | 11/03/2016 3:42 PM |                        |
| Finance Department         | Kristin Peeples    | Review                 |
| 1:09 PM                    |                    | Completed 11/04/2016   |
| Assistant City Manager     | Shirley Jaster     | Assistant City Manager |
| Review                     | Completed          | 11/04/2016 2:10 PM     |
| Public Information Officer | Lisa Thompson      | PIO Review             |
| 11/08/2016 4:26 PM         |                    | Completed              |
| City Manager               | John Whitson       | City Manager Review    |
| 4:50 PM                    |                    | Completed 11/09/2016   |
| City Council               | Jennifer Evans     | Meeting                |
| 6:00 PM                    |                    | Completed 11/14/2016   |

**Meeting History**

**ORDINANCE NO. 2016 – 133**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEXARKANA, TEXAS, AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH FOUR THIRTEEN INC. FOR THE CONSTRUCTION OF THE TEXARKANA, TEXAS WELCOME SIGN IN AMOUNT NOT TO EXCEED SIXTY SIX THOUSAND FOUR HUNDRED SEVENTY-NINE AND 00/100 DOLLARS (\$66,479.00); AND AMENDING BUDGET EXPENDITURES FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2017 TO APPROPRIATE FUNDING IN THE AMOUNT OF SEVENTY-NINE THOUSAND SEVEN HUNDRED SEVENTY-NINE AND 00/100 DOLLARS (\$79,779.00) FOR THE CONSTRUCTION OF THE SIGN; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, expenditures for the Texarkana, Texas Welcome Sign were not appropriated in the original budget for the fiscal year ending September 30, 2017; and

**WHEREAS**, an appropriation of Seventy-Nine Thousand Seven Hundred Seventy-Nine Dollars (\$79,779) is needed to proceed with the construction of the Texarkana, Texas Welcome Sign; and

**WHEREAS**, the bids were opened on November 3, 2016 for the construction of the Texarkana, Texas Welcome Sign; and

**WHEREAS**, the bidder with the lowest and best bid was Four Thirteen Inc. of Texarkana, Texas in an amount not to exceed Sixty-Six Thousand Four Hundred Seventy-Nine Dollars (\$66,479); and

**WHEREAS**, a 20% contingency in the amount of Thirteen Thousand Three Hundred Dollars (\$13,300) is included for any additional construction services; and

**WHEREAS**, the budget for the fiscal year ending September 30, 2017 should be amended to reflect the appropriation of Seventy-Nine Thousand Seven Hundred Seventy-Nine Dollars (\$79,779) from the General Fund.

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

**SECTION 1:** That the City Manager be and is hereby authorized to enter into a contract with Four Thirteen Inc. for the construction of the Texarkana, Texas Welcome Sign in amount not to exceed Sixty-Six Thousand Four Hundred Seventy-Nine Dollars (\$66,479).

**SECTION 2:** That the budget estimate of the 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, 2016 and ending September 30, 2017, be amended to reflect additional expenditures

of Seventy-Nine Thousand Seven Hundred Seventy-Nine Dollars (\$79,779) from the General Fund.

**SECTION 3:** That 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 **9<sup>th</sup> day of January, 2017**.

ATTEST:

\_\_\_\_\_  
JENNIFER EVANS, CITY SECRETARY

\_\_\_\_\_  
BOB BRUGGEMAN, MAYOR

# CONSTRUCTION OF GATEWAY SIGN

For



**Bid Number: 17-1901-03**

**October 2016**



MTG ENGINEERS & SURVEYORS, INC.  
TEXAS REGISTERED  
ENGINEERING FIRM F-354



# CITY OF TEXARKANA

## INVITATION FOR BID

**Bid Name:** Gateway Sign Construction Project  
**Bid Number:** 17-1901-03

**Advertisement Dates:** October 16, 2016  
 October 23, 2016

**Pre-Bid Meeting:** October 25, 2016 @ 10:00 A.M.  
**Location:** Conference Room, Public Works Department, 919 Elm Street, Texarkana, TX

**Bid Due Date:** November 3, 2016 at 2:00 P.M.

**Location:** Purchasing & Contracts, 2<sup>nd</sup> Floor, City Hall, 220 Texas Blvd., Texarkana, TX

Questions may be directed to: Sharon Moore, Purchasing and Contracts Department by email at: [Moores@txkusa.org](mailto:Moores@txkusa.org).  
**All questions must be submitted in writing via email to [moores@txkusa.org](mailto:moores@txkusa.org) and received on or before 12:00 PM on October 31, 2016.**

Responses must be submitted in a sealed envelope, addressed to the City of Texarkana, Purchasing and Contracts Department with the bid # and name on the envelope.

Responses may not be altered, amended, or withdrawn after the official opening.

The entire document including all forms must be submitted to be considered.

### BID ACKNOWLEDGEMENT

Undersigned affirms that they have read and understand all requirements of this proposal. Additionally, the undersigned affirms that they are duly authorized to execute this contract and that this company has not prepared this proposal in collusion with any other proposer, and that the contents of this proposal as to prices, terms or conditions of said proposal have not been communicated by the undersigned nor by any employee or agent to any other person engaged in this type of business prior to the official opening of this type of business prior to the official opening of this proposal.

Undersigned affirms that submittal of this bid, and when properly accepted by the City of Texarkana, shall constitute a contract equally binding between the successful bidder and the City. No different or additional terms will become a part of this contract with the exception of change orders.

**PLEASE TYPE OR COMPLETE ELECTRONICALLY**

|                     |                                                          |
|---------------------|----------------------------------------------------------|
| Signature           |                                                          |
| Date                |                                                          |
| Printed Name        |                                                          |
| Company             |                                                          |
| Mailing address     |                                                          |
| Phone               |                                                          |
| Fax                 |                                                          |
| Email               |                                                          |
| EIN#                |                                                          |
| M/WBE or HUB Vendor | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| Certifying Agency   |                                                          |



### Contractor Checklist

Before submitting your bid, please ensure you have completed and included the following documents in the order they are listed. The contractor is only to submit (1) one original copy of every item listed.

1. \_\_\_\_\_ Carefully read and understand the plans and specifications and properly complete the BID SUBMITTAL FORM. Bid submittal form **MUST** be completed in blue or black ink or by typewriter. Signatures must be original, in blue or black ink, and by hand. Enter unit price, and extended cost in the columns provided. In the event of discrepancies in extension, the unit price shall govern. Include corporate seal and Secretary's signature. Identify addenda received (if any).
2. \_\_\_\_\_ Include BID BOND or CASHIER'S OR CERTIFIED CHECK as your bid surety for all contracts **exceeding \$100,000**. Failure to provide a bid surety **WILL** result in automatic rejection of your bid.
3. \_\_\_\_\_ Clearly mark the bid number, title, due date and time and your company name and address on the outside of the envelope or container.
4. \_\_\_\_\_ Ensure your bid is **RECEIVED** by the City of Texarkana Purchasing and Contracts Department prior to the deadline. Late bids will not be accepted.
5. \_\_\_\_\_ Complete and sign the SAFETY RECORD QUESTIONNAIRE. All "YES" responses must be explained in detail and submitted with Bid.
6. \_\_\_\_\_ Complete and sign the SUSPENSION AND DEBARMENT CERTIFICATION. ***Include firm's FEDERAL TAX ID number or Owner's SOCIAL SECURITY number.***
7. \_\_\_\_\_ Complete and submit the LIST OF SUB-CONTRACTORS.

**DOCUMENTS REQUIRED WITHIN SEVEN BUSINESS DAYS AFTER CLOSING:**

8. \_\_\_\_\_ If changes are made to your SUB-CONTRACTORS LIST after bid closing, YOU MUST complete and submit the **FINAL** LIST OF SUB-CONTRACTORS.

**FAILURE TO PROVIDE ANY OF THE ABOVE MAY RESULT IN YOUR BID BEING DEEMED NON-RESPONSIVE AND, THEREFORE, NOT FURTHER EVALUATED. PLEASE INCLUDE THIS COMPLETED PAGE AS THE FIRST PAGE OF YOUR BID SUBMITTAL.**

\_\_\_\_\_  
(Type or Print Company Name)

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2. GENERAL INSTRUCTIONS TO BIDDERS
3. BID SUBMITTAL – (must be submitted by published due date & time)
  - 3-1. UNIT PRICE BID SUBMITTAL FORM
  - 3-2. CITY OF TEXARKANA INSURANCE REQUIREMENT AFFIDAVIT
  - 3-3. SAFETY RECORD QUESTIONNAIRE
  - 3-4. SUSPENSION AND DEBARMENT CERTIFICATION
4. LIST OF SUB-CONTRACTORS
5. PAYMENT BOND
6. PERFORMANCE BOND
7. CERTIFICATE OF INSURANCE
8. CONTRACT
9. GENERAL CONDITIONS OF THE AGREEMENT
10. SPECIAL CONDITIONS
11. SPECIFICATION INDEX
12. GENERAL NOTES

## 1. NOTICE TO BIDDERS

### IFB #17-191-03

Sealed bids addressed to Sharon Moore, Purchasing and Contracts Department, City of Texarkana, Texas, will be received in the office of Purchasing and Contracts, City Hall, 220 Texas Blvd. 2<sup>nd</sup> Floor, Texarkana, Texas, 75503, until **2:00 P.M., November 3, 2016** or as changed by the issuance of formal addenda to all planholders, to furnish all labor and materials and perform all work for the construction of the following described project:

### GATEWAY SIGN CONSTRUCTION PROJECT

After the expiration of the time and date above first written, said sealed bids will be opened and publicly read aloud. It is the sole responsibility of the bidder to ensure that his bid is actually in the office of Purchasing and Contracts for the City of Texarkana, before the expiration of the date above first written.

The successful bidder will be required to furnish a performance bond in accordance with Chapter 2253, Government Code, in the amount of 100% of the total contract price in the event that said contract price exceeds \$100,000 and the successful bidder will be required to furnish a payment bond in accordance with Chapter 2253, Government Code, in the amount of 100% of the total contract price in the event that said contract price exceeds \$50,000. Said statutory bonds should be issued by a company carrying a current **Best Rating of "A" or better. THE BONDS MUST IN A FORM ACCEPTABLE TO THE CITY ATTORNEY AND MUST BE DATED THE SAME DATE THAT THE CONTRACT WAS AWARDED.**

If the contract amount exceeds \$100,000, the Bidders are required to submit a cashier's or certified check issued by a bank satisfactory to the City of Texarkana, or a bid bond from a reliable surety company, payable without recourse to the order of the City of Texarkana in an amount not less than 5% of the total amount of the bid submitted as a guarantee that bidder will enter into a contract and execute all necessary bonds (if required) within ten (10) business days after notice of award of the contract to him. **FAILURE OF THE BIDDER TO INCLUDE BID SECURITY WITH THE BID SUBMITTAL SHALL CONSTITUTE A NONRESPONSIVE BID AND RESULT IN DISQUALIFICATION OF THE BID SUBMITTAL.**

It shall be each bidder's sole responsibility to inspect the sites of the work and to inform himself regarding all local conditions under which the work is to be done. It shall be understood and agreed that all such factors have been thoroughly investigated and considered in the preparation of the bid submitted. There will be a **NON-MANDATORY** pre-bid conference on **October 25, 2016 @ 10:00 A.M.** in the Public Works Department Conference Room, 919 Elm Street, Texarkana, Texas.

Bidders may pick up the plans and specifications without charge by CD furnished by the City on **October 17<sup>th</sup>, 2016 at the City Hall kiosk, 1<sup>st</sup> floor, 220 Texas Blvd, Texarkana, Texas 75501.**

Sharon Moore  
PURCHASING AND CONTRACTS DEPARTMENT

## 2. GENERAL INSTRUCTIONS TO BIDDERS

### 1 BID DELIVERY, TIME & DATE

- 1.1 The City of Texarkana is seeking written and sealed competitive bids to furnish CONSTRUCTION SERVICES per the attached specifications and contract documents. Sealed bids will be received no later than **2:00 P.M. on November 3, 2016** at the office listed below. Any bid received after the date and hour specified will be rejected and returned unopened to the bidder. Each bid and supporting documentation must be in a sealed envelope or container plainly labeled in the lower left-hand corner: "**IFB # 17-1901-03- Gateway Sign Construction Project**" and the bid opening date and time. Bidders must also include their company name and address on the outside of the envelope or container. Bids must be addressed to:

Express Mail (**Preferred**)  
 Sharon Moore  
 Purchasing and Contracts  
 City of Texarkana  
 220 Texas Blvd.  
 Texarkana, Texas 75501

- 1.2 Bidders are responsible for making certain bids are delivered to the Purchasing and Contracts Department. Mailing of a bid does not ensure that the bid will be delivered on time or delivered at all. If bidder does not hand deliver bid, we suggest that he/she use some sort of delivery service (FedEx, UPS) that provides a receipt.
- 1.3 Bids will be accepted in person, by United States Mail, by overnight courier service, or by private courier service. No bids will be accepted by oral communication, telephone, electronic mail, telegraphic transmission, or telefacsimile transmission. **THE CITY WILL NOT ACCEPT FAX BIDS.**
- 1.4 The City of Texarkana reserves the right to postpone the date and time for opening bids through an addendum.

### 2 PRE-BID MEETING

For the purpose of familiarizing bidders with the requirements, answering questions, and issuing addenda as needed for the clarification of the Invitation to Bid (IFB) documents, a **NON-MANDATORY** pre-bid meeting will be held at **10:00 A.M., October 25, 2016**, Public Works Department Conference Room, 919 Elm Street, Texarkana, Texas.

- 2.1 All persons attending the meeting will be asked to identify themselves and the prospective bidder they represent.
- 2.2 It is the bidder's responsibility to attend the pre-bid meeting though the meeting is not mandatory. The City will not be responsible for providing information discussed at the pre-bid meeting to bidders who do not attend the pre-bid meeting.

### 3 ADDENDA & MODIFICATIONS

- 3.1 Any changes, additions, or clarifications to the IFB are made by **ADDENDA**.
- 3.2 Any bidder in doubt as to the true meaning of any part of the specifications or other documents may request an interpretation thereof from the Purchasing and Contracts Department. At the request of the bidder, or in the event the Purchasing and Contracts Department deems the interpretation to be substantive, the interpretation will be made by written addendum issued by the Purchasing and Contracts Department. Such addenda issued by the Purchasing and Contracts Department will be available by email or fax and will become part of the bid package having the same binding effect as provisions of the original IFB. **NO VERBAL EXPLANATIONS OR INTERPRETATIONS WILL BE BINDING.** In order to have a request for interpretation considered, the request must be submitted in writing and must be received by the City of Texarkana Purchasing and Contracts Department no later than **October 31, 2016 at 12:00 P.M. CST.**

3.3 All addenda, amendments, and interpretations of this solicitation shall be in writing. The City of Texarkana shall not be legally bound by any amendment or interpretation that is not in writing. Only information supplied by the City of Texarkana Purchasing and Contracts Department in writing or in this IFB should be used in preparing bid responses. All contacts that a bidder may have had before or after receipt of this IFB with any individuals, employees, or representatives of the City and any information that may have been read in any news media or seen or heard in any communication facility regarding this bid should be disregarded in preparing responses.

3.4 The City does not assume responsibility for the receipt of any addendum sent to bidders.

#### 4 EXAMINATION OF DOCUMENTS AND REQUIREMENTS

4.1 Each bidder shall carefully examine all IFB documents and thoroughly familiarize itself with all requirements before submitting a bid to ensure that their bid meets the intent of these specifications.

4.2 Before submitting a bid, each bidder shall be responsible for making all investigations and examinations that are necessary to ascertain conditions and requirements affecting the requirements of this Invitation to Bid. Failure to make such investigations and examinations shall not relieve the bidder from obligation to comply, in every detail, with all provisions and requirements of the Invitation to Bid.

4.3 Notices of any discrepancies or omissions in these plans, specifications, or contract documents, shall be given to the Purchasing and Contracts Department and a clarification obtained before the bids are received, and if no such notice is received by the Purchasing and Contracts Department prior to the opening of bids, then it shall be deemed that the bidder fully understands the work to be included and has provided sufficient sums in its bid to complete the work in accordance with these plans and specifications. If bidder does not notify Purchasing and Contracts Department before bidding of any discrepancies or omissions, then it shall be deemed for all purposes that the plans and specifications are sufficient and adequate for completion of the project.

4.4 NO BIDDER SHALL REQUEST ANY INFORMATION VERBALLY. ALL REQUESTS FOR ADDITIONAL INFORMATION OR CLARIFICATION CONCERNING THIS INVITATION TO BID (IFB) MUST BE SUBMITTED IN WRITING NO LATER THAN OCTOBER 31, 2016 AT 12:00 P.M. CST AND ADDRESSED TO:

City of Texarkana  
Purchasing and Contracts Department  
Fax: 903-798-3922  
Email: moores@txkusa.org

#### 5 BID PREPARATION COSTS

5.1 Issuance of this IFB does not commit the City of Texarkana, in any way, to pay any costs incurred in the preparation and submission of a bid.

5.2 The issuance of this IFB does not obligate the City of Texarkana to enter into contract for any services or equipment.

5.3 All costs related to the preparation and submission of a bid shall be paid by the bidder.

#### 6 TRADE SECRETS, CONFIDENTIAL INFORMATION AND THE TEXAS PUBLIC INFORMATION ACT

6.1 If you consider any portion of your bid to be privileged or confidential by statute or judicial decision, including trade secrets and commercial or financial information, clearly identify those portions.

6.2 The City of Texarkana will honor your notations of trade secrets and confidential information and decline to release such information initially, but please note that the final determination of whether a particular portion of your bid is in fact a trade secret or commercial or financial information that may be withheld from public inspection will be made by the Texas Attorney General or a court of competent jurisdiction. In the event a public information request is received for a portion of your bid that you have marked as being confidential information, you will be notified of such request and you will be required to justify your legal

position in writing to the Texas Attorney General pursuant to Section 552.305 of the Government Code. In the event that it is determined by opinion or order of the Texas Attorney General or a court of competent jurisdiction that such information is in fact not privileged and confidential under Section 552.110 of the Government Code and Section 252.049 of the Local Government Code, then such information will be made available to the requester.

- 6.3 Marking your entire bid CONFIDENTIAL/PROPRIETARY is not in conformance with the Texas Open Records Act.

## 7 LICENSES, PERMITS, TAXES

The price or prices for the work shall include full compensation for all taxes, permits, etc. that the bidder is or may be required to pay.

## 8 UTILIZATION OF LOCAL BUSINESS RESOURCES

Prospective bidders are strongly encouraged to explore and implement methods for the utilization of local resources, and to outline in their bid submittal how they would utilize local resources.

## 9 CONFLICT OF INTEREST

9.1 The bidder shall not offer or accept gifts or anything of value nor enter into any business arrangement with any employee, official or agent of the City of Texarkana.

9.2 By signing and executing this bid, the bidder certifies and represents to the City the bidder has not offered, conferred or agreed to confer any pecuniary benefit or other thing of value for the receipt of special treatment, advantage, information, recipient's decision, opinion, recommendation, vote or any other exercise of discretion concerning this bid.

## 10 CONTRACT DOCUMENTS

10.1 All work covered by the contract shall be done in accordance with contract documents described in the General Conditions.

10.2 All bidders shall be thoroughly familiar with all of the requirements set forth on the contract documents for the construction of this project and shall be responsible for the satisfactory completion of all work contemplated by said contract documents.

## 11 PLANS FOR USE BY BIDDERS

It is the intent of the City of Texarkana that all parties with an interest in submitting a bid on the project covered by the contract documents be given a reasonable opportunity to examine the documents and prepare a bid without charge. The contract documents may be examined without charge as noted in the Notice to Bidders.

## 12 TIME AND ORDER FOR COMPLETION

12.1 The construction covered by the contract documents shall be substantially completed within **60 WORKING DAYS** from the date specified in the Notice to Proceed issued by the City of Texarkana to the successful bidder.

12.2 The Contractor will be permitted to prosecute the work in the order of his own choosing, provided, however, the City reserves the right to require the Contractor to submit a progress schedule of the work contemplated by the contract documents. In the event the City requires a progress schedule to be submitted, and it is determined by the City that the progress of the work is not in accordance with the progress schedule so submitted, the City may direct the Contractor to take such action as the City deems necessary to ensure completion of the project within the time specified.

## 13 PAYMENT

All payments due to Contractor shall be made in accordance with the provisions of the General Conditions of the contract documents.



14 AFFIDAVITS OF BILLS PAID

The City of Texarkana reserves the right, prior to final acceptance of this project to require the Contractor to execute an affidavit that all bills for labor, materials and incidentals incurred in the construction of the improvements contemplated by the contract documents have been paid in full and that there are no claims pending, of which the Contractor has been notified.

15 MATERIALS AND WORKMANSHIP

The intent of these contract documents is that only materials and workmanship of the best quality and grade will be furnished. The fact that the specifications may fail to be sufficiently complete in some detail will not relieve the Contractor of full responsibility for providing materials of high quality and for protecting them adequately until incorporated into the project. The presence or absence of a representative of the City on the site will not relieve the Contractor of full responsibility of complying with this provision. The specifications for materials and methods set forth in the contract documents provide minimum standards of quality, which the Owner believes necessary to procure a satisfactory project.

16 GUARANTEES

- 16.1 All equipment and materials incorporated in the project and all construction shall be guaranteed against defective materials and workmanship. Prior to final acceptance, the Contractor shall furnish to the Owner, a written general guarantee which shall provide that the Contractor shall remedy any defects in the work, and pay for any and all damages of any nature whatsoever resulting in such defects, when such defects appear within ONE year from date of final acceptance of the work as a result of defective materials or workmanship, at no cost to the Owner (City of Texarkana).
- 16.2 The obligations contained herein apply to products and services provided by the Contractor, its subcontractor or any third party involved in the creation or development of the products and services to be delivered to the City of Texarkana under this Contract. Failure to comply with any of the obligations contained herein, may result in the City of Texarkana availing itself of any of its rights under the law and under this Contract including, but not limited to, it's right pertaining to termination or default.
- 16.3 The warranties contained herein are separate and discrete from any other warranties specified in this Contract, and are not subject to any disclaimer of warranty, implied or expressed, or limitation to the Contractor's liability which may be specified in this Contract, its appendices, its schedules, its annexes or any document incorporated in this Contract by reference.

17 PLANS FOR THE CONTRACTOR

The contractor will, upon written request, be furnished up to 3 sets of plans and specifications and related contract documents for use during construction. Plans and specifications for use during construction will only be furnished directly to the Contractor. The Contractor shall then distribute copies of plans and specifications to suppliers, subcontractors or others, as required for proper prosecution of the work contemplated by the Contractor.

18 PROTECTION OF THE WORK

The Contractor shall be responsible for the care, preservation, conservation, and protection of all materials, supplies, machinery, equipment, tools, apparatus, accessories, facilities, and all means of construction, and any and all parts of the work whether the Contractor has been paid, partially paid, or not paid for such work, until the date the City issues its certificate of completion to Contractor. The City reserves the right, after the bids have been opened and before the contract has been awarded, to require of a bidder the following information:

- (a) The experience record of the bidder showing completed jobs of a similar nature to the one covered by the intended contract and all work in progress with bond amounts and percentage completed.
- (b) A sworn statement of the current financial condition of the bidder.
- (c) Equipment schedule.

20 TEXAS STATE SALES TAX

- 20.1 This contract is issued by an organization which qualifies for exemption provisions pursuant to provisions of Article 20.04 of the Texas Limited Sales, Excise and Use Tax Act.
- 20.2 The Contractor must obtain a limited sales, excise and use tax permit which shall enable him to buy the materials to be incorporated into the work without paying the tax at the time of purchase.

21 PROTECTION OF SUBSURFACE LINES AND STRUCTURES

It shall be the Contractor's responsibility to prosecute the work contemplated by the contract documents in such a way as to exercise due care to locate and prevent damage to all underground pipelines, utility lines, conduits or other underground structures which might or could be damaged by Contractor during the construction of the project contemplated by these contract documents. However, such fact shall not relieve the Contractor of his responsibilities aforementioned. All such underground lines or structures cut or damaged by Contractor during the prosecution of the work contemplated by this contract shall be repaired immediately by Contractor to the satisfaction of the City of Texarkana, Texas, at Contractor's expense.

22 BARRICADES AND SAFETY MEASURES

The contractor shall, at his own expense, furnish and erect such barricades, fences, lights and danger signals, and shall take such other precautionary measures for the protection of persons, property and the work as may be necessary. The Contractor will be held responsible for all damage to the work due to failure of barricades, signs, and lights to protect it, and when damage is incurred, the damaged portion shall be immediately removed and replaced by Contractor at his own cost and expense. The Contractor's responsibility for maintenance of barricades, signs, and lights shall not cease until the date of issuance to Contractor of City's certificate of acceptance of the project. All such devices shall conform to the TEXAS MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES.

23 EXPLOSIVES

- 23.1 The use of explosives will not be permitted unless written permission to do so is obtained by the Contractor from the City. In all cases where written permission is obtained for the use of explosives, the Contractor shall assume full responsibility for all damage, which may occur as a direct or indirect result of the blasting. In addition, in all cases where explosives are authorized to be used, the Contractor shall use utmost care so as not to endanger life or property and the Contractor shall further use only such methods as are currently utilized by persons, firms, or corporations engaged in similar type of construction activity.
- 23.2 Explosive materials shall not be stored or kept at the construction site by the Contractor.
- 23.3 In all cases where explosives are to be used during the construction of the project contemplated by this contract, it shall be the duty of the Contractor to notify each utility company having structures (above or below the ground) in proximity to the site of the work of Contractor's intention to use explosives, and such notice shall be given sufficiently in advance to enable the companies to take such steps as they may deem necessary to protect their property from injury. Such notice, however, shall not relieve the Contractor of responsibility for any damage resulting from his blasting operations.

24 CONTRACTOR'S REPRESENTATIVE

The successful bidder shall be required to have a responsible local representative available at all times while the work is in progress under this contract. The successful bidder shall be required to furnish the name, address and telephone number where such local representative may be reached during the time that the work contemplated by this contract is in progress.

## 25 LABOR AND WORKING HOURS

- 25.1 Construction work under the contract requiring an inspector shall not be performed on weekends or holidays unless the following conditions exist:
- 25.1.1 The project being constructed is essential to the City of Texarkana's ability to provide the necessary service to its citizens.
  - 25.1.2 Delays in construction are due to factors outside the control of the Contractor. The Contractor is approaching the penalty provisions of the contract and Contractor can show he has made a diligent effort to complete the contract within the allotted time.
- 25.2 Before construction work requiring an inspector is to be performed on Sunday or holidays, the Contractor must notify the Owner's Representative not less than three full working days prior to the weekend or holiday he desires to do work and obtain written permission from the Owner's Representative to do such work. The final decision on whether to allow construction work requiring an inspector on Sunday or holidays will be made by the Owner's Representative.
- 25.3 In any event, if a condition should occur or arise at the site of this project or from the work being done under this contract which is hazardous or dangerous to property or life, the Contractor shall immediately commence work, regardless of the day of the week or the time of day, to correct or alleviate such condition so that it is no longer dangerous to property or life.

## 26 PROVISIONS CONCERNING ESCALATION CLAUSES

Bids submitted containing any conditions which provide for changes in the stated bid price due to increases or decreases in the cost of materials, labor or other items required for the project will be rejected and returned to the bidder without being considered.

## 27 PREPARATION FOR BID

- 27.1 The bidder shall submit his bid on forms furnished by the City. All blank spaces in the form shall be correctly filled in and the bidder shall state the price in numerals, for which he intends to do the work contemplated or furnish the materials required. Such prices shall be written in ink, distinctly and legibly, or typewritten. In the case of a discrepancy between the unit price and extended amount, the unit price shall prevail.
- 27.2 If the bid is submitted by an individual, his name must be signed by him or his duly authorized agent. If a bid is submitted by a firm, association, or partnership, the name and address of each member must be given and the bid signed by a member of the firm, association or partnership, or person duly authorized. If the bid is submitted by a company or corporation, the company or corporate name and business address must be given, and the bid signed by an official or duly authorized agent. Powers of attorney authorizing agents or others to sign bids must be properly certified and must be in writing and submitted with the bid. The bid shall be executed in ink.
- 27.3 Each bid shall be enclosed in a sealed envelope, addressed as specified in the Notice to Bidders, and endorsed on the outside of the envelope in the following manner:
- 27.3.1 Bidder's name
  - 27.3.2 Bid for (description of the project [bid number and title]).
- 27.4 Bid submittals may be withdrawn and resubmitted at any time before the time set for opening of the bids, but no bid may be withdrawn or altered thereafter.
- 27.5 **Pursuant to Texas Local Government Code 252.043(g), a competitive sealed bid that has been opened may not be changed for the purpose of correcting an error in the bid price. THEREFORE, ANY CORRECTIONS TO THE BID PRICE MUST BE MADE ON THE BID SUBMITTAL FORM PRIOR TO BID OPENING.**

28 BOUND COPY OF CONTRACT DOCUMENTS

Bidder understands and agrees that the contract to be executed by bidder shall be bound and will include the following:

- (a) Notice to Bidders.
- (b) General Instructions to Bidders.
- (c) Bidder's Submittal.
- (d) Statutory Bonds (if required).
- (e) Contract Agreement.
- (f) General Conditions.
- (g) Special Conditions (if any).
- (h) Specifications.
- (i) Insurance Certificates for Contractor and all Sub-Contractors.
- (j) All other documents made available to bidder for his inspection in accordance with the Notice to Bidders.

If Plans and Specifications are too bulky or cumbersome to be physically bound, they are to be considered incorporated by reference into the aforementioned contract documents.

29 QUALIFICATIONS OF BIDDERS

The bidder may be required before the award of any contract to show to the complete satisfaction of the City of Texarkana that it has the necessary facilities, ability, and financial resources to provide the service specified therein in a satisfactory manner. The bidder may also be required to give a past history and references in order to satisfy the City of Texarkana about the bidder's qualifications. The City of Texarkana may make reasonable investigations deemed necessary and proper to determine the ability of the bidder to perform the work, and the bidder shall furnish to the City of Texarkana all information for this purpose that may be requested. The bidder's bid may be deemed not to meet specifications or the bid may be rejected if the evidence submitted by, or investigation of, the bidder fails to satisfy the City of Texarkana that the bidder is properly qualified to carry out the obligations of the contract and to complete the work described therein. Evaluation of the bidder's qualifications shall include:

- (a) The ability, capacity, skill, and financial resources to perform the work or provide the service required.
- (b) The ability of the bidder to perform the work or provide the service promptly or within the time specified, without delay or interference.
- (c) The character, integrity, reputation, judgment, experience, and efficiency of the bidder.
- (d) The quality of performance of previous contracts or services.
- (e) The safety record of the Contractor and proposed Sub-Contractors

Before contract award, the recommended contractor for this project may be required to show that he has experience with similar projects that require the Contractor to plan his work efforts and equipment needs with City of Texarkana specifications in mind. Demonstration of experience shall include a complete list of ALL similar municipal and similar non-municipal current and completed projects for the past three (3) years for review. This list shall include the names of supervisors and type of equipment used to perform work on these projects. In addition, the Contractor may be required to provide the name(s) of supervisor(s) that will be used to perform work on this project in compliance with City of Texarkana specifications herein.

30 BID AWARD

- 30.1 The City of Texarkana reserves the right to reject any or all bids, reject any particular item on a bid, and to waive immaterial formalities and to accept the offer most advantageous to the City of Texarkana in its sole discretion. Unless otherwise specified herein, the City shall award the bid based on the total bid plus the sum of any Alternate Bids or Options the City may select.
- 30.2 Response to specifications is primary in determining the best low bid. Failure to comply with the specifications may result in disqualification of the bid.

- 30.3 In case of tie bids, preference will be given to local bidders. Consistent and continued tie bidding may be cause for rejection of bids by the City of Texarkana and/or investigation by the Attorney General to determine possible Anti-Trust violations.
- 30.4 Before the City may award a bid to a nonresident bidder, the nonresident bidder's bid must be lower than lowest bid submitted by a responsible Texas bidder by the same margin or amount that a Texas bidder would be required to underbid the nonresident bidder in the nonresident bidders' home state.
- 30.5 Any contract made, or purchase order issued, as a result of this Invitation to Bid, shall be entered into the State of Texas and under the laws of the State of Texas. In connection with the performance of work, the Bidder agrees to comply with the Fair Labor Standard Act, Equal Opportunity Employment Act, and all other applicable Federal, State, and Local laws, regulations, and executive orders to the extent that the same may be applicable.
- 30.6 **NO INDIVIDUAL OF ANY USING DEPARTMENT HAS THE AUTHORITY TO LEGALLY AND/OR FINANCIALLY COMMIT THE CITY TO ANY CONTRACT, AGREEMENT OR PURCHASE ORDER FOR GOODS OR SERVICES, UNLESS SPECIFICALLY SANCTIONED BY THE REQUIREMENTS OF THIS INVITATION TO BID.**

### 31 ANTI-LOBBYING PROVISION

- 31.1 DURING THE PERIOD BETWEEN THE BID CLOSE DATE AND THE CONTRACT AWARD, BIDDERS, INCLUDING THEIR AGENTS AND REPRESENTATIVES, SHALL NOT DIRECTLY DISCUSS OR PROMOTE THEIR BID WITH ANY MEMBER OF THE TEXARKANA CITY COUNCIL OR CITY STAFF EXCEPT IN THE COURSE OF CITY-SPONSORED INQUIRIES, BRIEFINGS, INTERVIEWS, OR PRESENTATIONS, UNLESS REQUESTED BY THE CITY.
- 31.2 This provision is not meant to preclude bidders from discussing other matters with City Council members or City staff. This policy is intended to create a level playing field for all potential bidders, assure that contract decisions are made in public, and to protect the integrity of the bid process. Violation of this provision may result in rejection of the bidder's bid.

### 32 PREVAILING WAGE RATES

- 32.1 Bidders are required to comply with Texas Government Code, Chapter 2258, Prevailing Wage Rates, with respect to the payment of prevailing wage rates for the construction of a public work, including a building, highway, road, excavation, and repair work or other project development or improvement, paid for in whole or in part from public funds, without regard to whether the work is done under public supervision or direction. A worker is employed on a public work if the worker is employed by the contractor or any subcontractor in the execution of the contract for the project
- 32.2 A worker employed on a public work by or on behalf of the City of Texarkana shall be paid not less than the general prevailing rate of per diem wages for the work of a similar character in the locality in which the work is performed, and not less than the general prevailing rate of per diem wages for legal holiday and overtime work.
- 32.3 The State of Texas has adopted the Federal Davis-Bacon wage rates for use in Texas pursuant to and in accordance with the Texas Government Code, Section 2258.022.
- 32.4 It shall be the responsibility of the successful bidder to obtain the proper wage rates for Bowie County, Texas from the U.S. Department of Labor web site for the type of work defined in the bid specifications.

33 PAYMENT AND FILING OF PAYROLLS (FEDERALLY FUNDED PROJECT ONLY)

The contractor and each of his subcontractors shall pay each of his employees engaged in work on the project under this contract in full (less mandatory legal deductions) in cash, or by check readily cashable without discount, not less often than once each week. **The Contractor and each of his subcontractors engaged at the site of the work shall not later than the seventh day following the payment of wages, file with the Owner's Representative, or Engineer, a certified, sworn, legible copy of such payroll. This shall contain the name of each employee, his classification, the number of hours worked on each day, rate of pay, and net pay. The affidavit shall state that the copy is a true and correct copy of such payroll, that no rebates or deductions (except as shown) have been made, or will in the future be made from the wages paid as shown thereon.** The Contractor must classify employees according to one of the classifications set forth in the schedule of general prevailing rate of per diem wages, which schedule is included in the contract documents. The Contractor shall forfeit as a penalty to the City of Texarkana on whose behalf this contract is made, **sixty dollars** for each laborer, workman, or mechanic employed for each calendar day, or portion thereof, such laborer, workman or mechanic is paid less than the wages assigned to his particular classification as set forth in the schedule of general prevailing rate of per diem wages included in these contract documents.



### 3. BID SUBMITTAL FORM

#### 3.1 BID SUBMITTAL FORM UNIT PRICE BID CONTRACT

DATE: \_\_\_\_\_

PROJECT NUMBER: IFB #17-1901-03

GATEWAY SIGN CONSTRUCTION PROJECT

Bid of \_\_\_\_\_ (hereinafter called Bidder)

To the Honorable Mayor and City Council City of Texarkana, Texas (hereinafter called Owner)

Ladies and Gentlemen:

The Bidder, in compliance with your Invitation to Bid, having carefully examined the plans, specifications, instructions to bidders, notice to bidders and all other related contract documents and the site of the intended work, and being familiar with all of the conditions surrounding the construction of the intended project including the availability of materials and labor, hereby intends to furnish all labor, materials, and supplies; and to construct the project in accordance with the plans, specifications and contract documents, within the time set forth therein and at the price stated below.

The bidder binds himself on acceptance of his bid to execute a contract and any required bonds, according to the accompanying forms, for performing and completing the said work within the time stated and for the prices stated below.

The bidder binds himself on acceptance of his bid to execute a contract and any required bonds, according to the accompanying forms, for performing and completing the said work within the time stated and for the prices stated below.

| ITEM NO. | DESCRIPTION                                            | ESTIMATED QUANTITY | UNIT | UNIT PRICE | EXTENDED AMOUNT |
|----------|--------------------------------------------------------|--------------------|------|------------|-----------------|
| 1        | Mobilization                                           | 1                  | LS   |            |                 |
| 2        | Barricades, Signs and Traffic Handling                 | 1                  | LS   |            |                 |
| 3        | Prepare ROW                                            | 0.15               | AC   |            |                 |
| 4        | Conduit (PVC) (SCH 40) (2")                            | 334                | LF   |            |                 |
| 5        | Conduit (PVC) (SCH 40) (2") Bore                       | 75                 | LF   |            |                 |
| 6        | Conduit (PVC) (SCH 40) (3")                            | 160                | LF   |            |                 |
| 7        | Electrical Conductor (No. 10) (Insulated)              | 860                | LF   |            |                 |
| 8        | Electrical Conductor (No. 10) (Bare)                   | 430                | SY   |            |                 |
| 9        | Electrical Service TY T 120/240 100 (NS) GS (E) SF (U) | 1                  | EA   |            |                 |
| 10       | Ground Box TY A (122311) W/Apron                       | 1                  | EA   |            |                 |
| 11       | Ground Box TY A (122311)                               | 1                  | EA   |            |                 |
| 12       | Gateway Sign                                           | 1                  | LS   |            |                 |
| 13       | Broadcast Seed (Temporary) (Warm Season)               | 700                | SY   |            |                 |
| 14       | Broadcast Seed (Temporary) (Cool Season)               | 700                | SY   |            |                 |
| 15       | Cellulose Fiber Mulch Seeding (Permanent)              | 750                | SY   |            |                 |

|    |                         |     |    |  |  |
|----|-------------------------|-----|----|--|--|
| 16 | Silt Fence              | 350 | LF |  |  |
|    | <b>TOTAL BID AMOUNT</b> |     |    |  |  |

\_\_\_\_\_ Bidder's Initials

Bidder hereby agrees to commence the work on the above project on a date to be specified in a written "Notice to Proceed" of the Owner and to substantially complete the project by **60 WORKING DAYS**, thereafter as stipulated in the specifications and other contract documents. Bidder hereby further agrees to pay to Owner as liquidated damages the sum of **\$100 per day for 1<sup>st</sup> 10 working days and \$250 per day for anything after the 1<sup>st</sup> 10 working days** in excess of the time set forth herein above for completion of this project, all as more fully set forth in the general conditions of the contract documents.

Bidder understands that the Owner reserves the right to reject any or all bids and to waive any formality in the bidding.

The Bidder agrees that this bid shall be good and may not be withdrawn for a period of **SIXTY (60)** calendar days after the scheduled closing time for receiving bids.

The undersigned Bidder hereby declares that he has visited the site of the work and has carefully examined the plans, specifications and contract documents pertaining to the work covered by this bid, and he further agrees to commence work on or before the date specified in the written notice to proceed, and to substantially complete the work on which he has bid; as provided in the contract documents.

Bidders are required, whether or not a payment or performance bond is required, to submit a cashier's check or certified check issued by a bank satisfactory to the City of Texarkana, or a bid bond from a reliable surety company, payable without recourse to the order of the City of Texarkana in an amount not less than five percent (5%) of the total amount of the bid submitted as a guarantee that bidder will enter into a contract, obtain all required insurance policies, and execute all necessary bonds (if required) within ten (10) business days after notice of award of the contract to him

\_\_\_\_\_ Bidder's Initials

Enclosed with this bid is a Cashier's Check or Certified Check for \_\_\_\_\_ Dollars (\$\_\_\_\_\_) or a Bid Bond in the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_), which it is agreed shall be collected and retained by the Owner as liquidated damages in the event the bid is accepted by the Owner and the undersigned fails to execute the necessary contract documents, insurance certificates, and the required bond (if any) with the Owner within ten (10) business days after the date of receipt of written notification of acceptance of said bid; otherwise, said check or bond shall be returned to the undersigned upon demand.

Bidder understands and agrees that the contract to be executed by Bidder shall be bound and include all contract documents made available to him for his inspection in accordance with the Notice to Bidders.

**Pursuant to Texas Local Government Code 252.043(a), a competitive sealed bid that has been opened may not be changed for the purpose of correcting an error in the bid price. THEREFORE, ANY CORRECTIONS TO THE BID PRICE MUST BE MADE ON THE BID SUBMITTAL FORM PRIOR TO BID OPENING.**

Date: \_\_\_\_\_

Authorized Signature \_\_\_\_\_

(Printed or Typed Name) \_\_\_\_\_

Company \_\_\_\_\_

Address \_\_\_\_\_

City, \_\_\_\_\_ County \_\_\_\_\_

State \_\_\_\_\_ Zip Code \_\_\_\_\_

Telephone: \_\_\_\_\_ - \_\_\_\_\_

Fax: \_\_\_\_\_ - \_\_\_\_\_

**FEDERAL TAX ID or SOCIAL SECURITY No.** \_\_\_\_\_

EMAIL: \_\_\_\_\_

(Seal if Bidder is a Corporation)

ATTEST:

\_\_\_\_\_  
Secretary

Bidder acknowledges receipt of the following addenda:

Addenda No. \_\_\_\_\_ Date \_\_\_\_\_

Addenda No. \_\_\_\_\_ Date \_\_\_\_\_

Addenda No. \_\_\_\_\_ Date \_\_\_\_\_

Addenda No. \_\_\_\_\_ Date \_\_\_\_\_

## BID #17-1901-03 GATEWAY SIGN CONSTRUCTION PROJECT

### 3.2 SAFETY RECORD QUESTIONNAIRE

The City of Texarkana City Council desires to avail itself of the benefits of Section 252.0435 of the Local Government Code, and consider the safety records of potential contractors prior to awarding bids on City contracts. Pursuant to Section 252.0435 of the Local Government Code, City of Texarkana has adopted the following written definition and criteria for accurately determining the safety record of a bidder prior to awarding bids on City contracts.

The definition and criteria for determining the safety record of a bidder for this consideration shall be:

**The City of Texarkana shall consider the safety record of the bidders in determining the responsibility thereof. The City may consider any incidents involving worker safety or safety of the citizens of the City of Texarkana, be it related or caused by environmental, mechanical, operational, supervision or any other cause or factor. Specifically, the City may consider, among other things:**

- a. Complaints to, or final orders entered by, the Occupational Safety and Health Review Commission (OSHRC), against the bidder for violations of OSHA regulations within the past three (3) years.
- b. Citations (as defined below) from an Environmental Protection Agency (as defined below) for violations within the past five (5) years. Environmental Protection Agencies include, but are not necessarily limited to, the U.S. Army Corps of Engineers (USACOE), the U.S. Fish and Wildlife Service (USFWS), the Environmental Protection Agency (EPA), the Texas Commission on Environmental Quality (TCEQ), the Texas Natural Resource Conservation Commission (TNRCC) (predecessor to the TCEQ), the Texas Department of State Health Services (DSHS), the Texas Parks and Wildlife Department (TPWD), the Structural Pest Control Board (SPCB), agencies of local governments responsible for enforcing environmental protection or worker safety related laws or regulations, and similar regulatory agencies of other states of the United States. Citations include notices of violation, notices of enforcement, suspension/revocations of state or federal licenses or registrations, fines assessed, pending criminal complaints, indictments, or convictions, administrative orders, draft orders, final orders, and judicial final judgments.
- c. Convictions of a criminal offense within the past ten (10) years, which resulted from bodily harm or death.
- d. Any other safety related matter deemed by the City Council to be material in determining the responsibility of the bidder and his or her ability to perform the services or goods required by the bid documents in a safe environment, both for the workers and other employees of bidder and the citizens of the City of Texarkana.

In order to obtain proper information from bidders so that City of Texarkana may consider the safety records of potential contractors prior to awarding bids on City contracts, City of Texarkana requires that bidders answer the following three (3) questions and submit them with their bids:

#### QUESTION ONE

Has the bidder, or the firm, corporation, partnership, or institution represented by the bidder, or anyone acting for such firm, corporation, partnership or institution, received citations for violations of OSHA within the past three (3) years?

YES \_\_\_\_\_ NO \_\_\_\_\_

If the bidder has indicated YES for question number one above, the bidder must provide to City of Texarkana, with its bid submission, the following information with respect to each such citation:

Date of offense, location of establishment inspected, category of offense, final disposition of offense, if any, and penalty assessed.

**QUESTION TWO**

Has the bidder, or the firm, corporation, partnership, or institution represented by the bidder, or anyone acting for such firm, corporation, partnership or institution, received citations for violations of environmental protection laws or regulations, of any kind or type, within the past five years? Citations include notice of violation, notice of enforcement, suspension/revocations of state or federal licenses, or registrations, fines assessed, pending criminal complaints, indictments, or convictions, administrative orders, draft orders, final orders, and judicial final judgments.

YES \_\_\_\_\_ NO \_\_\_\_\_

If the bidder has indicated YES for question number two above, the bidder must provide to City of Texarkana, with its bid submission, the following information with respect to each such conviction:

Date of offense or occurrence, location where offense occurred, type of offense, final disposition of offense, if any, and penalty assessed.

**QUESTION THREE**

Has the bidder, or the firm, corporation, partnership, or institution represented by bidder, or anyone acting for such firm, corporation, partnership, or institution, ever been convicted, within the past ten (10) years, of a criminal offense which resulted from serious bodily injury or death?

YES \_\_\_\_\_ NO \_\_\_\_\_

If the bidder has indicated YES for question number three above, the bidder must provide to City of Texarkana, with its bid submission, the following information with respect to each such conviction:

Date of offense, location where offense occurred, type of offense, final disposition of offense, in any, and penalty assessed.

**ACKNOWLEDGEMENT**

THE STATE OF TEXAS

COUNTY OF BOWIE

I certify that I have made no willful misrepresentations in this Questionnaire nor have I withheld information in my statements and answers to questions. I am aware that the information given by me in this questionnaire shall be investigated, with my full permission, and that any misrepresentations or omissions may cause my bid to be rejected.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

### 3.3 SUSPENSION AND DEBARMENT CERTIFICATION

Federal Law (A-102 Common Rule and OMB Circular A-110) prohibits non-Federal entities from contracting with or making sub-awards under covered transactions to parties that are suspended or debarred or whose principals are suspended or debarred. Covered transactions include procurement contracts for goods or services equal to or in excess of \$50,000 and all non-procurement transactions (e.g., sub-awards to sub-recipients).

Contractors receiving individual awards of \$50,000 or more and all sub-recipients must certify that their organization and its principals are not suspended or debarred by a Federal agency.

Before an award of \$50,000 or more can be made to your firm, you must certify that your organization and its principals are not suspended or debarred by a Federal agency.

**I, the undersigned agent for the firm named below, certify that neither this firm nor its principals are suspended or debarred by a Federal agency.**

COMPANY NAME: \_\_\_\_\_

**FEDERAL TAX ID or SOCIAL SECURITY No.** \_\_\_\_\_

Signature of Company Official: \_\_\_\_\_

Printed name of company official signing above: \_\_\_\_\_

Date Signed: \_\_\_\_\_



#### 4. LIST OF SUB CONTRACTORS

|     | Company Name | Location | Services Provided | Minority Owned           |                          |
|-----|--------------|----------|-------------------|--------------------------|--------------------------|
|     |              |          |                   | Yes                      | No                       |
| 1.  | _____        | _____    | _____             | <input type="checkbox"/> | <input type="checkbox"/> |
| 2.  | _____        | _____    | _____             | <input type="checkbox"/> | <input type="checkbox"/> |
| 3.  | _____        | _____    | _____             | <input type="checkbox"/> | <input type="checkbox"/> |
| 4.  | _____        | _____    | _____             | <input type="checkbox"/> | <input type="checkbox"/> |
| 5.  | _____        | _____    | _____             | <input type="checkbox"/> | <input type="checkbox"/> |
| 6.  | _____        | _____    | _____             | <input type="checkbox"/> | <input type="checkbox"/> |
| 7.  | _____        | _____    | _____             | <input type="checkbox"/> | <input type="checkbox"/> |
| 8.  | _____        | _____    | _____             | <input type="checkbox"/> | <input type="checkbox"/> |
| 9.  | _____        | _____    | _____             | <input type="checkbox"/> | <input type="checkbox"/> |
| 10. | _____        | _____    | _____             | <input type="checkbox"/> | <input type="checkbox"/> |
| 11. | _____        | _____    | _____             | <input type="checkbox"/> | <input type="checkbox"/> |
| 12. | _____        | _____    | _____             | <input type="checkbox"/> | <input type="checkbox"/> |

\_\_\_\_\_  
Contractor Signature

**THIS FORM SHALL BE COMPLETED AND RETURNED ALONG WITH YOUR PROPOSAL IF NO  
SUB-CONTRACTORS WILL BE USED PLEASE INDICATE SO**

# BID # 17-1901-03 GATEWAY SIGN CONSTRUCTION PROJECT

## FINAL LIST OF SUB CONTRACTORS

|     | Company Name | Location | Services Provided | Minority Owned           |                          |
|-----|--------------|----------|-------------------|--------------------------|--------------------------|
|     |              |          |                   | Yes                      | No                       |
| 1.  |              |          |                   | <input type="checkbox"/> | <input type="checkbox"/> |
| 2.  |              |          |                   | <input type="checkbox"/> | <input type="checkbox"/> |
| 3.  |              |          |                   | <input type="checkbox"/> | <input type="checkbox"/> |
| 4.  |              |          |                   | <input type="checkbox"/> | <input type="checkbox"/> |
| 5.  |              |          |                   | <input type="checkbox"/> | <input type="checkbox"/> |
| 6.  |              |          |                   | <input type="checkbox"/> | <input type="checkbox"/> |
| 7.  |              |          |                   | <input type="checkbox"/> | <input type="checkbox"/> |
| 8.  |              |          |                   | <input type="checkbox"/> | <input type="checkbox"/> |
| 9.  |              |          |                   | <input type="checkbox"/> | <input type="checkbox"/> |
| 10. |              |          |                   | <input type="checkbox"/> | <input type="checkbox"/> |
| 11. |              |          |                   | <input type="checkbox"/> | <input type="checkbox"/> |
| 12. |              |          |                   | <input type="checkbox"/> | <input type="checkbox"/> |
| 13. |              |          |                   | <input type="checkbox"/> | <input type="checkbox"/> |
| 14. |              |          |                   | <input type="checkbox"/> | <input type="checkbox"/> |
| 15. |              |          |                   | <input type="checkbox"/> | <input type="checkbox"/> |
| 16. |              |          |                   | <input type="checkbox"/> | <input type="checkbox"/> |

\_\_\_\_\_  
Contractor Signature

**THIS FORM SHALL BE COMPLETED AND RETURNED ALONG WITHIN 7 BUSINESS DAYS AFTER BID IS AWARDED IF YOU ARE WINNING BIDDER AND YOU HAVE MADE ANY CHANGES OF SUBSTITUTIONS TO THE SUB-CONTRACTOR LIST SUBMITTED WITH YOUR ORIGINAL BID.**

5. **PAYMENT BOND**

**STATUTORY PAYMENT BOND PURSUANT TO SECTION 2253.021(a)  
OF THE TEXAS GOVERNMENT CODE  
(CONTRACTS MORE THAN \$50,000)**

KNOW ALL MEN BY THESE PRESENTS, that \_\_\_\_\_ (hereinafter called the Principal(s),  
as Principal(s), and \_\_\_\_\_

(hereinafter called the Surety(s), as Surety(s), are held and firmly bound unto the City of Texarkana (hereinafter called the Obligee), in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) lawful money of the United States for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee, dated the \_\_\_\_ day of \_\_\_\_\_, **2016**, to \_\_\_\_\_

and said Principal under the law is required before commencing the work provided for in said contract to execute a bond in the amount of said contract which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall pay all claimants supplying labor and material to him or a subcontractor in the prosecution of the work provided for in said contract, then, this obligation shall be void; otherwise to remain in full force and effect; PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Section 2253.021(a) of the Texas Government Code, and all liabilities on this bond shall be determined in accordance with the provisions of said Article to the same extent as if it were copied at length herein.

IN WITNESS WHEREOF, the said Principal (s) and Surety (s) have signed and sealed this instrument this \_\_\_\_\_ day of \_\_\_\_\_ **2016**.

\_\_\_\_\_  
Surety

\_\_\_\_\_  
(Company Name)

\*By: \_\_\_\_\_  
(Title)

By: \_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)

The undersigned surety company represents that it is duly qualified to do business in Texas, and hereby designates \_\_\_\_\_ an agent resident in Bowie County to whom any requisite notices may be delivered and on whom service of process may be had in matters arising out of such suretyship.

\_\_\_\_\_  
Surety

\* By: \_\_\_\_\_  
(Title)

6. **PERFORMANCE BOND**

STATUTORY PERFORMANCE BOND PURSUANT TO SECTION 2253.021(a)  
OF THE TEXAS GOVERNMENT CODE  
(CONTRACTS MORE THAN \$100,000)

KNOW ALL MEN BY THESE PRESENTS, that \_\_\_\_\_ (hereinafter called the Principal(s), as Principal(s), and

\_\_\_\_\_  
(hereinafter called the Surety(s), as Surety(s), are held and firmly bound unto the City of Texarkana (hereinafter called the Obligee), in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) lawful money of the United States for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee, dated the \_\_\_\_ day of \_\_\_\_\_, **2016**, to \_\_\_\_\_

and said principal under the law is required before commencing the work provided for in said contract to execute a bond in the amount of said contract which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall faithfully perform the work in accordance with the plans, specifications and contract documents, then this obligation shall be void; otherwise to remain in full force and effect. PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Section 2253.021(a) of the Texas Government Code, and all liabilities on this bond shall be determined in accordance with the provisions of said article to the same extent as if it were copied at length herein.

IN WITNESS WHEREOF, the said Principal (s) and Surety (s) have signed and sealed this instrument this \_\_\_\_ day of \_\_\_\_\_, **2016**.

\_\_\_\_\_  
Surety

\_\_\_\_\_  
(Company Name)

\* By: \_\_\_\_\_  
(Title)

By: \_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)

The undersigned surety company represents that it is duly qualified to do business in Texas, and hereby designates \_\_\_\_\_ an agent resident in Bowie County to whom any requisite notices may be delivered and on whom service of process may be had in matters arising out of such suretyship.

\_\_\_\_\_  
Surety

\*By: \_\_\_\_\_  
(Title)



7. **CERTIFICATE OF INSURANCE**

## **INSURANCE REQUIREMENTS**

Prior to the award of this contract by the City and before commencing work, the successful bidder shall be required, at his own expense, to furnish the City of Texarkana, Texas, within ten (10) days of notification of award with certified copies of all insurance certificates showing the following insurance coverage to be in force throughout the term of the contract. The City shall have no duty to pay or perform under this contract until such certificate has been delivered to and approved by the City, and no officer or employee of the City shall have authority to waive this requirement without written approval from the City Manager.

(a) Commercial General Liability (CGL) insurance at minimum combined single limits of \$1,000,000 per-occurrence and \$2,000,000 general aggregate for bodily injury and property damage. Coverage must be written on an occurrence form. Contractual liability must be maintained with respect to the contractor's obligations contained in the contract. The general aggregate limit must be at least two (2) times the per-occurrence limit. CGL shall include coverage for:

1. Premises/Operations
2. Products Completed Operations
3. Personal Injury

(b) Workers Compensation insurance at statutory limits.

(c) Commercial Automobile Liability insurance at minimum combined single limits of \$1,000,000 per-occurrence for bodily injury and property damage, including owned, non-owned, and hired vehicle coverage.

The required limits may be satisfied by any combination of primary, excess or umbrella liability insurances, provided the primary policy complies with the above requirements and the excess umbrella is following form. The successful bidder may maintain reasonable and customary deductibles, subject to approval by the City.

A comprehensive general liability insurance form may be used in lieu of a commercial general liability insurance form. In this event, coverage must be written on an occurrence basis, at limits of \$500,000 per occurrence, combined single limit; and coverage must include a broad form comprehensive general liability endorsement, coverage for products/completed operations, and broad form contractual liability covering the obligations included in the contract.

With reference to the foregoing insurance requirement, the successful bidder shall specifically endorse applicable insurance policies as follows:

- (1) The City shall be named as an additional insured with respect to general liability.
- (2) A waiver of subrogation in favor of the City of Texarkana, Texas shall be contained in the workers compensation coverage.
- (3) All insurance policies shall be endorsed to require the insurer to immediately notify the City of any material change in the insurance coverage.
- (4) All insurance policies shall be endorsed to the effect that the City will receive at least 10 days notice prior to cancellation, non-renewal or termination of the insurance.
- (5) All copies of Certificates of Insurance shall reference the project/contract number for which the insurance is being supplied.

The City prefers that all insurance be purchased from an insurance company that meets the following requirements:

- 1) A financial rating of A:VII or better as assigned by the BEST rating Company or A or better by Standard and Poor's.
- 2) Written by companies approved by the State of Texas and acceptable to the City of Texarkana, Texas.

All insurance must be written on forms filed with and approved by the Texas State Board of Insurance. Certificates of Insurance shall be prepared and executed by the insurance company or it's authorized agent, and shall contain provisions representing and warranting the following:

- 1) The insurance set forth by the insurance company are underwritten on forms, which have been approved by the Texas State Board of Insurance.
- 2) Sets forth all endorsements and insurance coverage according to requirements and instructions contained herein.
- 3) Shall specifically set forth the notice of cancellation or termination provisions to the City of Texarkana, Texas.

**CONTRACTOR SHALL:**

- (1) provide coverage for its employees providing services on a project, for the duration of the project based on proper reporting of classification codes and payroll amounts and filling of any coverage agreements;
- (2) provide a certificate of coverage showing workers' compensation coverage to the governmental entity prior to beginning work on the project;
- (3) provide the governmental entity, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project;
- (4) obtain from each person providing services on a project, and provide to the governmental entity:
  - (A) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and
  - (B) no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
- (5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
- (6) notify the governmental entity in writing by certified mail or personal delivery, within ten (10) days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project;
- (7) post a notice on each project site informing all persons providing services on the project that they are required to be covered, and stating how a person may verify current coverage and report failure to provide coverage. This notice does not satisfy other posting requirements imposed by the Act or other commission rules. This notice must be printed in at least 19-point normal type, and shall be in both English and Spanish and any other language common to the worker population. The text for the notices shall be the following text provided by the commission on the sample notice, without any additional words or changes:

## REQUIRED WORKERS' COMPENSATION COVERAGE

"The law requires that each person working on this site or providing services related to this construction project must (see reverse) be covered by workers' compensation insurance. This includes persons providing, hauling, or delivering equipment and materials, or providing labor or transportation or other service related to the project, regardless of the identity of their employer or status as an employee."

"Call the Texas Workers' Compensation Commission at 512-305-7238 to receive information on the legal requirement for coverage, to verify whether your employer has provided the required coverage, or to report an employer's failure to provide coverage." and

- (8) contractually require each person with whom it contracts to provide services on a project, to:
- (A) provide coverage based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements for all of its employees providing services on the project, for the duration of the project;
  - (B) provide a certificate of coverage to the contractor prior to that person beginning work on the project;
  - (C) include in all contracts to provide services on the project the language in subsection (e) (3) of this rule;
  - (D) provide the contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
  - (E) obtain from each other person with whom it contracts, and provide to the contractor:
    - (i) a certificate of coverage, prior to the other person beginning work on the project; and
    - (ii) prior to the end of the coverage period, a new certificate of coverage showing extension of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
  - (F) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
  - (G) notify the governmental entity in writing by certified mail or personal delivery, within (ten) 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
  - (H) contractually require each other person with whom it contracts, to perform as required by paragraphs (A) - (H), with the certificate of coverage to be provided to the person for whom they are providing services.

8. **CONTRACT**

# CONTRACT

STATE OF TEXAS  
COUNTY OF TEXARKANA

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by and between the City of Texarkana, County of Bowie, State of Texas, acting by and through the Mayor, City of Texarkana, thereunto authorized to do so, hereinafter referred to as OWNER, and \_\_\_\_\_ of the City of \_\_\_\_\_, County of \_\_\_\_\_ and the State of \_\_\_\_\_ hereinafter termed CONTRACTOR.

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the OWNER and under the conditions expressed in the bond bearing even date herewith (if any) the CONTRACTOR hereby agrees with OWNER to commence and complete the construction of certain improvements described as follows:

## **LABOR AND MATERAILS TO CONSTRUCT PROJECT #17-1901-03 GATEWAY SIGN CONSTRUCTION PROJECT**

and all extra work in connection therewith, under the terms as stated in the contract documents and at his (or their) own proper cost and expense to furnish all materials, supplies, machinery, equipment, tools, superintendence, labor, insurance and other accessories and services necessary to complete the said construction in accordance with the contract documents as defined in the General Conditions of Agreement. \_\_\_\_\_'s bid dated \_\_\_\_\_ is incorporated into and made a part of this agreement.

The CONTRACTOR hereby agrees to commence work within **TEN** days after the date written notice to do so shall have been given to him and to substantially complete same within the time specified in the contract documents.

The OWNER agrees to pay the CONTRACTOR in current funds for the performance of the contract in accordance with the bid submitted therefore, subject to additions and deductions, as provided in the contract documents and to make payment on account thereof as provided therein.

IN WITNESS WHEREOF, the parties to these presents have executed this agreement in Texarkana, Texarkana County, Texas in the year and day first above written.

CONTRACTOR:

CITY OF TEXARKANA, TEXAS (OWNER):

\_\_\_\_\_

By: \_\_\_\_\_  
City Manager

By: \_\_\_\_\_

PRINTED NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

COMPLETE ADDRESS:

Company \_\_\_\_\_

Address \_\_\_\_\_

City, State, Zip \_\_\_\_\_



## **GENERAL CONDITIONS OF THE AGREEMENT**

### 1. OWNER

Whenever the word Owner, or First Party, are used in this contract, it shall be understood as referring to the City of Texarkana, Texas.

### 2. CONTRACTOR

Whenever the word Contractor, or Second Party, is used, it shall be understood to mean the person, persons, co-partnership or corporation, to wit \_\_\_\_\_ who has agreed to perform the work embraced in this contract, or their legal representative.

### 3. OWNER'S REPRESENTATIVE

Whenever the word Owner's Representative or representative is used in this contract, it shall be understood as referring to, City of Texarkana, or its representative, so designated who shall inspect constructions; or to such other representatives, supervisors, architects, engineers, or inspectors as may be authorized by said Owner to act in any particular under this agreement. Engineers, supervisors or inspectors shall act for the Owner under the direction of Owner's Representative, but shall not directly supervise the Contractor or persons acting on behalf of the Contractor.

### 4. CONTRACT DOCUMENTS

The contract's documents shall consist of the Notice to Bidders, General Instructions to Bidders, Bid, Signed Agreement, Statutory Bonds (if required), General Conditions of the Agreement, Special Conditions of the Agreement (if any), Specifications, Plans, Insurance Certificates, and all other documents made available to Bidder for inspection in accordance with the Notice to Bidders. The above described materials are sometimes referred to herein as the "contract" or "contract documents".

### 5. INTERPRETATION OF PHRASES

Whenever the words "Directed," "Permitted," "Designated," "Required," "Considered Necessary," "Prescribed," or words of like import are used, it shall be understood that the direction, requirement, permission, order, designation or prescription of the Owner's Representative is intended; and similarly, the words "Approved," "Acceptable," "Satisfactory," or words of like import shall mean approved by or acceptable or satisfactory to the Owner's Representative.

### 6. SUBCONTRACTOR

The term Subcontractor, as employed herein, includes only those having a direct contract with the Contractor for performance of work on the project contemplated by these contract documents. Owner shall have no responsibility to any Subcontractor employed by Contractor for performance of work on the project contemplated by these contract documents, but said Subcontractors shall look exclusively to Contractor for any payments due Subcontractor. The City reserves the right to approve or disapprove the selection of any subcontractor(s).

### 7. WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual or to a member of the firm or to an Office of the corporation for whom it is intended, or if delivered at or sent certified mail to the last business address known to the party who gives the notice.

## 8. CONTRACTOR'S RESPONSIBILITIES

Unless otherwise stipulated, the Contractor shall provide and pay for all materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, and all water, light, power, fuel, transportation and all other facilities necessary for the execution and completion of the work covered by the contract documents. Unless otherwise specified, all materials shall be new and both workmanship and materials shall be of a good quality. The Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of materials. Materials or work described in words which so applied have well known, technical or trade meaning shall be held to refer such recognized standards.

All work shall be done and all materials furnished in strict conformity with the contract documents.

## 9. SUBSTANTIALLY COMPLETED

The term "Substantially Completed" is meant that the structure or project contemplated by the contract documents has been made suitable for use or occupancy or the facility is in a condition to serve its intended purpose, but still may require minor miscellaneous work and adjustment.

## 10. LAYOUT

Except as specifically provided herein, the Contractor shall be responsible for laying out all work and shall accomplish this work in a manner acceptable to the Owner's Representative. The Owner's Representative shall check the Contractor's layout of all major structures and any other layout work done by the Contractor at Contractor's request, but this check does not relieve the Contractor of the responsibility of correctly locating all work in accordance with the Plans and Specifications.

## 11. KEEPING OF PLANS AND SPECIFICATIONS ACCESSIBLE

The Contractor shall be furnished copies of all Plans and Specifications without expense to Contractor and Contractor shall keep one copy of same consistently accessible on the job site.

## 12. RIGHT OF ENTRY

The Owner's Representative may make periodic visits to the site to observe the progress or quality of the executed work and to determine, in general, if the work is proceeding in accordance with the contract documents. Owner's Representative shall not be required to make exhaustive or continuous onsite inspections to check the quality or quantity of the work, nor shall Owner's Representative be responsible for the construction means, methods, techniques, sequences or procedures, or the safety precautions incident thereto. Notwithstanding the Owner's Representative's rights of entry hereunder, the Owner's Representative shall not be responsible for the Contractor's failure to perform the work in accordance with the Contract Documents.

## 13. CONSTRUCTION STAKING

All construction staking will be supplied by the CONTRACTOR. The ENGINEER will not furnish any construction staking to CONTRACTOR.

The CONTRACTOR shall establish and be responsible for the correctness of alignment, elevation and position of all construction required by the contract. As a minimum, construction stakes shall be placed at intervals of 100 feet. In the event that the CONTRACTOR'S personnel are unable to construct an item of work to the tolerances allowed in the specifications with construction stakes at 100-foot intervals, the stakes shall be placed at closer intervals as directed by the ENGINEER. The CONTRACTOR shall provide a qualified and experienced work force to perform this work. He shall keep the ENGINEER informed a reasonable time in advance of the time and place he intends to work, in order that measurements may be made as necessary for the record and for determination of pay quantities.

The ENGINEER may, at his option, make spot or complete checks on all construction alignment and grades to determine the accuracy of the CONTRACTOR'S survey work. These checks, however, will not relieve the CONTRACTOR of his responsibility of constructing the work to the positions and elevations as shown on the plans or approve changes.

The CONTRACTOR shall furnish all stakes and other materials necessary to preserve control points for alignment and grades.

After the project is let to contract, the ENGINEER will furnish the CONTRACTOR, at no cost, with two (2) copies of the earthwork cross sections (when available) , two (2) copies of the computer printouts of the "Design Cross Section List" (when available), and an electronic design file showing proposed and existing surfaces (when available). The ENGINEER will also provide CONTRACTOR with the location of control points used to allow CONTRACTOR to tie into same coordinate system.

Other computations, sketches and drawings used in the design and layout of this project will also be made available to the CONTRACTOR, but these items will not relieve the CONTRACTOR of his responsibility as set out above.

#### 14. OWNER'S REPRESENTATIVE'S AUTHORITY AND DUTY

Unless otherwise specified, it is mutually agreed between the parties to this Agreement that the Owner's Representative has the authority to review all work included herein. The Owner's Representative has the authority to stop the work whenever such stoppage may be necessary to ensure the proper execution of the contract. The Owner's Representative shall, in all cases, determine the amounts and quantities of the several kinds of work which are to be paid for under the contract documents, and shall determine all questions in relation to said work and the construction thereof, and shall, in all cases, decide every question which may arise relative to the execution of this contract on the part of said Contractor. The decision of the Owner's Representative shall be conclusive in the absence of written objection to same delivered to Owner's Representative within fifteen (15) calendar days of any decision or direction by Owner's Representative. In the absence of timely written objection by Contractor, as provided herein, any and all objection or objections shall be deemed waived.

#### 15. SUPERINTENDENCE AND INSPECTION

It is agreed by the Contractor that the Owner's Representative shall be and is hereby authorized to appoint from time to time such subordinate engineers, supervisors, or inspectors as the said Owner's Representative may deem proper to inspect the materials furnished and the work done under this Agreement, and to see that said material is furnished and said work is done in accordance with the specifications therefore. The Contractor shall furnish all reasonable aid and assistance required by the subordinate engineers, supervisors or inspectors for the proper inspection and examination of the work. The Contractor shall regard and obey the directions and instructions of any subordinate engineers, supervisors or inspectors so appointed, when such directions and instructions are consistent with the obligations of this Agreement and accompanying plans and specifications provided, however, should the Contractor object to any orders by any subordinate engineer, supervisor or inspector, the Contractor may within fifteen (15) calendar days make written appeal to the Owner's Representative for its decision. In the absence of timely written objection by Contractor, as provided herein, any and all objection or objections shall be deemed waived.

#### 16. CONTRACTOR'S DUTY AND SUPERINTENDENCE

The Contractor shall give personal attention to the faithful prosecution and completion of this contract and shall keep on the work, during its progress, a competent superintendent and any necessary assistants, all satisfactory to Owner's Representative. The superintendent shall represent the Contractor in its absence and all directions given

to superintendent shall be binding as if given to the Contractor. It is expressly agreed that adequate supervision by competent and reasonable representatives of the Contractor is essential to the proper performance of the work and lack of such supervision shall be grounds for suspending operations of the Contractor.

The work, from its commencement to completion, shall be under the exclusive charge and control of the Contractor and all risk in connection therewith shall be borne by the Contractor.

The Owner or Owner's Representatives shall not be responsible for the acts or omissions of the Contractor, or any subcontractors, or any of Contractor's agents or employees, or any other persons performing any of the work.

#### 17. CONTRACTOR'S UNDERSTANDING

It is understood and agreed that the Contractor has, by careful examination, satisfied itself as to the nature and location of the work, the confirmation of the ground, the character, quality and quantity of materials to be encountered, the character of equipment and facilities needed preliminary to and during the prosecution of the work, and the general and local conditions, and all other matters which in any way affect the work under the contract documents. No oral agreement or conversation with any Office, agent, or employee of the Owner, or Owner's Representative either before or after the execution of this contract, shall affect or modify any of the terms or obligations herein contained. Subject to the rights of Owner as set forth in Paragraph 23 hereof, all modifications and/or amendments to the contract documents, shall be in writing, and executed by Owner's Representative and Contractor.

Unless otherwise specified herein, all loss, expense or damage to Contractor arising out of the nature of the work to be done, or from the action of the elements, or from any unforeseen circumstance and the prosecution of the work, shall be sustained and borne by the Contractor at its own cost and expense.

#### 18. CHARACTER OF WORKERS

The Contractor agrees to employ only orderly and competent workers, skillful in the performance in the type of work required under this contract, to do the work; and agrees that whenever the Owner's Representative shall inform Contractor in writing that any man or men on the work, are, in Owner's Representative's sole opinion, incompetent, unfaithful, disorderly, or otherwise unacceptable to Owner or Owner's Representative, such man or men shall be discharged from the work and shall not again be employed on the work without the Owner's Representative's written consent.

#### 19. CONSTRUCTION PLANT

The Contractor shall provide all labor, tools, equipment, machinery and materials necessary in the prosecution and completion of this contract where it is not otherwise specifically provided that Owner shall furnish same, and it is also understood that Owner shall not be held responsible for the care, preservation, conservation, or protection of any materials, tools, equipment or machinery or any part of the work until it is finally completed and accepted.

The building of structures for the housing of men or equipment are permitted only at such places as the Owner's Representative shall consent or direct, and the sanitary conditions of the grounds in or about such structure shall at all times be maintained in a manner satisfactory to the Owner's Representative.

#### 20. SANITATION

Necessary sanitary conveniences for the use of laborers on the work site, properly secluded from public observation, shall be constructed and maintained by the Contractor in such manner and at such points as shall be approved by the Owner's Representative and their use shall be strictly enforced.

## 21. OBSERVATION AND TESTING

The Owner or Owner's Representative shall have the right at all times to observe and test the work. Contractor shall make necessary arrangements and provide proper facilities and access for such observation and testing at any location wherever such work is in preparation or progress. Contractor shall ascertain the scope of any observation that may be contemplated by Owner or Owner's Representative and shall give ample notice as to the time each part of the work shall be ready for such observation. Owner or Owner's Representative may reject any such work found to be defective or not in accordance with the contract documents, regardless of the stage of its completion or the time or place of discovery of such errors and regardless of whether Owner's Representative has previously accepted the work through oversight or otherwise. If any such work should be covered without approval or consent of the Owner, it must, if requested by Owner or Owner's Representative, be uncovered for examination at Contractor's expense. In the event that any part of the work is being fabricated or manufactured at a location where it is not convenient for Owner or Owner's Representative to make observations of such work or require testing of said work, then in such event Owner or Owner's Representative may require Contractor to furnish Owner or Owner's Representative certificates of inspection, testing or approval made by persons competent to perform such tasks at the location where that part of the work is being manufactured or fabricated. All such tests shall be in accordance with the methods prescribed by the American Society for Testing and Materials or such other applicable organization as may be required by law or the contract documents.

If any such work which is required to be inspected, tested, or approved is covered up without written approval or consent of the Owner or Owner's Representative, it must, if requested by the Owner or Owner's Representative, be uncovered for observation and testing at the Contractor's expense. The cost of all such inspections, tests and approvals shall be borne by the Contractor unless otherwise provided herein. Any work which fails to meet the requirements of any such tests, inspections or approvals, and any work which meets the requirements of any such tests or approvals but does not meet the requirements of the contract documents shall be considered defective, and shall be corrected at the Contractor's expense.

Neither observations by the Owner or Owner's Representative, nor inspections, tests, or approvals made by Owner, Owner's Representative, or other persons authorized under the contract documents to make such inspections, tests, or approvals shall relieve the Contractor from its obligation to perform the work in accordance with the requirements of the contract documents.

## 22. DEFECTS AND THEIR REMEDIES

It is expressly agreed that if the work or any part thereof, or any material brought on the site of the work for use in the work or selected for the same, shall be deemed by the Owner or Owner's Representative as unsuitable or not in conformity with plans, specifications and/or contract documents, the Contractor shall, after receipt of written notice thereof from the Owner's Representative, forthwith remove such material and rebuild or otherwise remedy such work so that it shall be in full accordance with the contract documents. It is further agreed that any remedial action contemplated as hereinabove set forth shall be at Contractor's expense.

## 23. CHANGES AND ALTERATIONS

The Contractor further agrees that the Owner may make such changes and alterations as the Owner may see fit, in the line, grade, form dimensions, plans or materials for the work herein contemplated, or any part thereof, either before or after the beginning of the construction, without affecting the validity of this contract and the accompanying bond.

If such changes or alterations diminish the quantity of the work to be done, they shall not constitute the basis for a claim for damages, or anticipated profits on the work that may be dispensed with. If they increase the amount of work, and the increased work can fairly be classified under the specifications, such increase shall be paid according to the quantity actually done and at the unit price established for such work under this contract; otherwise such additional work shall be paid for as provided under Extra Work. In case the Owner shall make such changes or alterations as shall make useless any work already done or material already furnished or used in said work, then the

Owner shall recompense the Contractor for any material or labor so used, and for actual expenses incurred in preparation for the work as originally planned.

## 24. EXTRA WORK

The term "extra work" as used in this contract shall be understood to mean and include all work that may be required by the Owner or Owner's Representative to be done by the Contractor to accomplish any change, alteration or addition to the work as shown on the plans and specifications or contract documents and not covered by Contractor's bid, except as provided under Changes and Alterations herein.

It is agreed that the Contractor shall perform all extra work under the direction of the Owner's Representative when presented with a written work order signed by the Owner's Representative; subject, however, to the right of the Contractor to require written confirmation of such extra work order by the Owner. It is also agreed that the compensation to be paid to the Contractor for performing said extra work shall be determined by the following methods:

- Method (A) - By agreed unit prices; or
- Method (B) - By agreed lump sum; or
- Method (C) - If neither Method (A) or Method (B) be agreed upon before the extra work is commenced, then the Contractor shall be paid the lesser of the following: (1) actual field cost of the extra work, plus fifteen (15%) percent; or (2) the amount that would have been charged by a reasonable and prudent Contractor as a reasonable and necessary cost for performance of the extra work.

In the event said extra work be performed and paid for under Method (C)(1), then the provisions of this paragraph shall apply and the "actual field cost" is hereby defined to include the cost of all workmen, such as foremen, timekeepers, mechanics and laborers, materials, supplies, teams, trucks, rentals on machinery and equipment, for the time actually employed or used on such extra work, plus actual transportation charges necessarily incurred, together with all expenses incurred directly on account of such extra work, including Social Security, Old Age Benefits, Maintenance Bonds, Public Liability and Property Damage and Workers' Compensation and all other insurances as may be required by law or ordinances or directed by the Owner or Owner's Representative, or by them agreed to. Owner's Representative may direct the form in which accounts of the actual field cost shall be kept and records of these accounts shall be made available to the Owner's Representative. The Owner's Representative may also specify in writing, before the work commences, the method of doing the work and the type and kind of machinery and equipment to be used; otherwise, these matters shall be determined by the Contractor. Unless otherwise agreed upon, the prices for the use of machinery and equipment shall be determined by using 100%, unless otherwise specified, of the latest Schedule of Equipment and Ownership Expenses adopted by the Associated General Contractors of America. Where practical, the terms and prices for the use of machinery and equipment shall be incorporated in the written extra work order. The fifteen percent (15%) of the actual field cost to be paid to Contractor shall cover and compensate Contractor for its profit, overhead, general superintendence and field office expense, and all other elements of cost and expense not embraced within the actual field cost as herein defined, save that where the Contractor's Camp or Field Office must be maintained primarily on account of such Extra Work, then the cost to maintain and operate the same shall be included in the "actual field cost."

No claim for extra work of any kind shall be allowed unless ordered in writing by Owner's Representative. In case any orders or instructions appear to the Contractor to involve extra work for which Contractor should receive compensation or an adjustment in the construction time, Contractor shall prior to commencement of such extra work, make written request to the Owner's Representative for a written order authorizing such extra work. Should a difference of opinion arise as to what does or does not constitute extra work or as to the payment therefore, and the Owner's Representative insists upon its performance, the Contractor shall proceed with the work after making written request for written order and shall keep adequate and accurate account of the actual field cost thereof, as provided under Method (C) (1). If Contractor does not notify Owner's Representative before the commencement of any extra work, any claim for payment due to alleged extra work shall be deemed waived.



25. DISCREPANCIES AND OMISSIONS

It is further agreed that it is the intent of the contract documents that all work described in the bid, the specifications, plans and other contract documents, is to be done for the prices quoted by the Contractor and that such price shall include all appurtenances necessary to complete the work in accordance with the intent of these contract documents as interpreted by Owner's Representative. **Notices of any discrepancies or omissions in these plans, specifications, or contract documents, shall be given to the Owners' Representative and a clarification obtained before the bids are received, and if no such notice is received by the Owner's Representative prior to the opening of bids, then it shall be deemed that the Contractor fully understands the work to be included and has provided sufficient sums in its bid to complete the work in accordance with these plans and specifications. If Contractor does not notify Owner's Representative before bidding of any discrepancies or omissions, then it shall be deemed for all purposes that the plans and specifications are sufficient and adequate for completion of the project. It is further agreed that any request for clarification must be submitted no later than **October 31, 2016 at 12:00 P.M. CST.****

26. RIGHT OF OWNER TO MODIFY METHODS AND EQUIPMENT

If at any time the methods or equipment used by the Contractor are found to be inadequate to secure the quality of work with the rate of progress required under this contract, the Owner or Owner's Representative may order the Contractor in writing to increase their safety or improve their character and efficiency and the Contractor shall comply with such order. If, at any time, the working force of the Contractor is inadequate for securing the progress herein specified, the Contractor shall, if so ordered in writing, increase its force or equipment, or both, to such an extent as to give reasonable assurance of compliance with the schedule of progress.

27. PROTECTION AGAINST ACCIDENT TO EMPLOYEES AND THE PUBLIC AND GENERAL INDEMNITY

The Contractor shall take out and procure a policy or policies of Workers' Compensation Insurance with an insurance company licensed to transact business in the State of Texas, which policy shall comply with the Workers' Compensation laws of the State of Texas. The Contractor shall at all times exercise reasonable precaution for the safety of employees and others on or near the work and shall comply with all applicable provisions of federal, state and municipal laws and building and construction codes. All machinery and equipment and other physical hazards shall be guarded in accordance with the "Manual of Accident Prevention in Construction" of Associated General Contractors of America, except where incompatible with federal, state or municipal laws or regulations. The Contractor, its sureties and insurance carriers shall defend, indemnify and hold harmless the Owner and all of its Offices, agents and employees against any all losses, costs, damages, expenses, liabilities, claims and/or causes of action, whether known or unknown, fixed, actual, accrued or contingent, liquidated or unliquidated, including, but not limited to, attorneys' fees and expenses, in connection with, incident to, related to, or arising out of, the Contractor's or any subcontractor's, agent's or employee's, in any manner whatsoever, omission, execution and/or supervision of this contract, and the project which is the subject matter of this contract.

The safety precautions taken shall be the sole responsibility of the Contractor, in its sole discretion as an Independent Contractor; inclusion of this paragraph in the Agreement, as well as any notice which may be given by the Owners or the Owner's Representative concerning omissions under this paragraph as the work progresses, are intended as reminders to the Contractor of its duty and shall not be construed as any assumption of duty to supervise safety precautions by either the Contractor or any of its subcontractors.

28. CONTRACTOR'S INSURANCE

The Contractor shall not commence work under this contract until he has obtained all insurance as required in **Section 7 of the bid document**. Proof of coverage shall be furnished to the City and written notice of cancellation or any material change shall be provided ten (10) calendar days in advance of cancellation or change. All policies of insurance, required herein, including policies of insurance required to be provided by Contractor and its subcontractors, shall contain a waiver of any and all of the insurer's or payor's, in the event of self-insurance, rights to subrogation that any such insurer or payor, in the event of self-insurance, may acquire by virtue of payment of

any loss under such insurance or self-insurance. All certificates of insurance submitted to the City in conformity with the provisions hereof shall establish such waiver.

The Contractor shall procure and carry at its sole cost and expense through the life of this contract, insurance protection as hereinafter specified. Coverage in excess of that specified herein also shall be acceptable. Such insurance shall be carried with an insurance company authorized to transact business in the State of Texas and shall cover all operations in connection with this contract, whether performed by the Contractor or a subcontractor, or separate policies shall be provided covering the operation of each subcontractor. A certificate of insurance specifying each and all coverages shall be submitted prior to contract execution.

- 28.1 By signing this contract or providing or causing to be provided a certificate of coverage, the Contractor is representing to the governmental entity that all employees of the Contractor who shall provide services on the project shall be covered by worker's compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.
- 28.2 The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor which entitles the governmental entity to declare the contract void if the Contractor does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.
- 28.3 Contractor shall:
  - (a) provide coverage for its employees providing services on a project, for the duration of the project based on proper reporting of classification codes and payroll amounts and filling of any coverage agreements;
  - (b) provide a certificate of coverage showing workers' compensation coverage to the governmental entity prior to beginning work on the project;
  - (c) provide the governmental entity, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the project;
  - (d) obtain from each person providing services on a project, and provide to the governmental entity:
    - (i) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and
    - (ii) no later than seven days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
  - (e) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
  - (f) notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project;
  - (g) post a notice on each project site informing all persons providing services on the project that they are required to be covered, and stating how a person may verify current coverage and report failure to provide coverage. This notice does not satisfy other posting requirements imposed by the Texas Worker's Compensation Act or other commission rules. This notice must be printed with a title in at least 30 point bold type and text in at least 19 point normal type, and shall be in both English and Spanish and any other

language common to the worker population. The text for the notices shall be the following text provided by the commission on the sample notice, without any additional words or changes:

#### **REQUIRED WORKERS' COMPENSATION COVERAGE**

***"The law requires that each person working on this site or providing services related to this construction project must be covered by workers' compensation insurance. This includes persons providing, hauling, or delivering equipment or materials, or providing labor or transportation or other service related to the project, regardless of the identity of their employer or status as an employee." "Call the Texas Workers' Compensation Commission at 800-372-7713 or 512-804-4000 ([www.tdi.state.tx.us](http://www.tdi.state.tx.us)) to receive information of the legal requirements for coverage, to verify whether your employer has provided the required coverage, or to report an employer's failure to provide coverage;"***

- (h) contractually require each person with whom it contracts to provide services on a project, to:
  - (i) provide coverage based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements for all of its employees providing services on the project, for the duration of the project;
  - (ii) provide a certificate of coverage to the Contractor prior to that person beginning work on the project;
  - (iii) include in all contracts to provide services on the project the following language:

**"By signing this contract or providing or causing to be provided a certificate of coverage, the person signing this contract is representing to the governmental entity that all employees of the person signing this contract who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reprinting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions."**

#### 29. PROTECTION AGAINST CLAIMS OF SUBCONTRACTORS, LABORERS, MATERIALMEN, AND FURNISHERS OF MACHINERY, EQUIPMENT AND SUPPLIES

Without limiting, in any way, manner or form, the indemnity provided by Contractor in paragraph 27 hereof, the Contractor agrees that it will indemnify and save the Owner and all of its Offices, agents and employees, harmless against any and all claims, liabilities, losses, damages, expenses and causes of action arising out of, in any way, manner or form, the demands of subcontractors, laborers, workmen, mechanics, material men and furnishers of machinery and parts thereof, equipment, power tools, and supplies, incurred in the performance of this contract and the project which is the subject matter of this contract. When Owner so desires, the Contractor shall furnish satisfactory evidence that all obligations of the nature hereinabove designated have been paid, discharged or waived.

#### 30. PROTECTION AGAINST ROYALTIES OR PATENT INVENTION

The Contractor shall pay all royalties and license fees, and shall provide for the use of any design, device, material or process covered by letters patent or copyright by suitable legal agreement with the Patentee or owner thereof. Without limiting, in any way, manner or form, the indemnity provided by Contractor in paragraph 27 hereof, the Contractor shall defend all suits or claims for infringement of any patent or copyrights and shall indemnify and save the Owner, and all of its Offices, agents and employees harmless from any loss on account thereof, except that Owner shall defend all such suits and claims and shall be responsible for all such loss when a particular design, device, material or process or the product of a particular manufacturer or manufacturers is specified or required in these contract documents by Owner; provided, however, if choice of alternate design, device, material or process is allowed to the Contractor, then Contractor shall indemnify and save Owner, and all of its Offices, agents and employees harmless from any loss on account thereof. Notwithstanding anything herein to the contrary, if the material or process specified or required by Owner and/or this contract is an infringement, the Contractor shall be

responsible for such loss unless it gives written notice of such infringement to the Owner's Representative prior to bidding.

### 31. LAWS AND ORDINANCES

The Contractor shall at all times observe and comply with all federal, state and local laws, ordinances and regulations, which in any manner affect the contract or the work, and without limiting, in any way, manner or form, the indemnity provided by Contractor in paragraph 27 hereof, Contractor shall indemnify and save harmless the Owner, and all of its Offices, agents, and employees against any claims arising from the violation of any such laws, ordinances, and regulations, whether by the Contractor, its employees, or subcontractors. If the Contractor observes that the plans and specifications are at variance therewith, he shall notify the Owner's Representative in writing prior to bidding and any necessary changes shall be adjusted as provided in the contract for changes in the work. In the absence of timely written notification to Owner's Representative of such variance or variances within said time, any objection and/or assertion that the plans and specifications are at variance with any federal, state or local laws, ordinances or regulations shall be deemed waived. If the Contractor, its employees or subcontractors perform any work contrary to such laws, ordinances, rules and regulations, and without such notice to the Owner's Representative, Contractor shall bear all costs arising therefrom.

The Owner is a municipal corporation of the State of Texas and the law from which it derives its powers, insofar as the same regulates the objects for which, or the manner in which, or the conditions under which the Owner may enter into contracts, shall be controlling, and shall be considered as part of this contract to the same effect as though embodied herein.

### 32. SUBCONTRACTING

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

### 33. TIME FOR SUBSTANTIAL COMPLETION AND LIQUIDATED DAMAGES

It is hereby understood and mutually agreed by and between the Contractor and the Owner, that the date of beginning and time for completion as specified in the contract documents, of work to be done hereunder are essential conditions of this contract; and it is further mutually understood and agreed that the work embraced in this contract shall be commenced as provided in the contract documents.

If the Contractor should neglect, fail, or refuse to substantially complete the work within the time herein specified, then the Contractor does hereby agree as part of the consideration for the awarding of this contract, the Owner may withhold permanently from Contractor's total compensation, the sum of **\$100 per day for 1st 10 working days and \$250 per day for anything after the 1st 10 working days**, not as a penalty, but as liquidated damages for the breach of the contract as herein set forth for each and every working day that the Contractor shall be in default after the time stipulated for substantially completing the work.

It is expressly understood and agreed, by and between Contractor and the Owner, that the time for the substantial completion of the work described herein is reasonable time for the completion of the same, taking into consideration the average climatic range and conditions and usual industrial conditions prevailing in this locality. The amount is fixed and agreed upon by and between the Contractor and the Owner because the actual damages the Owner would sustain in such event would be difficult and/or impossible to estimate, however, the amount agreed upon herein is a reasonable forecast of the amount necessary to render just compensation to Owner, and is expressly agreed to be not disproportionate to actual damages as measured at time of breach.

IT IS FURTHER AGREED AND UNDERSTOOD BETWEEN THE CONTRACTOR AND OWNER THAT TIME IS OF THE ESSENCE OF THIS CONTRACT.

#### 34. TIME AND ORDER OF COMPLETION

It is the meaning and intent of this contract, unless otherwise herein specifically provided, that the Contractor shall be allowed to prosecute its work at such time and sessions, in such order of precedence, and in such manner as shall be most conducive to economy of construction; provided, however, that the order and time of prosecution shall be such that the work shall be substantially completed as a whole and in part, in accordance with this contract, the plans and specifications, and within the time of completion designated in the bid; provided, also, that when the Owner is having other work done, either by contract or by its own force, the Owner's Representative may direct the time and manner of constructing work done under this contract so that conflicts will be avoided and the construction of the various works being done for the Owner shall be harmonized.

The Contractor shall submit, at such times as may reasonably be requested by the Owner's Representative, schedules which shall show the order in which the Contractor intends to carry on the work, with dates at which the Contractor will start the several parts of the work and estimated dates of completion of the several parts.

#### 35. TIME OF PERFORMANCE

The Contractor agrees that it has submitted its bid in full recognition of the time required for the completion of this project, taking into consideration the average climatic range and industrial conditions prevailing in this locality, and has considered the liquidated damage provisions of paragraph 34 hereinabove set forth and expressly agrees that it shall not be entitled to, nor will it request, an extension of time on this contract, except when its work has been delayed by an act or neglect of the Owner, Owner's Representative, employees of the Owner or other contractors employed by the Owner, or by changes ordered in the work, or by strike, walkouts, acts of God or the public enemy, fire or flood. Any request for extension shall be in writing with the written request for same setting forth all justifications, in detail, for the request, and submitted to Owner's Representative within twenty (20) calendar days of the occurrence of the event causing said delay. A failure by Owner's Representative to affirmatively grant the extension no later than twenty (20) calendar days of written submission by Contractor shall be deemed a denial, and final. Further, in the absence of timely written notification of such delay and request for extension, as provided herein, any request for extension by Contractor shall be deemed waived.

#### 36. HINDRANCE AND DELAYS

In executing the contract, the Contractor agrees that in undertaking to complete the work within the time herein fixed, Contractor has taken into consideration and made allowances for all hindrances and delays incident to such work, whether growing out of delays due to unusual and unanticipated circumstances, difficulties or delays in securing material or workmen, or any other cause or occurrence. No charge shall be made by the Contractor for hindrance or delays from any cause during the progress of any part of the work embraced in this contract except where the work is stopped by order of the Owner or Owner's Representative for the Owner's convenience, in which event, such expense as in the sole judgment of the Owner's Representative that is caused by such stoppage shall be paid by Owner to Contractor.

#### 37. QUANTITIES AND MEASUREMENTS

No extra or customary measurements of any kind will be allowed, but the actual measured or computed length, area, solid contents, number and weight only shall be considered, unless otherwise specifically provided. In the event this contract is let on a unit price basis, then Owner and Contractor agree that this contract, including the specifications, plans and other contract documents are intended to show clearly all work to be done and material to be furnished hereunder. Where the estimated quantities are shown, and only when same are expressly stated to be estimates, for the various classes of work to be done and material to be furnished under this contract, they are approximate and are to be used only as a basis for estimating the probable cost of the work and for comparing their bids offered for the work. In the event the amount of work to be done and materials to be furnished are expressly stated to be estimated, and only when same are expressly stated to be estimated, it is understood and agreed that the actual amount of work to be done and the materials to be furnished under this contract may differ somewhat from



these estimates, and that where the basis for payment under this contract is the unit price method, payment shall be for the actual amount of work done and materials furnished on the project.

38. PROTECTION OF ADJOINING PROPERTY

The Contractor shall take proper means to protect the adjacent or adjoining property or properties in any way encountered, which may be injured or seriously affected by any process of construction to be undertaken under this agreement, from any damage or injury by reason of said process of construction; and Contractor shall be liable for any and all claims for such damage on account of his failure to fully protect all adjacent property. Without limiting, in any way, manner and form, the indemnity provided by Contractor in paragraph 27 hereof, the Contractor agrees to indemnify, save and hold harmless the Owner, and any of its Offices, agents and employees, against any and all claims or damages due to any injury to any adjacent or adjoining property, related to, arising from or growing out of the performance of this contract.

39. PRICE FOR WORK

In consideration of the furnishing of all necessary labor, equipment and material and the completion of all work by the Contractor, and on the delivery of all materials embraced in this contract in full conformity with the specifications and stipulations herein contained, the Owner agrees to pay the Contractor the price set forth in the bid proposal attached hereto, which has been made a part of this contract, and the Contractor hereby agrees to receive such price in full for furnishing all materials and all labor required for the aforesaid work, also, for all expenses incurred by Contractor and for well and truly performing the same and the whole thereof in the manner and according to this agreement, the attached specifications, plans, contract documents and requirements of Owner's Representative.

40. PAYMENTS

No payments made or certificates given shall be considered as conclusive evidence of the performance of the contract, either wholly or in part, nor shall any certificate or payment be considered as acceptance of defective work. Contractor shall at any time requested during the progress of the work furnish the Owner or Owner's Representative with a verifying certificate showing the Contractor's total outstanding indebtedness in connection with the work. Before final payment is made, Contractor shall satisfy Owner, by affidavit or otherwise, that there are no outstanding liens against Owner's premises by reason of any work under the contract. Acceptance by Contractor of final payment of the contract price shall constitute a waiver of all claims against Owner, Owner's agents and employees, which have not theretofore been timely filed as provided in this contract.

41. PARTIAL PAYMENTS

On or before the tenth day of each month, the Contractor shall submit to Owner's Representative an application for partial payment or, if the Contractor does not submit such application, the Owner's Representative shall determine the amount to be partially paid. Owner's Representative shall review said application for partial payment if submitted, and the progress of the work made by the Contractor and if found to be in order, shall prepare a certificate for partial payment showing as completely as practical the total value of the work done by the Contractor up to and including the last day of the preceding month. The determination of the partial payment by the Owner's Representative shall be in accordance with Paragraph 14 hereof.

The Owner shall then pay the Contractor on or before the fifteenth day of the current month the total amount of the Owner's Representative's Certificate of Partial Payment, less 5% of the amount thereof, which 5% shall be retained until final payment, and further, less all previous payments and all further sums that may be retained by Owner under the terms of the contract documents.

Any partial payment made hereunder shall not constitute a waiver by the Owner of any and all other rights to enforce the express terms of the contract documents, and all remedies provided therein, as to any and all work performed,



to be performed and/or materials delivered hereunder, including, but limited to, work to which said partial payment is attributable.

42. SUBSTANTIAL COMPLETION

Contractor shall give Owner's Representative written notice of substantial completion. Within thirty-one (31) working days after the Contractor has given the Owner's Representative written notice that the work has been substantially completed, the Owner's Representative and/or the Owner shall inspect the work and within said time, if the work be found to be substantially completed in accordance with the contract documents, the Owner's Representative shall issue to the Owner and Contractor a certificate of substantial completion. Notwithstanding the issuance of a certificate of substantial completion, Contractor shall proceed with diligence to finally complete the work within the time provided in this contract.

43. FINAL COMPLETION AND PAYMENT

The Contractor shall give written notice to Owner's Representative of final completion. Upon written notice of final completion, the Owner's Representative shall proceed to make final measurement to determine whether final completion has occurred. If the Owner's Representative determines final completion has occurred, Owner's Representative shall so certify to the Owner. Upon certification by Owner's Representative of final completion, Owner shall pay to the Contractor on or before the 31st working day after the date of certification of final completion, the balance due Contractor under the terms of this agreement. Neither the certification of final completion nor the final payment, nor any provisions in the contract documents shall relieve the Contractor of the obligation for fulfillment of any warranty which may be required in the contract documents and/or any warranty or warranties implied by law or otherwise.

44. CORRECTION OF WORK

Contractor shall promptly remove from Owner's premises all materials condemned by the Owner's Representative on account of failure to conform to the contract documents, whether actually incorporated in the work or not, and Contractor shall at its own expense promptly replace such condemned materials with other materials conforming to the requirements of the contract documents. Contractor shall also bear the expense of restoring all work of other contractors damaged by any such removal or replacement. If Contractor does not remove and replace any such condemned work within a reasonable time after a written notice by the Owner or the Owner's Representative, Owner may remove and replace it at Contractor's expense.

Neither the final payment, nor certification of final completion or substantial completion, nor any provision in the contract documents shall relieve the Contractor of responsibility for faulty materials or workmanship, and Contractor shall remedy any defects due thereto and pay for any damage to other work resulting therefrom, which shall appear within a period of one (1) year from the date of certification of final completion by Owner's Representative.

45. PAYMENT WITHHELD

The Owner or Owner's Representative may, on account of subsequently discovered evidence, withhold or nullify the whole or part of any certification to such extent as may be necessary to protect itself from loss on account of:

- (a) Defective work not remedied and/or work not performed.
- (b) Claims filed or reasonable evidence indicating possible filing of claims.
- (c) Damage to another contractor.

When the above grounds are removed, or the Contractor provides a surety bond satisfactory to the Owner, in the amount withheld, payment shall be made for amounts withheld because of them.

46. CLAIM OR DISPUTE

It is further agreed by both parties hereto that all questions of dispute or adjustment presented by the Contractor shall be in writing and filed with the Owner's Representative within fifteen (15) calendar days after the Owner's Representative has given any direction, order or instruction to which the Contractor desires to take exception. Timely written notice of dispute as provided in this contract of any decision by Owner's Representative or Owner shall be a condition precedent to the bringing and/or assertion of any action or claim by Contractor of any right under this Contract. If the matters set forth in the notice of dispute are not granted or otherwise responded to by Owner's Representative within fifteen (15) calendar days of receipt of notice of dispute by Owner's Representative, said objections shall be deemed denied. Any decision by the Owner's Representative, or deemed denial by the Owner's Representative, shall be final and conclusive in the absence of fraud. It is further agreed that the acceptance by the Contractor of the final payment shall be a bar to any and all claims of the Contractor, and constitute a waiver of the right to assert any claim against Owner, Owner's agents and employees and Owner's Representative, by Contractor.

47. NON-COMPLIANCE AND/OR ABANDONMENT BY CONTRACTOR

In case the Contractor should (1) abandon and fail or refuse to resume work within fifteen (15) calendar days after written notification from the Owner or the Owner's Representative, or (2) if the Contractor fails to comply with the written orders of the Owner's Representative, when such orders are consistent with this contract, then the Surety on the bond shall be notified in writing and directed to complete the work and a copy of said notice shall be delivered to the Contractor. In the event a bond is not required by law, or otherwise obtained by the Contractor, no further notice of such non-compliance to Contractor shall be required.

After receiving said notice of abandonment or non-compliance, the Contractor shall not remove from the work any machinery, equipment, tools, materials or supplies then on the job, but the same, together with any materials and equipment under the contract for work, may be held for use on the work by the Owner or the Surety of the Contractor, or another contractor, in completion of the work; and the Contractor shall not receive any rental or credit therefore (except when used in connection with Extra Work, where credit shall be allowed as provided for under paragraph 24 of this contract); it being understood that the use of such equipment and materials will ultimately reduce the cost to complete the work and be reflected in the final settlement.

In the event the Contractor, or Surety, whichever is applicable, should fail to commence compliance with the notice hereinbefore provided within ten (10) calendar days after service of such notice, and/or shall fail to proceed with diligence to complete the project as contemplated and in compliance with all terms and provisions of the contract documents, then the Owner may exercise any and all remedies available to it pursuant to law, contract, equity or otherwise, including, but not limited to, providing for completion of the work in either of the following elective manners:

- (a) The Owner may employ such force of men and use of machinery, equipment, tools, materials and supplies as said Owner may deem necessary to complete the work and charge the expense of such labor, machinery, equipment, tools, materials and supplies to said Contractor, and the expense so charged shall be deducted and paid by the Owner out of such moneys as may be due, or that may thereafter at any time become due to the Contractor under and by virtue of this Agreement. In case such expense is less than the sum which would have been payable under this contract, if the same had been completed by the Contractor, then said Contractor shall receive the difference. In case such expense is greater than the sum which would have been payable under this contract, if the same had been completed by said Contractor, then the Contractor and/or its Surety shall pay the amount of such excess to the Owner; or
- (b) The Owner, under sealed bids, after notice published as required by law, at least twice in a newspaper having a general circulation in the County of location of the work, may let the contract for the completion of the work under substantially the same terms and conditions which are provided in this contract. In case of any increase in cost to the Owner under the new contract as compared to what would have been the cost under this contract, such increase shall be charged to the Contractor and the Surety shall be and remain

bound therefore. Should the cost to complete any such new contract prove to be less than that which would have been the cost to complete the work under this contract, the Contractor or his Surety shall be credited therewith.

In the event the Owner's Representative elects to complete the work, as described above, when the work shall have been finally completed, the Contractor and his Surety shall be so notified and certification of completion as provided in paragraph 44 hereinabove set forth, shall be issued. A complete itemized statement of the contract accounts, certified to by Owner's Representative as being correct shall then be prepared and delivered to Contractor and his Surety, if applicable, whereon the Contractor or his Surety, or the Owner as the case may be, shall pay the balance due as reflected by said statement within 30 days after the date of certification of completion.

In the event the statement of accounts shows that the cost to complete the work is less than that which would have been the cost to the Owner had the work been completed by the Contractor under the terms of this contract, or when the Contractor and/or his Surety, if applicable, shall pay the balance shown to be due by them to the Owner, then all machinery, equipment, tools, materials or supplies left on the site of the work shall be turned over to the Contractor and/or his Surety, if applicable. Should the cost to complete the work exceed the contract price, and the Contractor and/or his Surety, if applicable, fail to pay the amount due the Owner within the time designated hereinabove, and there remains any machinery, equipment, tools, materials or supplies on the site of the work, notice thereof, together with an itemized list of such equipment and materials shall be mailed to the Contractor and his Surety, if applicable, at the respective addresses designated in this contract; provided, however, that actual written notice given in any manner will satisfy this condition. After mailing, or other giving of such notice, such property shall be held at the risk of the Contractor and his Surety, if applicable, subject only to the duty of the Owner to exercise ordinary care to protect such property. After fifteen (15) calendar days from the date of said notice the Owner may sell such machinery, equipment, tools, materials or supplies and apply the net sum derived from such sale to the credit of the Contractor and his Surety, if applicable. Such sale may be made at either public or private sale, with or without notice, as the Owner may elect. The Owner shall release any machinery, equipment, tools, materials, or supplies that remain on the jobsite and belong to persons other than the Contractor or his Surety, if applicable, to their proper owners.

The remedies provided to Owner by law, equity, contract, or otherwise, shall be cumulative, to the extent permitted by law. It is expressly agreed and understood that the exercise by Owner of the remedies provided in this paragraph shall not constitute an election of remedies on the part of Owner, and Owner, irrespective of its exercise of remedies hereunder, shall be entitled to exercise concurrently or otherwise, any and all other remedies available to it, by law, equity, contract or otherwise, including but not limited to, liquidated damages, as provided in paragraph 34, hereinabove set forth.

48. LIMITATION ON CONTRACTOR'S REMEDY

The remedies of Contractor hereunder shall be limited to, and Owner shall be liable only for, work actually performed by Contractor and/or its subcontractors as set forth in the contract documents, and Owner shall not be liable for any consequential, punitive or indirect loss or damage that Contractor may suffer in connection with the project which is the subject matter of this contract.

49. BONDS

The Contractor is required to furnish a performance bond in accordance with Chapter 2253, Government Code, in the amount of 100% of the total contract price in the event that said contract price exceeds \$100,000 and the Contractor is required to furnish a payment bond in accordance with Chapter 2253, Government Code, in the amount of 100% of the total contract price in the event that said contract price exceeds \$50,000. All bonds shall be submitted on forms supplied by the Owner, and executed by an approved Surety Company authorized to do business in the State of Texas. It is further agreed that this contract shall not be in effect until such bonds are so furnished.

50. SPECIAL CONDITIONS

In the event special conditions are contained herein as part of the contract documents and said special conditions conflict with any of the general conditions contained in this contract, then in such event the special conditions shall control.

51. LOSS OR EXPENSE DUE TO UNUSUAL OR UNANTICIPATED CIRCUMSTANCES

Unless otherwise specified herein, all loss, expense or damage to the Contractor arising out of the nature of the work to be done, or from the action of the elements, or from any unforeseen circumstance or from unusual obstructions or difficulties, naturally occurring, man made or otherwise, which may be encountered in the prosecution of the work, shall be sustained and borne by the Contractor at his own cost and expense.

52. INDEPENDENT CONTRACTOR

Contractor is, and shall remain, an independent contractor with full, complete and exclusive power and authority to direct, supervise, and control its own employees and to determine the method of the performance of the work covered hereby. The fact that the Owner or Owner's Representative shall have the right to observe Contractor's work during Contractor's performance and to carry out the other prerogatives which are expressly reserved to and vested in the Owner or Owner's Representative hereunder, is not intended to and shall not at any time change or effect the status of the Contractor as an independent contractor with respect to either the Owner or Owner's Representative or to the Contractor's own employees or to any other person, firm, or corporation.

53. CLEANING UP

The Contractor shall at all times keep the premises free from accumulation of debris caused by the work, and at the completion of the work Contractor shall remove all such debris and also its tools, scaffolding, and surplus materials and shall leave the work room clean or its equivalent. The work shall be left in good order and condition. In case of dispute Owner may remove the debris and charge the cost to the Contractor.

54. HAZARDOUS SUBSTANCES AND ASBESTOS

Hazardous Substances (herein so called), as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C.S. §9601(14)) and the regulations promulgated thereunder, as same may be amended from time to time, hydrocarbons or other petroleum products or byproducts and/or asbestos, in any form, shall not (i) be utilized, in any way, manner or form, in the construction of, or incorporation into, the Project; or (ii) be brought upon, placed, or located, by any party, on the Project site, or any other property of the City, without the written consent of the Owner's Representative. If Contractor believes that the utilization of a Hazardous Substance, hydrocarbons or other petroleum products or byproducts and/or asbestos is necessary in the construction of the Project, or that it is necessary to place and/or otherwise locate upon the site of the Project or other property of the City, a Hazardous Substance, hydrocarbons or other petroleum products or byproducts and/or asbestos, Contractor shall notify the Owner's Representative, and request consent therefrom, at least twenty (20) days prior to such action. Owner's Representative may grant or deny the request of Contractor and provide whatever requirements such consent, if granted, is conditioned upon, in its sole and absolute discretion. If the request of Contractor is not granted, or otherwise not responded to, by Owner's Representative within five (5) days of the receipt of said request, said request shall be deemed to be denied.

In the event Owner's Representative shall consent to the request of Contractor, Contractor shall be responsible for ensuring that all personnel involved in the Project are (i) trained for the level of expertise required for proper performance of the actions contemplated by this Contract and, in particular, in all aspects of handling, storage, disposal and exposure of Hazardous Substances, hydrocarbons or other petroleum products or byproducts and/or asbestos; and (ii) are provided and utilize all protective equipment, including without limitation, personal protective gear, necessary to provide protection from exposure to Hazardous Substances, hydrocarbons or other petroleum products or byproducts and/or asbestos.

55. NONAPPROPRIATION

All funds for payment by the City under this contract are subject to the availability of an annual appropriation for this purpose by the City. In the event of non-appropriation of funds by the City Council of the City of Texarkana for the goods or services provided under the contract, the City will terminate the contract, without termination charge or other liability, on the last day of the then-current fiscal year or when the appropriation made for the then-current year for the goods or services covered by this contract is spent, whichever event occurs first. If at any time funds are not appropriated for the continuance of this contract, cancellation shall be accepted by the Seller on thirty (30) days prior written notice, but failure to give such notice shall be of no effect and the City shall not be obligated under this contract beyond the date of termination.

56. THE CITY RIGHT TO AUDIT

At any time during the term of this Contract and for a period of four (4) years thereafter the City or a duly authorized audit representative of the City, or the State of Texas, at its expense and at reasonable times, reserves the right to audit Contractor's records and books relevant to all services provided under this Contract. In the event such an audit by the City reveals any errors/overpayments by the City, Contractor shall refund the City the full amount of such overpayments within thirty (30) days of such audit findings, or the City, at its option, reserves the right to deduct such amounts owing the City from any payments due Contractor.

57. DISCLOSING "INTERESTED PARTIES" TO A CONTRACT, HB1295

A governmental entity (the City) or state agency may not enter into a contract described by Subsection (b) with a business entity unless the business entity, in accordance with this section and rules adopted under this section submits a disclosure of interested parties to the governmental entity or state agency at the time the business entity submits the signed contract to the governmental entity or state agency.

"controlling interest" means: (1) an ownership interest or participating interest in a business entity by virtue of units, percentage, shares, stock or otherwise that exceeds 10%; (2) membership on a board of directors or other governing body of a business entity of which the board or other governing body is composed of not more than 10 members; or (3) service as an officer of business entity that has four or fewer officers or service as one of the four officers most highly compensated by a business entity that has more than four officers.

"Interested party" means a person who has a controlling interest in the business entity with whom a governmental entity or state agency contracts or who actively participated in facilitating the contract or negotiating the terms of the contract, including a broker, intermediary, adviser or attorney for the business entity.

The disclosure of interested parties must be submitted on a form prescribed by the Texas Ethics Commission that includes:

- (1) A list of each interested party for the contract of which the contracting business entity is aware; and
- (2) The signature of the authorized agent of the contracting business entity, acknowledging that the disclosure is made under oath and under penalty of perjury.

A copy of this form can be found on the Texas Ethics Commission website with instructions. <https://www.ethics.state.tx.us/tec/1295-info.htm>

## 10 SPECIAL CONDITIONS



1. **TECHNICAL SPECIFICATIONS:** Technical Specifications may be located in the 2014 edition of the Texas Department of Transportation's Standard Specifications for Construction of Highways, Streets and Bridges. These specifications may be found on the Texas Department of Transportation's website. The link to this website is listed below.

<ftp://ftp.dot.state.tx.us/pub/txdot-info/des/spec-book-1114.pdf>

2. **MATERIALS TESTING:** All materials testing called for in the plans and specifications or as required by the ENGINEER shall be performed by an independent accredited testing laboratory and shall be paid for as follows:
  - a. Design Requirement Testing: All materials provided by the CONTRACTOR for use in the project shall be tested in order to show compliance with the design requirements in the plans and specifications. This testing shall be scheduled and paid for by the CONTRACTOR prior to the use of the material at the construction site (except for concrete which by necessity is sampled at placement and tested afterward). The City shall be supplied with two copies of the test results. The ENGINEER reserves the right to request additional materials testing should he determine that in his opinion the quality of the materials(s) being used has become suspect. Should such additional design requirement testing be required, it would also be at the expense of the CONTRACTOR. Design testing for HMAC does include the daily extractions and gradations required for proof of specification compliance. The molded specimen for density purposes is considered quality control testing.
  - b. Quality Control Testing: The in place testing of materials utilized, whether they have been provided by the CONTRACTOR or existed at the construction site for the purpose of determining compliance with the plans and specifications will be termed quality control testing. Quality control testing will be performed as requested by the ENGINEER at location and frequency he determines is necessary to attain sufficient quality control. This testing will be paid for by the City and the CONTRACTOR will be supplied one copy of the results. Should the CONTRACTOR desire additional tests for his information, they will be at his own expense.
3. **PROJECT SIGN:** ~~One sign the size and design noted in the plans shall be constructed and erected as directed by the ENGINEER.~~ NOT REQUIRED FOR THIS PROJECT.
4. **STORMWATER REGULATIONS:** CONTRACTOR shall comply will all Federal, State, and Local Stormwater regulations. CONTRACTOR shall acquire all permits prior to beginning work. CONTRACTOR will assume full responsibility to ensure plans and specifications are carried out accordingly and will be responsible of any penalties levied against the OWNER due to the negligence of the CONTRACTOR. CONTRACTOR may submit their own plans that meet all regulations to OWNER for approval in case CONTRACTOR wants to implement another plan that goes above and beyond plan provided by OWNER. CONTRACTOR shall be responsible to keep plans up to date and make any necessary revisions. OWNER shall approve any additional measures that will be added to plan.

## 11 SPECIFICATIONS INDEX

**Specifications Index**  
**All TxDot Specs are Spec Book 2014**  
**(Any reference specifications are also included)**

| <b><u>Bid Item #</u></b> | <b><u>Description</u></b>                                 | <b><u>Spec</u></b>                                       |
|--------------------------|-----------------------------------------------------------|----------------------------------------------------------|
| 1                        | Mobilization                                              | TxDOT Item 500 – Mobilization                            |
| 2                        | Barricades, Signs, and Traffic Handling                   | TxDOT Item 502 - Barricades, Signs, and Traffic Handling |
| 3                        | Right Of Way Preparation                                  | TxDOT Item 100 – Preparing Right Of Way                  |
| 4                        | Conduit (PVC) (SCH 40) (2")                               | TxDOT Item 618 – Conduit                                 |
| 5                        | Conduit (PVC) (SCH 40) (2") Bore                          | TxDOT Item 618 – Conduit                                 |
| 6                        | Conduit (PVC) (SCH 40) (3")                               | TxDOT Item 618 – Conduit                                 |
| 7                        | Electrical Conductor (No. 10) (Insulated)                 | TxDOT Item 620 – Electrical Conductors                   |
| 8                        | Electrical Conductor (No. 10) (Bare)                      | TxDOT Item 620 – Electrical Conductors                   |
| 9                        | Electrical Service TY T 120/240<br>100 (NS) GS (E) SF (U) | TxDOT Item 628 – Electrical Services                     |
| 10                       | Ground Box TY A (122311) W/Apron                          | TxDOT Item 624 – Ground Boxes                            |
| 11                       | Ground Box TY A (122311)                                  | TxDOT Item 624 – Ground Boxes                            |
| 12                       | Gateway Sign                                              |                                                          |
| 13                       | Broadcast Seed (Temporary)<br>(Warm Season)               | TxDOT Item 164 – Seeding for Erosion Control             |
| 14                       | Broadcast Seed (Temporary)<br>(Cool Season)               | TxDOT Item 164 – Seeding for Erosion Control             |
| 15                       | Cellulose Fiber Mulch Seeding (Permanent)                 | TxDOT Item 164 – Seeding for Erosion Control             |

12      **GENERAL NOTES**

## GENERAL NOTES

### GENERAL:

Any proposed substitutions of equal items proposed by the contractor shall be submitted to the owner a minimum 7 days prior to the mandatory pre-bid conference for pre-approval. Only pre-approved product substitutions may be utilized.

### ITEM 100: Right of Way Preparation

Contractor shall not burn trash, debris, etc. without prior approval from Texarkana, TX Fire Department.

Grind stumps as directed.

No trees other than those shown on the plans for removal shall be removed without prior approval.

### ITEM 164: Seeding

Finish slopes with a tracked vehicle running vertically up and down the slope.

Mow tall growing vegetation as directed, to provide optimum growing conditions for temporary or permanent seeded areas in accordance with Item 730 "Roadside Mowing" except for measurement and payment. This work will be subsidiary to pertinent bid items.

Repair seeding, damaged by causes other than the Contractor's operations, as directed using seeding, and fertilizer. This work will be measured and paid for in accordance with the applicable bid items of the contract.

Adjust the seeding mixture and rates if directed.

Do not use Bahia grass.

Use broadcast seeding for temporary erosion control, when and as directed.

Use additional temporary seeding if permanent seeding is placed outside the optimum growing season shown for this item, if directed.

### ITEM 502: Barricades, Signs and Traffic Handling

Restrict the movement of equipment across traffic lanes to an absolute minimum.

No work area access from the main lanes of IH 30 will be allowed. All access shall be from the frontage road.

Use strobe lights or rotating beacons on all motorized equipment, operating on or adjacent to the road surface.

### ITEM 506: Temporary Erosion, Sedimentation and Environmental Controls

Sprinkle water for dust control. Meet the requirements of Item 204, "Sprinkling" except for measurement and payment. Sprinkling will be considered subsidiary to this Item.

The removal of accumulated silt necessary to maintain proper operation of erosion control devices shall be subsidiary to the pertinent bid items.

The removal of erosion control devices upon final stabilization shall be subsidiary to the pertinent bid items.

Straw wattle may be substituted for silt fence as approved by the engineer.

#### **ITEM 618: Conduit**

Install a continuous bare or green insulated copper wire, No. 10 AWG or larger, in the conduit throughout the electrical system in accordance with the electrical detail sheets, and the latest edition of the National Electrical Code.

The locations of conduit as shown are for diagrammatic purposes only and may be varied to meet local conditions, subject to approval.

All conduit placed under existing pavement will be bored as directed. Cutting, trenching or jacking across roadways or driveways will not be permitted without approval.

Install a 3 inch warning tape on trenched conduit runs during backfill operations. The tape will be red polyethylene marked "CAUTION-BURIED ELECTRIC LINE". Place the tape 12 inches above the conduit. Measurement and payment is subsidiary to Item 618, "Conduit".

#### **ITEM 628: Electrical Service**

The power company will connect the power to the service lines at the meter base and will furnish and install meters.

Make arrangements with the appropriate electric power company to provide electric service. Notify the electric power company at least 3 weeks in advance of the need for the service connection.

Make all arrangements for electrical service and comply with local standards and practices for proper installation.

Specifications for electrical items requiring UL listed products will be understood to mean UL listed or CSA listed.

#### **Bid Item # 12: Gateway Sign**

This item shall provide for the complete construction of the Gateway Sign including but not limited to excavation for sign foundation, concrete foundation, CMU walls, furnishing and installation of stone material, cast stone caps, sign lettering, sign lighting and associated power supply transformer, clean-up and disposal of all excess materials.

A sign mock-up of the proposed stone finish and stucco finish shall be constructed on-site for engineer approval. The stone portion shall be a minimum of 4 feet by 4 feet and the stucco portion shall be a minimum of 4 feet by 2 feet.

A dimensioned color rendering of the sign face with lettering, to scale shall be provided for engineer approval prior to letter fabrication. Included with the rendering, a LED module placement plan for each individual letter shall be provided along with construction details for each individual letter.



CITY OF TEXARKANA, TEXAS

CONSTRUCTION PLANS FOR

E.B. IH 30 GATEWAY SIGN

BID NUMBER: 17-1901-03

CITY OF TEXARKANA, TEXAS



MAYOR  
BOB BRUGGEMAN

CITY COUNCIL MEMBERS  
JEAN H. MATLOCK  
WILLIE J. RAY  
TINA VEAL-GOOCH  
DR. BRIAN MATTHEWS  
CHRISTY P. PADDOCK  
JOSH DAVIS

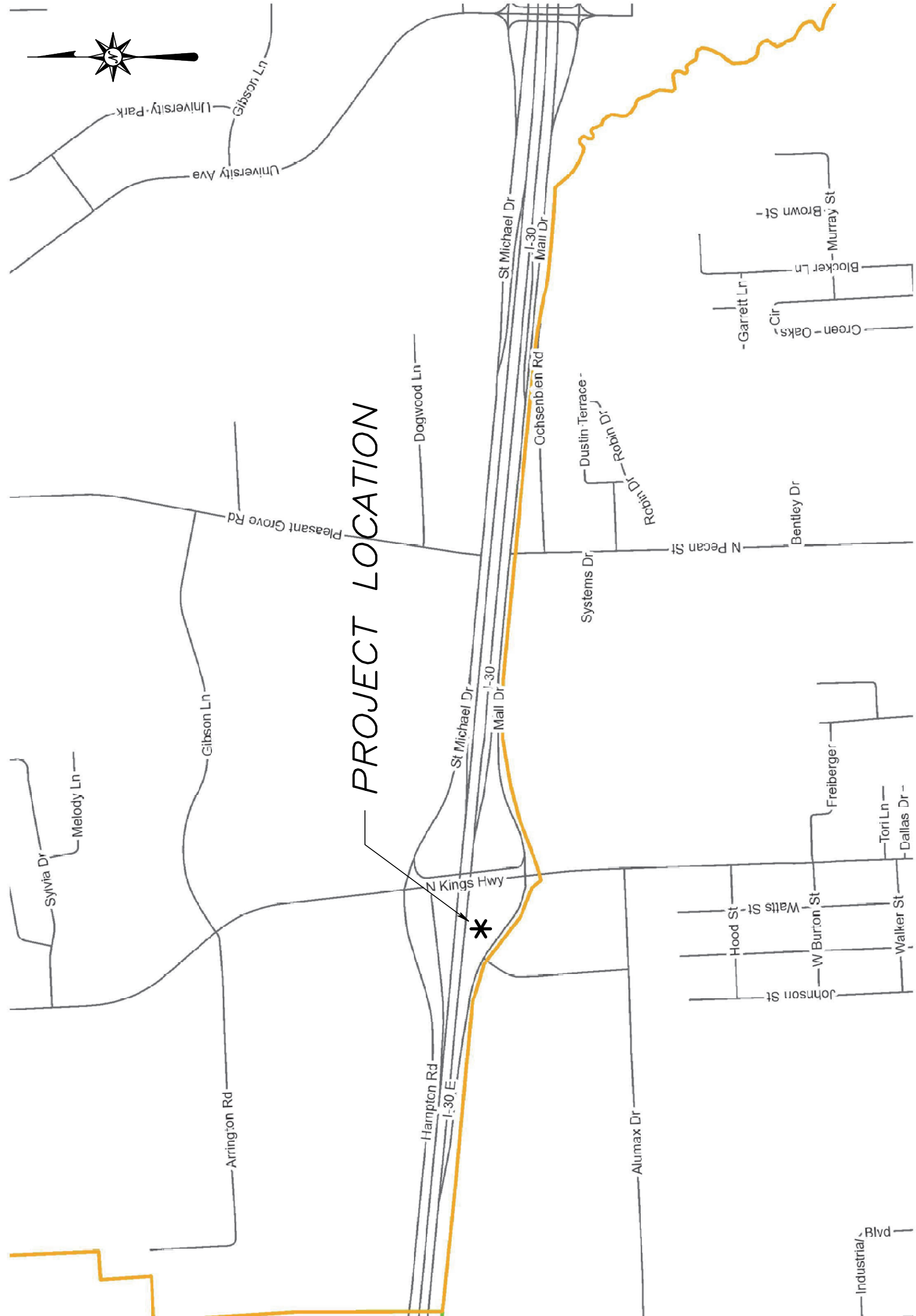
CITY MANAGER  
JOHN WHITSON

DIRECTOR OF PUBLIC WORKS  
KYLE DOOLEY, P.E., CFM

APPROVED FOR LETTING:

KYLE DOOLEY, P.E., CFM  
DIRECTOR OF PUBLIC WORKS

VICINITY MAP  
(N.T.S.)



INDEX OF DRAWINGS

- 1. TITLE SHEET
- 2. EXISTING CONDITIONS
- 3. OVERALL SITE PLAN
- 4. SITE PLAN
- 5. SIGN ELEVATION & DETAILS
- 6. ED (1) - 14 \*
- 7. ED (3) - 14 \*
- 8. ED (4) - 14 \*
- 9. ED (5) - 14 \*
- 10. ED (6) - 14 \*
- 11. ED (7) - 14 \*
- 12 - 23. BC (1) - 14 TO BC (12) - 14\*

THE STANDARD SHEETS SPECIFICALLY IDENTIFIED ABOVE WITH AN \* HAVE BEEN SELECTED BY ME OR UNDER MY RESPONSIBLE SUPERVISION AS BEING APPLICABLE TO THIS PROJECT.

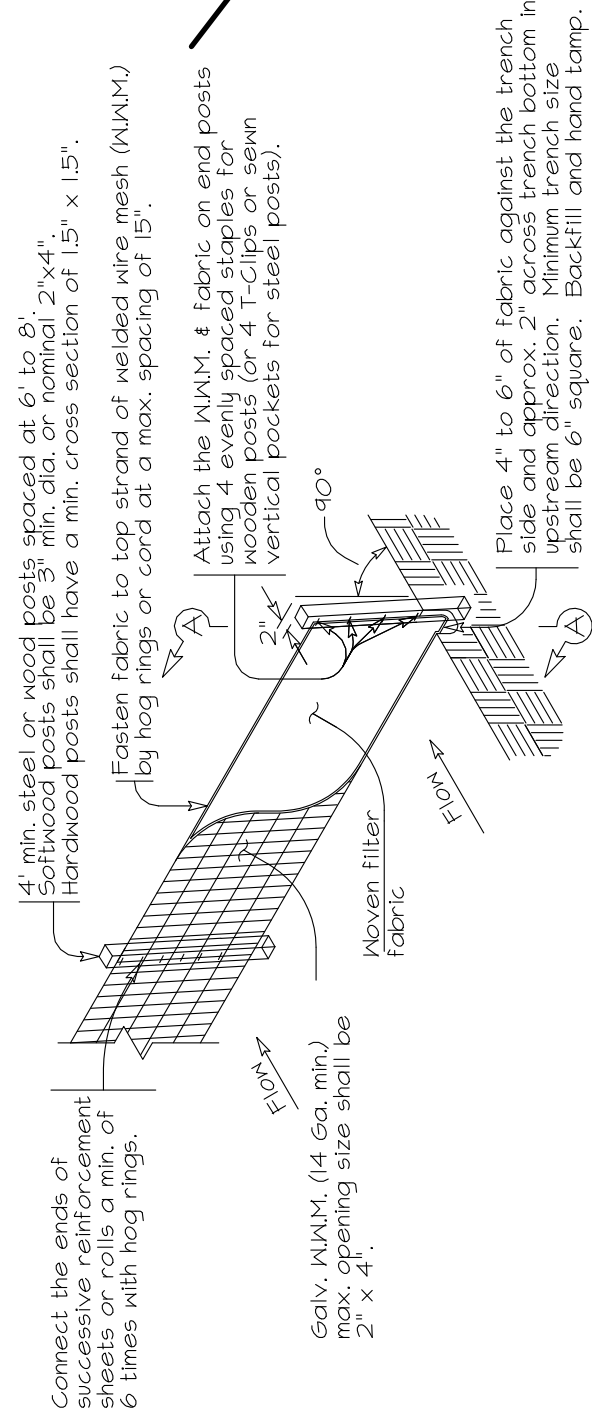
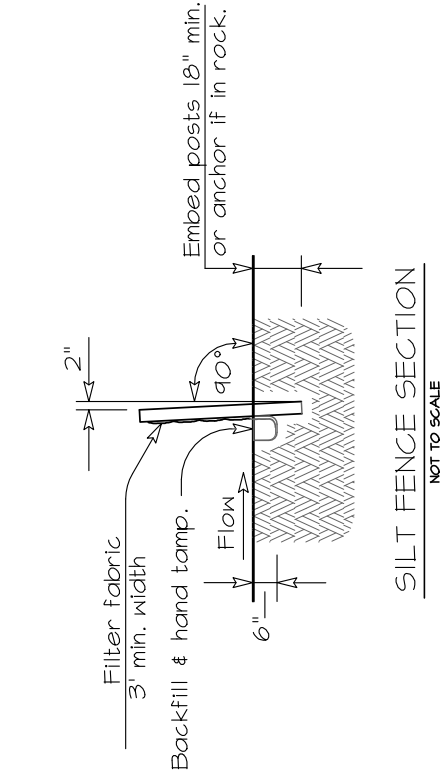
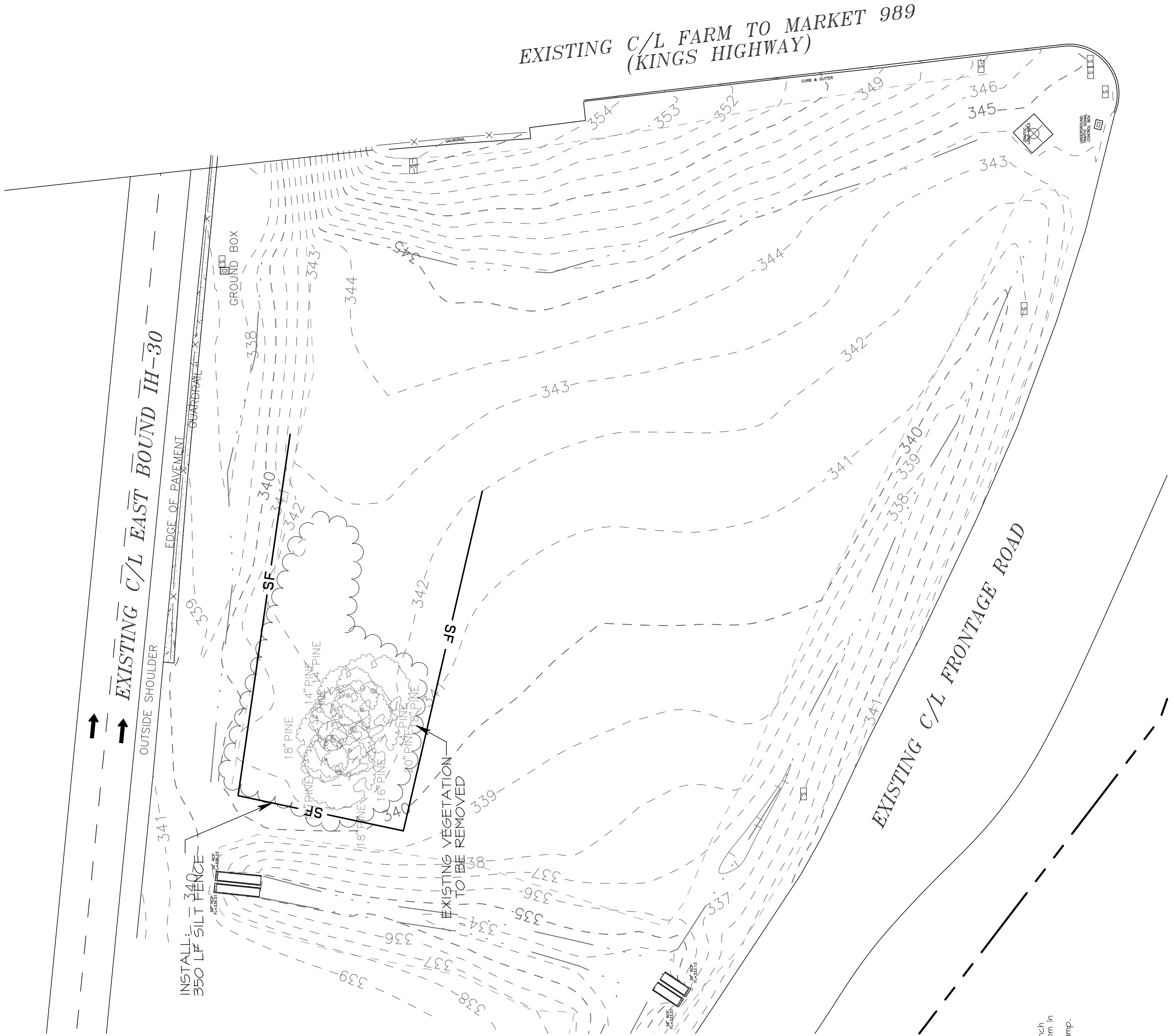
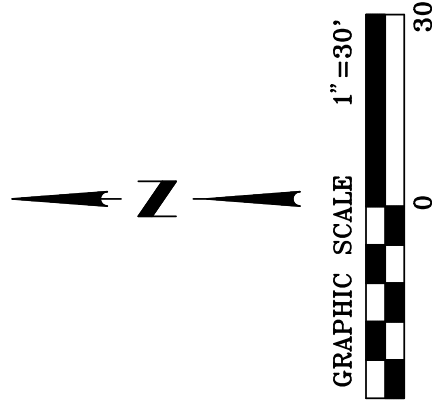


**MTG**  
*engineers & surveyors*

5930 SUMMERHILL RD.  
TEXARKANA, TEXAS 75503  
P 903.838.8533 | F 903.832.4700  
www.mtgengineers.com  
TBP# FIRM NO. F-354 | ASBL NO. 125  
© MTG 2016

SET NO. \_\_\_\_\_





EXISTING CONDITIONS NOTE:

EXISTING CONDITIONS ARE BASED ON THE SURVEY PERFORMED IN DECEMBER, 2015. ANY IMPROVEMENTS TO THE SITE AFTER THE SURVEY DATE ARE NOT SHOWN. ENGINEER SHALL BE NOTIFIED OF ANY DISCREPANCIES BETWEEN SITE AND PLANS.

EROSION AND SEDIMENT CONTROL NOTES:

OWNER: CITY OF TEXARKANA  
PROJECT TYPE: SIGN CONSTRUCTION  
SEQUENCE OF CONSTRUCTION ACTIVITIES:  
CONSTRUCTION OF A GATEWAY SIGN, TREE CLEARING & UTILITY CONNECTION  
SILT FENCE WILL BE UTILIZED FOR TEMPORARY EROSION CONTROL.  
PERMANENT VEGETATIVE COVER (BROADCAST SEED, HYDROMULCH SEEDING OR SOG) WILL BE UTILIZED TO CONTROL EROSION.

THE CITY OF TEXARKANA, TEXAS STANDARD STORMWATER CONSTRUCTION SITE INSPECTION REPORT IS TO BE UTILIZED DURING INSPECTIONS. INSPECTION FREQUENCY SHALL BE DETERMINED BY THE INSPECTOR. INSPECTIONS SHALL BE CONDUCTED WHEN ENCOUNTERED. CONTROLS SHALL BE FIXED OR REPLACED WITHIN 5 WORKING DAYS.  
REVISIONS AND UPDATES TO THE EROSION AND SEDIMENT CONTROL PLAN SHALL BE KEPT ON SITE AND SUBMITTED TO THE CITY OF TEXARKANA FOR REVIEW. ANY CHANGES TO THE PLAN SHALL BE NOTIFIED TO THE CITY OF TEXARKANA. ANY IMPROVEMENTS TO THE SITE AFTER THE SURVEY DATE ARE NOT SHOWN. ENGINEER SHALL BE NOTIFIED OF ANY DISCREPANCIES BETWEEN SITE AND PLANS.



EXISTING CONDITIONS  
 & ESCP PLAN

EB IH 30 GATEWAY SIGN  
CITY OF TEXARKANA, TEXAS

| Date | Revision/Description |
|------|----------------------|
|      |                      |
|      |                      |

| Drawn By | Checked By | Project No. | Dwg. Date |
|----------|------------|-------------|-----------|
| XXX      | XXX        | 156081      | 2/2016    |

| File No. | Sheet No. |
|----------|-----------|
|          | 2         |

**MTG**  
engineers  
 & surveyors

5630 SUMMERHILL RD. | P.O. BOX 3706  
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www.mtgengineers.com  
TBP# FIRM NO. F-354 | ASBL NO. 125  
© MTG 2015



X:\2015 Projects\150087 Texarkana Gateway Sign, City of Texarkana\05 Engineering Design\DES\_02.prt  
Tue Oct 11, 2016 11:30AM

GENERAL SITE NOTES

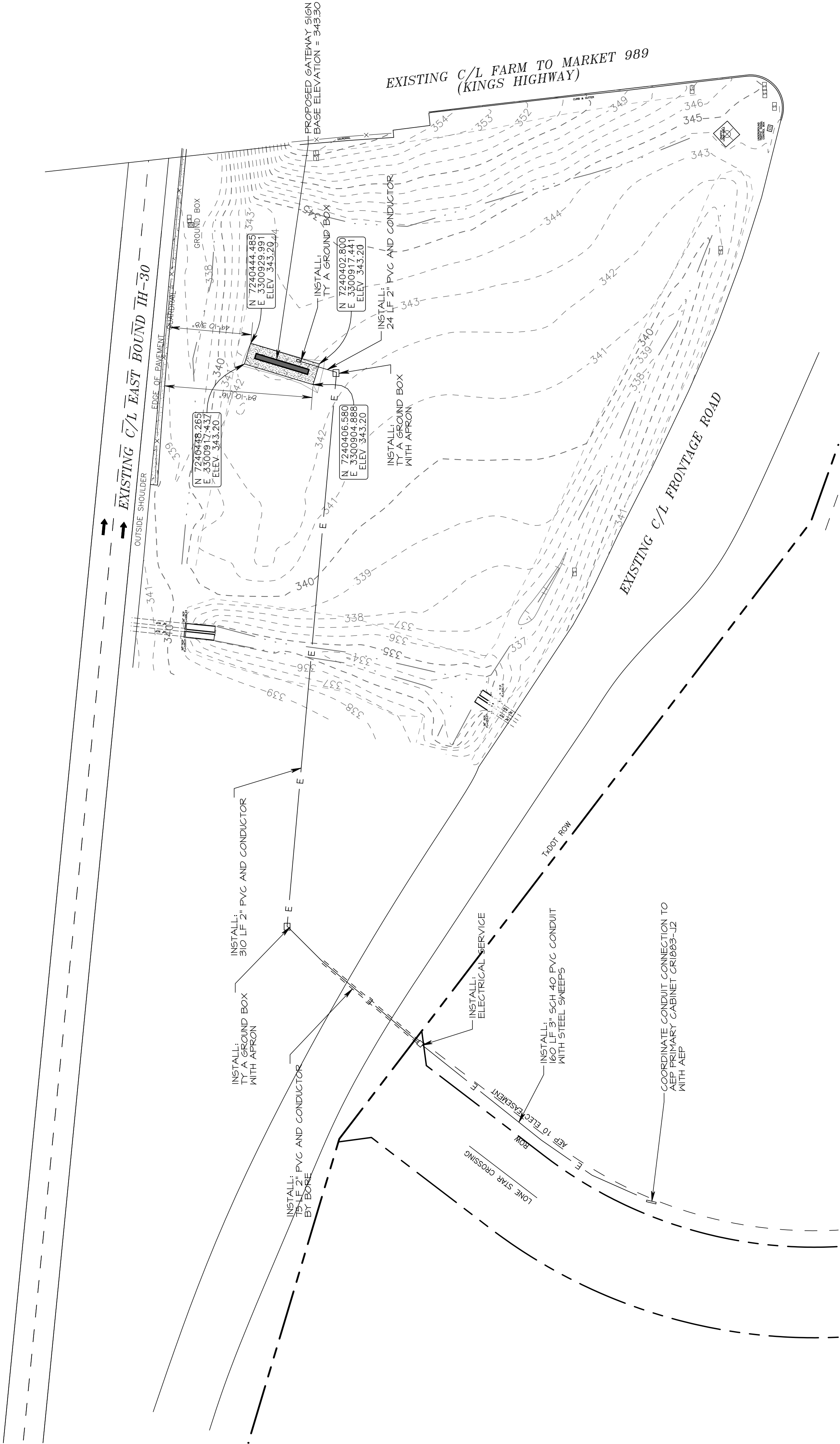
1. CONTRACTOR SHALL FIELD VERIFY HORIZONTAL AND VERTICAL LOCATION OF ALL EXISTING AND PLANNED UTILITIES BEFORE CONSTRUCTION. CONTRACTOR IS RESPONSIBLE FOR PROTECTING EXISTING UTILITIES (SHOWN OR NOT SHOWN) WITHIN SCOPE OF CONSTRUCTION. IF ANY EXISTING UTILITIES ARE DAMAGED, THE CONTRACTOR SHALL REPLACE THEM AT HIS OWN EXPENSE.

2. CONTRACTOR SHALL NOTIFY THE APPROPRIATE AGENCY A MINIMUM OF 2 WORKING DAYS PRIOR TO BEGINNING CONSTRUCTION WITHIN RIGHT-OF-WAY. ALL WORK WITHIN THE RIGHT OF WAY SHALL BE IN COMPLIANCE WITH APPROVED PERMIT.

3. DIMENSIONS SHOWN ON THESE PLANS ARE OUTSIDE FOUNDATION/SLAB LINES.
4. DIMENSIONS SHOWN ARE FROM BACK OF CURB.

5. THE CONTRACTOR IS RESPONSIBLE FOR REMOVING ANY OBSTRUCTIONS SUCH AS EXISTING STRUCTURES, FENCES, DEBRIS, OR TREES ON SITE, AND SHALL COORDINATE ALL REMOVAL WITH THE GENERAL CONTRACTOR. NO TREES OR OTHER ITEMS SHALL BE REMOVED WITHOUT THE APPROVAL OF THE ARCHITECT, ENGINEER, AND OWNER.

6. THE CONTRACTOR SHALL PROTECT ALL EXISTING POWER POLES, SIGNS, MANHOLES, TELEPHONE RISERS, WATER VALVES, ETC. DURING ALL CONSTRUCTION PHASES.

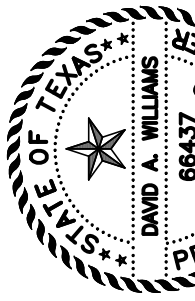


NOTES:

NO WORK AREA ACCESS WILL BE ALLOWED FROM IH 30. ALL ACCESS SHALL BE FROM THE FRONTAGE ROAD. ALL TRAFFIC CONTROL SHALL BE AS SHOWN IN THE PLANS OR AS DIRECTED BY THE ENGINEER. ALL TRAFFIC CONTROL AND DEVICES SHALL BE IN COMPLIANCE WITH THE TxDOT BC STANDARDS AND TEXAS MUTCD.

ALL TREES UNDERGROWTH VINES, ETC. SHALL BE REMOVED A MINIMUM OF 6" BELOW EXISTING GRADE. AFTER CLEARING, A MINIMUM OF 6" OF TOPSOIL SHALL BE PLACED ON THE SURFACE. IN THE AREA OF CLEARING, FINAL GRADING SHALL MATCH THE EXISTING GRADING AND PROVIDE FOR POSITIVE DRAINAGE.

ALL DISTURBED AREAS SHALL HAVE TOPSOIL RESTORED AND BE RE-SEEDED USING CELLOSE FIBER MULCH SEEDING. THE SEED MIXTURE AND CONSTRUCTION METHODS SHALL BE IN ACCORDANCE WITH ITEM 164, SEEDING FOR EROSION CONTROL OF THE 2014 TxDOT STANDARD SPECIFICATIONS.



MTG ENGINEERS & SURVEYORS, INC.  
TEXAS REGISTERED  
ENGINEERING FIRM F-354

OVERALL  
SITE PLAN

EB IH 30 GATEWAY SIGN  
CITY OF TEXARKANA, TEXAS

| Date | Revision/Description |
|------|----------------------|
|      |                      |
|      |                      |
|      |                      |

| Drawn By | Checked By | Project No. | Dwg. Date |
|----------|------------|-------------|-----------|
| XXX      | XXX        | 156087      | 2/2016    |

| File No. | Sheet No. |
|----------|-----------|
|          | 3         |

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TEBPE FIRM NO. F-354 | ASBL NO. 125  
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GENERAL SITE NOTES

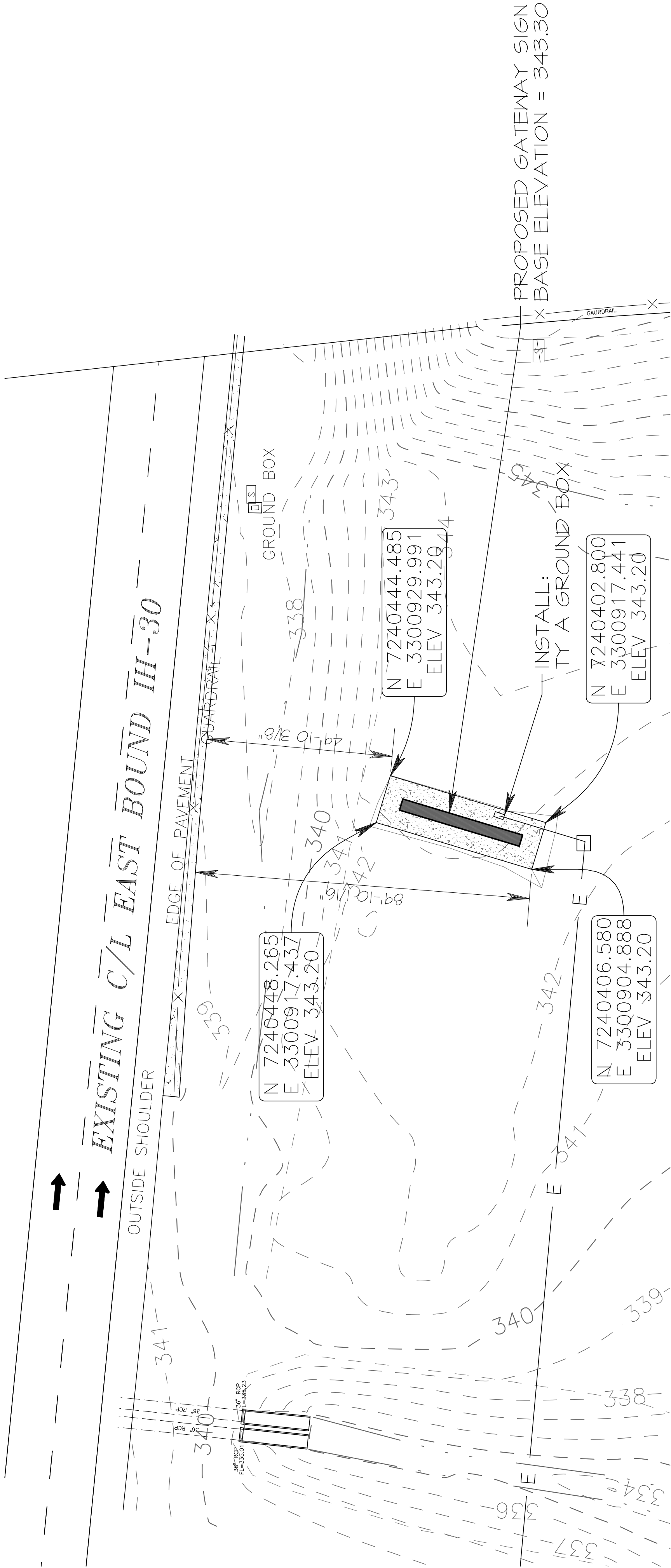
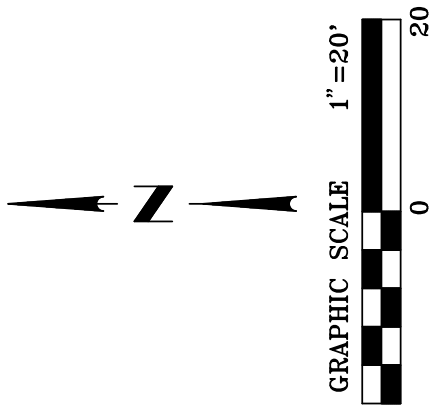
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NOTES:

NO WORK AREA ACCESS WILL BE ALLOWED FROM IH 30. ALL ACCESS SHALL BE FROM THE FRONTAGE ROAD. ALL TRAFFIC CONTROL SHALL BE SHOWN ON THE PLANS OR AS DIRECTED BY THE ENGINEER. ALL TRAFFIC CONTROL DEVICES SHALL BE IN COMPLIANCE WITH THE TxDOT BC STANDARDS AND TEXAS MUTCD.

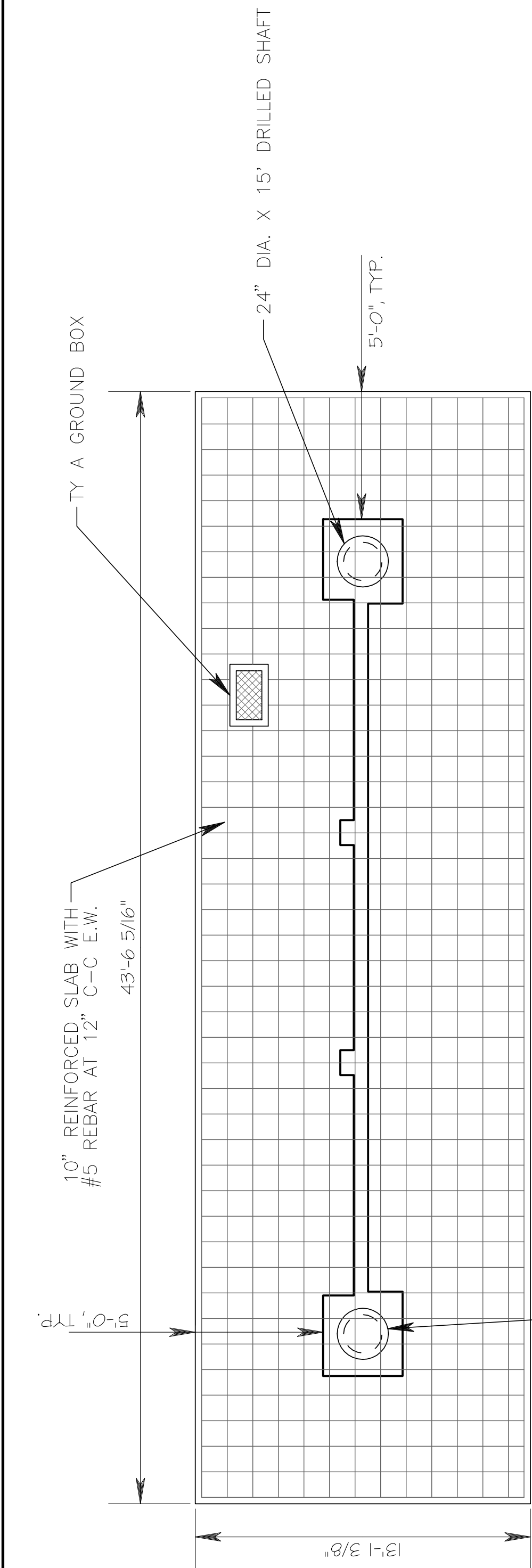
ALL TREES, UNDERGROWTH, VINES, ETC. SHALL BE REMOVED A MINIMUM OF 6" BELOW EXISTING GROUND AFTER CLEARING. A MINIMUM OF 6" OF TOPSOIL SHALL BE PLACED ON THE SURFACE. IN THE AREA OF CLEARING, FINAL GRADING SHALL MATCH THE EXISTING GRADING AND PROVIDE FOR POSITIVE DRAINAGE.

ALL DISTURBED AREAS SHALL HAVE TOPSOIL RESTORED AND BE RE-SEEDED USING CELLOSE FIBER MULCH SEEDING. THE SEED MIXTURE AND CONSTRUCTION METHODS SHALL BE IN ACCORDANCE WITH ITEM 164, SEEDING FOR EROSION CONTROL OF THE 2014 TxDOT STANDARD SPECIFICATIONS.



|                                                   |                      |                                                                                                                                                                               |                     |
|---------------------------------------------------|----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|
| SITE PLAN                                         |                      | MTGengineers & surveyors                                                                                                                                                      |                     |
| EB IH 30 GATEWAY SIGN<br>CITY OF TEXARKANA, TEXAS |                      | 5450 SUMMERHILL RD.   P.O. BOX 37066<br>TEXARKANA, TEXAS 75501<br>P 409.836.8593   F 409.832.4700<br>www.mtgengineers.com<br>TBP# FIRM NO. F-354   ASBL NO. 125<br>© MTG 2015 |                     |
| Date                                              | Revision/Description |                                                                                                                                                                               |                     |
| Drawn By<br>XXX                                   | Checked By<br>XXX    | Project No.<br>156081                                                                                                                                                         | Dwg. Date<br>2/2016 |
|                                                   |                      | File No.                                                                                                                                                                      | Sheet No.<br>4      |

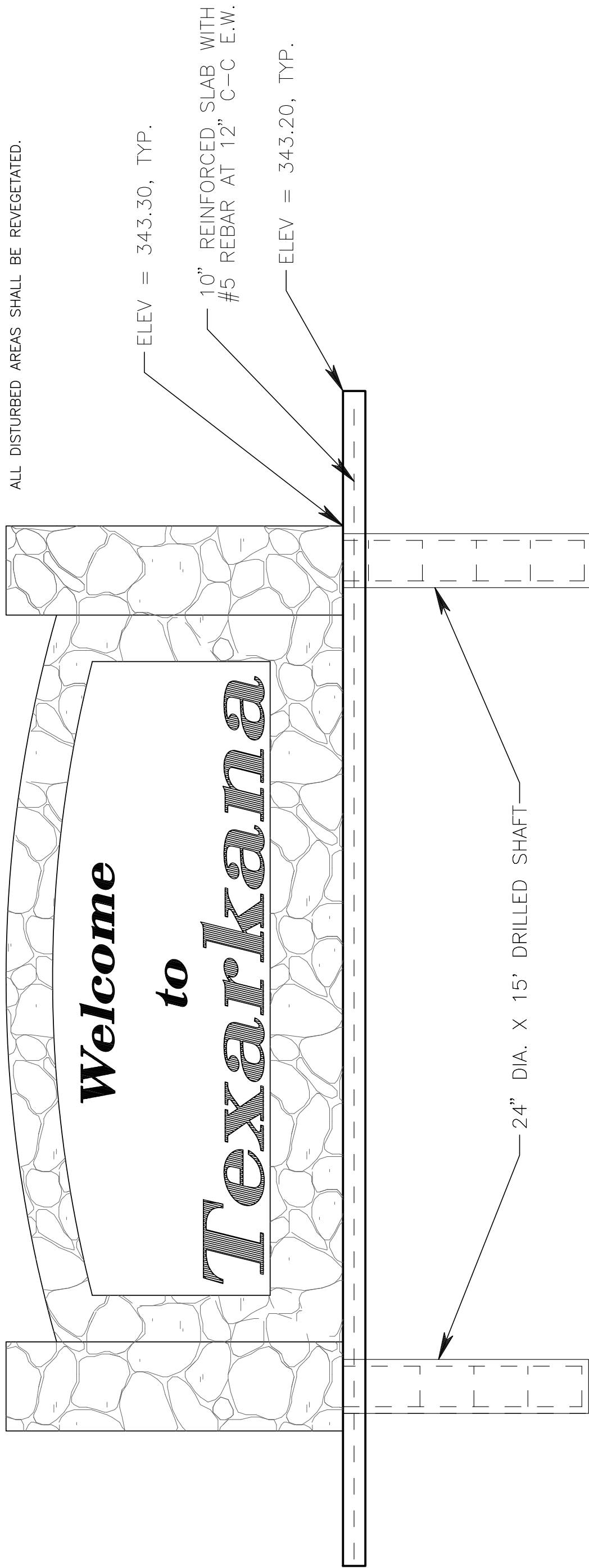




FOUNDATION PLAN

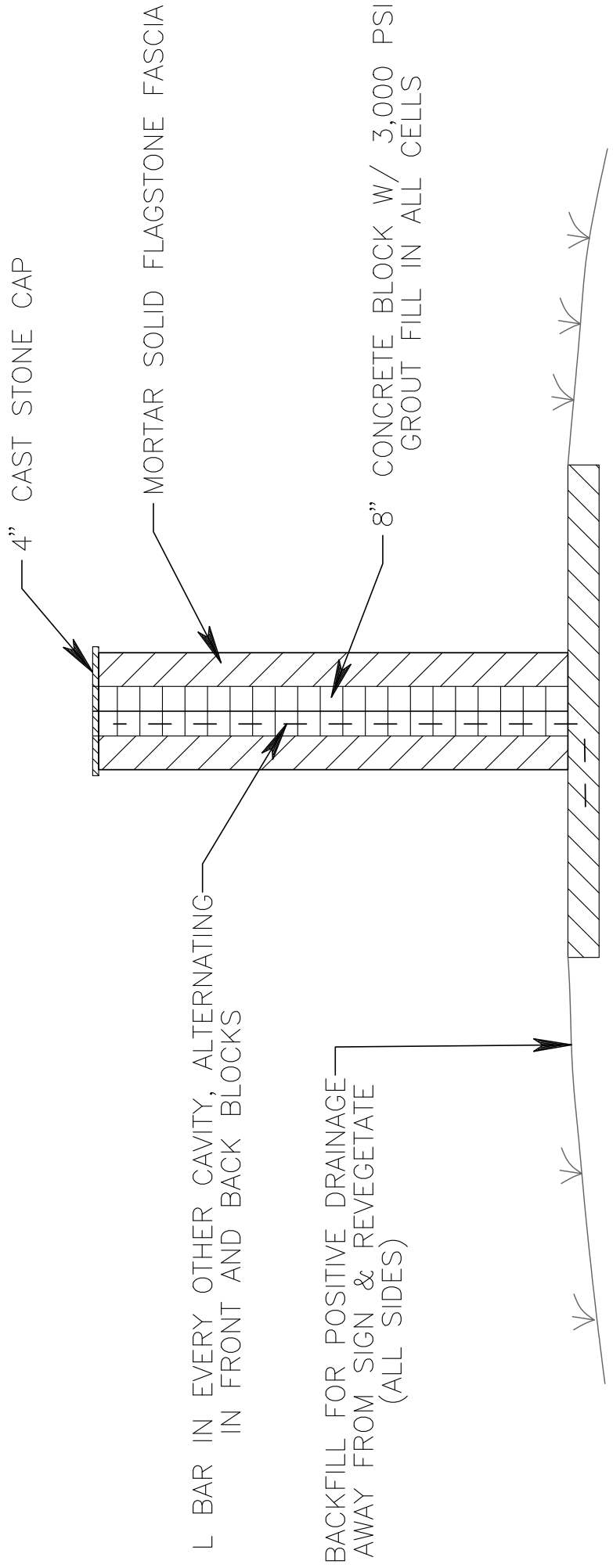
GENERAL NOTES:

ALL CONCRETE SHALL BE 3,000 PSI WITH 4% - 6% ENTRAINED AIR.  
ALL REINFORCEMENT SHALL BE ASTM A-615, GR 60.  
EXPOSED EDGES OF FOUNDATION SHALL HAVE A 3/4 CHAMFER  
AND A LIGHT BROOM FINISH.  
ALL DISTURBED AREAS SHALL BE REVEGETATED.

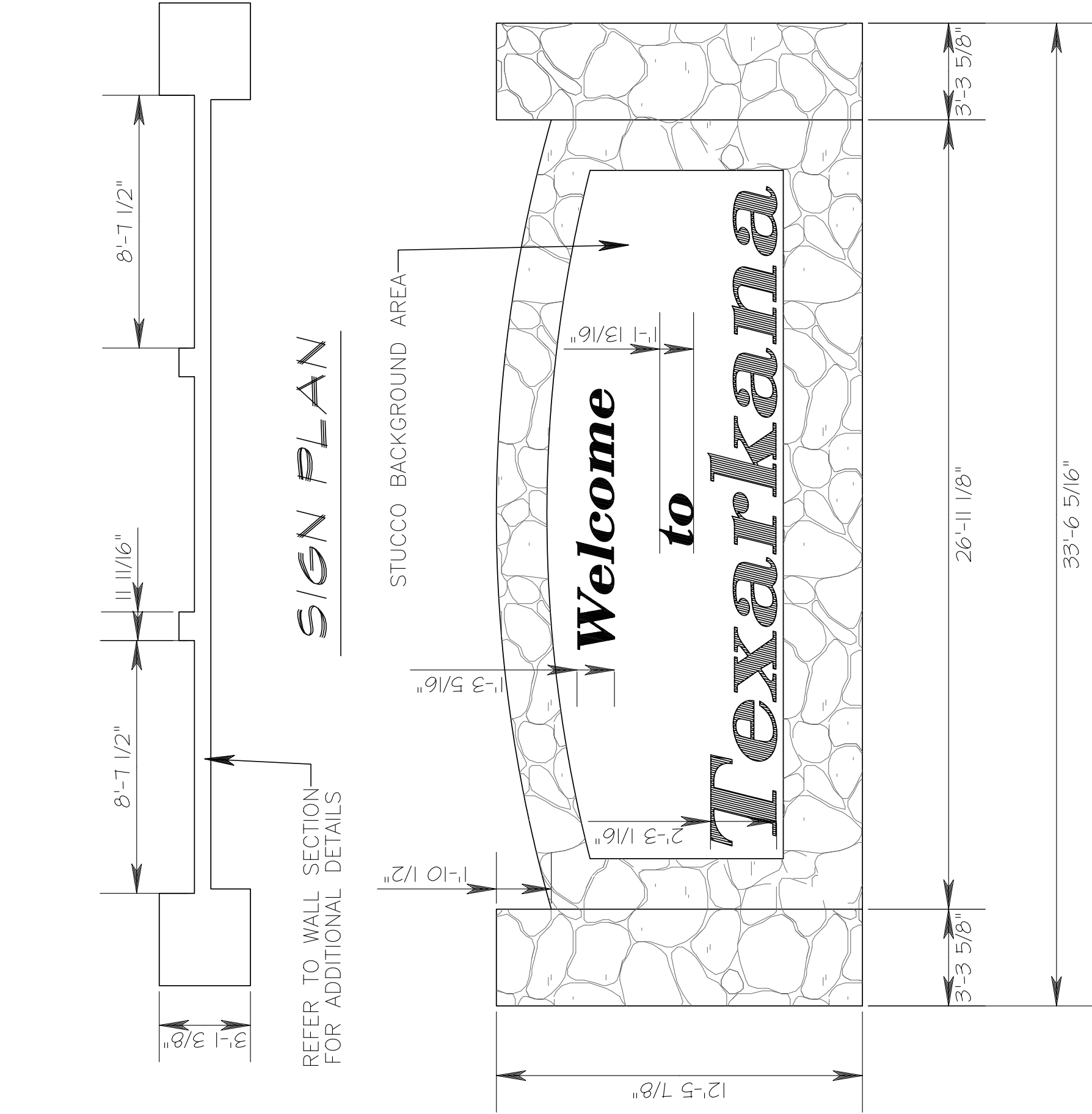


SCALE: 1/4" = 1'

FOUNDATION ELEVATION



WALL SECTION



SIGN ELEVATION

SCALE: 1/4" = 1'

SIGN MATERIAL NOTES:

PROPOSED ROCK MATERIAL TO BE A FLAGSTONE TYPE STONE. ALL ROCK MATERIAL TO BE SOLID MORTARED TO CMU WALL AND CONCRETE FOUNDATION.  
ALL EXPOSED SURFACES SHALL HAVE THE ROCK SURFACE INCLUDING THE REAR FACE OF THE SIGN.

MESSAGE BACKGROUND TO BE A EGGSHELL COLOR STUCCO MATERIAL.

PROPOSED LETTERS TO BE A NAVY COLORED LED INTERNAL BACKLIGHT LETTER.

NO LANDSCAPING OR IRRIGATION IMPROVEMENTS ARE PROPOSED.

ALL ACCESS TO THE WORK SITE WILL BE FROM THE FRONTAGE ROAD. NO ACCESS FROM IH 30 MAIN LANES WILL BE ALLOWED.

LED LIGHTING NOTES:

THE FOLLOWING LED MODULE APPROXIMATION IS FOR INFORMATIONAL PURPOSES ONLY. THE SIGN MANUFACTURER MUST VERIFY MODULE PLACEMENT AND QUANTITY TO INSURE EVEN ILLUMINATION.

THE MODULE QUANTITIES ARE BASED ON TETRA LED SYSTEMS TETRA MINIMAX WET LOCATION WAX MODULES:

- W - 18 MODULES
  - L - 6 MODULES
  - C - 6 MODULES
  - O - 8 MODULES
  - K - 18 MODULES
  - A - 16 MODULES
  - N - 18 MODULES
  - T - 7 MODULES
  - O - 8 MODULES
- TOTAL WATTS FOR ABOVE LETTERS = 27.52
- T - 15 MODULES
  - E - 12 MODULES
  - X - 14 MODULES
  - A - 16 MODULES
  - K - 18 MODULES
  - A - 16 MODULES
  - N - 18 MODULES
  - A - 16 MODULES
- TOTAL WATTS FOR TEXARKANA LETTERS = 43.2



SIGN ELEVATION & DETAILS

EB IH 30 GATEWAY SIGN  
CITY OF TEXARKANA, TEXAS

| Date                  | Revision/Description |
|-----------------------|----------------------|
|                       |                      |
| Drawn By<br>XXX       | Checked By<br>XXX    |
| Project No.<br>156087 | Dwg. Date<br>2/2016  |
| File No.              | Sheet No.<br>5       |

**MTG**  
*engineers & surveyors*

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TEXARKANA, TEXAS 75501  
P 409.836.8593 | F 409.832.4700  
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TBP# FIRM NO. F-354 | ASBL NO. 125  
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GENERAL NOTES FOR ALL ELECTRICAL WORK

- The location of all conduits, junction boxes, ground boxes, and electrical services is diagrammatic and may be shifted to accommodate field conditions.
- Provide new and unused materials. Ensure that all materials and installations comply with the applicable articles of the National Electrical Code (NEC), TxDOT standards and specifications, National Electrical Manufacturers Association (NEMA), and are listed by Underwriters Laboratories (UL) or a Nationally Recognized Testing Lab (NRTL). NRTLs such as Canadian Standard Association (CSA), Intertek Testing Services NA Inc., or FM Approvals LLC can be considered equivalent to UL. Where reference is made to NEMA listed devices, International Electrotechnical Commission (IEC) listed devices will not be considered an acceptable equal to a NEMA listed device. Acceptable devices may have both a NEMA and IEC listing. Faulty fabrication or poor workmanship in any material, equipment, or installation is justification for rejection. Replace or reinstall rejected material or equipment at no additional cost to the Department.
- Miscellaneous nuts, bolts and hardware, except for high strength bolts, may be stainless steel when plans specify galvanized, provided the bolt size is 1/2 in. or less in diameter.
- Provide the following test equipment as required by the Engineer to confirm compliance with the contract and the NEC: voltmeter, ammeter, megohm meter (1000 volt DC), ground resistance tester, torque wrenches, and torque screwdrivers. Ensure all equipment has been properly calibrated within the last year. Provide calibration certification to the Engineer upon request. Operate test equipment during inspection as requested by the Engineer.
- Install grounding as shown on the plans and in accordance with the NEC. Ensure all metallic conduits; metal poles; luminaires; and metal enclosures are bonded to the equipment grounding conductor. Provide stranded bare copper or green insulated grounding conductors. Ground rods, connectors, and bonding jumpers are subsidiary to the various bid items.
- When required by the Engineer, notify the Department in writing of materials from the Material Producers List (MPL) intended for use on each project. Prequalified materials are listed on the MPL on TxDOT's website under "Roadway Illumination and Electrical Supplies." No substitutions will be allowed for materials on this list.

CONDUIT

A. MATERIALS

- Provide conduit, junction boxes, fittings, and hardware as per TxDOT Departmental Material Specification (DMS) 11030 "Conduit" and Item 618 "Conduit" of TxDOT's "Standard Specifications For Construction And Maintenance Of Highways, Streets, And Bridges," latest edition. Provide conduits listed under Item 618 on the MPL under "Roadway Illumination and Electrical Supplies." Provide conduit types according to the descriptive code or as shown on the plans. Do not substitute other types of conduits for those shown. Provide liquidtight flexible metal conduit (LFMC) when flexible conduit is called for on galvanized steel rigid metallic conduit (RMC) systems. Provide liquidtight flexible nonmetallic conduit (LFNC) when flexible conduit is called for on polyvinyl chloride (PVC) systems.
- Provide galvanized steel RMC for all exposed conduits, unless otherwise shown on the plans. Properly bond all metal conduits.
- Unless otherwise shown on the plans, provide junction boxes with a minimum size as shown in the following table, which applies to the greatest number of conductors entering the box through one conduit, with no more than four conduits per box. When a mixture of conductor sizes is present, count the conductors as if all are of the larger size. For situations not applicable to the table, size junction boxes in accordance with NEC.

| AWG | 3 CONDUCTORS   | 5 CONDUCTORS   | 7 CONDUCTORS   |
|-----|----------------|----------------|----------------|
| #1  | 10" x 10" x 4" | 12" x 12" x 4" | 16" x 16" x 4" |
| #2  | 8" x 8" x 4"   | 10" x 10" x 4" | 12" x 12" x 4" |
| #4  | 8" x 8" x 4"   | 10" x 10" x 4" | 10" x 10" x 4" |
| #6  | 8" x 8" x 4"   | 8" x 8" x 4"   | 10" x 10" x 4" |
| #8  | 8" x 8" x 4"   | 8" x 8" x 4"   | 8" x 8" x 4"   |

- Junction boxes with an internal volume of less than 100 cu. in. and supported by entering raceways must have threaded entries or hubs identified for the intended purpose and supported by connection of two or more rigid metal conduits. Secure conduit within 3 ft. of the enclosure or within 18 in. of the enclosure if all conduit entries are on the same side. Mechanically secure all junction boxes with an internal volume greater than 100 cu. inches.
- Provide hot dipped galvanized cast iron or sand cast aluminum outlet boxes for aluminum boxes containing only 10 AWG or 12 AWG conductors. Do not use die cast aluminum boxes. Size outlet boxes according to the NEC.
- Do not use intermediate metal conduit (IMC) or electrical metallic tubing (EMT) unless specifically required by the plan sheets. When EMT is called for, provide junction boxes made from galvanized steel sheeting, listed and approved for outdoor use, unless otherwise noted on the plans. Size all galvanized steel junction boxes in accordance with the NEC. Provide junction boxes for IMC conduit systems that meet the same requirements for junction boxes used with RMC systems.
- Provide PVC junction boxes intended for outdoor use on PVC conduit systems, unless otherwise noted on the plans.

- Provide PVC elbows in PVC conduit systems, unless otherwise shown on the plans. Use only a flat, high tensile strength polyester fiber pull tape for pulling conductors through the PVC conduit system. When galvanized steel RMC elbows are specifically called for in the plans and any portion of the RMC elbow is buried less than 18 in., ground the RMC elbow by means of a grounding bushing on a rigid metal extension. Grounding of the rigid metal elbow is not required if the entire RMC elbow is encased in a minimum of 2 in. of concrete. PVC extensions are allowed on these concrete encased rigid metal elbows. RMC or PVC elbows are subsidiary to various bid items.
  - When required, provide High-Density Polyethylene (HDPE) conduit with factory installed internal conductors according to Item 622 "Duct Cable." At the Contractor's request and with approval by the Engineer, substitute HDPE conduit with no conductors for bored schedule 40 or schedule 80 PVC conduit bid under Item 618. Ensure bored HDPE substituted for PVC is schedule 40 and of the same size PVC called for in the plans. Ensure the substituted HDPE meets the requirements of Item 622, except that the conduit is supplied without factory-installed conductors. Make the transition of the HDPE conduit to PVC (or RMC elbow when required) at the bore pit. Provide conduit of the size and schedule as shown on the plans. Do not extend substituted conduit into ground boxes or foundations. Provide PVC or galvanized steel RMC elbows as called for at all ground boxes and foundations.
  - Use two-hole straps when supporting 2 in. and larger conduits. On electrical service poles, properly sized stainless steel or hot dipped galvanized one-hole standoff straps are allowed on the service riser conduit.
- B. CONSTRUCTION METHODS
- Provide and install expansion joint conduit fittings on all structure-mounted conduits at the structure's expansion joints to allow for movement of the conduit. In addition, provide and install expansion joint fittings on all continuous runs of galvanized steel RMC conduit externally exposed on structures such as bridges at maximum intervals of 150 ft. When requested by the Project Engineer, supply manufacturer's specification sheet for expansion joint conduit fittings. Repair or replace expansion joint fittings that do not allow for movement at no additional cost to the Department. Provide the method of determining the amount of expansion to the Engineer upon request. Do not use LFMC or LFNC as a substitute for the required expansion conduit fittings.
  - Space all conduit supports at maximum intervals of 5 ft. Install conduit spacers when attaching metal conduit to surface of concrete structures. See "Conduit Mounting Options" on ED(2). Install conduit support within 3 ft. of all enclosures and conduit terminations.
  - Do not attach conduit supports directly to pre-stressed concrete beams except as shown specifically in the plans or as approved by the Engineer.
  - Unless otherwise shown on the plans, jack or bore conduit placed beneath existing roadways, driveways, sidewalks, or after the base or surfacing operation has begun. Backfill and compact the bore pits below the conduit per Item 476 "Jacking, Boring, or Tunneling Pipe or Box" prior to installing conduit or duct cable to prevent bending of the connections.
  - When placing conduit in the sub-grade of new roadways, backfill all trenches with excavated material unless otherwise noted on the plans. When placing conduit in the sub-base of new roadways, backfill all trenches with cement-stabilized base as per requirements of Items 110 "Excavation", 400 "Excavation and Backfill for Structures", 401 "Flowable Backfill", 402 "Trench Excavation Protection", and 403 "Temporary Special Shoring."
  - Provide and place warning tape approximately 10 in. above all trenched conduit as per Item 618.
  - During construction, temporarily cap or plug open ends of all conduit and raceways immediately after installation to prevent entry of dirt, debris and animals. Temporary caps constructed of durable duct tape are allowed. Tightly fix the tape to the conduit opening. Clean out the conduit and prove it clear in accordance with Item 618 prior to installing any conductors.
  - Ensure conduit entry into the top of any enclosure is waterproof by installing conduit sealing hubs or using boxes with threaded bosses. This includes surface mounted safety switches, meter cans, service enclosures, auxiliary enclosures and junction boxes. Grounding bushings on water tight sealing hubs are not required.
  - Fit the ends of all PVC conduit terminations with bushings or bell end fittings. Provide and install a grounding type bushing on all metal conduit terminations.
  - Install a bonding jumper from each grounding bushing to the nearest ground rod, grounding lug, or equipment grounding conductor. Ensure all bonding jumpers are the same size as the equipment grounding conductor. Bonding of conduit used as a casing under roadways for duct cable is not required, if the duct extends the full length through the casing.
  - At all electrical services, install a 6 AWG solid copper grounding electrode conductor.
  - Place conduits entering ground boxes so that the conduit openings are between 3 in. and 6 in. from the bottom of the box. See the ground box detail on sheet ED(4).
  - Seal ends of all conduits with duct seal, expandable foam, or by other methods approved by the Engineer. Seal conduit immediately after completion of conductor installation and pull tests. Do not use duct tape as a permanent conduit sealant. Do not use silicone caulk as a conduit sealant.
  - File smooth the cut ends of all mounting strut and conduit. Before installing, paint the field cut ends of all mounting strut and RMC (threaded or non-threaded) with zinc rich paint (94% or more zinc content) to alleviate overspray. Use zinc rich paint to touch up galvanized material as allowed under Item 445 "galvanizing." Do not paint non-galvanized material with a zinc rich paint as an alternative for materials required to be galvanized.



Traffic  
Operations  
Division  
Standard

ELECTRICAL DETAILS  
CONDUITS & NOTES

ED(1) - 14

|           |              |      |      |     |
|-----------|--------------|------|------|-----|
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| © TxDOT   | October 2014 | CONT | SECT | JOB |
| REVISIONS |              |      |      |     |
| DIST      |              |      |      |     |
| COUNTY    |              |      |      |     |
| SHEET NO. |              |      |      |     |
| 6         |              |      |      |     |

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ELECTRICAL CONDUCTORS

A. MATERIAL INFORMATION

- Provide Type XHHW insulated conductors in accordance with Departmental Material Specification (DMS)11040 "Conductors" and Item 620 "Electrical Conductors." Provide conductors as listed on the Material Producers List (MPL) on the Department web site under "Roadway Illumination and Electrical Supplies." Item 620. Color code insulated conductors in conformance with the NEC. Identify grounding (neutral) conductors with white insulation. Identify grounding conductors (ground wires) with green insulation or bare conductors. Identify ungrounded (hot) conductors with any color insulation except green, white, or gray. Keep color scheme consistent throughout the wiring system. Identify conductors 6 American Wire Gauge (AWG) and smaller by continuous color jacket. Identify electrical conductors 4 AWG and larger by continuous color jacket or by colored tape. When identifying conductors with colored tape, mark at least 6 in. of the conductor's insulation with half laps of tape.
- Provide a solid copper 6 AWG grounding electrode conductor to bond the electrical service equipment to the concrete encased grounding electrode or the ground rod at the service location. Connect the grounding electrode conductor to the ground rod with a UL listed connector in accordance with DMS 11040. Connect the grounding electrode conductor to the concrete encased grounding electrode as shown in the plans.
- Where two or more circuits are present in one conduit or enclosure, permanently identify the conductors of each branch circuit by attaching a non-metallic tag around both circuit conductors at each accessible location. Provide tags with two straps, large enough to indicate circuit number, letter, or other identification as shown in the plans. Print circuit identification on the tag with a permanent marker.
- Use listed compression or screw type pressure connectors, terminal blocks, or split bolt connectors for splicing as specified in DMS 11040. Use hot melt adhesive tape to fill the gap and seal the ends of heat shrink tubing. Provide UL listed gel-filled insulating splice covers. Splicing materials, insulating materials, breakaway disconnects, splice covers, and fuse holders are subsidiary to various bid items.

B. CONSTRUCTION METHODS

- Use only a flat, high tensile strength polyester fiber pull tape for pulling conductors through the conduit system. After installing conductors in conduit, perform conductor pull test. If a conductor cannot be freely pulled, make any needed alterations or repairs at no additional cost to the department. Perform insulation resistance tests in accordance with Item 620. Coordinate with the Engineer to witness the tests.
- Leave 2 ft. minimum, 3 ft. maximum length for each conductor up to the splice in ground boxes. Leave 3 ft. minimum, 4 ft. maximum length of conductor in ground boxes when pulled through with no splice. Leave 1 ft. minimum, 1.5 ft. maximum length of conductor at enclosures, weatherheads and pole bases.
- Make splices only in junction boxes, ground boxes, pole bases, or electrical enclosures and use only listed compression or screw type pressure connectors, terminal blocks, or split bolt connectors. Insulate splices with heavy wall heat shrink tubing or gel-filled insulating splice covers to provide a watertight splice. Overlap conductor insulation with heat shrink tubing a minimum of 2 in. past both sides of the splice. Where heat shrink tubing may not shrink sufficiently to provide a watertight seal around the individual conductors, prior to heating the tubing, increase the diameter of the conductor insulation using hot melt adhesive tape to provide a watertight seal between the individual conductors and the heat shrink tubing. Ensure the tape extends past the heat shrink tubing. Use hot melt adhesive tape to fill the gap and seal the ends of heat shrink tubing. Heat shrink tubing that appears to have been burned, or overheated, is considered defective and must be replaced.
- Size and install gel-filled insulating splice covers according to manufacturer's specifications when used in place of heat shrink tubing.
- Wire nuts with factory applied waterproof sealant may be used for 8 AWG or smaller conductors in above ground junction boxes, but not in pole bases or ground boxes. Install wire nuts in an upright position to prevent the accumulation of water.
- Support conductors in illumination poles with a J-hook at the top of the pole.
- When terminating conductors, remove the insulation and jacketing material without nicking the individual strands of the conductor. Conductors with nicked individual conductor strands or removed strands will be considered damaged.
- Replace conductors and cables that are damaged beyond repair or that fail an insulation resistance test at no additional cost to the department.
- Use only approved splicing methods.
- Do not terminate more than one conductor under a single connector, unless the connector is rated for multiple conductors. Do not exceed the pressure connector's listing for maximum number and size of conductors allowed.
- Install breakaway connectors on conductors bid under Item 620 whenever those conductors pass through a breakaway support device. Follow manufacturer's instructions when terminating conductors to breakaway connectors. Properly torque threaded connections. Proper terminations are critical to the safe operation of breakaway devices. Trim waterproofing boots on breakaway connectors to fit snugly around the conductor to ensure waterproof connection. Only one conductor may enter a single opening in a boot. Provide waterproof boots with the correct number of openings. Leave unused openings factory sealed. Use prequalified breakaway connectors as shown on the MPL.

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- Provide and install a separate stranded equipment grounding conductor (EGC) in all conduits that contain circuit wiring of 50 volts or more. Unless shown elsewhere, size the EGC to be the same size as the largest current carrying conductor contained in the conduit. Ensure all EGCs are bonded together at every accessible location. For traffic signal installations, provide a minimum size 8 AWG EGC. The EGC is paid for under Item 620.
- TEMPORARY WIRING
  - Install temporary conductors and electrical equipment in accordance with the NEC article "Temporary Installations" and Department standard sheets.
  - Provide a ground fault circuit interrupter (GFCI) for power outlets for portable electrical equipment, power tools, ice machines, ice storage bins and refrigerators located outdoors at grade. GFCI may be any one of the following: molded cord and plug set, receptacle, or circuit breaker type.
  - Use listed wire nuts with factory applied sealant for temporary wiring where approved.
  - Enclose conductor splices within a listed enclosure or ground box, or ensure the splices are more than 10 ft. above grade vertically and more than 5 ft. horizontally from any metal structure. Where installing temporary conductors in areas subject to vehicle traffic or mobile construction equipment, ensure the vertical clearance to ground is at least 18 ft. when measured at the lowest point. Ground messenger wires that support power conductors in conformance with the NEC.
  - Protect and when necessary repair any existing electrical conduits uncovered during the construction process in a timely manner and in conformance with the NEC.

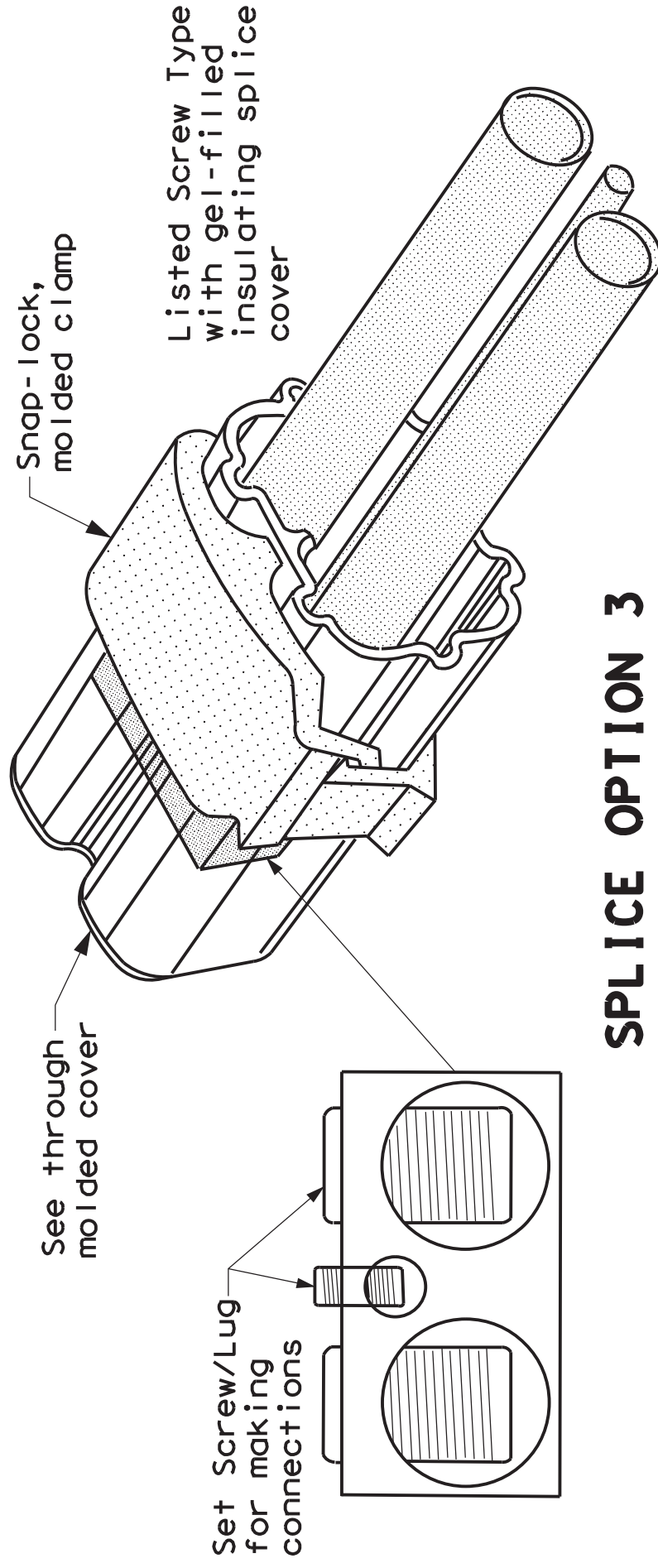
GROUND RODS & GROUNDING ELECTRODES

A. MATERIAL INFORMATION

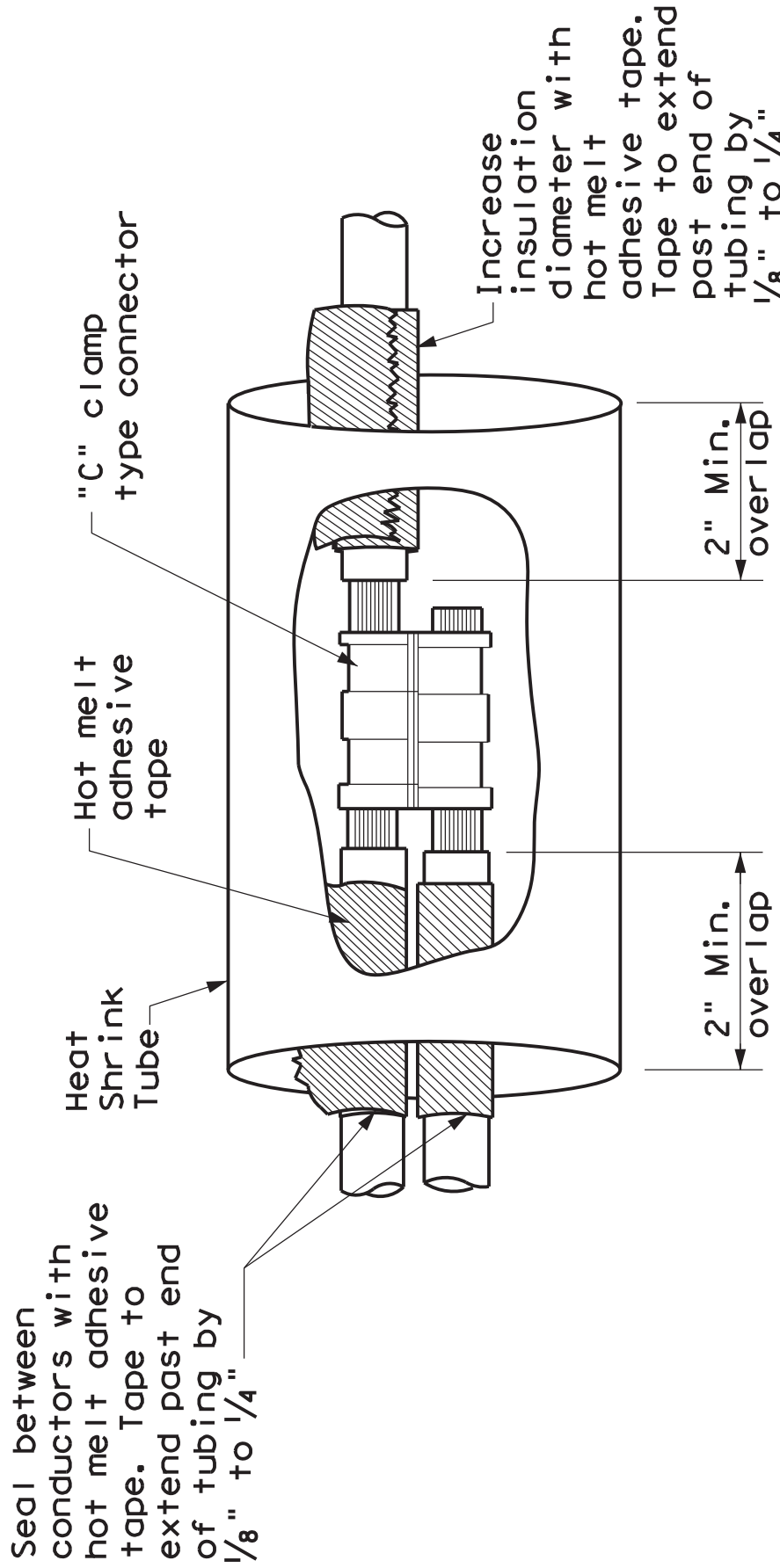
- Provide and install a grounding electrode at electrical services. Provide ground rods according to DMS 11040 and the plans. Larger diameter or longer length rods may be called for in some specific locations, see the individual plans sheets. Concrete encased grounding electrodes may be called for in specific locations including electrical service, see individual plan sheets.

B. CONSTRUCTION METHODS

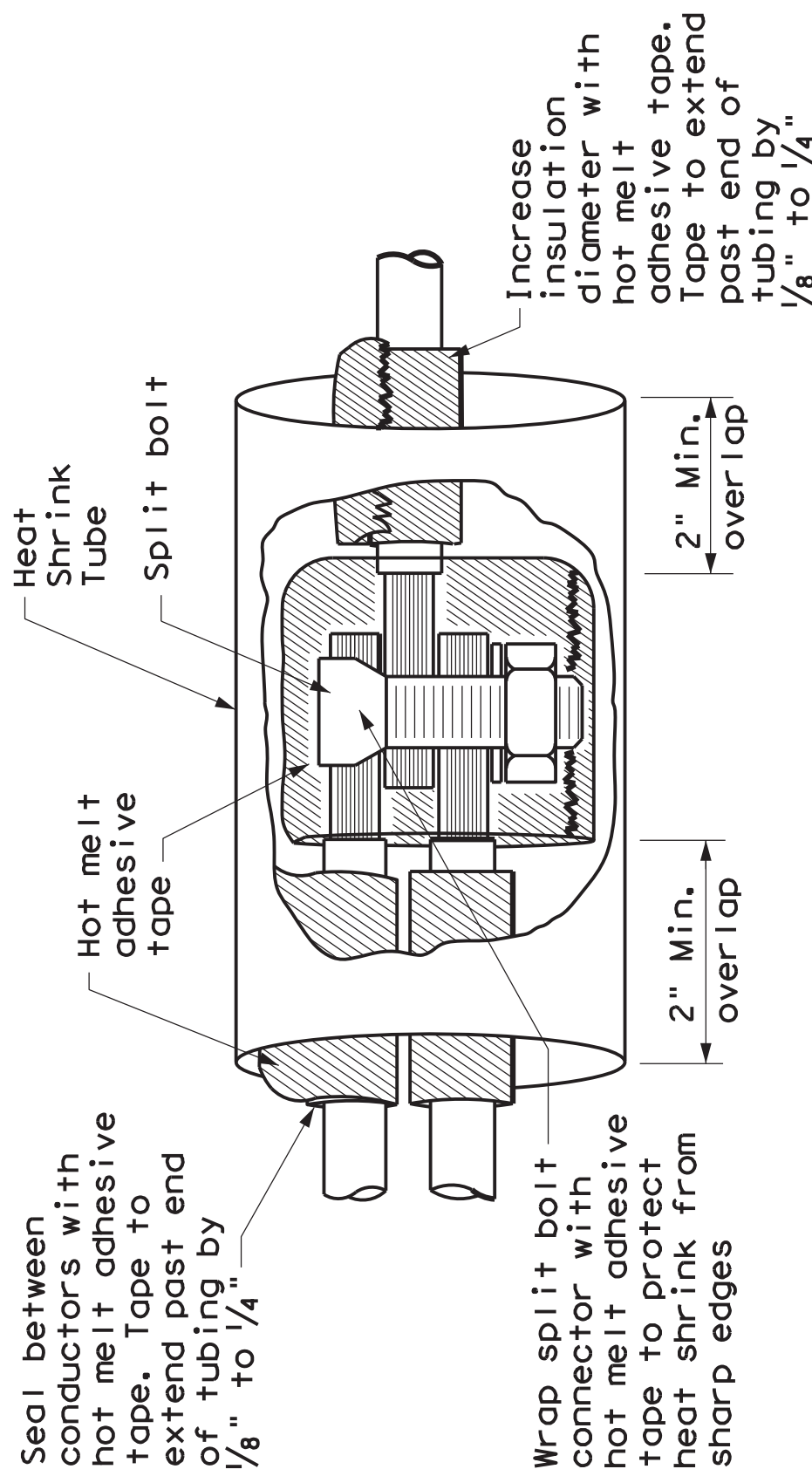
- Furnish auxiliary ground rods for lightning protection and install in soil, concrete, or both, as called for in the plans. For ground rods installed in concrete, ensure the connection of the conductor to the ground rod is readily accessible for inspection or repairs. For ground rods installed in soil, ensure that the upper end is between 2 to 4 in. below finished grade.
- Do not place ground rods in the same drilled hole as a timber pole.
- Install ground rods so the imprinted part number is at the upper end of the rod.
- Remove all non-conductive coatings such as concrete splatter from the rod at the clamp location.
- Route all conductors as short and straight as possible for connection to lightning protection ground rods. When a bend is required, ensure a minimum radius bend of four inches for these conductors.
- Unless otherwise called for in the plans, protect grounding electrode conductors with non-metallic conduit. When protecting grounding electrode conductors with metal conduit, provide and install a grounding type bushing and properly sized bonding jumper on each end of the metal conduit.
- Written authorization is required before installing a ground rod in a horizontal trench for rocky soil or a solid rock bottom.



SPLICE OPTION 3  
Listed Screw Type



SPLICE OPTION 1  
Compression Type



SPLICE OPTION 2  
Split Bolt Type



Texas Department of Transportation

Traffic  
Operations  
Division  
Standard

ELECTRICAL DETAILS  
CONDUCTORS

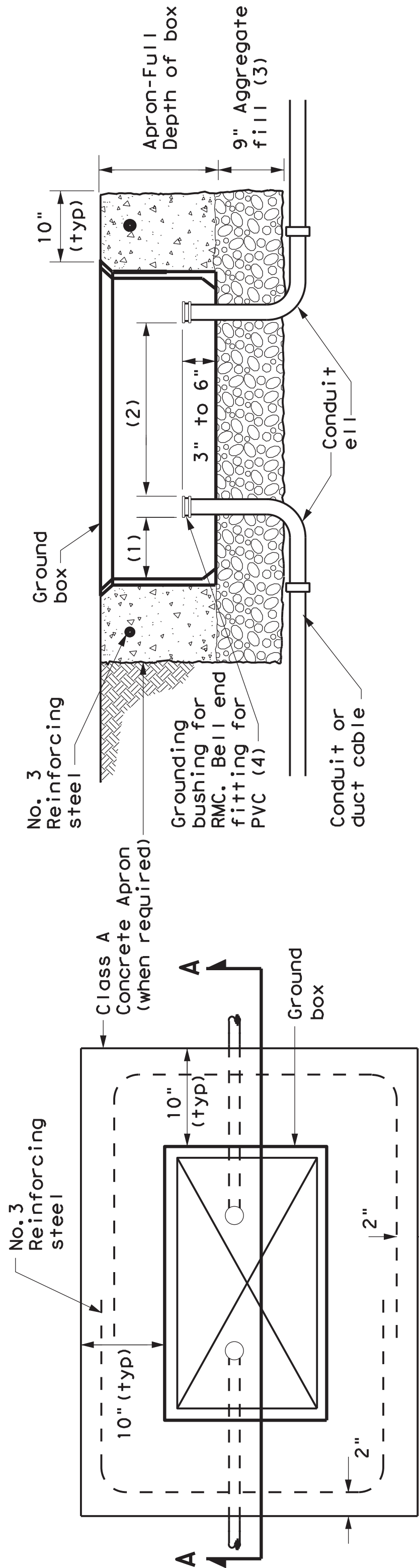
ED (3) - 14

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| DIST:    | COUNTY:      | SHEET NO.:  | 7           |                |



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DATE:  
FILE:



PLAN VIEW

SECTION A - A

## APRON FOR GROUND BOX

- (1) Uniformly space ends of conduits within the ground box. Position ends of conduits so that ground box walls do not interfere with the installation of grounding bushings or bell end fittings.
- (2) Maintain sufficient space between conduits to allow for proper installation of bushing.
- (3) Place aggregate under the box, not in the box. Aggregate should not encroach on the interior volume of the box.
- (4) Install a grounding bushing on the upper end of all RMC terminating in a ground box. Ground RMC elbows when any part of the elbow is less than 18 in. below the bottom of the ground box. Install a PVC bushing or bell end fitting on the upper end of all PVC conduits terminating in a ground box.

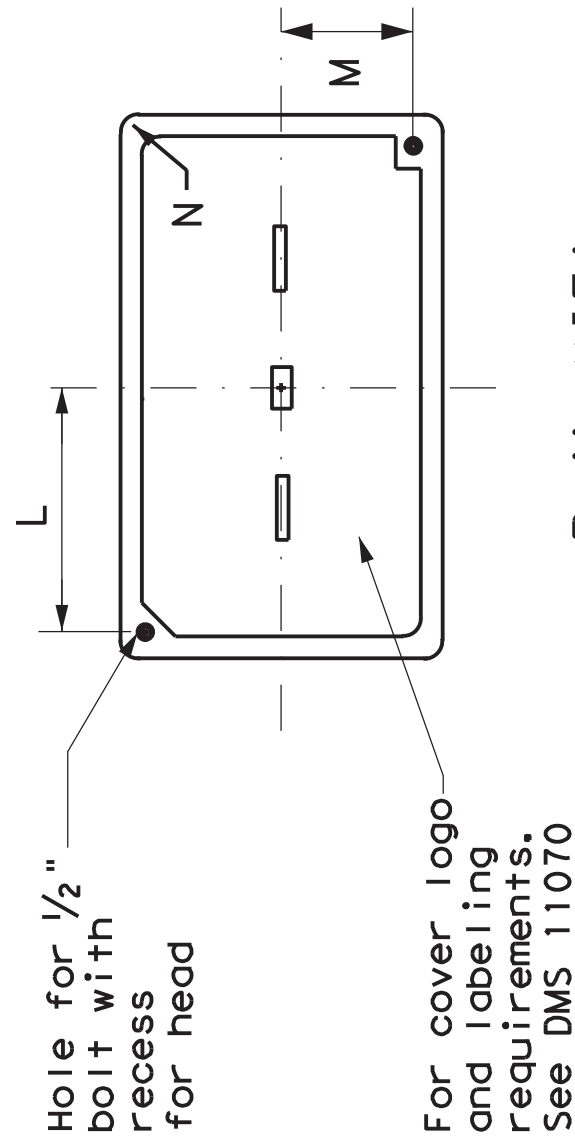
## GROUND BOXES

### A. MATERIALS

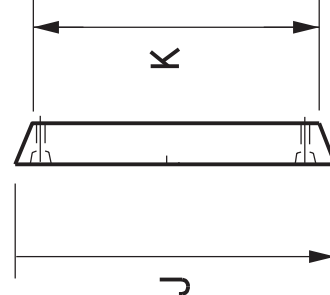
1. Provide polymer concrete ground boxes measuring 16x30x24 in. (WxLxD) or smaller in accordance with Departmental Material Specification (DMS) 11070 "Ground Boxes" and Item 624 "Ground Boxes."
2. Provide Type A, B, C, D, and E ground boxes as shown in the plans, and as listed on the Material Producers List (MPL) on the Department web site under "Roadway Illumination and Electrical Supplies," Item 624.
3. Ensure ground box cover is correctly labeled in accordance with DMS 11070.
4. Provide larger ground boxes in accordance with Item 624 and as shown in the plans.

### B. CONSTRUCTION METHODS

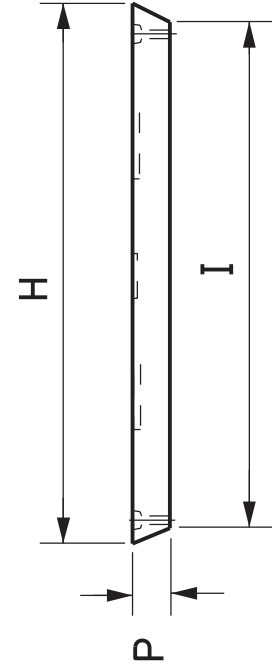
1. Remove all gravel and dirt from conduit. Cap all conduits prior to placing aggregate and setting ground box. Provide Grade 3 or 4 coarse aggregate as shown on Table 2 of Item 302 "Aggregates for Surface Treatments." Ensure aggregate bed is in place and at least 9 inches deep, prior to setting the ground box. Install ground box on top of aggregate.
2. Cast ground box aprons in place. Reinforcing steel may be field bent. Ensure the depth of concrete for the apron extends from finished grade to the top of the aggregate bed under the box. Ground box aprons, including concrete and reinforcing steel, are subsidiary to ground boxes when called for by descriptive code.
3. Keep bolt holes in the box clear of dirt. Bolt covers down when not working in ground boxes.
4. Install all conduits and ellis in a neat and workmanlike manner. Uniformly space conduits so grounding bushings and bell end fittings can easily be installed.
5. Temporarily seal all conduits in the ground box until conductors are installed.
6. Permanently seal conduits immediately after the completion of conductor installation and pull tests. Permanently seal the ends of all conduits with duct seal, expandable foam, or other method as approved. Do not use duct tape as a permanent conduit sealant. Do not use silicone caulk as a sealant.
7. When a ground rod is present in a ground box, bond all equipment grounding conductors together and to the ground rod with listed connectors.
8. When a type B or D ground box is stacked to meet volume requirements, it is allowable to cut an appropriately sized hole for conduit entry in the side wall at least 18 inches below grade.
9. If an existing ground box in the contract has a metal cover, bond the cover to the equipment grounding conductor with a 3 ft. long stranded bonding jumper the same size as the grounding conductor. The bonding jumper is subsidiary to various bid items. Verify existing ground boxes with metal covers are shown on the plans, with notes fully describing the work required.
10. If other ground boxes with metal covers are within the project limits but are not part of the contract, the Engineer may direct the Contractor to bond the metal covers, identifying the specific boxes in writing. This work will be paid for separately.
11. Bond metal ground box covers to the grounding conductor with a tank ground type lug.



PLAN VIEW



END



SIDE

Traffic  
Operations  
Division  
Standard

# ELECTRICAL DETAILS

## GROUND BOXES

### ED (4) - 14

|           |              |       |       |       |          |            |       |
|-----------|--------------|-------|-------|-------|----------|------------|-------|
| FILE:     | ed4-14.dgn   | DWG:  | TxDOT | CHK:  | TxDOT    | DATE:      | TxDOT |
| REVISED:  | October 2014 | CONT: | SECT: | JOB:  | HIGHWAY: |            |       |
| REVISIONS |              |       |       | DIST: | COUNTY:  | SHEET NO.: | 8     |

## GROUND BOX COVER



## ELECTRICAL SERVICES NOTES

1. Provide new materials. Ensure installation and materials comply with the applicable provisions of the National Electrical Code (NEC) and National Electrical Manufacturers Association (NEMA) standards. Ensure materials is Underwriters Laboratories (UL) listed. Provide and install electrical service conduits, conductors, disconnects, contactors, circuit breaker panels, and branch circuit breakers as shown on the Electrical Service Data chart in the plans. Faulty fabrication or poor workmanship in material, equipment, or installation is justification for rejection. Where manufacturers provide warranties and guarantees as a customary trade practice, furnish these to the State.

2. Provide electrical services in accordance with Electrical Details standard sheets, Departmental Material Specification (DMS) 1080 "Electrical Services." DMS 1081 "Electrical Services-Type A," DMS 1082 "Electrical Services-Type C," DMS 1083 "Electrical Services-Type D," DMS 1084 "Electrical Services-Type I," DMS 1085 "Electrical Services-Pedestal (PS)," and Item 628 "Electrical Services" of the Standard Specifications. Provide electrical service types A, C, and D, as listed on the Material Producers List (MPL) on the Department web site under "Roadway Illumination and Electrical Supplies." Item 628. Provide other service types as detailed on the plans.

3. Provide all work, materials, services, and any incidentals needed to install a complete electrical service as specified in the plans.

4. Coordinate with the Engineer and the utility provider for metering and compliance with utility requirements. Primary line extensions, connection charges, meter charges, and other charges by the utility company to provide power to the location are paid for in accordance with Item 628. Get approval for the costs associated with these charges prior to engaging the utility company to do the work. Consult with the utility provider to determine costs and requirements, and coordinate the work as approved.

5. The enclosure manufacturer will provide Master Lock Type 2 with brass tumblers keyed "2195" for all custom electrical enclosures. Installing Contractor is to provide Master Lock "2195" Type 2 with brass tumblers for "off the shelf" enclosures. Master Lock "2195" keys and locks become property of the State. Unless otherwise approved, do not energize electrical service equipment until locks are installed.

6. Enclosures with external disconnects that de-energize all equipment inside the enclosure do not need a dead front trim. Protect incoming line terminations from incidental contact as required by the NEC.

7. When galvanized is specified for nuts, screws, bolts or miscellaneous hardware, stainless steel may be used.

8. Provide wiring and electrical components rated for 75° C. Provide red, black, and white colored YHHW service entrance conductors of minimum size 6 American Wire Gauge (AWG). Identify size 6 AWG conductors by continuous color jacket. Identify electrical conductors sized 4 AWG and larger by continuous color jacket or by colored tape. Mark at least 6 inches of the conductor's insulation with half lops of colored tape, when identifying conductors. Ensure each service entrance conductor exits through a separately bused non-metallic opening in the weatherhead. The lengths of the conductors outside the weatherhead are to be 12 inches minimum, 18 inches maximum, or as required by utility.

9. All electrical service conduit and conductors attached to the electrical service including the riser or the elbow below ground are subsidiary to the electrical service. For an underground utility feed, all service conduit and conductors off the elbow, including service conduit and conductors for the utility pole riser when furnished by the Contractor, will be paid for separately.

D. Provide rigid metal conduit (RMC) for all conduits on service, except for the 1/2 in. PVC conduit containing the electrical service grounding electrode conductor. Size the service entrance conduit as shown in the plans. Ensure conduit for branch circuit entry to enclosure is the same size as that shown on the layout sheets for branch circuit conduit. Extend all rigid metal conduits a minimum of 6 inches underground and then couple to the type and schedule of the conduit shown on the layout for that particular branch circuit. Install a grounding bushing on the RMC where it terminates in the service enclosure.

Use of liquidtight flexible metal conduit (LFMC) is allowed between the meter and service enclosure when they are mounted 90 to 180 degrees to each other. Size the LFMC the same size as service entrance conduit. LFMC must not exceed 5 feet in length. Strip LFMC within 1 foot of each end. LFMC less than 12 inches in length need not be stripped. Each end of LFMC must have a grounding bushing or be terminated with a grounding fitting. The LFMC must contain a grounded (neutral) conductor. Ensure any bend in LFMC never exceeds 180 degrees. A pull test is required on all installed conductors, with at least six inches of free conductor movement demonstrated to the satisfaction of the Engineer.

**2.Ensure all mounting hardware and installation details of services conform to utility company specifications.**

3.5. For all electrical service enclosures listed under item 628 on the MPL, the UL 508 enclosure manufacturers will prepare and submit a schematic drawing unique to each service. Before shipment to the job site, placing the applicable laminated schematic drawings and the laminated plan sheet showing the electrical service data chart used to build the enclosure in the enclosure's data pocket. The installing contractor will copy and laminate the actual project plan sheets detailing all equipment and branch circuits supplied by that service. The laminated plan sheets are to be placed in the service enclosure's document pocket. Reduce 11 in. x 17 in. plan sheets to 8 1/2 in. x 11 in. before laminating. If the installation differs from the plan sheets, the installing contractor is to redline plan sheets before laminating.

4. When providing on "Off The Shelf" Type D or Type I service, provide laminated plan sheets detailing equipment and branch circuits supplied by that service. Reduce 11 in. x 17 in. plan sheets to 8 1/2 in. x 11 in before laminating. Deliver these drawings before completion of the work to the Engineer, instead of placing in enclosure that has no door pocket.

5. Do not install conduit in the back wall of a service enclosure where it would penetrate the equipment mounting panel inside the enclosure. Provide grounding bushings on all metal conduits, and terminate bonding jumpers to grounding bus. Grounding bushings are not required when the end of the metal conduit is fitted with a conduit sealing hub or threaded boss, such as a meter base hub.

**SERVICE ASSEMBLY ENCLOSURE**

1. Provide threaded hub for all conduit entries into the top of enclosure.
2. Type galvanized steel (GS) enclosures may be used for Type C panelboards and for Type D and T services that do not use an enclosure mounted photocell or lighting contactor. Provide GS enclosures in accordance with DMS 11080, 11082, 11083, and 11084.
3. Provide aluminum (AL) and stainless steel (SS) enclosures for Types A, C, and D in accordance with DMS 11080, 11081, 11082, 11083, and 11084. Do not paint stainless steel.
4. Provide pedestal service (PS) enclosures in accordance with ED(9) and DMS 11080 and 11085. Do not provide GS pedestal services. If GS is shown in the PS descriptive code, provide an AL enclosure.

## MAIN DISCONNECT & BRANCH CIRCUIT BREAKERS

2. When the utility company provides a transformer larger than 50 KVA, verify that the available fault current is less than the circuit breaker's ampere interrupting capacity (AIC) rating and provide documentation from the electric utility provider to the Engineer.

# PHOTOELECTRIC CONTROL

1. Provide photocells as listed on the MPL. Move, adjust, or shield the photocell from stray or ambient night time light to ensure proper operation. Mount photocell facing north when practical. Mount top of pole photocells as shown on Top Mounted Photocell Detail.

## \* ELECTRICAL SERVICE DATA

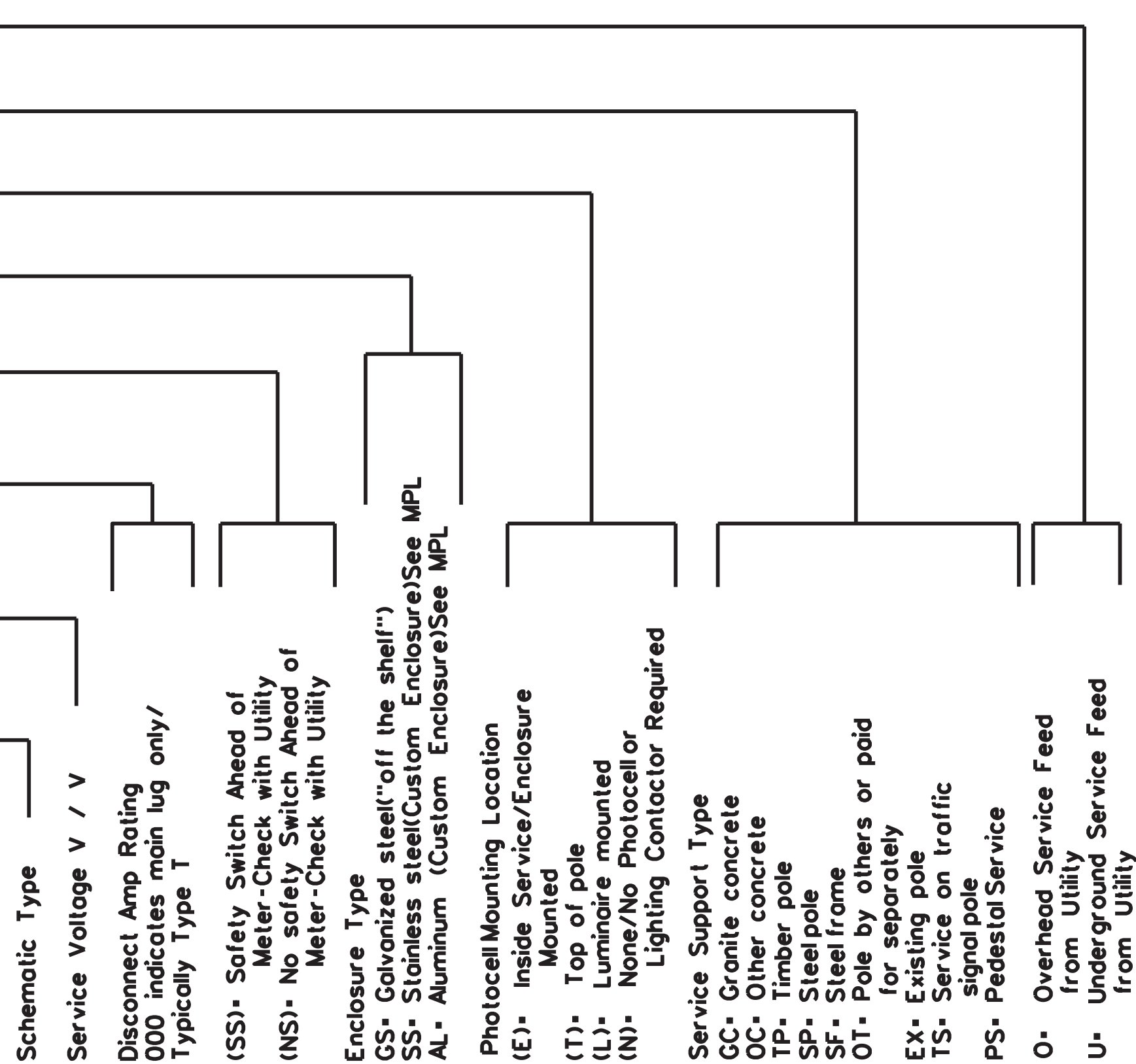
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\* Example only, not for construction. All new electrical services must have electrical service data chart specific to that service as shown in the plans.

**\* \* Verify service conduit size with utility. Size may change due to utility meter requirements. Ensure conduit size meets the National Electrical Code.**

### EXPLANATION OF ELECTRICAL SERVICE DESCRIPTIVE CODE

**ELEC SERV TY X XXX/XXX XXX (XX) XX (X) XX (X)**



# TOP MOUNTED PHOTOCELL

**Install conduit strap maximum 3 feet from box. 5 foot maximum spacing between straps supporting conduit.**



***Texas Department of Transportation***

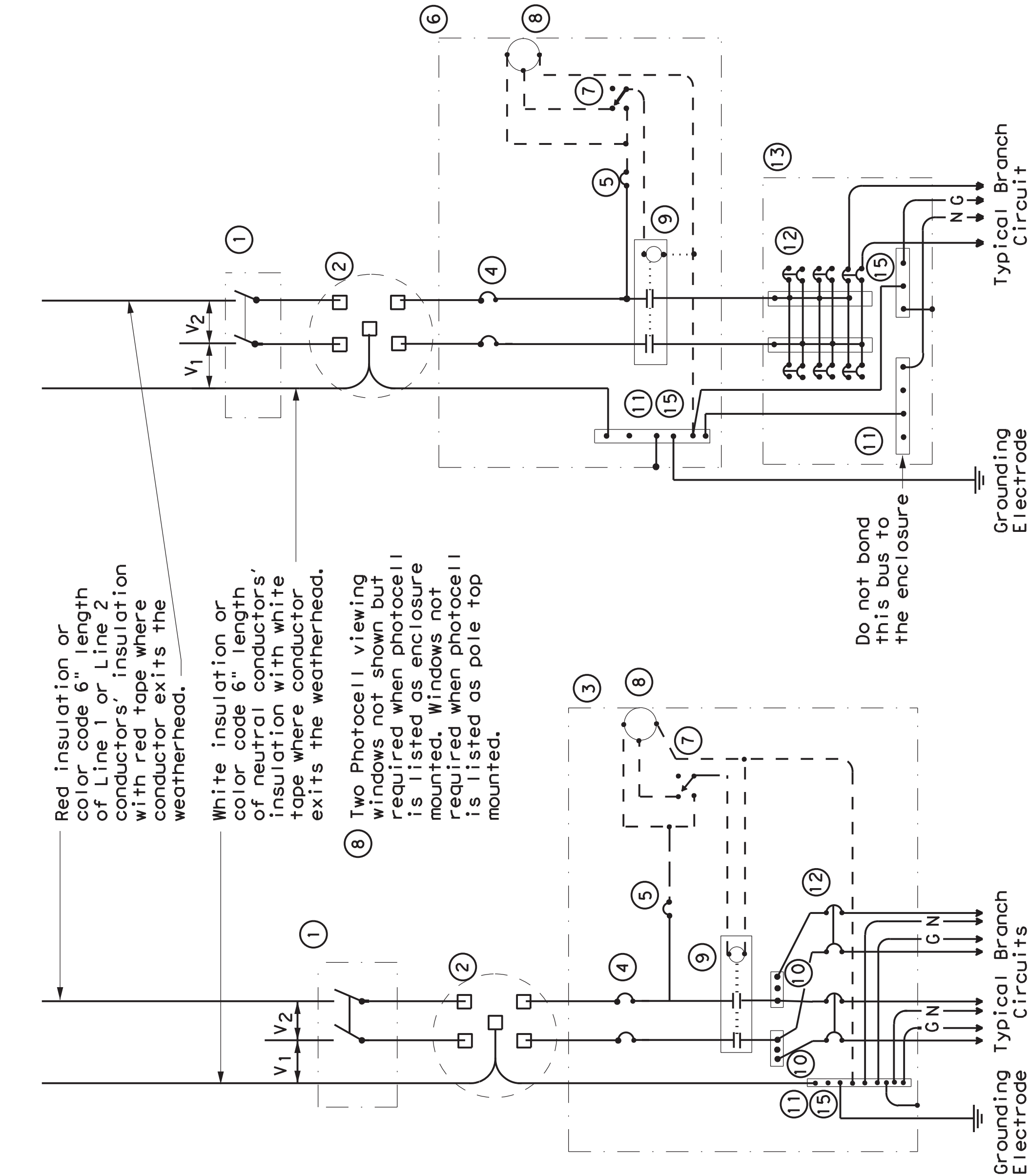
**Traffic  
Operations  
Division  
Standard**

## ELECTRICAL DETAILS SERVICE NOTES & DATA

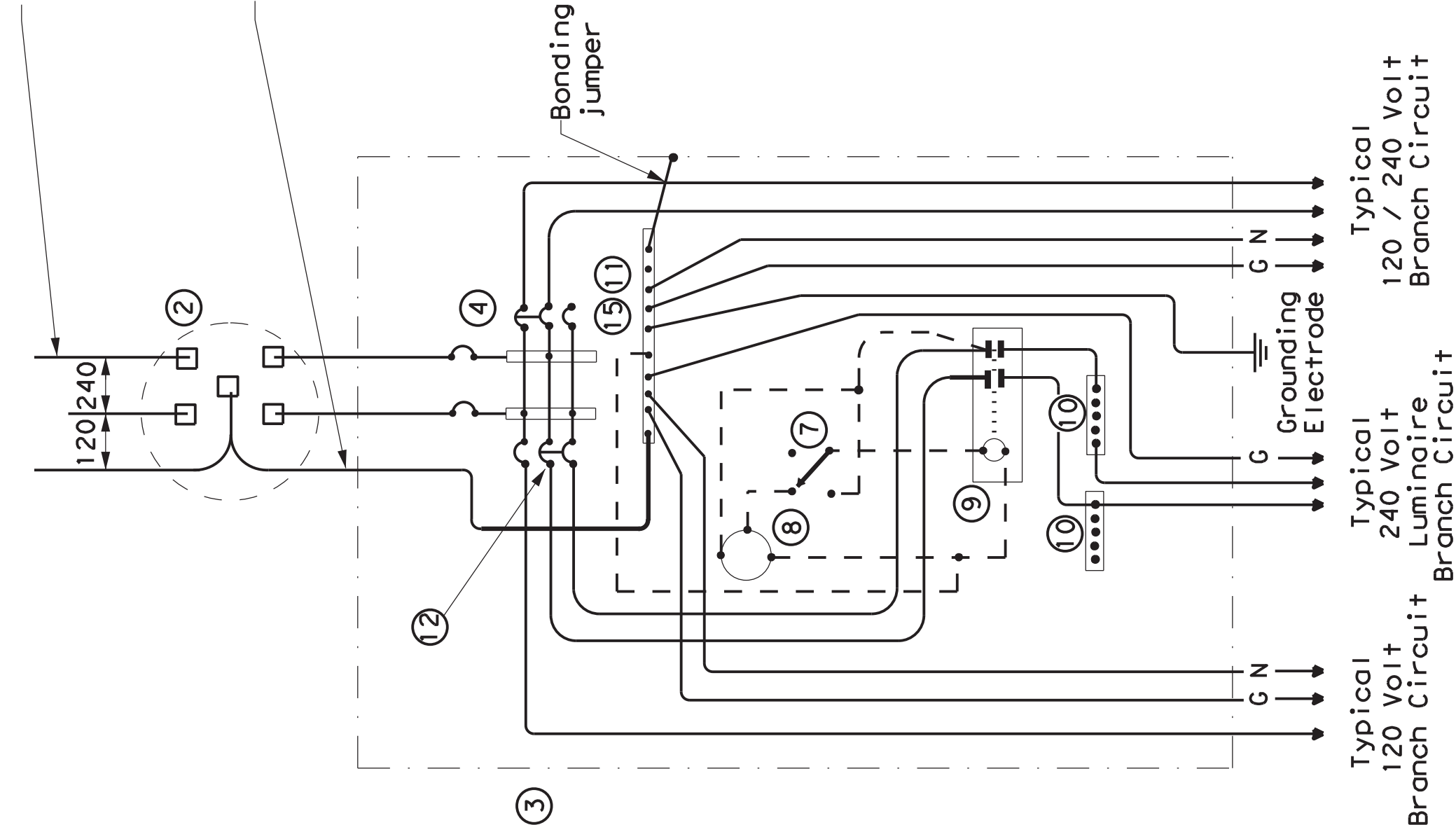
ED(5)-14

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| FILE:   | ed5-14.dgn   | DN: TxDOT | CK: TxDOT | OW: TxDOT | CK: TxDOT |
| © TxDOT | October 2014 | CONT      | SECT      | JOB       | HIGHWAY   |
| REVIEWS |              |           |           |           |           |
|         |              | DIST      | COUNTY    |           | SHEET NO. |
|         |              | 9         |           |           |           |

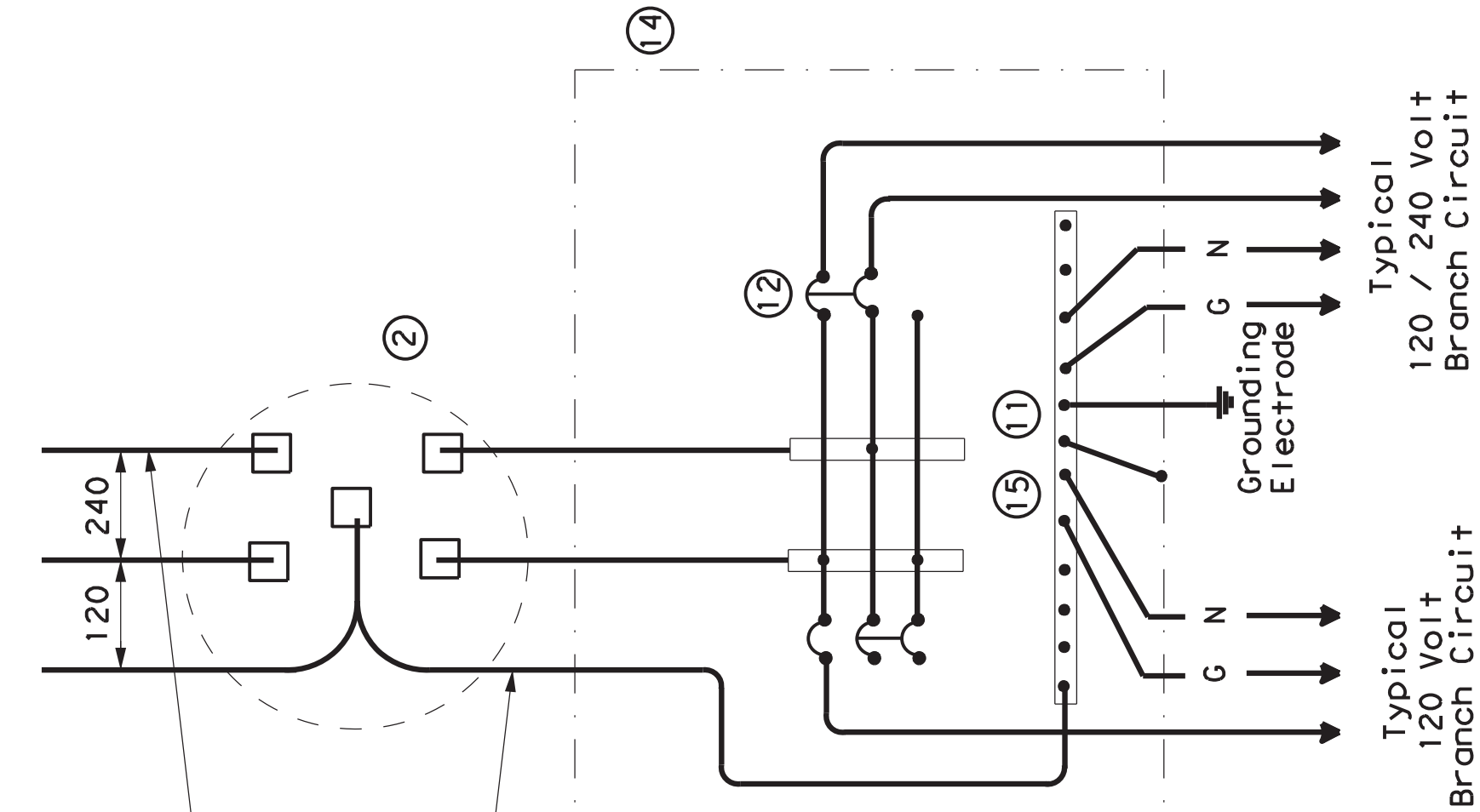




SCHEMATIC TYPE A  
THREE WIRE



SCHEMATIC TYPE D - CUSTOM  
120/240 VOLTS - THREE WIRE



SCHEMATIC TYPE T

120/240 VOLTS - THREE WIRE

Galvanized steel - "Buy Off The Shelf" only. When required install photocell top of the pole or on luminaire only, no lighting contractor will be installed.

Red insulation or color code 6" length of Line 1 or Line 2 conductors' insulation with red tape where conductor exits the weatherhead.

White insulation or color code 6" length of neutral conductors' insulation with white tape where conductor exits the weatherhead.

| SCHEMATIC LEGEND |                                                             |
|------------------|-------------------------------------------------------------|
| 1                | Safety Switch (when required)                               |
| 2                | Meter (when required-verify with electric utility provider) |
| 3                | Service Assembly Enclosure                                  |
| 4                | Main Disconnect Breaker (See Electrical Service Data)       |
| 5                | Circuit Breaker, 15 Amp (Control Circuit)                   |
| 6                | Auxiliary Enclosure                                         |
| 7                | Control Station ("H-O-A" Switch)                            |
| 8                | Photo Electric Control (enclosure-mounted shown)            |
| 9                | Lighting Contactor                                          |
| 10               | Power Distribution Terminal Blocks                          |
| 11               | Neutral Bus                                                 |
| 12               | Branch Circuit Breaker (See Electrical Service Data)        |
| 13               | Separate Circuit Breaker Panelboard                         |
| 14               | Load Center                                                 |
| 15               | Ground Bus                                                  |

| WIRING LEGEND |                                               |
|---------------|-----------------------------------------------|
| —             | Power Wiring                                  |
| - - -         | Control Wiring                                |
| — N —         | Neutral Conductor                             |
| — G —         | Equipment grounding conductor-always required |

Texas Department of Transportation

Traffic Operations Division Standard

# ELECTRICAL DETAILS

## SERVICE ENCLOSURE AND NOTES

### ED(6) - 14

FILE: ed6-14.dgn

DWG: TxDOT

CHK: TxDOT

DATE: 10/14/2014

REV: 1

REVISIONS

CONT: TxDOT

SECT: 101

JOB: 101

DIST: 101

COUNTY: 101

SHEET NO.: 10







BARRICADE AND CONSTRUCTION (BC) STANDARD SHEETS GENERAL NOTES:

1.

The Barricade and Construction Standard Sheets (BC sheets) are intended to show typical examples for placement of temporary traffic control devices, construction pavement markings, and typical work zone signs. The information contained in these sheets meet or exceed the requirements shown in the "Texas Manual on Uniform Traffic Control Devices" (TMUTCD).

2.

The development and design of the Traffic Control Plan (TCP) is the responsibility of the Engineer.

3.

The Contractor may propose changes to the TCP that are signed and sealed by a licensed professional engineer for approval. The Engineer may develop, sign and seal Contractor proposed changes.

4.

The Contractor is responsible for installing and maintaining the traffic control devices as shown in the plans. The Contractor may not move or change the approximate location of any device without the approval of the Engineer.

5.

Geometric design of lane shifts and detours should, when possible, meet the applicable design criteria contained in manuals such as the American Association of State Highway and Transportation Officials (AASHTO), "A Policy on Geometric Design of Highways and Streets," the TxDOT "Roadway Design Manual" or engineering judgment.

6.

When projects about, the Engineer(s) may omit the END ROAD WORK, TRAFFIC FINES DOUBLE, and other advance warning signs if the signing would be redundant and the work areas appear continuous to the motorists. If the adjacent project is completed first, the Contractor shall erect the necessary warning signs as shown on these sheets, the TCP sheets or as directed by the Engineer. The BEGIN ROAD WORK NEXT X MILES sign shall be revised to show appropriate work zone distance.

7.

The Engineer may require duplicate warning signs on the median side of divided highways where median width will permit and traffic volumes justify the signing.

8.

All signs shall be constructed in accordance with the details found in the "Standard Highway Sign Designs for Texas," latest edition. Sign details not shown in this manual shall be shown in the plans or the Engineer shall provide a detail to the Contractor before the sign is manufactured.

9.

The temporary traffic control devices shown in the illustrations of the BC sheets are examples. As necessary, the Engineer will determine the most appropriate traffic control devices to be used.

10.

As shown on BC(2), the OBEY WARNING SIGNS STATE LAW sign, STAY ALERT TALK OR TEXT LATER (see Sign Detail G20-10T) and the WORK ZONE TRAFFIC FINES DOUBLE sign with plaque shall be erected in advance of the CSJ limits. However, the TRAFFIC FINES DOUBLE sign will not be required on projects consisting solely of mobile operation work, such as striping or milling edgeline rumble strips. The BEGIN ROAD WORK NEXT X MILES, CONTRACTOR and END ROAD WORK signs shall be erected at or near the CSJ limits.

11.

Except for devices required by Note 10, traffic control devices should be in place only while work is actually in progress or a definite need exists.

12.

The Engineer has the final decision on the location of all traffic control devices.

13.

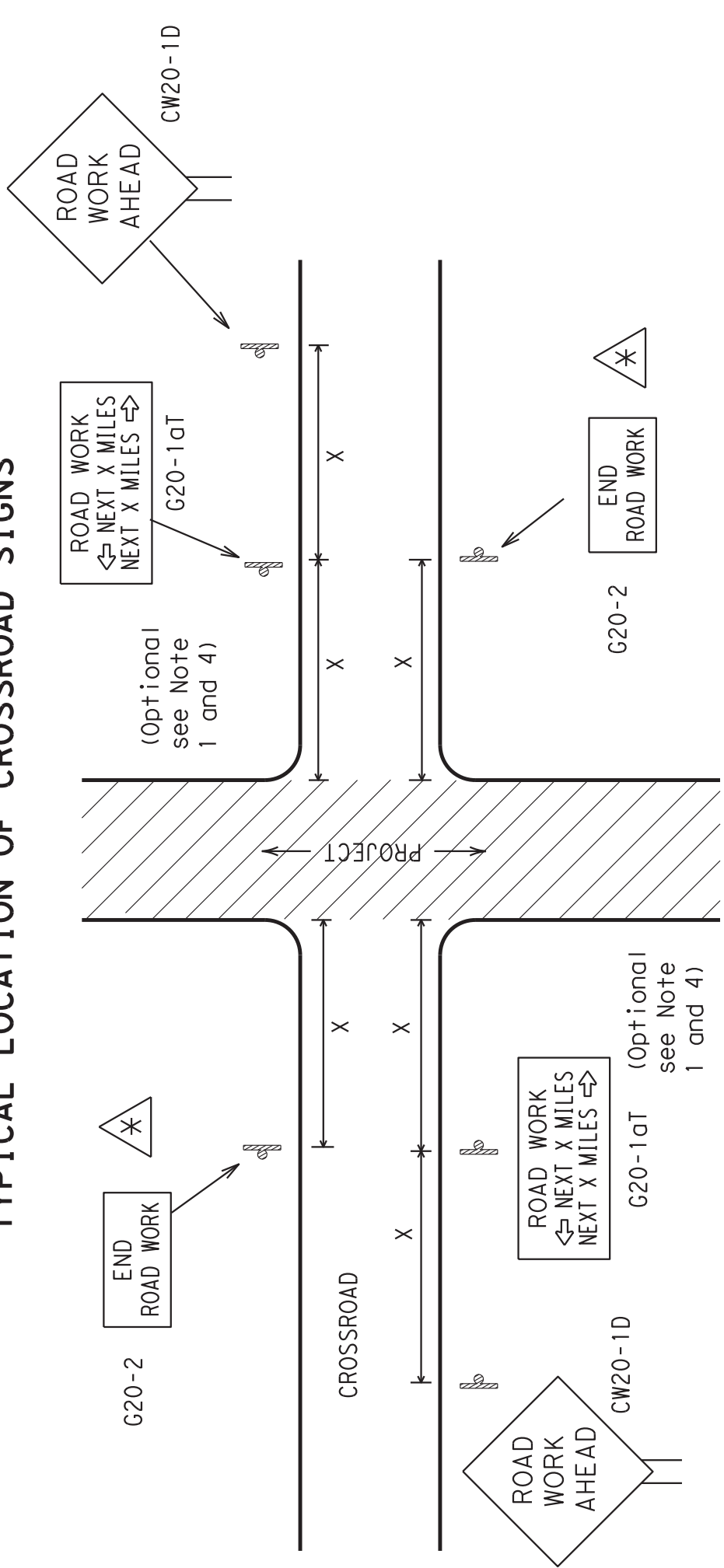
Inactive equipment and work vehicles, including workers' private vehicles must be parked away from travel lanes. They should be as close to the right-of-way line as possible, or located behind a barrier or guardrail, or as approved by the Engineer.
- WORKER SAFETY APPAREL NOTES:
1.

Workers on foot who are exposed to traffic or to construction equipment within the right-of-way shall wear high-visibility safety apparel meeting the requirements of ISEA "American National Standard for High-Visibility Apparel," or equivalent revisions, and labeled as ANSI 107-2004 standard performance for Class 2 or 3 risk exposure. Class 3 garments should be considered for high traffic volume work areas or night time work.
- 
- Only pre-qualified products shall be used. The "Compliant Work Zone Traffic Control Devices List" (CWZTCD) describes pre-qualified products and their sources and may be found on-line at the web address given below or by contacting:

Texas Department of Transportation  
Traffic Operations Division - TE  
Phone (512) 416-3118
- SIGN DETAIL (G20-10T)
- |                                                                                                        |  |
|--------------------------------------------------------------------------------------------------------|--|
| THE DOCUMENTS BELOW CAN BE FOUND ON-LINE AT<br><a href="http://www.txdot.gov">http://www.txdot.gov</a> |  |
| COMPLIANT WORK ZONE TRAFFIC CONTROL DEVICES LIST (CWZTCD)                                              |  |
| DEPARTMENTAL MATERIAL SPECIFICATIONS (DMS)                                                             |  |
| MATERIAL PRODUCER LIST (MPL)                                                                           |  |
| ROADWAY DESIGN MANUAL - SEE "MANUALS (ONLINE MANUALS) "                                                |  |
| STANDARD HIGHWAY SIGN DESIGNS FOR TEXAS (SHSD)                                                         |  |
| TEXAS MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES (TMUTCD)                                               |  |
| TRAFFIC ENGINEERING STANDARD SHEETS                                                                    |  |
- SHEET 1 OF 12
- |                                                                                                                               |               |
|-------------------------------------------------------------------------------------------------------------------------------|---------------|
| <div><div><div></div><div>Texas Department of Transportation</div></div><div>Traffic Operations Division Standard</div></div> |               |
| BARRICADE AND CONSTRUCTION<br>GENERAL NOTES<br>AND REQUIREMENTS                                                               |               |
| BC (1) - 14                                                                                                                   |               |
| FILES: bc-14.dgn                                                                                                              | DWG: TxDOT    |
| CONT: November 2002                                                                                                           | SECT: HIGHWAY |
| REVISIONS                                                                                                                     |               |
| 4-03 5-10 8-14 9-07 7-13                                                                                                      | DIST: COUNTY  |
| SHEET NO.                                                                                                                     | 12            |
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- Packet Pg. 329
- DATE: FILE:
- Attachment: 2016-133 ATTH 02 DPW 17-1901-03 Gateway Sign Plans (1567 : 2016-133 ORD amending the FY17 Budget for the construction of the Texarkana, Texas Welcome Sign)
- 6.3.c



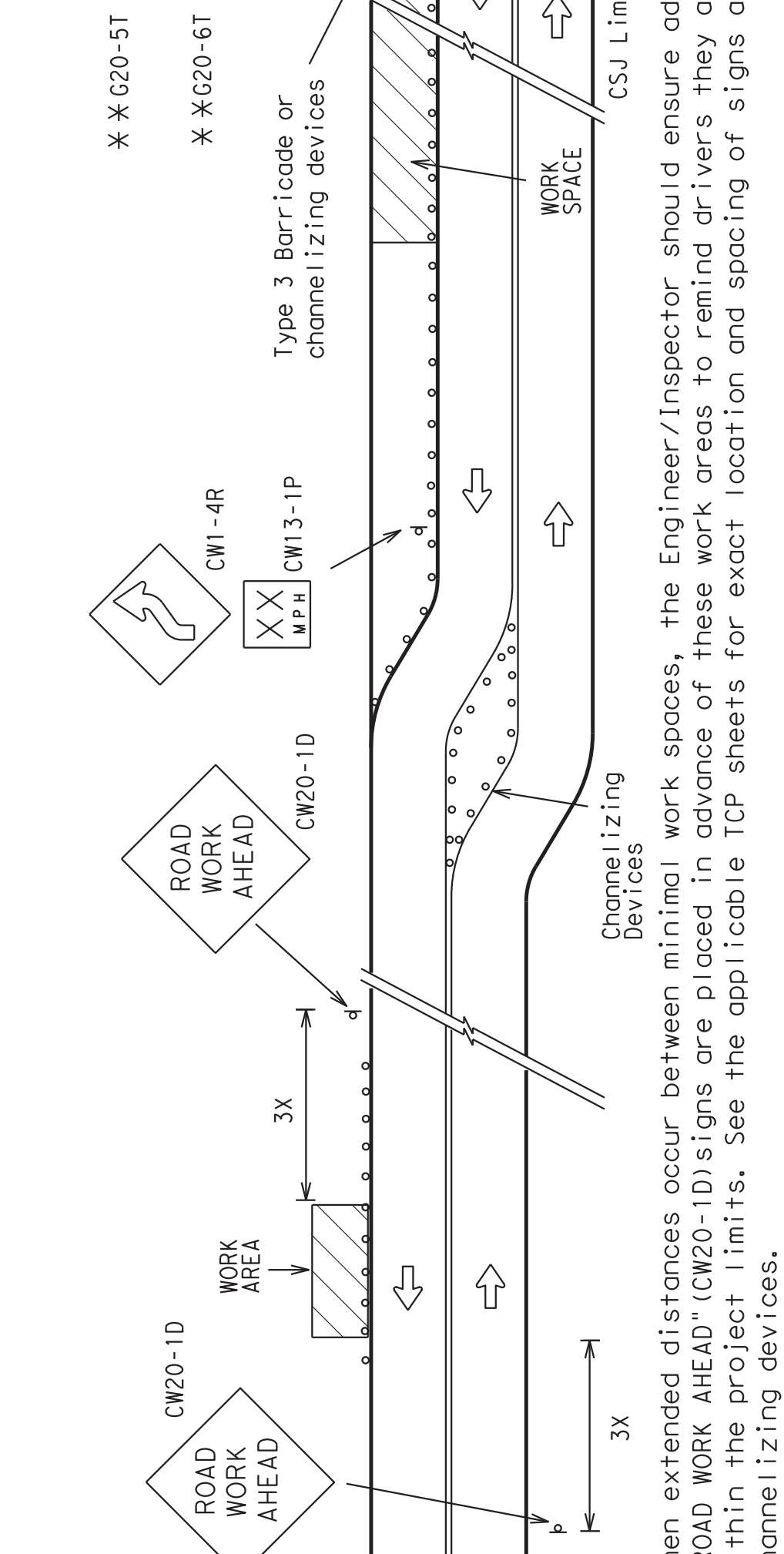
TYPICAL LOCATION OF CROSSROAD SIGNS



May be mounted on back of "ROAD WORK AHEAD" (CW20-1D) sign with approval of Engineer.  
(See note 2 below)

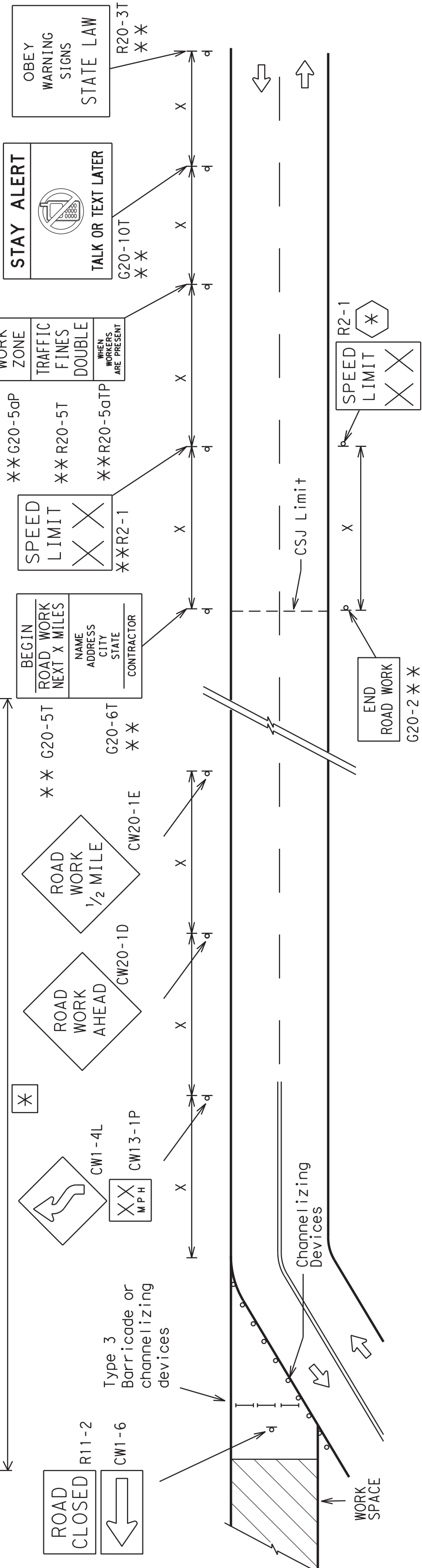
- The typical minimum signing on a crossroad approach should be a "ROAD WORK AHEAD" (CW20-1D) sign and a (G20-2) "END ROAD WORK" sign, unless noted otherwise in plans.
- The Engineer may use the reduced size 36" x 36" x 36" ROAD WORK AHEAD (CW20-1D) sign mounted back to back with the reduced size 36" x 18" "END ROAD WORK" (G20-2) sign on low volume crossroads (see Note 4 under "Typical Construction Warning Sign Size and Spacing"). See the "Standard Highway Sign Designs for Texas" manual for sign details. The Engineer may omit the advance warning signs on low volume crossroads. The Engineer will determine whether a road is low volume. This information shall be shown in the plans.
- Based on existing field conditions, the Engineer/Inspector may require additional signs such as FLAGGER AHEAD, LOOSE GRAVEL, or other appropriate signs. When additional signs are required, these signs will be considered part of the minimum requirements. The Engineer/Inspector will determine the proper location and spacing of any sign not shown on the BC sheets, Traffic Control Plan sheets or the Work Zone Standard Sheets.
- The "ROAD WORK NEXT X MILES" (G20-1aT) sign shall be required at high volume crossroads to advise motorists of the length of construction in either direction from the intersection. The Engineer will determine whether a roadway is considered high volume.
- Additional traffic control devices may be shown elsewhere in the plans for higher volume crossroads.
- When work occurs in the intersection area, appropriate traffic control devices, as shown elsewhere in the plans or as determined by the Engineer/Inspector, shall be in place.

WORK AREAS IN MULTIPLE LOCATIONS WITHIN CSJ LIMITS

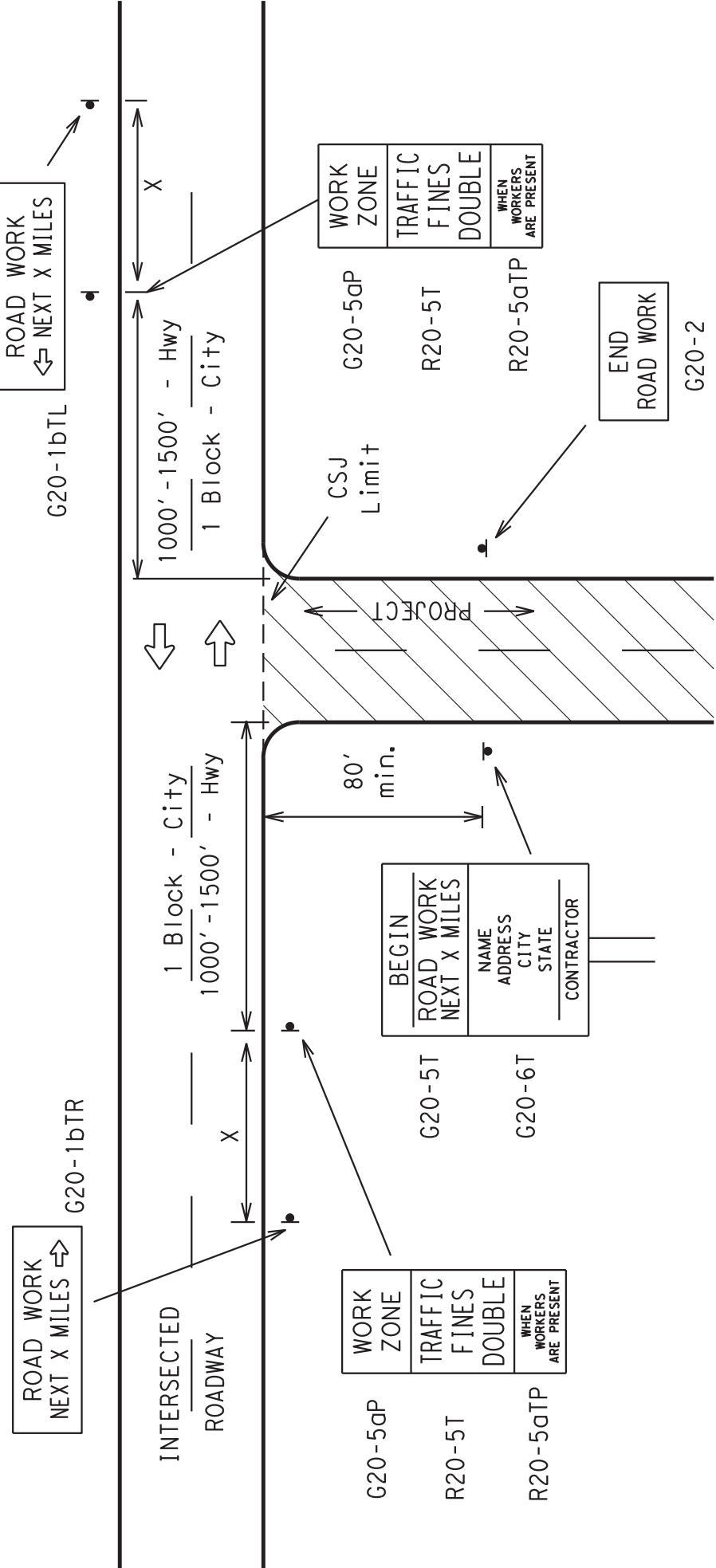


When extended distances occur between minimal work spaces, the Engineer/Inspector should ensure additional "ROAD WORK AHEAD" (CW20-1D) signs are placed in advance of these work areas to remind drivers they are still within the project limits. See the applicable TCP sheets for exact location and spacing of signs and channelizing devices.

SAMPLE LAYOUT OF SIGNING FOR WORK BEGINNING DOWNSTREAM OF THE CSJ LIMITS



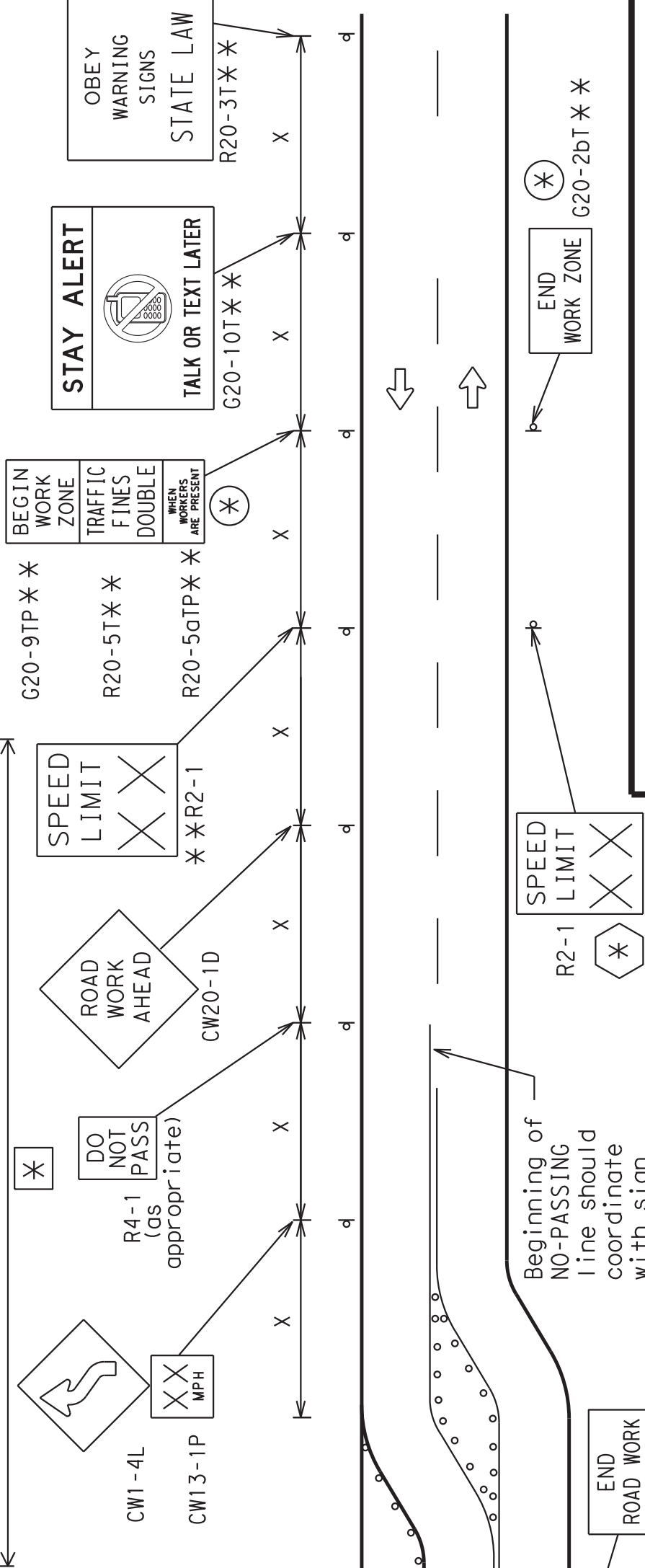
T - INTERSECTION



CSJ LIMITS AT T-INTERSECTION

- The Engineer will determine the types and location of any additional traffic control devices, such as a flagger and accompanying signs, or other signs, that should be used when work is being performed at or near an intersection.
- If construction closes the road at a T-intersection the Contractor shall place the "CONTRACTOR NAME" (G20-6T) sign behind the Type 3 Barricades for the road closure (see BC(10) also). The "ROAD WORK NEXT X MILES" left arrow (G20-1bTL) and "ROAD WORK NEXT X MILES" right arrow (G20-1bTR) signs shall be replaced by the detour signing called for in the plans.

SAMPLE LAYOUT OF SIGNING FOR WORK BEGINNING AT THE CSJ LIMITS



NOTES

- The Contractor shall determine the appropriate distance to be placed on the G20-1 series signs and "BEGIN ROAD WORK NEXT X MILES" (G20-5T) sign for each specific project. This distance shall replace the "X" and shall be rounded to the nearest whole mile with the approval of the Engineer. No decimals shall be used.
- The "BEGIN WORK ZONE" (G20-9TP) and "END WORK ZONE" (G20-2bT) shall be used as shown on the sample layout when advance signs are required outside the CSJ Limits. They inform the motorist of entering or leaving a part of the work zone lying outside the CSJ Limits where traffic fines may double if workers are present.
- \*\* Required CSJ Limit signing. See Note 10 on BC(1). TRAFFIC FINES DOUBLE signs will not be required on projects consisting solely of mobile operations work.
- \*\* Area for placement of "ROAD WORK AHEAD" (CW20-1D) sign and other signs or devices as called for on the Traffic Control Plan.
- Contractor will install a regulatory speed limit sign at the end of the work zone.

TYPICAL CONSTRUCTION WARNING SIGN SIZE AND SPACING<sup>1,5,6</sup>

| SIZE                                              |                   |                     | SPACING         |                   |
|---------------------------------------------------|-------------------|---------------------|-----------------|-------------------|
| Sign Number or Series                             | Conventional Road | Expressway/ Freeway | Posted Speed    | Sign Spacing "X"  |
| CW20 <sup>4</sup><br>CW21<br>CW22<br>CW23<br>CW25 | 48" x 48"         | 48" x 48"           | MPH<br>(Apprx.) | Feet<br>(Apprx.)  |
|                                                   |                   |                     | 30              | 120               |
|                                                   |                   |                     | 35              | 160               |
|                                                   |                   |                     | 40              | 240               |
|                                                   |                   |                     | 45              | 320               |
|                                                   |                   |                     | 50              | 400               |
|                                                   |                   |                     | 55              | 500 <sup>2</sup>  |
|                                                   |                   |                     | 60              | 600 <sup>2</sup>  |
|                                                   |                   |                     | 65              | 700 <sup>2</sup>  |
|                                                   |                   |                     | 70              | 800 <sup>2</sup>  |
|                                                   |                   |                     | 75              | 900 <sup>2</sup>  |
|                                                   |                   |                     | 80              | 1000 <sup>2</sup> |
|                                                   |                   |                     | *               | *                 |
|                                                   |                   |                     |                 | 3                 |

\* For typical sign spacings on divided highways, expressways and freeways, see Part 6 of the "Texas Manual on Uniform Traffic Control Devices" (TMUTCD) typical application diagrams or TCP Standard Sheets.

Δ Minimum distance from work area to first Advance Warning sign nearest the work area and/or distance between each additional sign.

GENERAL NOTES

- Special or larger size signs may be used as necessary.
- Distance between signs should be increased as required to have 1500 feet advance warning.
- Distance between signs should be increased as required to have 1/2 mile or more advance warning.
- 36" x 36" "ROAD WORK AHEAD" (CW20-1D) signs may be used on low volume crossroads at the discretion of the Engineer. See Note 2 under "Typical Location of Crossroad Signs".
- Only diamond shaped warning sign sizes are indicated.
- See sign size listing in "TMUTCD", Sign Appendix or the "Standard Highway Sign Designs for Texas" manual for complete list of available sign design sizes.

| LEGEND |                                                                                                           |
|--------|-----------------------------------------------------------------------------------------------------------|
| — —    | Type 3 Barricade                                                                                          |
| ○ ○ ○  | Channelizing Devices                                                                                      |
| ⬇      | Sign                                                                                                      |
| X      | See Typical Construction Warning Sign Size and Spacing chart or the TMUTCD for sign spacing requirements. |

SHEET 2 OF 12



Texas Department of Transportation

Traffic Operations Division Standard

BARRICADE AND CONSTRUCTION PROJECT LIMIT

BC (2) - 14

|          |               |       |         |           |       |         |
|----------|---------------|-------|---------|-----------|-------|---------|
| FILE:    | bc-14.dgn     | DWG:  | TXDOT   | CHK:      | TXDOT | HIGHWAY |
| REVISED: | November 2002 | CONT: | SECT:   | JOB:      |       |         |
| REVISED: | 8-14          | DIST: | COUNTY: | SHEET NO. |       |         |
|          | 7-13          |       |         |           |       | 13      |

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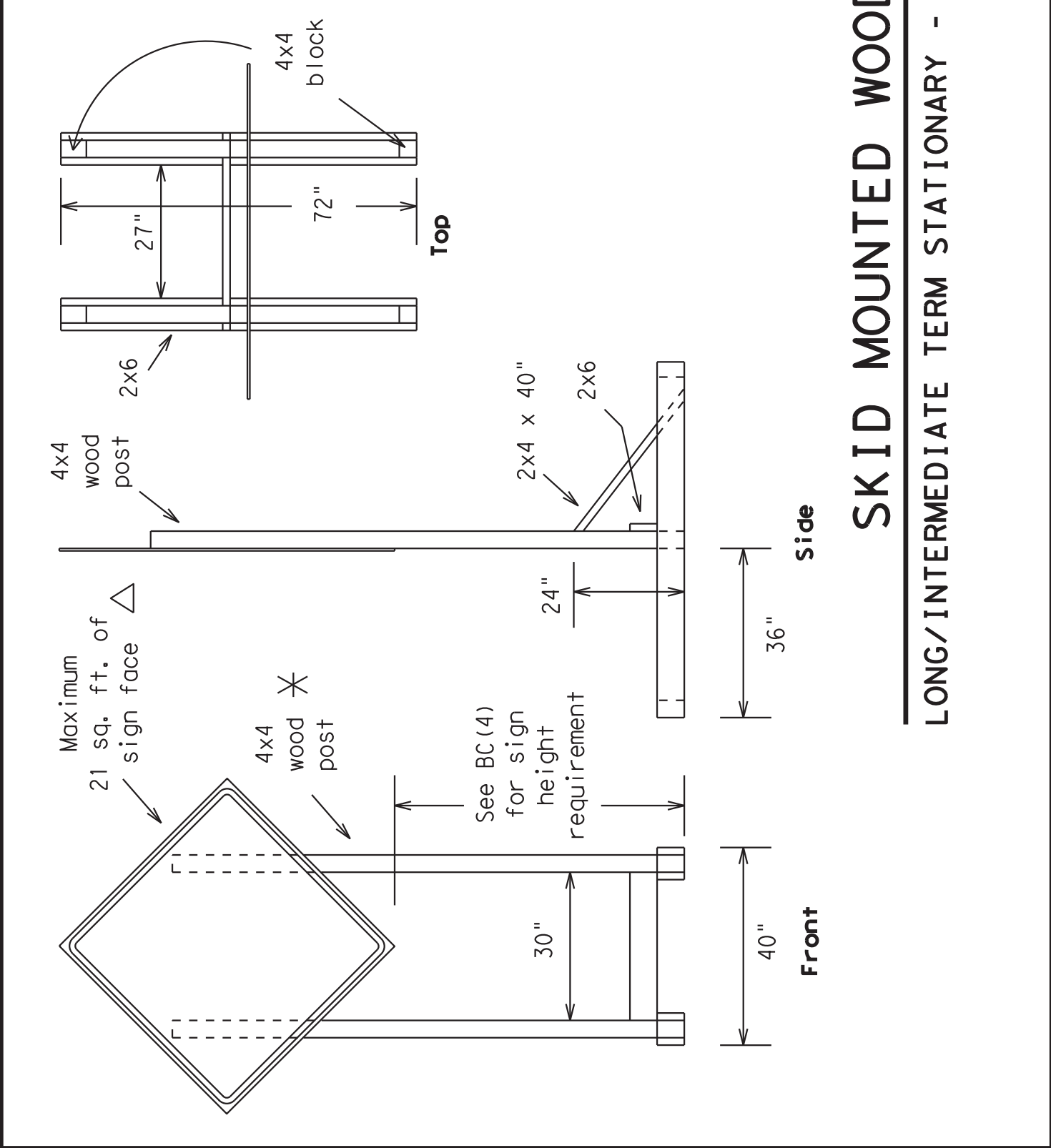






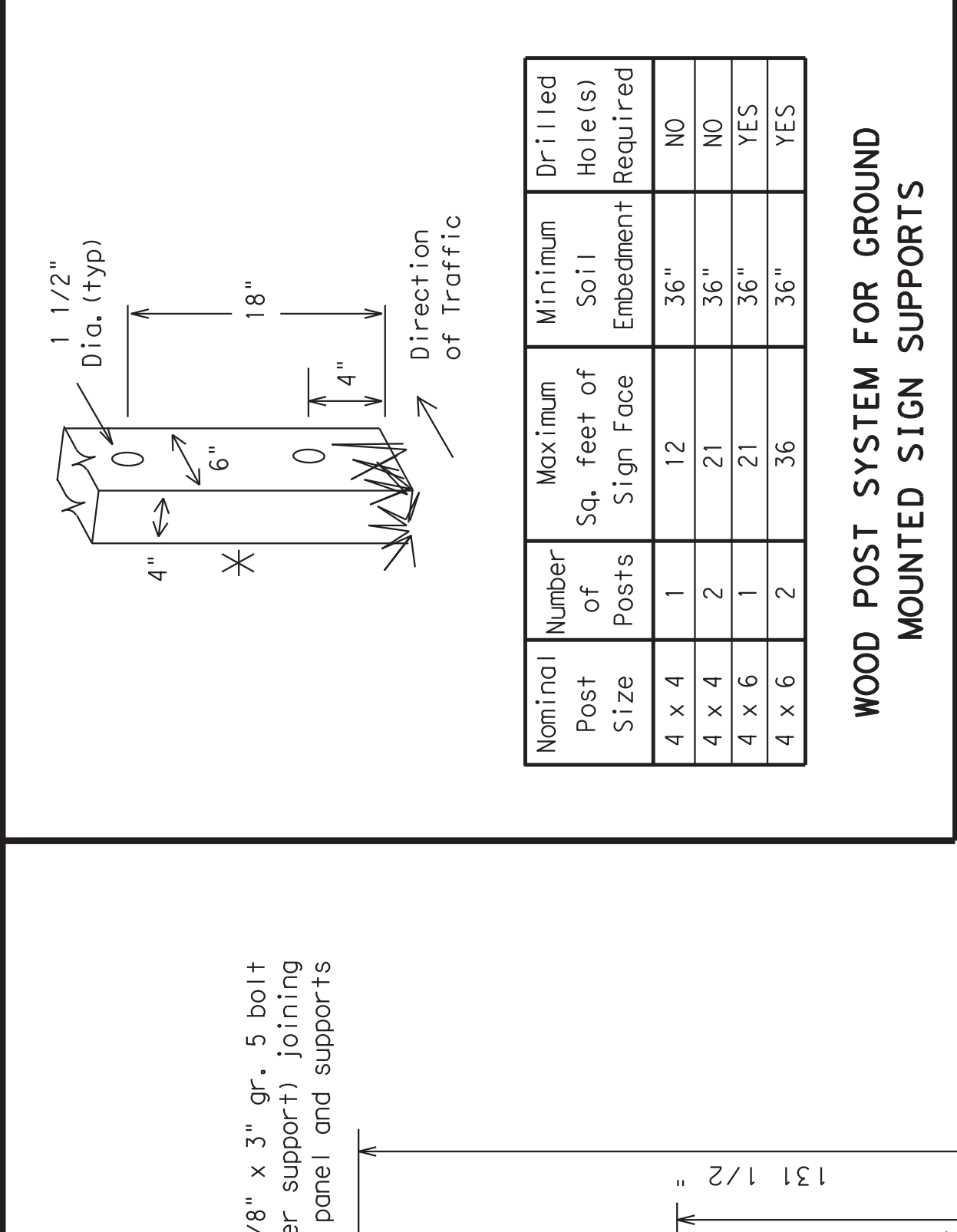
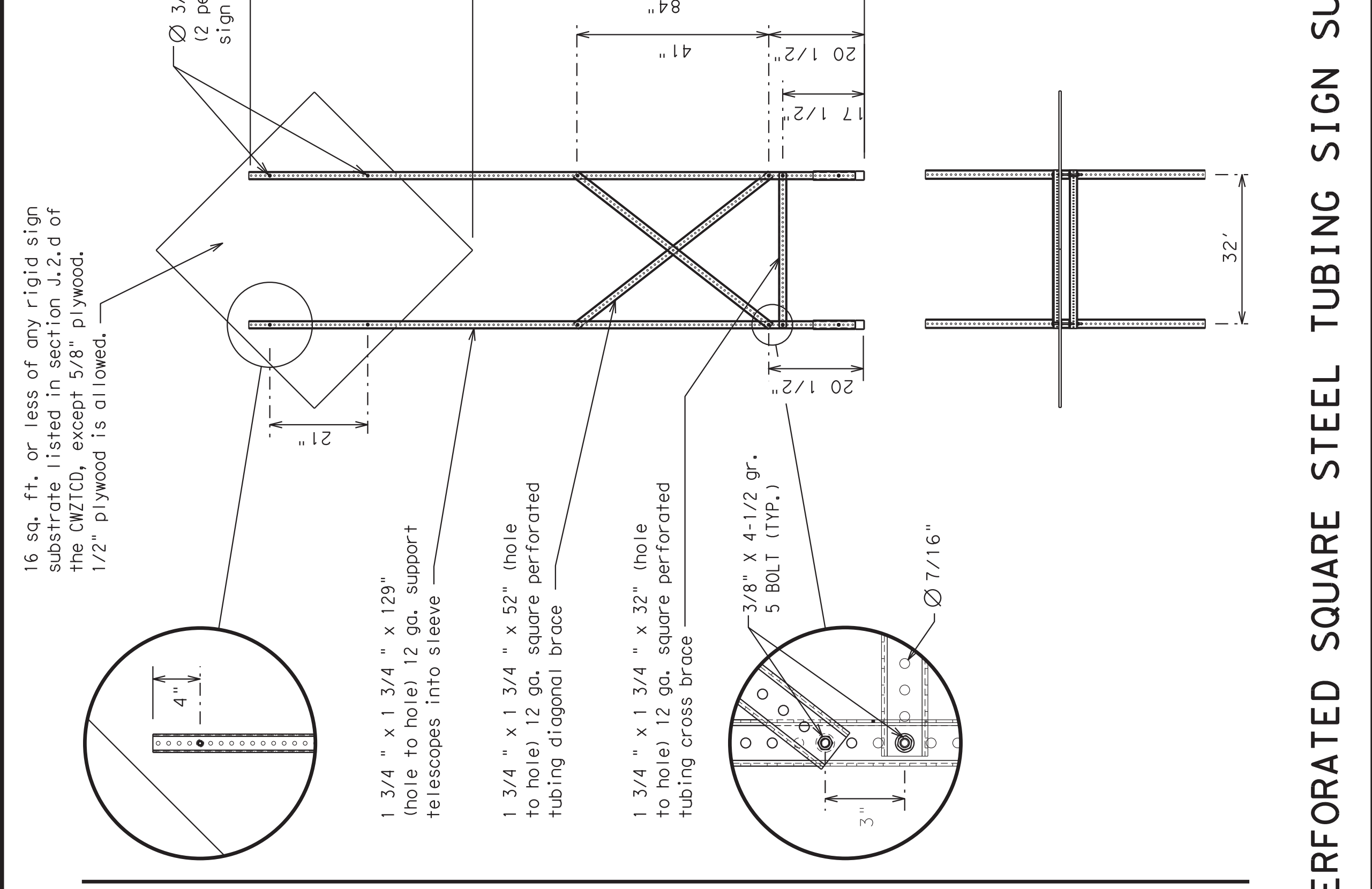
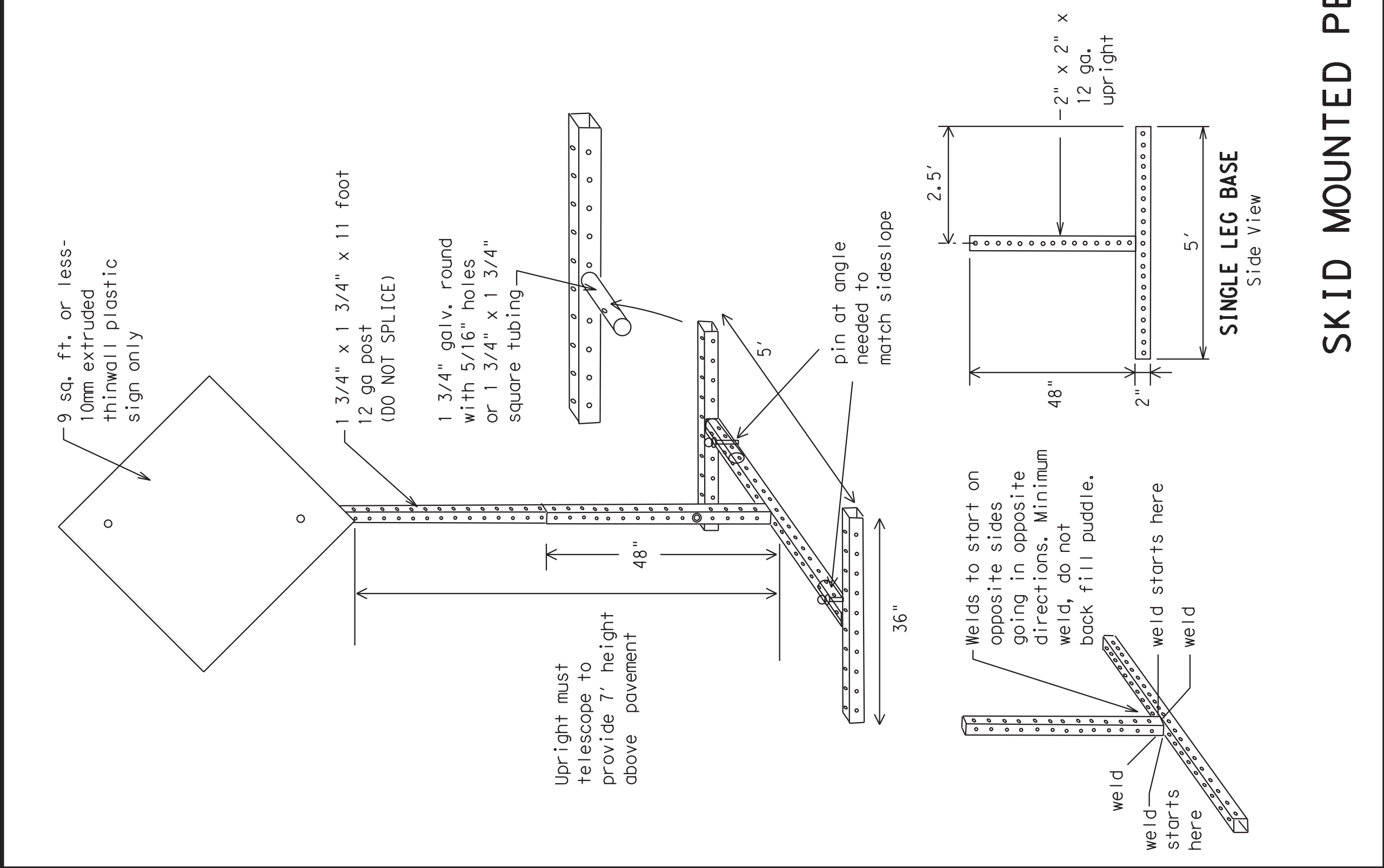
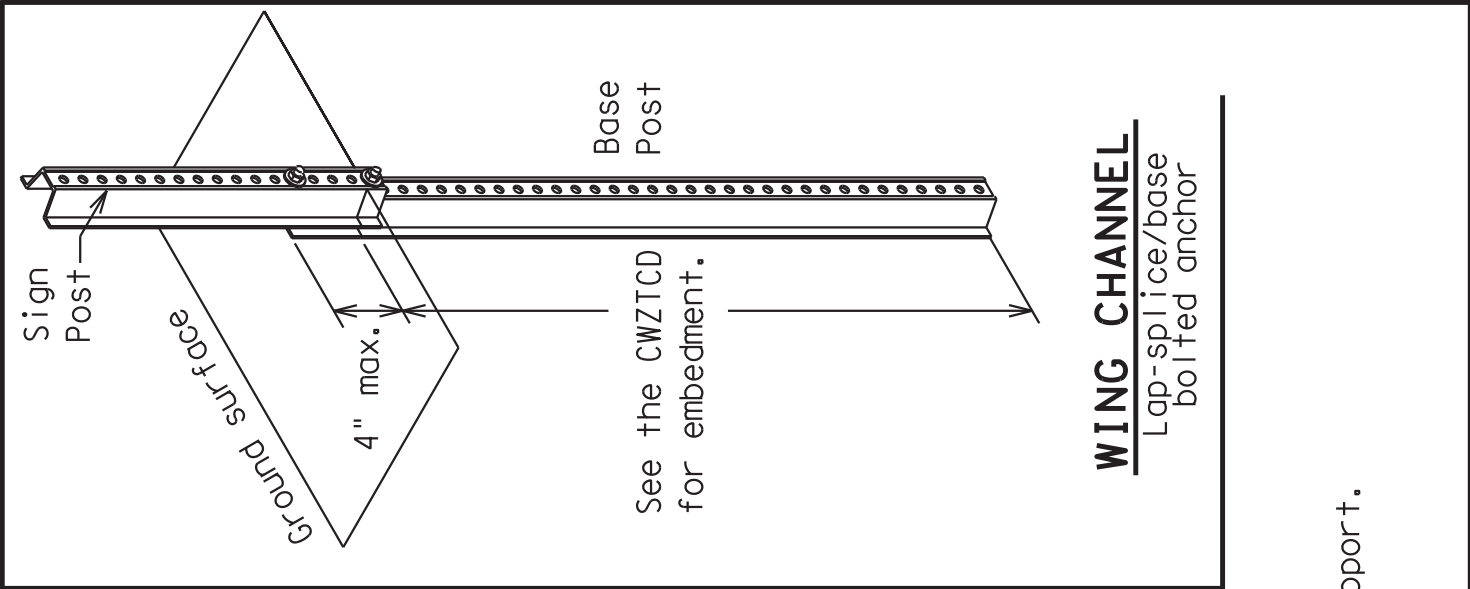
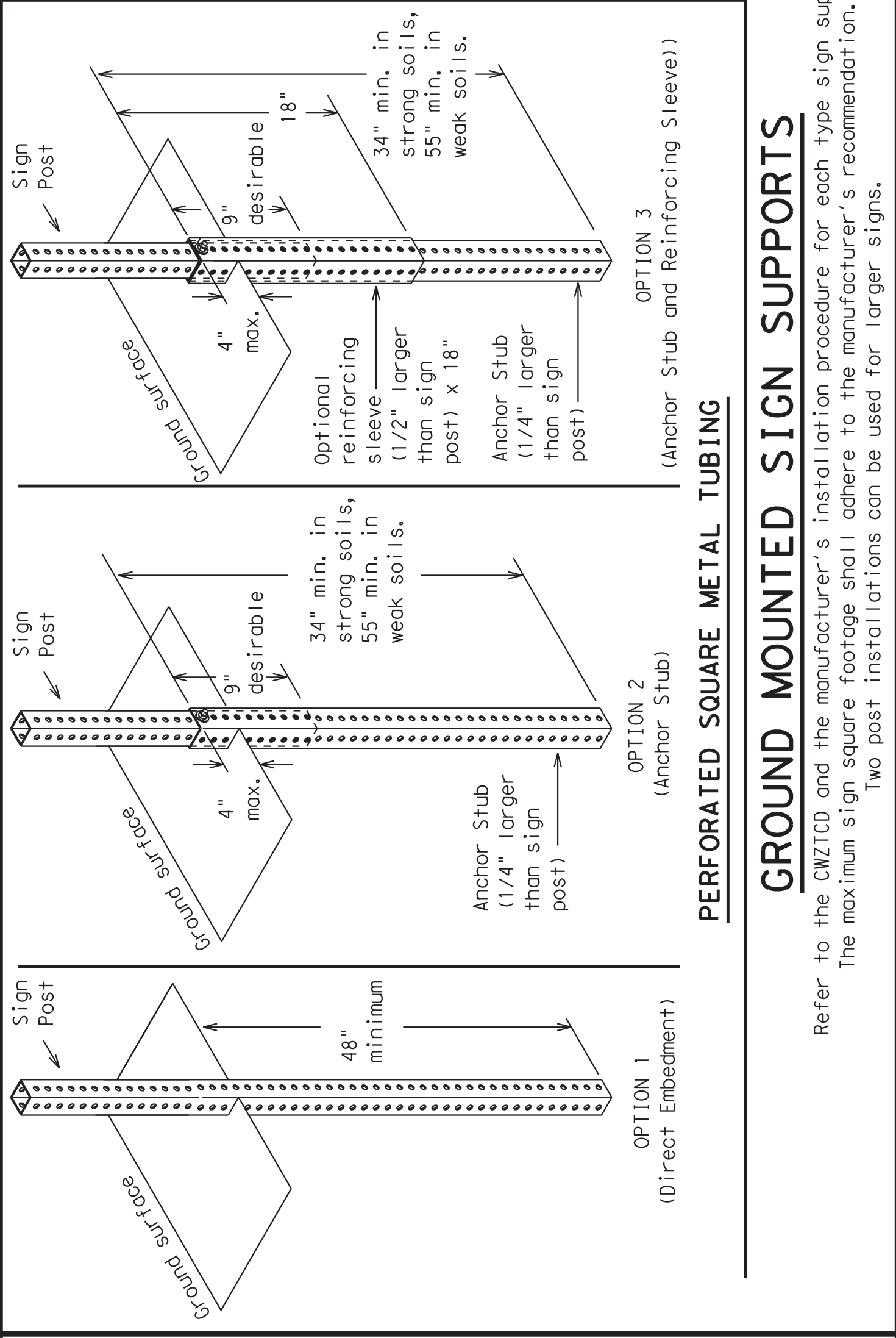
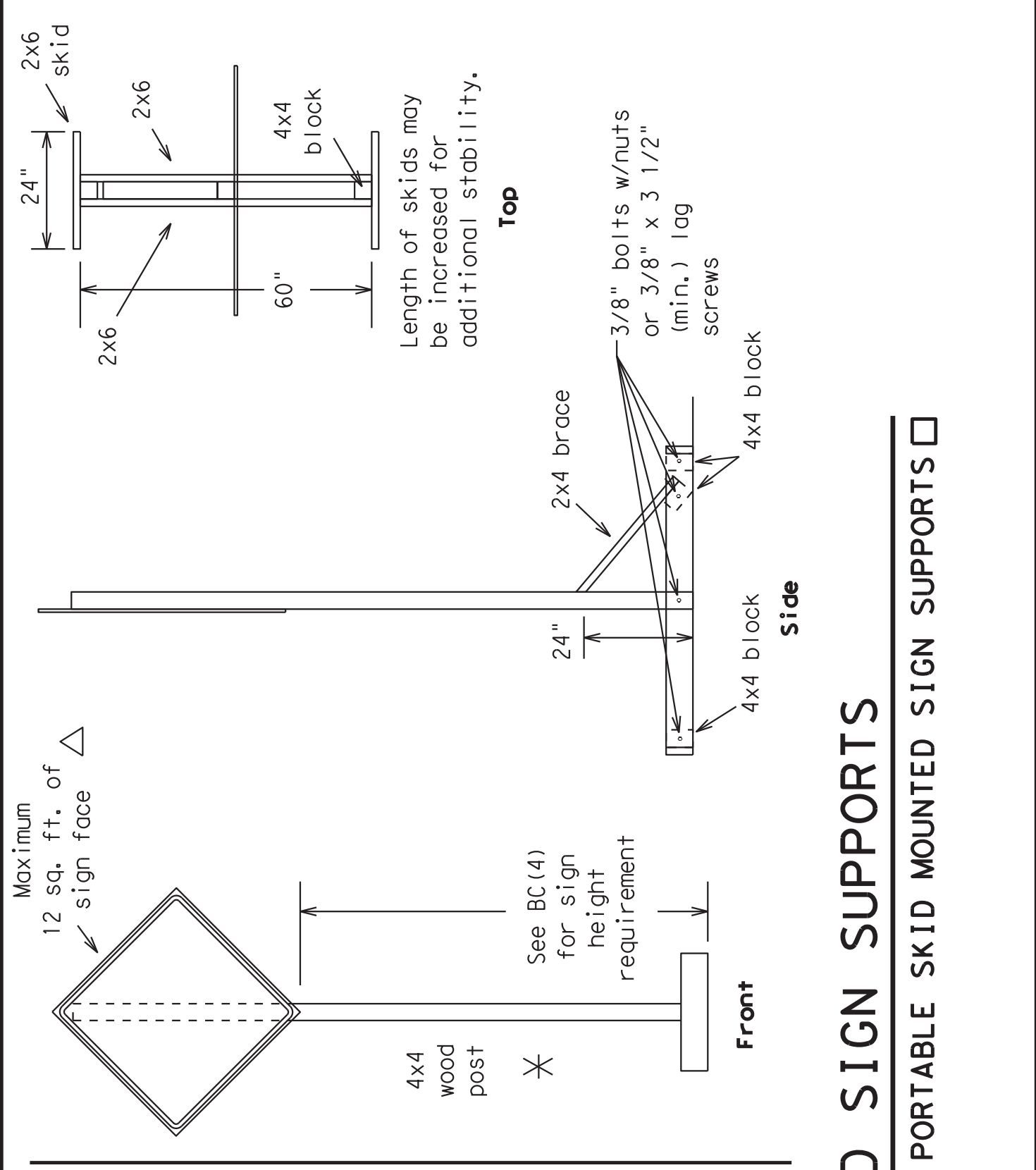


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### SKID MOUNTED WOOD SIGN SUPPORTS

LONG/INTERMEDIATE TERM STATIONARY - PORTABLE SKID MOUNTED SIGN SUPPORTS



**WEDGE ANCHORS**

Both steel and plastic Wedge Anchor Systems as shown on the SMD Standard Sheets may be used as temporary sign supports for signs up to 10 square feet of sign face. They may be set in concrete or in sturdy soils if approved by the Engineer. (See web address for "Traffic Engineering Standard Sheets" on BC(1)).

**OTHER DESIGNS**

MORE DETAILS OF APPROVED LONG/INTERMEDIATE AND SHORT TERM SUPPORTS CAN BE FOUND ON THE CWZTCD LIST. SEE BC(1) FOR WEBSITE LOCATION.

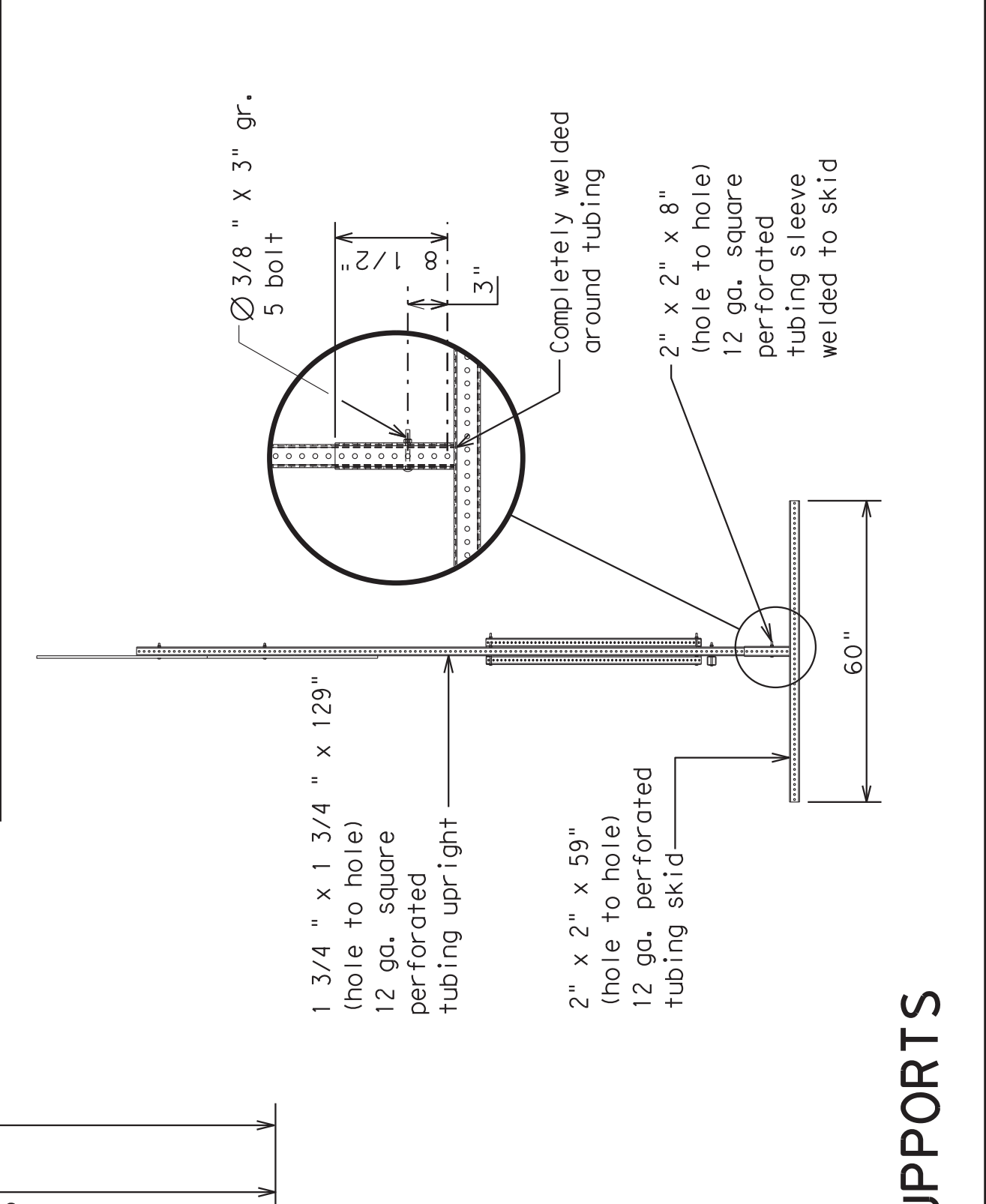
**GENERAL NOTES**

- Nails may be used in the assembly of wooden sign supports, but 3/8" bolts with nuts or 3/8" x 3 1/2" lag screws must be used on every joint for final connection.
- No more than 2 sign posts shall be placed within a 7 ft. circle, except for specific materials noted on the CWZTCD List.
- When project is completed, all sign supports and foundations shall be removed from the project site. This will be considered subsidiary to Item 502.

☐ See BC(4) for definition of "Work Duration."

☒ Wood sign posts MUST be one piece. Splicing will NOT be allowed. Posts shall be painted white.

☐ See the CWZTCD for the type of sign substrate that can be used for each approved sign support.



**BC (5) - 14**

**BARRICADE AND CONSTRUCTION TYPICAL SIGN SUPPORT**

**Texas Department of Transportation**

**Traffic Operations Division Standard**

**SHEET 5 OF 12**

FILE: bc-14.dgn DNE: TxDOT CK: TxDOT DW: TxDOT CK: TxDOT

CONT: November 2002 SECT: HIGHWAY

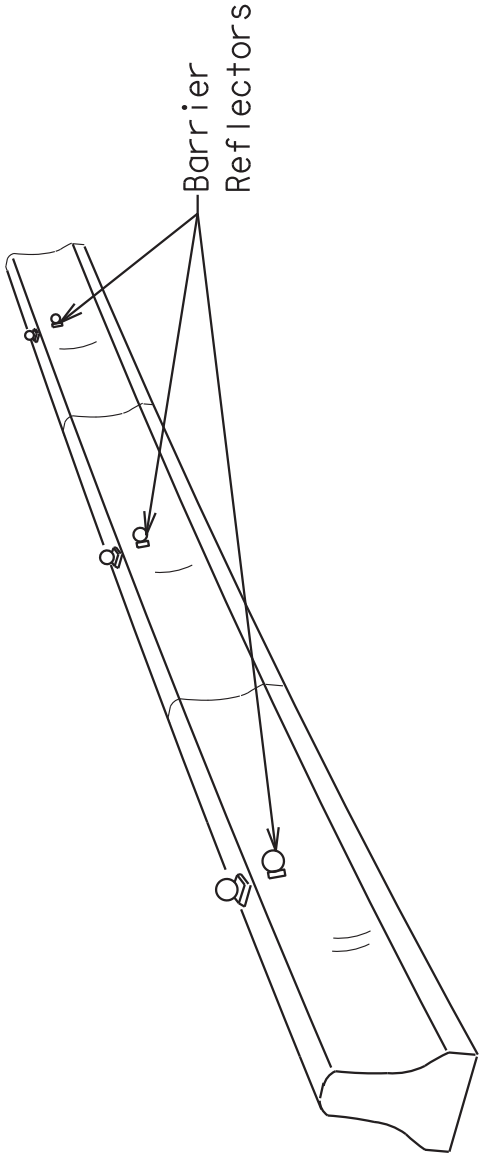
REVISIONS: 9-07 8-14 DIST: COUNTY SHEET NO. 16







1. Barrier Reflectors shall be pre-qualified, and conform to the color and reflectivity requirements of DMS-8600. A list of prequalified Barrier Reflectors can be found at the Material Producer List web address shown on BC(1).
2. Color of Barrier Reflectors shall be as specified in the TMUTCD. The cost of the reflectors shall be considered subsidiary to Item 512.



### CONCRETE TRAFFIC BARRIER (CTB)

3. Where traffic is on one side of the CTB, two (2) Barrier Reflectors shall be mounted in approximately the midsection of each section of CTB. An alternate mounting location is uniformly spaced at one end of each CTB. This will allow for attachment of a barrier grapple without damaging the reflector. The Barrier Reflector mounted on the side of the CTB shall be located directly below the reflector mounted on top of the barrier, as shown in the detail above.
4. Where CTB separates two-way traffic, three barrier reflectors shall be mounted on each section of CTB. The reflector unit on top shall have two yellow reflective faces (Bi-Directional)while the reflectors on each side of the barrier shall have one yellow reflective face, as shown in the detail above.
5. When CTB separates traffic traveling in the same direction, no barrier reflectors will be required on top of the CTB.
6. Barrier Reflector units shall be yellow or white in color to match the edgeline being supplemented.
7. Maximum spacing of Barrier Reflectors is forty (40) feet.
8. Pavement markers or temporary flexible-reflective roadway marker tabs shall NOT be used as CTB delineation.
9. Attachment of Barrier Reflectors to CTB shall be per manufacturer's recommendations.
10. Missing or damaged Barrier Reflectors shall be replaced as directed by the Engineer.
11. Single slope barriers shall be delineated as shown on the above detail.

## BARRIER REFLECTORS FOR CONCRETE TRAFFIC BARRIER AND ATTENUATORS

### WARNING LIGHTS

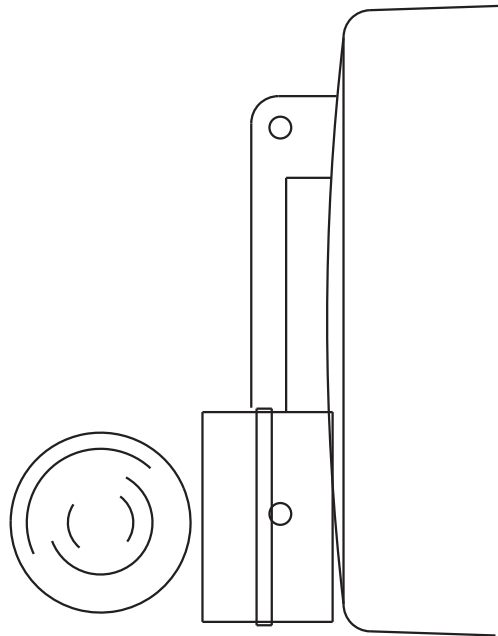
1. Warning lights shall meet the requirements of the TMUTCD.
2. Warning lights shall NOT be installed on barricades.
3. Type A-Low Intensity Flashing Warning Lights are commonly used with drums. They are intended to warn of or mark a potentially hazardous area. Their use shall be as indicated on this sheet and/or other sheets of the plans by the designation "FL". The Type A Warning Lights shall not be used with signs manufactured with Type B<sub>1</sub> or C<sub>1</sub> Sheeting meeting the requirements of Departmental Material Specification DMS-8300.
4. Type-C and Type D 360 degree Steady Burn Lights are intended to be used in a series for delineation to supplement other traffic control devices. Their use shall be as indicated on this sheet and/or other sheets of the plans by the designation "SB".
5. The Engineer/Inspector or the plans shall specify the location and type of warning lights to be installed on the traffic control devices.
6. When required by the Engineer, the Contractor shall furnish a copy of the warning lights certification. The warning light manufacturer will certify the warning lights meet the requirements of the latest ITE Purchase Specifications for Flashing and Steady-Burn Warning Lights.
7. When used to delineate curves, Type-C and Type D Steady Burn Lights should only be placed on the outside of the curve, not the inside.
8. The location of warning lights and warning reflectors on drums shall be as shown elsewhere in the plans.

### WARNING LIGHTS MOUNTED ON PLASTIC DRUMS

1. Type A flashing warning lights are intended to warn drivers that they are approaching or are in a potentially hazardous area.
2. Type A random flashing warning lights are not intended for delineation and shall not be used in a series.
3. A series of sequential flashing warning lights placed on channelizing devices to form a merging taper may be used for delineation. If used, the successive flashing of the sequential warning lights should occur from the beginning of the taper to the end of the merging taper in order to identify the desired vehicle path. The rate of flashing for each light shall be 65 flashes per minute, plus or minus 10 flashes.
4. Type C and D steady-burn warning lights are intended to be used in a series to delineate the edge of the travel lane on detours, on lane changes, on lane closures, and on other similar conditions.
5. Type A, Type C and Type D warning lights shall be installed at locations as detailed on other sheets in the plans.
6. Warning lights shall not be installed on a drum that has a sign, chevron or vertical panel.
7. The maximum spacing for warning lights on drums should be identical to the channelizing device spacing.

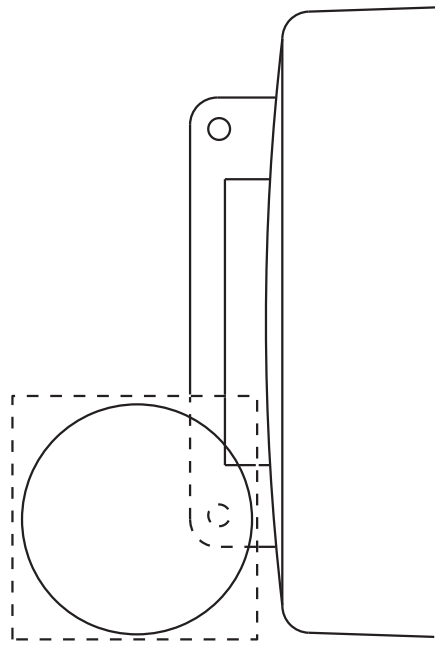
### WARNING REFLECTORS MOUNTED ON PLASTIC DRUMS AS A SUBSTITUTE FOR TYPE C (STEADY BURN) WARNING LIGHTS

1. A warning reflector or approved substitute may be mounted on a plastic drum as a substitute for a Type C, steady burn warning light at the discretion of the Contractor unless otherwise noted in the plans.
2. The warning reflector shall be yellow in color and shall be manufactured using a sign substrate approved for use with plastic drums listed on the CWZTCD.
3. The warning reflector shall have a minimum retroreflective surface area (one-side) of 30 square inches.
4. Round reflectors shall be fully reflectorized, including the area where attached to the drum.
5. Square substrates must have a minimum of 30 square inches of reflectorized sheeting. They do not have to be reflectorized where it attaches to the drum.
6. The side of the warning reflector facing approaching traffic shall have sheeting meeting the color and retroreflectivity requirements for DMS 8300-Type B or Type C.
7. When used near two-way traffic, both sides of the warning reflector shall be reflectorized.
8. The warning reflector should be mounted on the side of the handle nearest approaching traffic.
9. The maximum spacing for warning reflectors should be identical to the channelizing device spacing requirements.



Type C Warning Light or

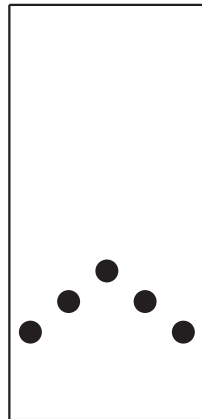
approved substitute mounted on a drum adjacent to the travel way.



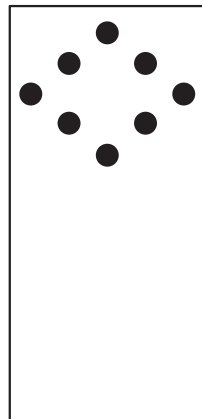
Warning reflector may be round or square. Must have a yellow reflective surface area of at least 30 square inches

Arrow Boards may be located behind channelizing devices in place for a shoulder taper or merging taper, otherwise they shall be delineated with four (4) channelizing devices placed perpendicular to traffic on the upstream side of traffic.

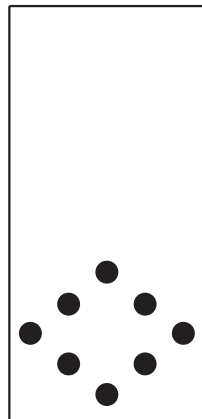
1. The Flashing Arrow Board should be used for all lane closures on multi-lane roadways, or slow moving maintenance or construction activities on the travel lanes.
2. Flashing Arrow Boards should not be used on two-lane, two-way roadways, detours, diversions or work on shoulders unless the "CAUTION" display (see detail below) is used.
3. The Engineer/Inspector shall choose all appropriate signs, barricades and/or other traffic control devices that should be used in conjunction with the Flashing Arrow Board.
4. The Flashing Arrow Board should be able to display the following symbols:



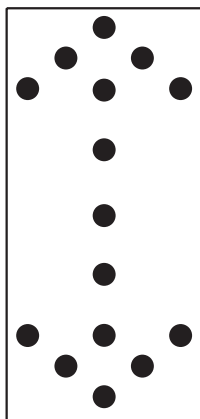
OR



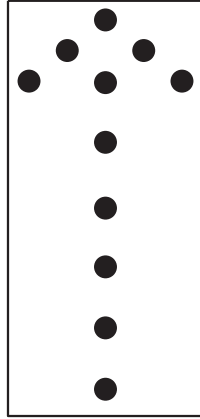
4 CORNER CAUTION



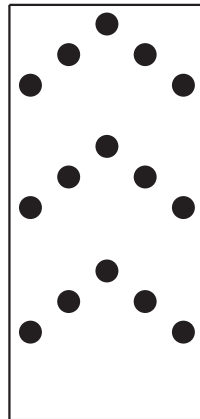
ALTERNATING DIAMOND CAUTION



DOUBLE ARROW



LEFT & RIGHT



CHEVRON ARROW  
LEFT & RIGHT

5. The "CAUTION" display consists of four corner lamps flashing simultaneously, or the Alternating Diamond Caution mode as shown.
6. The straight line caution display is NOT ALLOWED.
7. The Flashing Arrow Board shall be capable of minimum 50 percent dimming from rated lamp voltage. The flashing rate of the lamps shall not be less than 25 nor more than 40 flashes per minute.
8. Minimum lamp "on time" shall be approximately 50 percent for the flashing arrow and equal intervals of 25 percent for each sequential phase of the flashing chevron.
9. The sequential arrow display is NOT ALLOWED.
10. The flashing arrow display is the TxDOT standard; however, the sequential Chevron display may be used during daylight operations.
11. The Flashing Arrow Board shall be mounted on a vehicle, trailer or other suitable support.
12. A Flashing Arrow Board SHALL NOT BE USED to laterally shift traffic.
13. A full matrix PCMS may be used to simulate a Flashing Arrow Board provided it meets visibility, flash rate and dimming requirements on this sheet for the same size arrow.
14. Minimum mounting height of trailer mounted Arrow Boards should be 7 feet from roadway to bottom of panel.

| REQUIREMENTS |              |                               |                             |
|--------------|--------------|-------------------------------|-----------------------------|
| TYPE         | MINIMUM SIZE | MINIMUM NUMBER OF PANEL LAMPS | MINIMUM VISIBILITY DISTANCE |
| B            | 30 x 60      | 13                            | 3/4 mile                    |
| C            | 48 x 96      | 15                            | 1 mile                      |

| ATTENTION                                                               |
|-------------------------------------------------------------------------|
| Flashing Arrow Boards shall be equipped with automatic dimming devices. |

WHEN NOT IN USE, REMOVE THE ARROW BOARD FROM THE RIGHT-OF-WAY OR PLACE THE ARROW BOARD BEHIND CONCRETE TRAFFIC BARRIER OR GUARDRAIL.

## FLASHING ARROW BOARDS

SHEET 7 OF 12



Department of Transportation

Traffic  
Operations  
Division  
Standard

## BARRICADE AND CONSTRUCTION ARROW PANEL, REFLECTORS, WARNING LIGHTS & ATTENUATOR

BC (7) - 14

|           |               |           |       |         |       |         |
|-----------|---------------|-----------|-------|---------|-------|---------|
| FILE:     | bc-14.dgn     | DWG:      | TxDOT | CHK:    | TxDOT | HIGHWAY |
| © TxDOT   | November 2002 | CONT:     | SECT: | JOB:    |       |         |
| REVISIONS |               | DIST:     |       | COUNTY: |       |         |
| 9-07 8-14 |               | SHEET NO. |       | 18      |       |         |

### TRUCK-MOUNTED ATTENUATORS

1. Truck-mounted attenuators (TMA) used on TxDOT facilities must meet the requirements outlined in the National Cooperative Highway Research Report No. 350 (NCHRP 350) or the Manual for Assessing Safety Hardware (MASH).
2. Refer to the CWZTCD for the requirements of Level 2 or Level 3 TMAs.
3. Refer to the CWZTCD for a list of approved TMAs.
4. TMAs are required on freeways unless otherwise noted in the plans.
5. A TMA should be used anytime that it can be positioned 30 to 100 feet in advance of the area of crew exposure without adversely affecting the work performance.
6. The only reason a TMA should not be required is when a work area is spread down the roadway and the work crew is an extended distance from the TMA.

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GENERAL NOTES

- For long term stationary work zones on freeways, drums shall be used as the primary channelizing device.
- For intermediate term stationary work zones on freeways, drums should be used as the primary channelizing device but may be replaced in tangent sections by vertical panels, or 42" two-piece cones. In tangent sections one-piece cones may be used with the approval of the Engineer but only if personnel are present on the project at all times to maintain the cones in proper position and location.
- For short term stationary work zones on freeways, drums are the preferred channelizing device but may be replaced in tapers, transitions and tangent sections by vertical panels, two-piece cones or one-piece cones as approved by the Engineer.
- Drums and all related items shall comply with the requirements of the current version of the "Texas Manual on Uniform Traffic Control Devices" (TMUTCD) and the "Compliant Work Zone Traffic Control Devices List" (CWZTCD).
- Drums, bases, and related materials shall exhibit good workmanship and shall be free from objectionable marks or defects that would adversely affect their appearance or serviceability.
- The Contractor shall have a maximum of 24 hours to replace any plastic drums identified for replacement by the Engineer/Inspector. The replacement device must be an approved device.

GENERAL DESIGN REQUIREMENTS

Pre-qualified plastic drums shall meet the following requirements:

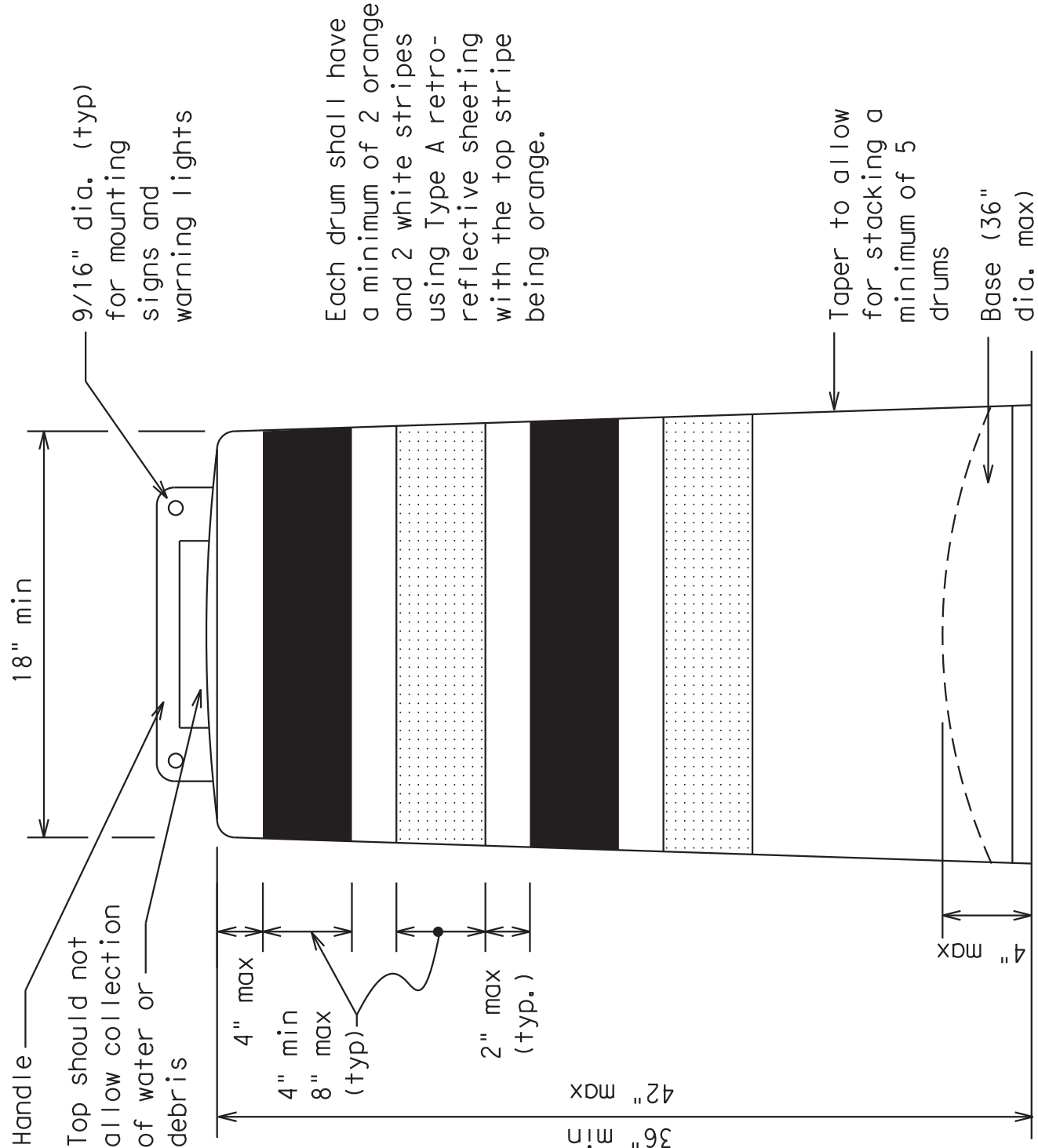
- Plastic drums shall be a two-piece design; the "body" of the drum shall be the top portion and the "base" shall be the bottom.
- The body and base shall lock together in such a manner that the body separates from the base when impacted by a vehicle traveling at a speed of 20 MPH or greater but prevents accidental separation due to normal handling and/or air turbulence created by passing vehicles.
- Plastic drums shall be constructed of lightweight flexible, and deformable materials. The Contractor shall NOT use metal drums or single piece plastic drums as channelization devices or sign supports.
- Drums shall present a profile that is a minimum of 18 inches in width at the 36 inch height when viewed from any direction. The height of drum unit (body installed on base) shall be a minimum of 36 inches and a maximum of 42 inches.
- The top of the drum shall have a built-in handle for easy pickup and shall be designed to drain water and not collect debris. The handle shall have a minimum of two widely spaced 9/16 inch diameter holes to allow attachment of a warning light, warning reflector unit or approved compliant sign.
- The exterior of the drum body shall have a minimum of four alternating orange and white retroreflective circumferential stripes not less than 4 inches nor greater than 8 inches in width. Any non-reflectORIZED space between any two adjacent stripes shall not exceed 2 inches in width.
- Bases shall have a maximum width of 36 inches, a maximum height of 4 inches, and a minimum of two footholds of sufficient size to allow base to be held down while separating the drum body from the base.
- Plastic drums shall be constructed of ultra-violet stabilized, orange, high-density polyethylene (HDPE) or other approved material.
- Drum body shall have a maximum unballasted weight of 11 lbs.
- Drum and base shall be marked with manufacturer's name and model number.

RETROREFLECTIVE SHEETING

- The stripes used on drums shall be constructed of sheeting meeting the color and retroreflectivity requirements of Departmental Materials Specification DMS-8300, "Sign Face Materials." Type A reflective sheeting shall be supplied unless otherwise specified in the plans.
- The sheeting shall be suitable for use on and shall adhere to the drum surface such that, upon vehicular impact, the sheeting shall remain adhered in-place and exhibit no delaminating, cracking, or loss of retroreflectivity other than that loss due to abrasion of the sheeting surface.

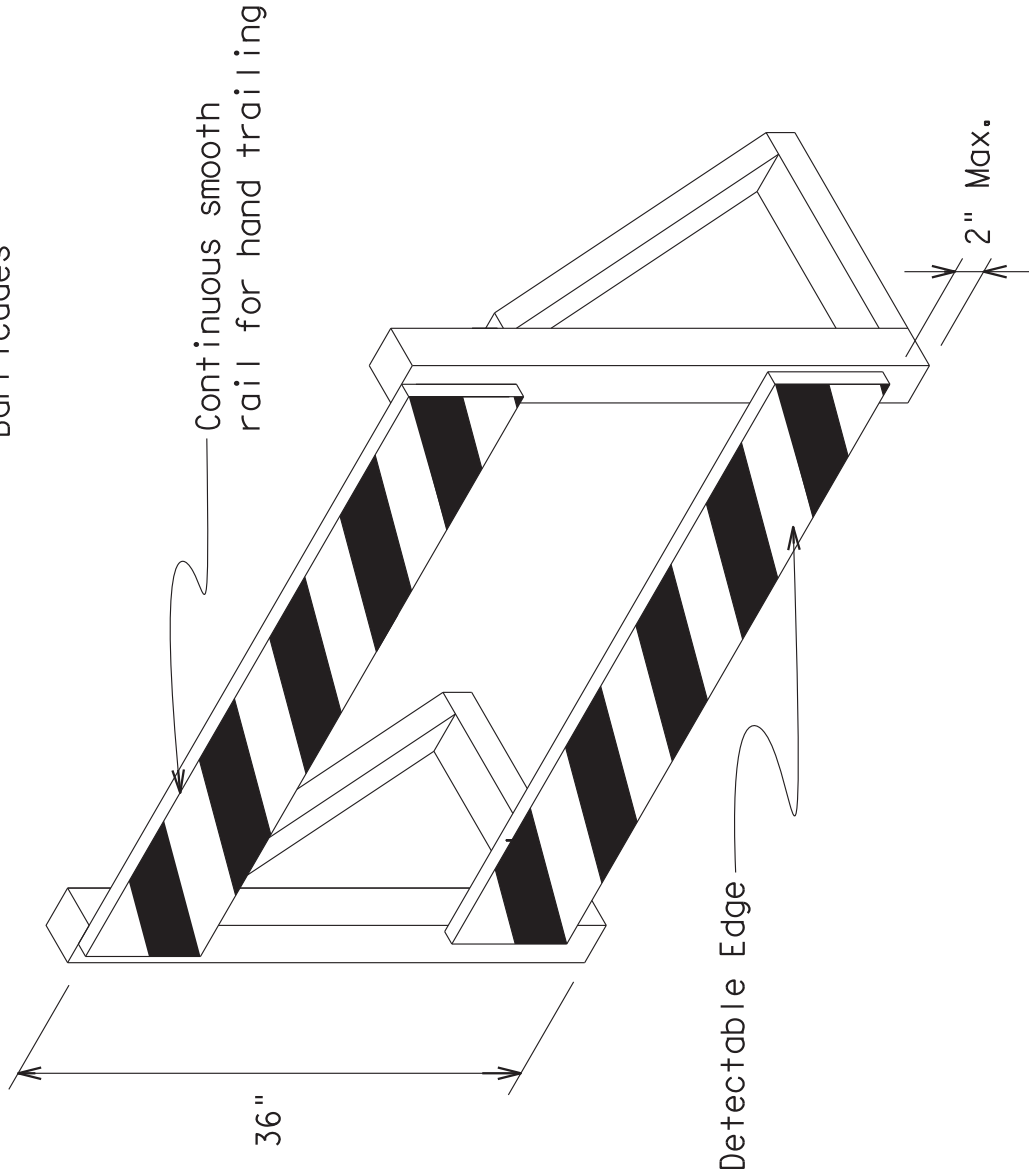
BALLAST

- Unballasted bases shall be large enough to hold up to 50 lbs. of sand. This base, when filled with the ballast material, should weigh between 35 lbs (minimum) and 50 lbs (maximum). The ballast may be sand in one to three sandbags separate from the base, sand in a sand-filled plastic base, or other ballasting devices as approved by the Engineer. Stacking of sandbags will be allowed, however height of sandbags above pavement surface may not exceed 12 inches.
- Bases with built-in ballast shall weigh between 40 lbs. and 50 lbs. Built-in ballast can be constructed of an integral crumb rubber base or a solid rubber base.
- Recycled truck tire sidewall is may be used for ballast on drums approved for this type of ballast on the CWZTCD list.
- The ballast shall not be heavy objects, water, or any material that would become hazardous to motorists, pedestrians, or workers when the drum is struck by a vehicle.
- When used in regions susceptible to freezing, drums shall have drainage holes in the bottoms so that water will not collect and freeze becoming a hazard when struck by a vehicle.
- Ballast shall not be placed on top of drums.
- Adhesives may be used to secure base of drums to pavement.



Each drum shall have a minimum of 2 orange and 2 white stripes using Type A retro-reflective sheeting with the top stripe being orange.

This detail is not intended for fabrication. See note 3 and the CWZTCD list for providers of approved Detectable Pedestrian Barricades

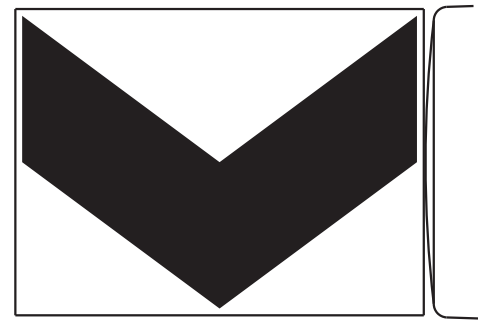


DETECTABLE PEDESTRIAN BARRICADES

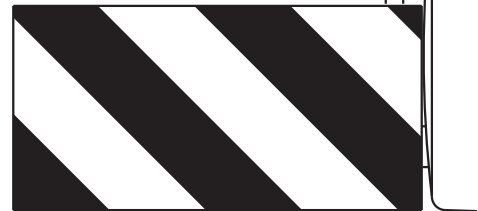
- When existing pedestrian facilities are disrupted, closed, or relocated in a TTC zone, the temporary facilities shall be detectable and include accessibility features consistent with the features present in the existing pedestrian facility.
- Where pedestrians with visual disabilities normally use the closed sidewalk, a device that is detectable by a person with a visual disability traveling with the aid of a long cane shall be placed across the full width of the closed sidewalk. Detectable pedestrian barricades similar to the one pictured above, longitudinal channelizing devices, some concrete barriers, and wood or chain link fencing with a continuous detectable edging can satisfactorily delineate a pedestrian path.
- Tape, rope, or plastic chain strung between devices are not detectable, do not comply with the design standards in the "Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG)" and should not be used as a control for pedestrian movements.
- Warning lights shall not be attached to detectable pedestrian barricades.
- Detectable pedestrian barricades may use 8" nominal barricade rails as shown on BC(10) provided that the top rail provides a smooth continuous rail suitable for hand trailing with no splinters, burrs, or sharp edges.

DIRECTION INDICATOR BARRICADE

- The Direction Indicator Barricade may be used in tapers, transitions, and other areas where specific directional guidance to drivers is necessary.
- If used, the Direction Indicator Barricade should be used in series to direct the driver through the transition and into the intended travel lane.
- The Direction Indicator Barricade shall consist of One-Direction Large Arrow (CW1-6) sign in the size shown with a black arrow on a background of Type BFL or Type CLO orange retroreflective sheeting above a rail with Type A Retroreflective sheeting in alternating white and orange stripes sloping downward at an angle of 45 degrees in the direction road users are to pass. Sheeting types shall be as per DMS 8300.
- Double arrows on the Direction Indicator Barricade will not be allowed.
- Approved manufacturers are shown on the CWZTCD List. Ballast shall be as approved by the manufacturer's instructions.



18" x 24" Sign  
(Maximum Sign Dimension)  
Chevron CW1-8, Opposing Traffic Lane Divider, Driveway sign D70a, Keep Right R4 series or other signs as approved by Engineer



12" x 24" Vertical Panel  
mount with diagonals sloping down towards travel way

Plywood, Aluminum or Metal sign substrates shall NOT be used on plastic drums

SIGNS, CHEVRONS, AND VERTICAL PANELS MOUNTED ON PLASTIC DRUMS

- Signs used on plastic drums shall be manufactured using substrates listed on the CWZTCD.
- Chevrons and other work zone signs with an orange background shall be manufactured with Type BFL or Type CLO orange sheeting meeting the color and retroreflectivity requirements of DMS-8300, "Sign Face Material," unless otherwise specified in the plans.
- Vertical Panels shall be manufactured with orange and white sheeting meeting the requirements of DMS-8300 Type A Diagonal stripes on Vertical Panels shall slope down toward the intended traveled lane.
- Other sign messages (text or symbolic) may be used as approved by the Engineer. Sign dimensions shall not exceed 18 inches in width or 24 inches in height, except for the R9 series signs discussed in note 8 below.
- Signs shall be installed using a 1/2 inch bolt (nominal) and nut, two washers, and one locking washer for each connection.
- Mounting bolts and nuts shall be fully engaged and adequately torqued. Bolts should not extend more than 1/2 inch beyond nuts.
- Chevrons may be placed on drums on the outside of curves, on merging tapers or on shifting tapers. When used in these locations they may be placed on every drum or spaced not more than on every third drum. A minimum of three (3) should be used at each location called for in the plans.
- R9-9, R9-10, R9-11 and R9-11a Sidewalk Closed signs which are 24 inches wide may be mounted on plastic drums, with approval of the Engineer.



Traffic Operations Division Standard

SHEET 8 OF 12

BARRICADE AND CONSTRUCTION CHANNELIZING DEVICES

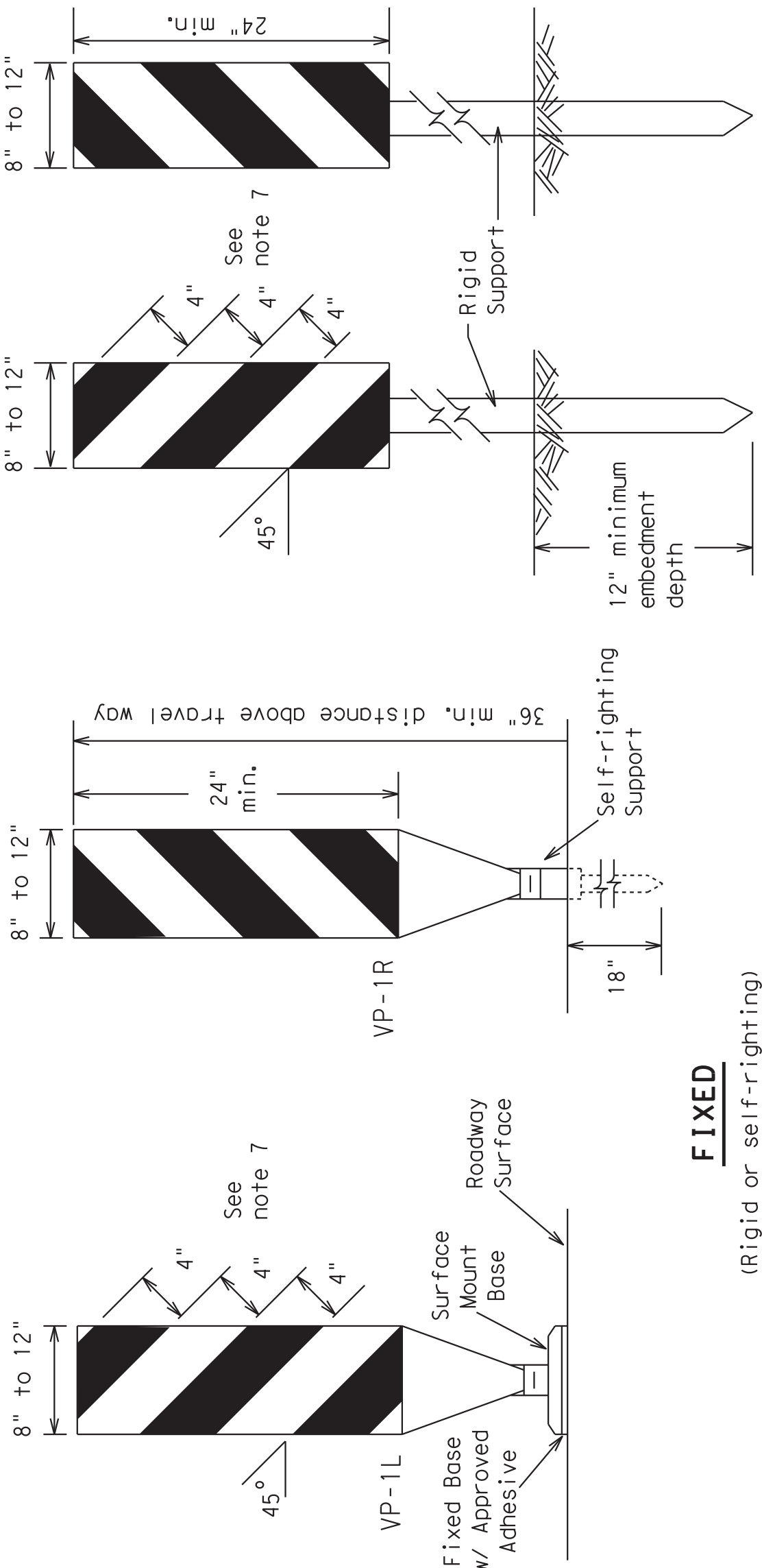
BC (8) - 14

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| REVISED: | November 2002 | CONT: | SECT:   | JOB: | HIGHWAY:  |       |       |
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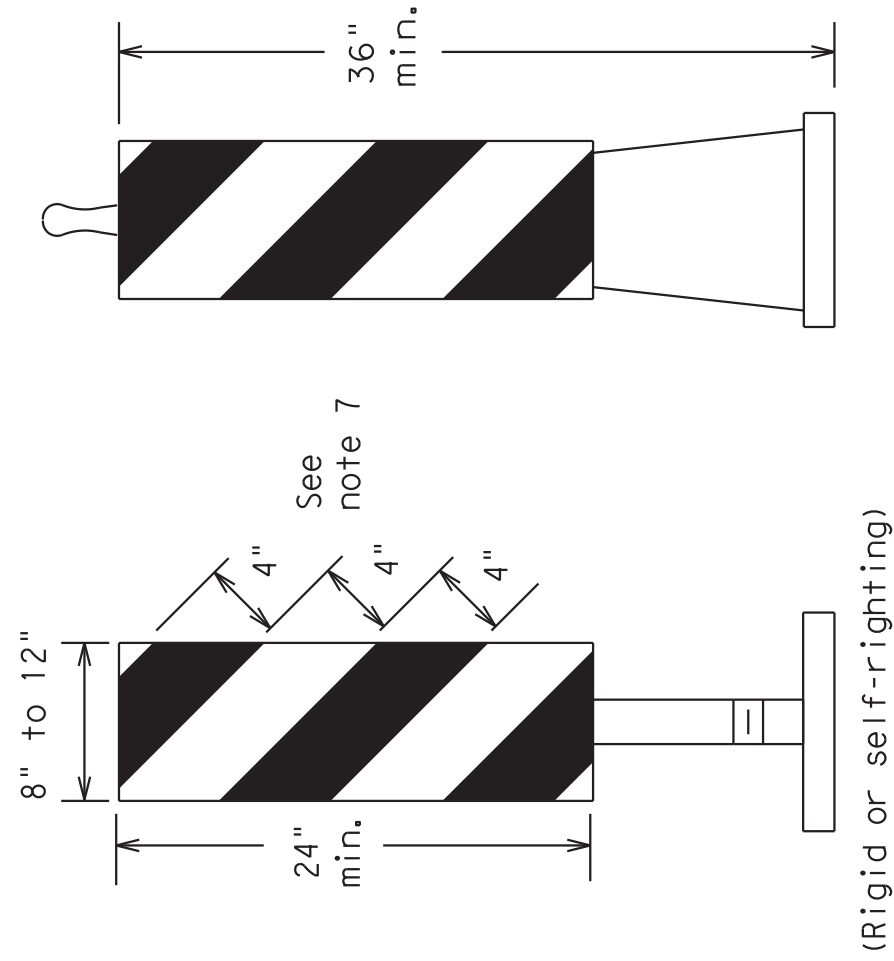


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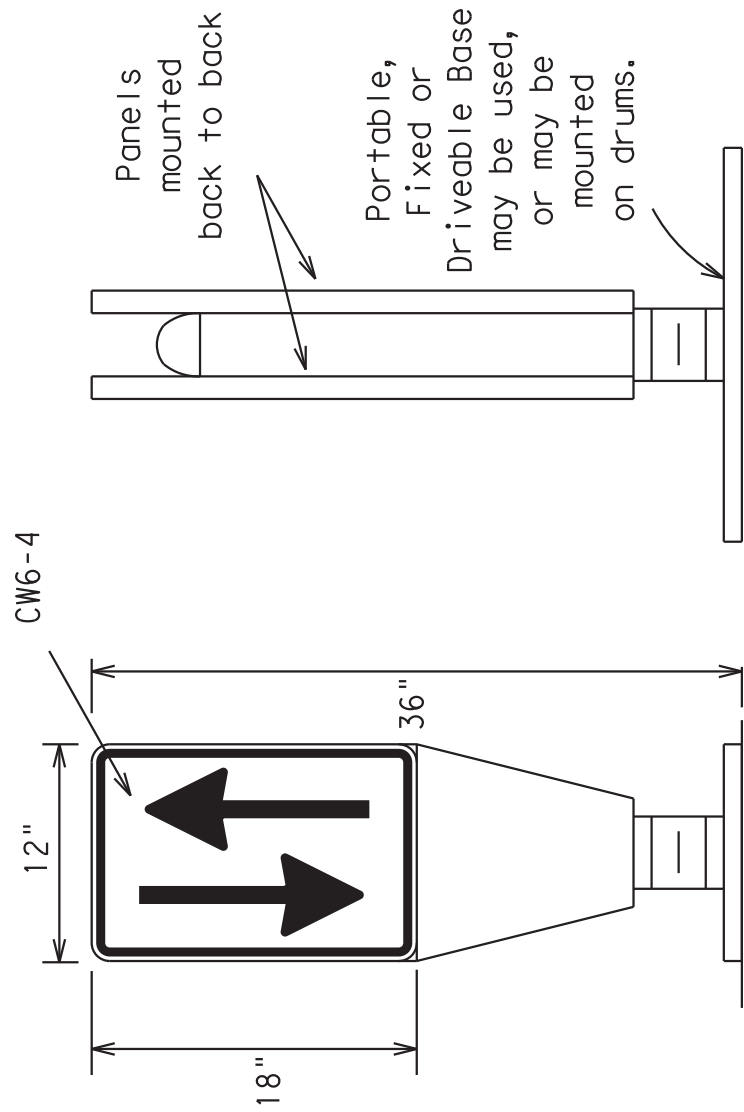
## DRIVEABLE

1. Vertical Panels (VP's) are normally used to channelize traffic or divide opposing lanes of traffic.
2. VP's may be used in daytime or nighttime situations. They may be used at the edge of shoulder drop-offs and other areas such as lane transitions where positive daytime and nighttime delineation is required. The Engineer/Inspector shall refer to the Roadway Design Manual Appendix B "Treatment of Pavement Drop-offs in Work Zones" for additional guidelines on the use of VP's for drop-offs.
3. VP's should be mounted back to back if used at the edge of cuts adjacent to two-way two lane roadways. Stripes are to be reflective orange and reflective white and should always slope downward toward the travel lane.
4. VP's used on expressways and freeways or other high speed roadways, may have more than 270 square inches of retroreflective area facing traffic.
5. Self-righting supports are available with portable base. See "Compliant Work Zone Traffic Control Devices List" (CWZTCOD).
6. Sheeting for the VP's shall be retroreflective Type A conforming to Departmental Material Specification DMS-8300, unless noted otherwise.
7. Where the height of reflective material on the vertical panel is 36 inches or greater, a panel stripe of 6 inches shall be used.

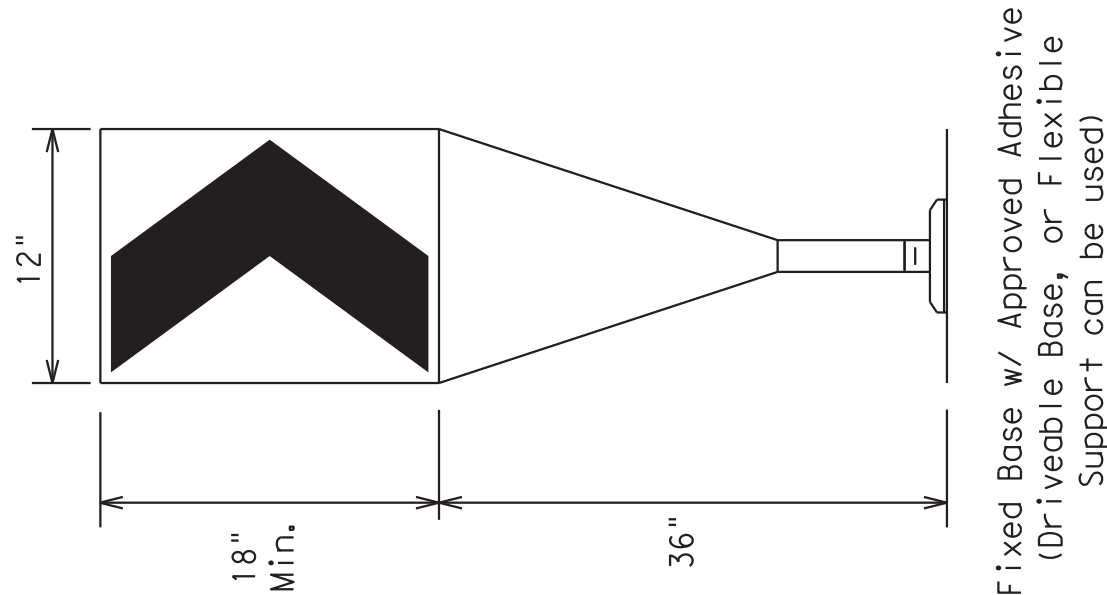


## VERTICAL PANELS (VPS)

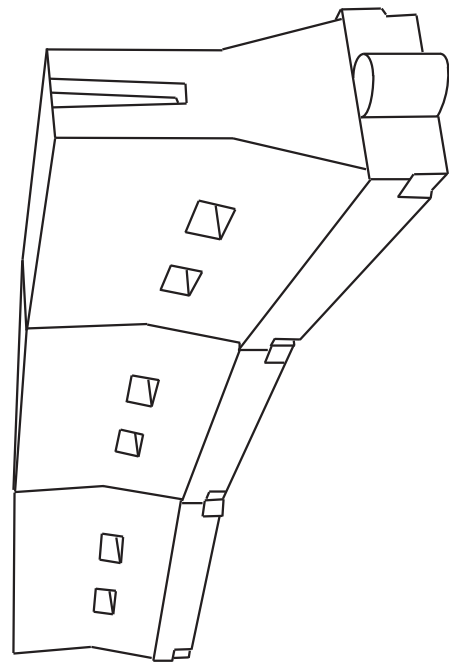
1. Opposing Traffic Lane Dividers (OTLD) are delineation devices designed to convert a normal one-way roadway section to two-way operation. OTLD's are used on temporary centerlines. The upward and downward arrows on the sign's face indicate the direction of traffic on either side of the divider. The base is secured to the pavement with an adhesive or rubber weight to minimize movement caused by a vehicle impact or wind gust.
2. The OTLD may be used in combination with 42" cones or VPS.
3. Spacing between the OTLD shall not exceed 500 feet, 42" cones or VPS placed between the OTLD's should not exceed 100 foot spacing.
4. The OTLD shall be orange with a black non-reflective legend. Sheet for the OTLD shall be retroreflective Type B<sub>2</sub> or Type C<sub>FL</sub> conforming to Departmental Material Specification DMS-8300, unless noted otherwise, the legend shall meet the requirements of DMS-8300.



1. The chevron shall be a vertical rectangle with a minimum size of 12 by 18 inches.
2. Chevrons are intended to give notice of a sharp change of alignment with the direction of travel and provide additional emphasis and guidance for vehicle operators with regard to changes in horizontal alignment of the roadway.
3. Chevrons, when used, shall be erected on the outside of a sharp curve or turn, or on the far side of an intersection. They shall be in line with and at right angles to approaching traffic. Spacing should be such that the motorist always has three in view, until the change in alignment eliminates its need.
4. To be effective, the chevron should be visible for at least 500 feet.
5. Chevrons shall be orange with a black nonreflective legend. Sheeting for the chevron shall be retroreflective Type B<sub>40</sub> or Type C<sub>40</sub> conforming to Departmental Material Specification DMS-8300, unless noted otherwise. The legend shall meet the requirements of DMS-8300.
6. For Long Term Stationary use on tapers or transitions on freeways and divided highways self-righting chevrons may be used to supplement plastic drums but not to replace plastic drums.



# CHEVRONS



## LONGITUDINAL CHANNELIZING DEVICES (LCD)

1. LCUs are crashworthy, lightweight, deformable devices that are highly visible, have good target value and can be connected together. They are not designed to contain or redirect a vehicle on impact.
2. LCUs may be used instead of a line of cones or drums.
3. LCUs shall be placed in accordance to application and installation requirements specific to the device, and used only when shown on the GWZCD list.
4. LCUs should not be used to provide positive protection for obstacles, pedestrians or workers.
5. LCUs shall be supplemented with retroreflective delineation as required for temporary barriers on BC(7) when placed roughly parallel to the travel lanes.
6. LCUs used as barricades perpendicular to traffic should have at least one row of reflective sheeting meeting the requirements for barricade rails as shown on BC(10) placed near the top of the LCU along the full length of the device.

## WATER BALLASTED SYSTEMS USED AS BARRIERS

1. Water ballasted systems used as barriers shall not be used solely to channelize road users, but also to protect the work space per the appropriate NCHRP 350 crashworthiness requirements based on roadway speed and barrier application.
2. Water ballasted systems used to channelize vehicular traffic shall be supplemented with retroreflective delineation or channelizing devices to improve daytime/nighttime visibility. They may also be supplemented with pavement markings.
3. Water ballasted systems used as barriers shall be placed in accordance to application and installation requirements specific to the device, and used only when shown on the CWZCDD list.
4. Water ballasted systems used as barriers shall not be used for a merging taper except in low speed (less than 45 MPH) urban areas. When used on a taper in a low speed urban area, the taper shall be delineated and the taper length should be designed to optimize road user operations considering the available geometric conditions.
5. When water ballasted systems used as barriers have blunt ends exposed to traffic, they should be attenuated as per manufacturer recommendations or flared to a point outside the clear zone.

If used to channelize pedestrians, longitudinal channelizing devices or water ballasted systems must have a continuous detectable bottom for users of long canes and the top of the unit shall not be less than 32 inches in height.

## HOLLOW OR WATER BALLASTED SYSTEMS USED AS LONGITUDINAL CHANNELIZING DEVICES OR BARRIERS

## GENERAL NOTES

1. Work Zone channelizing devices illustrated on this sheet may be installed in close proximity to traffic and are suitable for use on high or low speed roadways. The Engineer/Inspector shall ensure that spacing and placement is uniform and in accordance with the "Texas Manual on Uniform Traffic Control Devices" (TMUTCD).
2. Channelizing devices shown on this sheet may have a driveable, fixed or portable base. The requirement for self-righting channelizing devices must be specified in the General Notes or other plan sheets.
3. Channelizing devices on self-righting supports should be used in work zone areas where channelizing devices are frequently impacted by errant vehicles or vehicle related wind gusts making alignment of the channelizing devices difficult to maintain. Locations of these devices shall be detailed elsewhere in the plans. These devices shall conform to the TMUTCD and the "Compliant Work Zone Traffic Control Devices List" (CWZTCD).
4. The Contractor shall maintain devices in a clean condition and replace damaged, nonreflective, faded, or broken devices and bases as required by the Engineer/Inspector. The Contractor shall be required to maintain proper device spacing and alignment.
5. Portable bases shall be fabricated from virgin and/or recycled rubber. The portable bases shall weigh a minimum of 30 lbs.
6. Pavement surfaces shall be prepared in a manner that ensures proper bonding between the adhesives, the fixed mount bases and the pavement surface. Adhesives shall be prepared and applied according to the manufacturer's recommendations.
7. The installation and removal of channelizing devices shall not cause detrimental effects to the final pavement surfaces, including pavement surface discoloration or surface integrity. Driveable bases shall not be permitted on final pavement surfaces. The Engineer/Inspector shall approve all application and removal procedures of fixed bases.

| Posted Speed<br>* | Formula               | Minimum Desirable<br>Taper Lengths<br>** |            |            | Suggested Maximum<br>Spacing of<br>Channelizing<br>Devices |              |  |
|-------------------|-----------------------|------------------------------------------|------------|------------|------------------------------------------------------------|--------------|--|
|                   |                       | 10' Offset                               | 11' Offset | 12' Offset | On a Taper                                                 | On a Tangent |  |
| 30                | $L = \frac{WS^2}{60}$ | 150'                                     | 165'       | 180'       | 30'                                                        | 60'          |  |
| 35                |                       | 205'                                     | 225'       | 245'       | 35'                                                        | 70'          |  |
| 40                |                       | 265'                                     | 295'       | 320'       | 40'                                                        | 80'          |  |
| 45                | $L = WS$              | 450'                                     | 495'       | 540'       | 45'                                                        | 90'          |  |
| 50                |                       | 500'                                     | 550'       | 600'       | 50'                                                        | 100'         |  |
| 55                |                       | 550'                                     | 605'       | 660'       | 55'                                                        | 110'         |  |
| 60                |                       | 600'                                     | 660'       | 720'       | 60'                                                        | 120'         |  |
| 65                |                       | 650'                                     | 715'       | 780'       | 65'                                                        | 130'         |  |
| 70                |                       | 700'                                     | 770'       | 840'       | 70'                                                        | 140'         |  |
| 75                |                       | 750'                                     | 825'       | 900'       | 75'                                                        | 150'         |  |
| 80                |                       | 800'                                     | 880'       | 960'       | 80'                                                        | 160'         |  |

\*\*Taper lengths have been rounded off.  
 L=Length of Taper (FT.) W=Width of Offset (FT.)  
 S=Posted Speed (MPH)

## SUGGESTED MAXIMUM SPACING OF CHANNELIZING DEVICES AND MINIMUM DESIRABLE TAPER LENGTHS

SHEET 9 OF 12



# BARRICADE AND CONSTRUCTION CHANNELIZING DEVICES

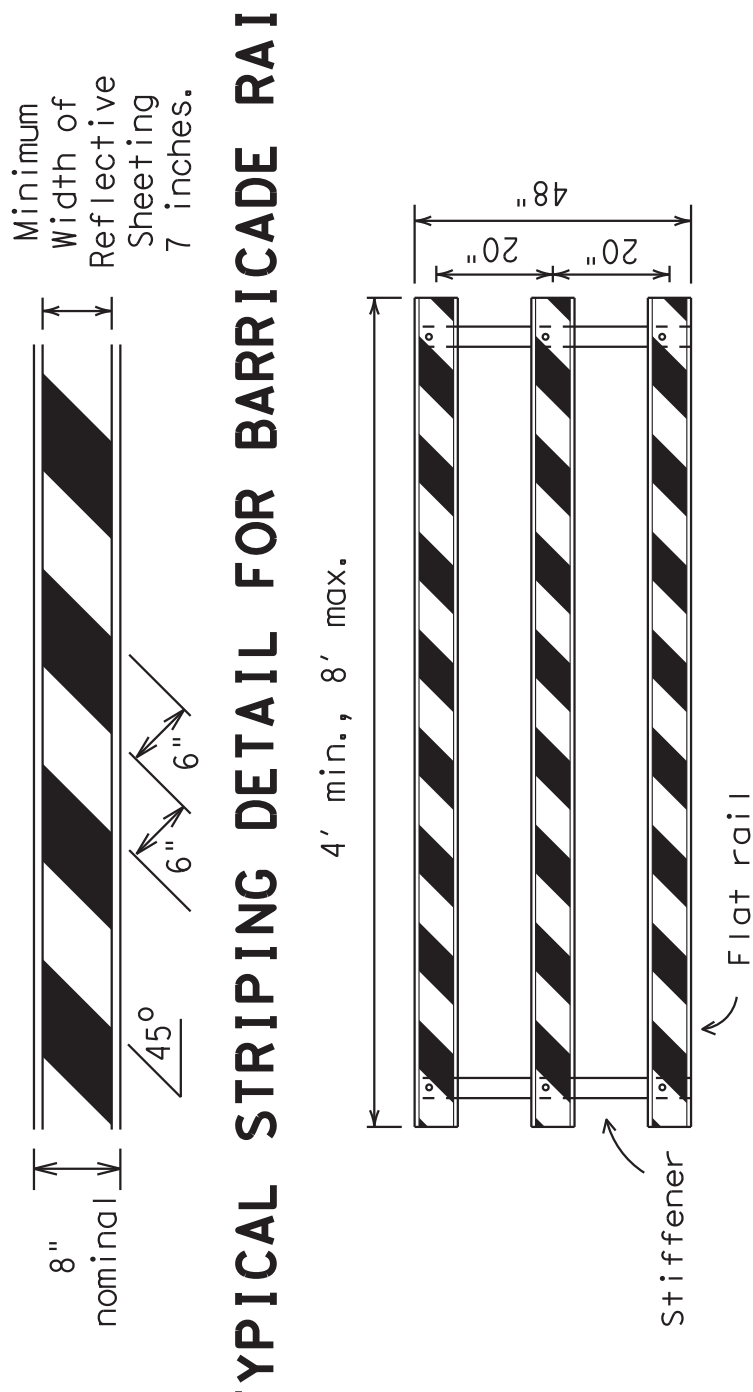
BC(9)-14

|                       |           |            |             |             |              |
|-----------------------|-----------|------------|-------------|-------------|--------------|
| FILE:                 | bc-14.dgn | DWG: TxDOT | CITY: TxDOT | DATE: TxDOT | SCALE: TxDOT |
| © TxDOT November 2002 |           | CONT       | SECT        | JOB         | HIGHWAY      |
| REVISONS              |           |            |             |             |              |
| 9-07                  | 8-14      | DIST       |             | COUNTY      | SHEET NO.    |
| 7-13                  |           |            |             |             | 20           |



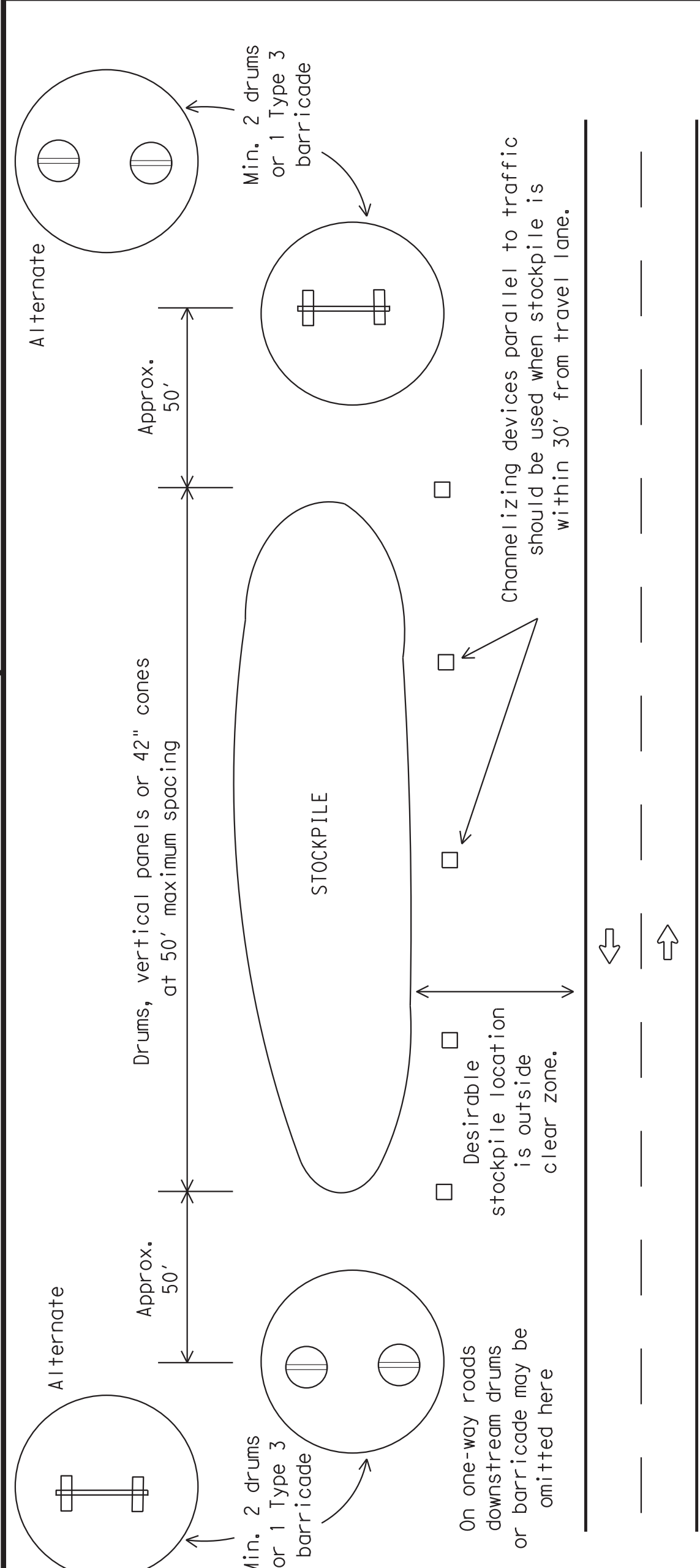
- TYPE 3 BARRICADES**
1. Refer to the Compliant Work Zone Traffic Control Devices List (CWZTCD) for details of the Type 3 Barricades and a list of all materials used in the construction of Type 3 Barricades.
  2. Type 3 Barricades shall be used at each end of construction projects closed to all traffic.
  3. Barricades extending across a roadway should have stripes that slope downward in the direction toward which traffic must turn in detouring. When both right and left turns are provided, the chevron striping may slope downward in both directions from the center of the barricade. Where no turns are provided at a closed road striping should slope downward in both directions toward the center of roadway.
  4. Striping of rails, for the right side of the roadway, should slope downward to the left. For the left side of the roadway, striping should slope downward to the right.
  5. Identification markings may be shown only on the back of the barricade rails. The maximum height of letters and/or company logos used for identification shall be 1".
  6. Barricades shall not be placed parallel to traffic unless an adequate clear zone is provided.
  7. Warning lights shall NOT be installed on barricades.
  8. Where barricades require the use of weights to keep from turning over, the use of sandbags with dry, cohesionless sand is recommended. The sandbags will be tied shut to keep the sand from spilling and to maintain a constant weight. Sand bags shall not be stacked in a manner that covers any portion of a barricade rails reflective sheeting. Rock, concrete, iron, steel or other solid objects will NOT be permitted. Sandbags should weigh a minimum of 35 lbs and a maximum of 50 lbs. Sandbags shall be made of a durable material that tears upon vehicular impact. Rubber (such as tire inner tubes) shall not be used for sandbags. Sandbags shall only be placed along or upon the base supports of the device and shall not be suspended above ground level or hung with rope, wire, chains or other fasteners.
  9. Sheeting for barricades shall be retroreflective Type A conforming to Departmental Material Specification DMS-8300 unless otherwise noted.

Barricades shall NOT be used as a sign support.

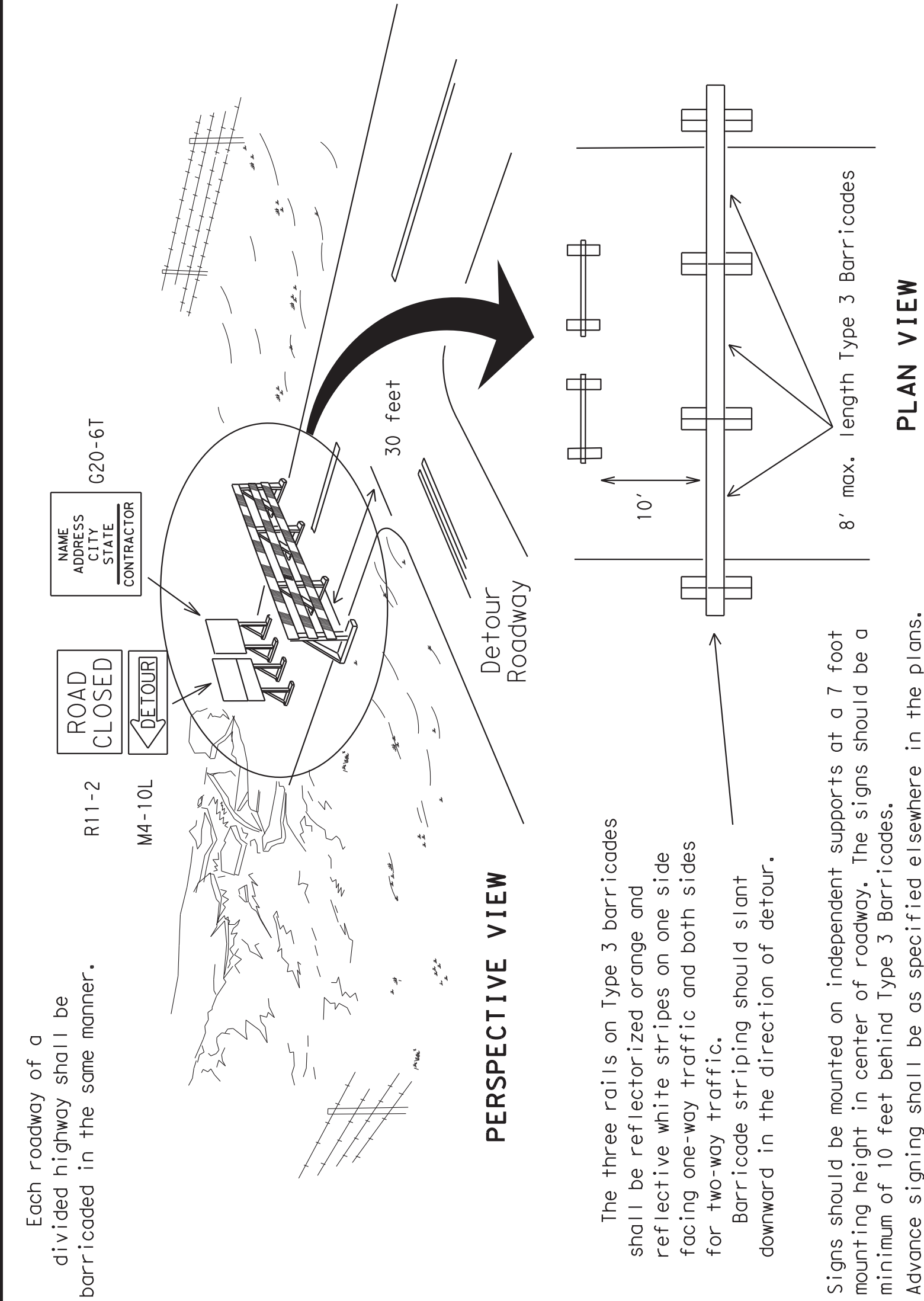


Stiffener may be inside or outside of support, but no more than 2 stiffeners shall be allowed on one barricade.

**TYPICAL PANEL DETAIL FOR SKID OR POST TYPE BARRICADES**

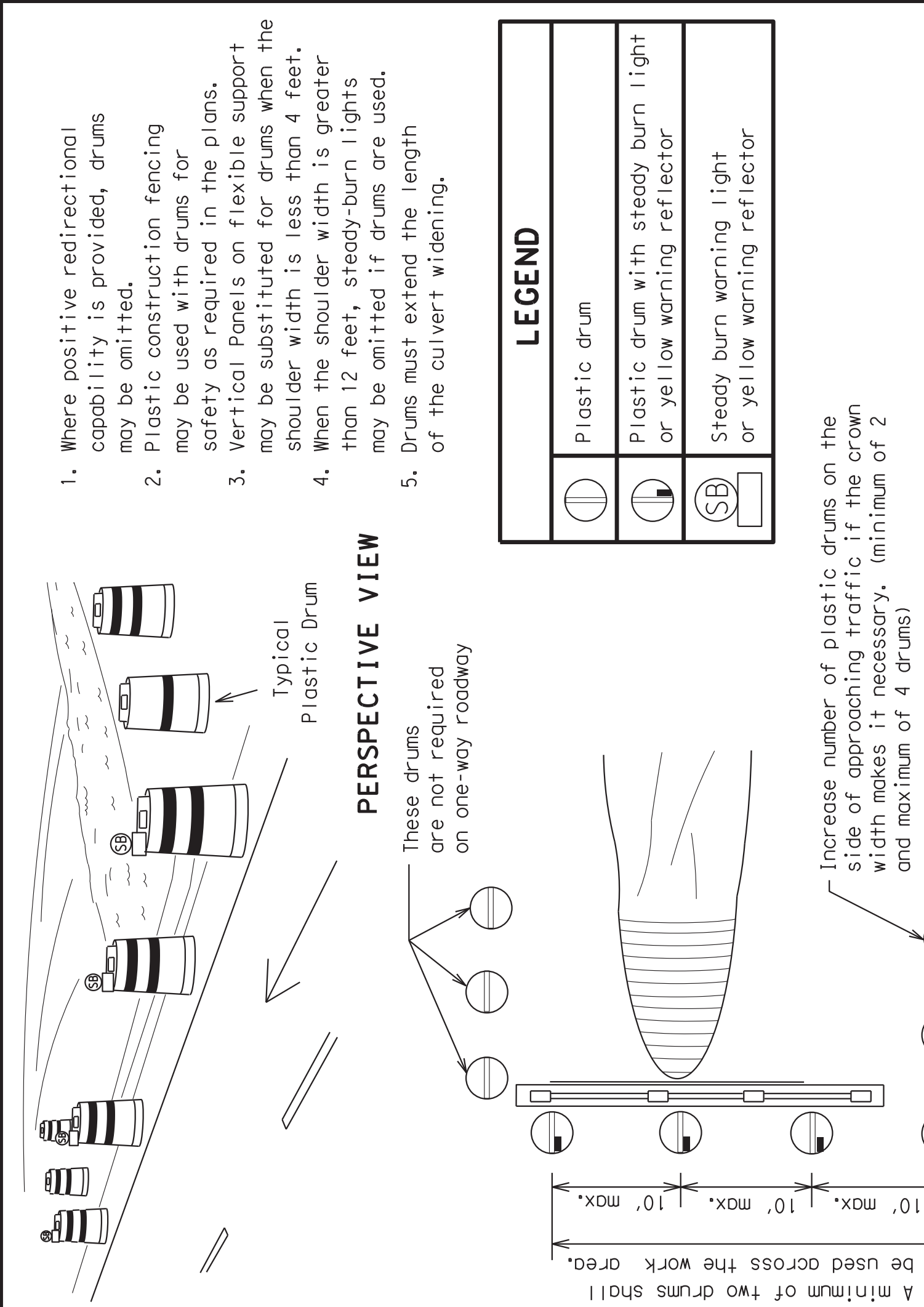


**TRAFFIC CONTROL FOR MATERIAL STOCKPILES**



**TYPE 3 BARRICADE (POST AND SKID) TYPICAL APPLICATION**

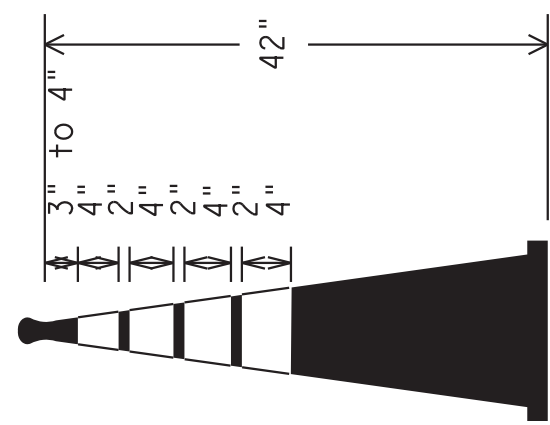
1. Signs should be mounted on independent supports at a 7 foot mounting height in center of roadway. The signs should be a minimum of 10 feet behind Type 3 Barricades.
2. Advance signing shall be as specified elsewhere in the plans.



**PLAN VIEW**

**CULVERT WIDENING OR OTHER ISOLATED WORK WITHIN THE PROJECT LIMITS**

THIS DEVICE SHALL NOT BE USED ON PROJECTS LET AFTER MARCH 2014.



1. This device is intended only for use in place of a vertical panel to channelize traffic by indicating the edge of the travel lane. It is not intended to be used in transitions or tapers.
2. This device shall not be used to separate lanes of traffic (opposing or otherwise) or warn of objects.
3. This device is based on a 42 inch, two-piece cone with an alternate striping pattern: four 4 inch retroreflective bands, with an approximate 2 inch gap between bands. The color of the band should correspond to the color of the edgeline (yellow for left edgeline, white for right edgeline) for which the device is substituted or for which it supplements. The reflectorized bands shall be retroreflective Type A conforming to Departmental Material Specification DMS-8300, unless otherwise noted.
4. The base must weigh a minimum of 30 lbs.

**SHEET 10 OF 12**

**Texas Department of Transportation**

**Traffic Operations Division Standard**

**BARRICADE AND CONSTRUCTION CHANNELIZING DEVICES**

**BC (10) - 14**

FILE: bc-14.dgn

ONE: TXDOT

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FIVE: TXDOT

SIX: TXDOT

SEVEN: TXDOT

EIGHT: TXDOT

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TEN TRILLION-THREE: TXDOT



DISCLAIMER: The use of this standard is governed by the "Texas Engineering Practice Act". Texas Engineering Practice Act assumes no responsibility for the conversion of this standard to other formats or for incorrect results or damages resulting from its use. This standard is made by TxDOT for any purpose whatsoever. TxDOT assumes no responsibility for the conversion of this standard to other formats or for incorrect results or damages resulting from its use.

WORK ZONE PAVEMENT MARKINGS

GENERAL

- 1. The Contractor shall be responsible for maintaining work zone and existing pavement markings, in accordance with the standard specifications and special provisions, on all roadways open to traffic within the CSJ limits unless otherwise stated in the plans.
- 2. Color, patterns and dimensions shall be in conformance with the "Texas Manual on Uniform Traffic Control Devices" (TMUTCD).
- 3. Additional supplemental pavement marking details may be found in the plans or specifications.
- 4. Pavement markings shall be installed in accordance with the TMUTCD and as shown on the plans.
- 5. When short term markings are required on the plans, short term markings shall conform with the TMUTCD, the plans and details as shown on the Standard Plan Sheet WZ(STPM).
- 6. When standard pavement markings are not in place and the roadway is opened to traffic, DO NOT PASS signs shall be erected to mark the beginning of the sections where passing is prohibited and PASS WITH CARE signs at the beginning of sections where passing is permitted.
- 7. All work zone pavement markings shall be installed in accordance with Item 662, "Work Zone Pavement Markings."

RAISED PAVEMENT MARKERS

- 1. Raised pavement markers are to be placed according to the patterns on BC(12).
- 2. All raised pavement markers used for work zone markings shall meet the requirements of Item 672, "RAISED PAVEMENT MARKERS" and Departmental Material Specification DMS-4200 or DMS-4300.

PREFABRICATED PAVEMENT MARKINGS

- 1. Removable prefabricated pavement markings shall meet the requirements of DMS-8241.
- 2. Non-removable prefabricated pavement markings (foil back) shall meet the requirements of DMS-8240.

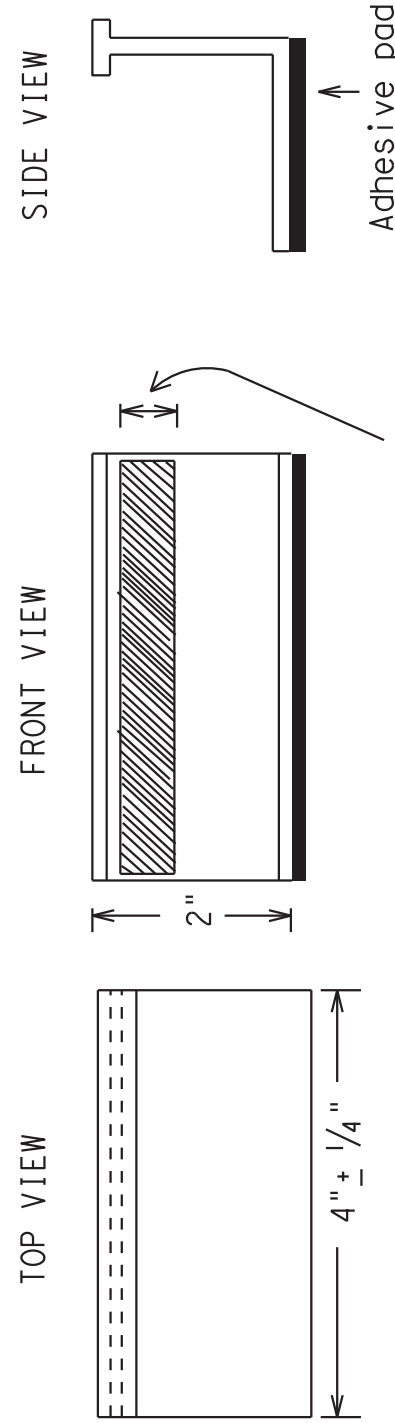
MAINTAINING WORK ZONE PAVEMENT MARKINGS

- 1. The Contractor will be responsible for maintaining work zone pavement markings within the work limits.
- 2. Work zone pavement markings shall be inspected in accordance with the frequency and reporting requirements of work zone traffic control device inspections as required by Form 599.
- 3. The markings should provide a visible reference for a minimum distance of 300 feet during normal daylight hours and 160 feet when illuminated by automobile low-beam headlights at night, unless sight distance is restricted by roadway geometrics.
- 4. Markings failing to meet this criteria within the first 30 days after placement shall be replaced at the expense of the Contractor as per Specification Item 662.

- 1. Pavement markings that are no longer applicable, could create confusion or direct a motorist toward or into the closed portion of the roadway shall be removed or obliterated before the roadway is opened to traffic.
- 2. The above shall not apply to detours in place for less than three days, where flaggers and/or sufficient channelizing devices are used in lieu of markings to outline the detour route.
- 3. Pavement markings shall be removed to the fullest extent possible, so as not to leave a discernable marking. This shall be by any method approved by TxDOT Specification Item 677 for "Eliminating Existing Pavement Markings and Markers".
- 4. The removal of pavement markings may require resurfacing or seal coating portions of the roadway as described in Item 677.
- 5. Subject to the approval of the Engineer, any method that proves to be successful on a particular type pavement may be used.
- 6. Blast cleaning may be used but will not be required unless specifically shown in the plans.
- 7. Over-painting of the markings SHALL NOT BE permitted.
- 8. Removal of raised pavement markers shall be as directed by the Engineer.
- 9. Removal of existing pavement markings and markers will be paid for directly in accordance with Item 677, "ELIMINATING EXISTING PAVEMENT MARKINGS AND MARKERS," unless otherwise stated in the plans.
- 10.Black-out marking tape may be used to cover conflicting existing markings for periods less than two weeks when approved by the Engineer.

REMOVAL OF PAVEMENT MARKINGS

Temporary Flexible-Reflective Roadway Marker Tabs



STAPLES OR NAILS SHALL NOT BE USED TO SECURE TEMPORARY FLEXIBLE-REFLECTIVE ROADWAY MARKER TABS TO THE PAVEMENT SURFACE

- 1. Temporary flexible-reflective roadway marker tabs used as guidemarks shall meet the requirements of DMS-8242.
- 2. Tabs detailed on this sheet are to be inspected and accepted by the Engineer or designated representative. Sampling and testing is not normally required, however at the option of the Engineer, either "A" or "B" below may be imposed to assure quality before placement on the roadway.
  - A. Select five (5) or more tabs at random from each lot or shipment and submit to the Construction Division, Materials and Pavement Section to determine specification compliance.
  - B. Select five (5) tabs and perform the following test. Affix five (5) tabs at 24 inch intervals on an asphaltic pavement in a straight line. Using a medium size passenger vehicle or pickup, run over the markers with the front and rear tires at a speed of 35 to 40 miles per hour, four (4) times in each direction. No more than one (1) out of the five (5) reflective surfaces shall be lost or displaced as a result of this test.
- 3. Small design variances may be noted between tab manufacturers.
- 4. See Standard Sheet WZ(STPM) for tab placement on new pavements. See Standard Sheet TCP(7-1) for tab placement on seal coat work.

RAISED PAVEMENT MARKERS USED AS GUIDEMARKS

- 1. Raised pavement markers used as guidemarks shall be from the approved product list, and meet the requirements of DMS-4200.
- 2. All temporary construction raised pavement markers provided on a project shall be of the same manufacturer.
- 3. Adhesive for guidemarks shall be bituminous material hot applied or butyl rubber pad for all surfaces, or thermoplastic for concrete surfaces.

Guidemarks shall be designated as:  
YELLOW - (two amber reflective surfaces with yellow body).  
WHITE - (one silver reflective surface with white body).

DEPARTMENTAL MATERIAL SPECIFICATIONS

|                                                      |          |
|------------------------------------------------------|----------|
| PAVEMENT MARKERS (REFLECTORIZED)                     | DMS-4200 |
| TRAFFIC BUTTONS                                      | DMS-4300 |
| EPOXY AND ADHESIVES                                  | DMS-6100 |
| BITUMINOUS ADHESIVE FOR PAVEMENT MARKERS             | DMS-6130 |
| PERMANENT PREFABRICATED PAVEMENT MARKINGS            | DMS-8240 |
| TEMPORARY REMOVABLE, PREFABRICATED PAVEMENT MARKINGS | DMS-8241 |
| TEMPORARY FLEXIBLE, REFLECTIVE ROADWAY MARKER TABS   | DMS-8242 |

A list of prequalified reflective raised pavement markers, non-reflective traffic buttons, roadway marker tabs and other pavement markings can be found at the Material Producer List web address shown on BC(1).

SHEET 11 OF 12



Texas Department of Transportation

Traffic Operations Division Standard

BARRICADE AND CONSTRUCTION PAVEMENT MARKINGS

BC(11) - 14

|         |           |            |            |           |
|---------|-----------|------------|------------|-----------|
| FILE:   | bc-14.dgn | DWG: TxDOT | CHK: TxDOT | HIGHWAY   |
| CONT    | SECT      | JOB        |            |           |
| REVISED |           |            |            |           |
| 2-98    | 9-07      |            |            |           |
| 1-02    | 7-13      | COUNTY     |            | SHEET NO. |
| 11-02   | 8-14      |            |            | 22        |





| Exhibit "A"                   |             |                                           |
|-------------------------------|-------------|-------------------------------------------|
| Bid Comparison                |             |                                           |
| Texarkana, Texas Welcome Sign |             |                                           |
| Four Thirteen Inc.            | TEC, Inc.   | Dyanimc Sign Solutions and Marketing, LLC |
| \$66,479.00                   | \$73,575.15 | \$99,788.50                               |

## City of Texarkana, Texas

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

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

## Perspectives and Goals Additional Comments:

NONE

## Resource Impact:

Staff time required if item is approved: No Additional

## Other Potential Impacts:

NONE APPLICABLE

## Public Information Plan:

|                                                                 |                                                               |
|-----------------------------------------------------------------|---------------------------------------------------------------|
| <input type="checkbox"/> Newspaper Notice (Required by Statute) | <input type="checkbox"/> Public Hearing (Required by Statute) |
| <input type="checkbox"/> Public Forum/Input Session             | <input type="checkbox"/> Press Release                        |
| <input type="checkbox"/> E-News Distribution                    | <input type="checkbox"/> Website Notice                       |
| <input type="checkbox"/> Social Media (Twitter, Facebook, etc.) | <input type="checkbox"/> Special Mailing                      |
| <input type="checkbox"/> Flyers Posted                          | <input type="checkbox"/> Banners Posted                       |
| <input type="checkbox"/> Survey                                 | <input type="checkbox"/> Automated Phone Call                 |
| <input checked="" type="checkbox"/> None Required               | <input type="checkbox"/>                                      |

Other:



# ORDINANCE NO. 2016 – 133

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEXARKANA, TEXAS, AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH FOUR THIRTEEN INC. FOR THE CONSTRUCTION OF THE TEXARKANA, TEXAS WELCOME SIGN IN AMOUNT NOT TO EXCEED SIXTY SIX THOUSAND FOUR HUNDRED SEVENTY-NINE AND 00/100 DOLLARS (\$66,479.00); AND AMENDING BUDGET EXPENDITURES FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2017 TO APPROPRIATE FUNDING IN THE AMOUNT OF SEVENTY-NINE THOUSAND SEVEN HUNDRED SEVENTY-NINE AND 00/100 DOLLARS (\$79,779.00) FOR THE CONSTRUCTION OF THE SIGN; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, expenditures for the Texarkana, Texas Welcome Sign were not appropriated in the original budget for the fiscal year ending September 30, 2017; and

**WHEREAS**, an appropriation of Seventy-Nine Thousand Seven Hundred Seventy-Nine Dollars (\$79,779) is needed to proceed with the construction of the Texarkana, Texas Welcome Sign; and

**WHEREAS**, the bids were opened on November 3, 2016 for the construction of the Texarkana, Texas Welcome Sign; and

**WHEREAS**, the bidder with the lowest and best bid was Four Thirteen Inc. of Texarkana, Texas in an amount not to exceed Sixty-Six Thousand Four Hundred Seventy-Nine Dollars (\$66,479); and

**WHEREAS**, a 20% contingency in the amount of Thirteen Thousand Three Hundred Dollars (\$13,300) is included for any additional construction services; and

**WHEREAS**, the budget for the fiscal year ending September 30, 2017 should be amended to reflect the appropriation of Seventy-Nine Thousand Seven Hundred Seventy-Nine Dollars (\$79,779) from the General Fund.

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

**SECTION 1:** That the City Manager be and is hereby authorized to enter into a contract with Four Thirteen Inc. for the construction of the Texarkana, Texas Welcome Sign in amount not to exceed Sixty-Six Thousand Four Hundred Seventy-Nine Dollars (\$66,479).

**SECTION 2:** That the budget estimate of the 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, 2016 and ending September 30, 2017, be amended to reflect additional expenditures

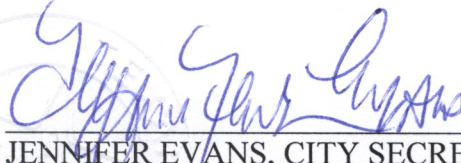
of Seventy-Nine Thousand Seven Hundred Seventy-Nine Dollars (\$79,779) from the General Fund.

**SECTION 3:** That 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 **28<sup>th</sup>** day of **November, 2017**.

ATTEST:



  
JENNIFER EVANS, CITY SECRETARY

  
BOB BRUGGEMAN, MAYOR

6:51 p.m.



## City of Texarkana, Texas

Version: A

Update Date: 10/14/2016 1:35 PM

**Briefing Sheet**

**Lead Department:** Finance Department      **Action Officer:** Kristin Peeples,  
**Subject:** Resolution No. 2016-120 approving Bowie Central Appraisal District's 2016 tax  
roll.  
**Public**      **Second**      **Council**  
**Briefing:** 11/14/2016      **Hearing:** 11/14/2016      **Briefing:** November 28,      **Vote:** 2016      12/12/2016

**Item Schedule**Schedule 1: Brief twice - vote once (six weeks)**Updates/History of Briefing:**

Not Applicable

**Executive Summary and Background Information:**

Bowie Central Appraisal District has completed and presented the City's 2016 tax roll for the City, TIRZ District No. 1 and TIRZ District No. 2. This roll, as presented, needs to be approved by signature of the City Council, and returned to the Appraisal District.

**Potential Options:**

- Approve
- Deny

**Fiscal Implications:**

Collections by Bowie Central Appraisal District from the approved tax roll provide funds needed for the operating budget for fiscal year ending September 30, 2017.

**Staff Recommendation:**

Staff recommends approval

**Advisory Board/Committee Review:**

None

**Board/Committee Recommendation:**

None

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

Not Applicable

**Attachments**

- a. 2016-120 RES 2016 Tax Roll(DOC)
- b. 2016-120 EXH 'A' 2016 Tax Roll (PDF)
- c. 2016-120 RES Goals & Perspectives (DOCX)
- d. 2016-120 RES Approving 2016 Tax Roll signed (PDF)

## City of Texarkana, Texas

### Staff Coordination

|                            |                     |                        |                        |
|----------------------------|---------------------|------------------------|------------------------|
| Finance Department         | Kristin Peebles     | Department Head Review | Completed              |
|                            | 10/11/2016 4:22 PM  |                        |                        |
| Assistant City Manager     |                     | Shirley Jaster         | Assistant City Manager |
| Review                     | Completed           | 10/12/2016 11:18 AM    |                        |
| Public Information Officer |                     | Lisa Thompson          | PIO Review             |
|                            | 10/12/2016 11:28 AM |                        | Completed              |
| City Manager               | John Whitson        | City Manager Review    | Completed              |
| 9:21 AM                    |                     |                        | 10/19/2016             |
| City Council               | Jennifer Evans      | Meeting                | Completed              |
| 6:00 PM                    |                     |                        | 10/24/2016             |

### Meeting History

|          |              |               |                |
|----------|--------------|---------------|----------------|
| 10/24/16 | City Council | MOVED FORWARD | Next: 11/14/16 |
|----------|--------------|---------------|----------------|

## RESOLUTION NO. 2016-120

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEXARKANA, TEXAS, APPROVING THE BOWIE CENTRAL APPRAISAL DISTRICT 2016 TAX ROLL FOR THE CITY OF TEXARKANA, TEXAS; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, the Bowie Central Appraisal District has completed the 2016 Tax Roll; and

**WHEREAS**, it is recommended by the Finance Department that the 2016 Tax Roll for the City of Texarkana, Texas be approved as presented.

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

**SECTION 1:** That the 2016 Tax Roll for the City of Texarkana, Texas as prepared and presented by the Bowie Central Appraisal District is hereby approved. Copies of the City of Texarkana, Texas 2016 Tax Roll are attached hereto and incorporated herein as **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 **12<sup>th</sup> day of December, 2016**.

ATTEST:

\_\_\_\_\_  
JENNIFER EVANS, CITY SECRETARY

\_\_\_\_\_  
BOB BRUGGEMAN, MAYOR

Attachment: 2016-120 RES 2016 Tax Roll [Revision 1] (1553 : 2016-120 RES approving 2016 Tax Roll)

**BCAD**

BCAD  
122 Plaza West Suite A  
Texarkana, TX 75505

PHONE 903-793-8936  
FAX 903-792-8889

October 5, 2016

CITY OF TEXARKANA  
P O BOX 1967  
TEXARKANA, TX 75504-1967

Enclosed is a copy of your 2016 Tax Roll. Please have it signed and return it to our office at your earliest convenience.

Sincerely,



Kim Kinder  
Director of Collections

Attachment: 2016-120 EXH 'A' 2016 Tax Roll (1553 : 2016-120 RES approving 2016 Tax Roll)

## CITY OF TEXARKKANA

## 2016 TAX ROLL

|                          |                 |
|--------------------------|-----------------|
| TOTAL TAXABLE VALUE      | 2,146,986,211   |
| GROSS TAX LEVY           | \$15,028,911.21 |
| LESS TAX ON FROZEN ITEMS | \$1,935,617.97  |
| PLUS FROZEN TAXES        | \$1,403,048.76  |
| PLUS LATE PENALTY GAIN   | \$39,321.61     |
| TOTAL TAX LEVY           | \$14,535,663.61 |

COUNCIL MEMBERS :

MAYOR, BOB BRUGGEMAN

MEMBER JEAN MATLOCK

MEMBER MS WILLIE RAY

MEMBER TINA VEAL GOOCH

MEMBER BRIAN MATTHEWS

MEMBER JOSH DAVIS

MEMBER, CHRISTY PADDOCK

APPROVED THE \_\_\_\_\_ DAY OF \_\_\_\_\_

2016

Attachment: 2016-120 EXH 'A' 2016 Tax Roll (1553 : 2016-120 RES approving 2016 Tax Roll)



## CITY OF TEXARKKANA T1

**2016 TAX ROLL**

|                          |                |
|--------------------------|----------------|
| TOTAL TAXABLE VALUE      | 326,694,049    |
| GROSS TAX LEVY           | \$2,286,858.54 |
| LESS TAX ON FROZEN ITEMS | \$17,612.73    |
| PLUS FROZEN TAXES        | \$10,882.63    |
| PLUS LATE PENALTY GAIN   | \$89.59        |
| TOTAL TAX LEVY           | \$2,280,218.03 |

COUNCIL MEMBERS :

MAYOR , BOB BRUGGEMAN

---

MEMBER BRIAN MATTHEWS

---

MEMBER MS WILLIE RAY

---

MEMBER TINA VEAL GOOCH

---

MEMBER JEAN MATLOCK

---

MEMBER JOSH DAVIS

---

MEMBER, CHRISTY PADDOCK

---

APPROVED THE \_\_\_\_\_ DAY OF \_\_\_\_\_

2016

Attachment: 2016-120 EXH 'A' 2016 Tax Roll (1553 : 2016-120 RES approving 2016 Tax Roll)

## CITY OF TEXARKKANA T2

**2016 TAX ROLL**

|                          |              |
|--------------------------|--------------|
| TOTAL TAXABLE VALUE      | 53,176,506   |
| GROSS TAX LEVY           | \$372,235.75 |
| LESS TAX ON FROZEN ITEMS | \$5,283.32   |
| PLUS FROZEN TAXES        | \$4,068.25   |
| PLUS LATE PENALTY GAIN   | \$0.00       |
| TOTAL TAX LEVY           | \$371,020.68 |

COUNCIL MEMBERS :

MAYOR , BOB BRUGGEMAN

---

MEMBER JEAN MATLOCK

---

MEMBER MS WILLIE RAY

---

MEMBER TINA VEAL GOOCH

---

MEMBER BRIAN MATTHEWS

---

MEMBER JOSH DAVIS

---

MEMBER, CHRISTY PADDOCK

---

APPROVED THE \_\_\_\_\_ DAY OF \_\_\_\_\_

2016

Attachment: 2016-120 EXH 'A' 2016 Tax Roll (1553 : 2016-120 RES approving 2016 Tax Roll)

## City of Texarkana, Texas

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

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

## Perspectives and Goals Additional Comments:

NONE

## Resource Impact:

Staff time required if item is approved: No Additional

## Other Potential Impacts:

NONE APPLICABLE

## Public Information Plan:

|                                     |                                        |                                     |                                      |
|-------------------------------------|----------------------------------------|-------------------------------------|--------------------------------------|
| <input checked="" type="checkbox"/> | Newspaper Notice (Required by Statute) | <input checked="" type="checkbox"/> | Public Hearing (Required by Statute) |
| <input type="checkbox"/>            | Public Forum/Input Session             | <input type="checkbox"/>            | Press Release                        |
| <input type="checkbox"/>            | E-News Distribution                    | <input type="checkbox"/>            | Website Notice                       |
| <input type="checkbox"/>            | Social Media (Twitter, Facebook, etc.) | <input type="checkbox"/>            | Special Mailing                      |
| <input type="checkbox"/>            | Flyers Posted                          | <input type="checkbox"/>            | Banners Posted                       |
| <input type="checkbox"/>            | Survey                                 | <input type="checkbox"/>            | Automated Phone Call                 |
| <input type="checkbox"/>            | None Required                          | <input type="checkbox"/>            |                                      |

Other:

## RESOLUTION NO. 2016-120

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEXARKANA, TEXAS, APPROVING THE BOWIE CENTRAL APPRAISAL DISTRICT 2016 TAX ROLL FOR THE CITY OF TEXARKANA, TEXAS; AND ESTABLISHING AN EFFECTIVE DATE.

**WHEREAS**, the Bowie Central Appraisal District has completed the 2016 Tax Roll; and

**WHEREAS**, it is recommended by the Finance Department that the 2016 Tax Roll for the City of Texarkana, Texas be approved as presented.

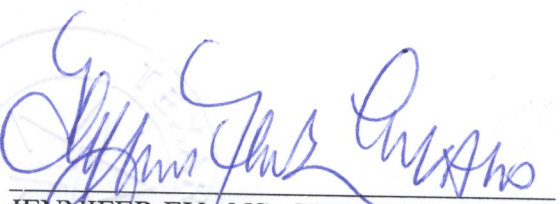
**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TEXARKANA, TEXAS:**

**SECTION 1:** That the 2016 Tax Roll for the City of Texarkana, Texas as prepared and presented by the Bowie Central Appraisal District is hereby approved. Copies of the City of Texarkana, Texas 2016 Tax Roll are attached hereto and incorporated herein as **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 14<sup>th</sup> day of November, 2016.

ATTEST:

  
JENNIFER EVANS, CITY SECRETARY

  
BOB BRUGGEMAN, MAYOR

6:56p.m.

Attachment: 2016-120 RES Approving 2016 Tax Roll signed (1553 : 2016-120 RES approving 2016 Tax Roll)

**BCAD**

BCAD  
122 Plaza West Suite A  
Texarkana, TX 75505

PHONE 903-793-8936  
FAX 903-792-8889

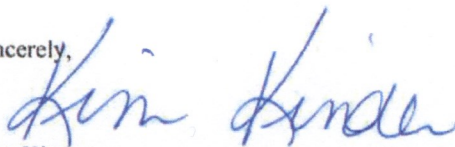
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October 5, 2016

CITY OF TEXARKANA  
P O BOX 1967  
TEXARKANA, TX 75504-1967

Enclosed is a copy of your 2016 Tax Roll. Please have it signed and return it to our office at your earliest convenience.

Sincerely,



Kim Kinder  
Director of Collections

Attachment: 2016-120 RES Approving 2016 Tax Roll signed (1553 : 2016-120 RES approving 2016 Tax Roll)



## CITY OF TEXARKANA

## 2016 TAX ROLL

|                          |                 |
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COUNCIL MEMBERS :

MAYOR, BOB BRUGGEMAN

Bob Bruggeman

MEMBER JEAN MATLOCK

Jean A Matlock

MEMBER MS WILLIE RAY

Not Present

MEMBER TINA VEAL GOOCH

Tina Veal Gooch

MEMBER BRIAN MATTHEWS

Brian Matthews

MEMBER JOSH DAVIS

Josh Davis

MEMBER, CHRISTY PADDOCK

Not Present

APPROVED THE \_\_\_\_\_ DAY OF \_\_\_\_\_

2016

Attachment: 2016-120 RES Approving 2016 Tax Roll signed (1553 : 2016-120 RES approving 2016 Tax Roll)

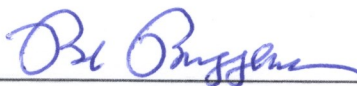
## CITY OF TEXARKKANA T2

## 2016 TAX ROLL

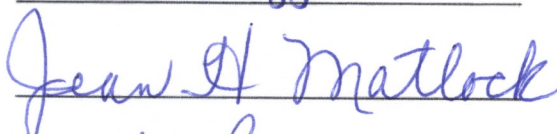
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COUNCIL MEMBERS :

MAYOR, BOB BRUGGEMAN



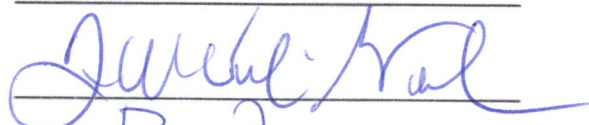
MEMBER JEAN MATLOCK



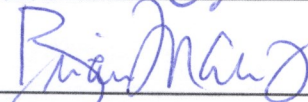
MEMBER MS WILLIE RAY

Not PRESENT

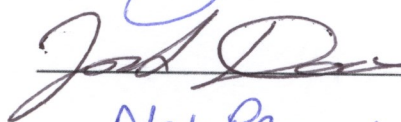
MEMBER TINA VEAL GOOCH



MEMBER BRIAN MATTHEWS



MEMBER JOSH DAVIS



MEMBER, CHRISTY PADDOCK

Not PRESENT

APPROVED THE \_\_\_\_\_ DAY OF \_\_\_\_\_

2016

## CITY OF TEXARKKANA T1

## 2016 TAX ROLL

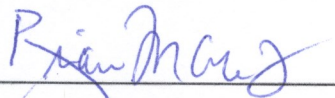
|                          |                |
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COUNCIL MEMBERS :

MAYOR, BOB BRUGGEMAN



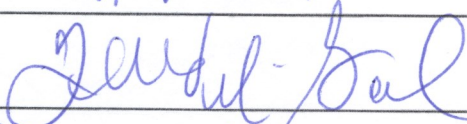
MEMBER BRIAN MATTHEWS



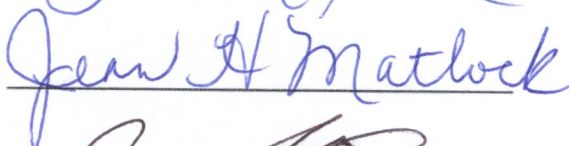
MEMBER MS WILLIE RAY

Not Present

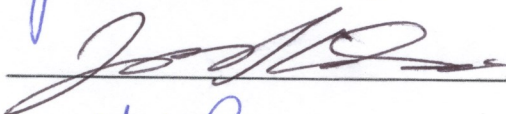
MEMBER TINA VEAL GOOCH



MEMBER JEAN MATLOCK



MEMBER JOSH DAVIS



MEMBER, CHRISTY PADDOCK

Not Present

APPROVED THE \_\_\_\_\_ DAY OF \_\_\_\_\_

2016

Attachment: 2016-120 RES Approving 2016 Tax Roll signed (1553 : 2016-120 RES approving 2016 Tax Roll)

## City of Texarkana, Texas

Version: B

Update Date: 10/14/2016 1:34 PM

## Briefing Sheet

**Lead Department:** Economic Development **Action Officer:** Jerry Sparks, Economic Developer  
Resolution No. 2016-121 authorizing the City Manager to enter into an incentive agreement under Chapter 380 of the Texas Local Government Code with Legato Holdings LLC for plans to remodel a facility located at 3103 Summerhill Road.

**Subject:** Summerhill Road.

**Briefing:** 11/14/2016 **Public Hearing:** 11/14/2016 **Second Briefing:** November 28, 2016 **Council Vote:** 12/12/2016

## Item Schedule

Schedule 1: Brief twice - vote once (six weeks)

## Updates/History of Briefing:

"NOT APPLICABLE"

## Executive Summary and Background Information:

Legato Holdings LLC has a contract with State of Texas agency to relocate office space with 37 existing jobs. A second State of Texas agency wants to move an operation from Austin creating 38 new jobs in Texarkana. According to the application:

- The estimated value of the building after renovations is \$3,000,000.
- There will be an increase of 38 jobs. The majority of those jobs are above the current per capita income
- The cost to remodel the structure will increase property tax. This property has not been on the tax rolls while owned by Texarkana College and was unoccupied when purchased by Legato.

## Potential Options:

- Approve staff recommendation for incentive agreement
- Deny application for incentive agreement

## Fiscal Implications:

The fiscal implication is the use of an amount not to exceed 50% of the City's portion of property tax to provide an incentive for the project. The estimated value is \$10,500 per year for a five year period.

## Staff Recommendation:

Staff recommends approving an incentive of a property tax rebate equal to 50% of the City's portion of the ad valorem tax for a period of five years with the potential of a 5-year renewal.

## Advisory Board/Committee Review:

The internal review committee approves the recommendation.

## City of Texarkana, Texas

### Board/Committee Recommendation:

The internal review committee met at City Hall on October 6, 2016.

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

"NOT APPLICABLE"

### Attachments

- a. 2016-121 RES Authorizing CM to enter into incentive agreement (DOC)
- b. 2016-121 ATTH 01 2015-12 Chapter 380 Program Guidelines 8 Dec 2015 (JCL) (PDF)
- c. 2016-121 ATTH 02 Briefing Sheet Legato Holding briefing (DOCX)
- d. 2016-121 ATTH 03 Cost Analysis Legato Holdings LLC (XLSX)
- e. 2016-121 ATTH 04 Application Legato Holds LLC (PDF)
- f. 2016-121 ATTH 05 Legato Holdings Finn Cap Letter (PDF)
- g. 2016-121 Goals & Perspectives (DOCX)
- h. 2016-121 RES Legato Chapter 380 Incentive Agreement signed (PDF)

### Staff Coordination

|                                    |                    |                        |                               |
|------------------------------------|--------------------|------------------------|-------------------------------|
| Economic Development               | Jerry Sparks       | Department Head Review |                               |
| Completed                          | 10/13/2016 1:55 PM |                        |                               |
| Finance Department                 | Kristin Peebles    | Finance Review         | Completed 10/14/2016 10:52 AM |
| Planning and Community Development | David Orr          | Review                 | Completed 10/14/2016 11:42 AM |
| Assistant City Manager             | Shirley Jaster     | Assistant City Manager |                               |
| Review                             | Completed          | 10/14/2016 12:46 PM    |                               |
| Public Information Officer         | Lisa Thompson      | PIO Review             | Completed 10/14/2016 12:46 PM |
| City Manager                       | John Whitson       | City Manager Review    | Completed 10/20/2016 3:17 PM  |
| City Council                       | Jennifer Evans     | Meeting                | Completed 10/24/2016 6:00 PM  |

### Meeting History

|          |              |               |                |
|----------|--------------|---------------|----------------|
| 10/24/16 | City Council | MOVED FORWARD | Next: 11/14/16 |
|----------|--------------|---------------|----------------|



# RESOLUTION NO. 2016-121

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEXARKANA, TEXAS, AUTHORIZING THE CITY MANAGER TO ENTER INTO AN INCENTIVE AGREEMENT, USING GUIDELINES APPROVED IN RESOLUTION NO. 2015-120 OF THE CITY OF TEXARKANA UNDER CHAPTER 380 OF THE TEXAS LOCAL GOVERNMENT CODE, FUNDED BY A REBATE OF AN AMOUNT NOT TO EXCEED FIFTY PERCENT (50%) OF THE CITY'S PORTION OF THE AD VALOREM TAX PAID BY LEGATO HOLDINGS LLC FOR A TERM NOT TO EXCEED FIVE (5) YEARS WITH A POTENTIAL FIVE YEAR (5) RENEWAL; AUTHORIZING THE CITY MANAGER TO EXECUTE THE NECESSARY DOCUMENTS; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, the City Council established in Resolution No. 2015-120 a policy for the use of Chapter 380 of the Texas Local Government Code to provide incentives for specified activities; and

**WHEREAS, Legato Holdings LLC** has requested an incentive in response to their plans to remodel a facility at 3103 Summerhill Road that will retain existing jobs and create new jobs in our community.

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

**SECTION 1:** That the City Manager, be and is hereby authorized to enter into an incentive agreement with Legato Holdings LLC to rebate an amount not to exceed fifty percent (50%) of the City's portion of paid ad valorem taxes for the property at 3103 Summerhill Road for a period of no more than five (5) years.

**SECTION 2:** That said agreement will have the potential for a five-year renewal based upon the number of jobs retained, the number of jobs created and the continuous occupancy of the facility.

**SECTION 3:** That the City Manager is hereby authorized to execute the necessary documents to enter into said incentive agreement.

**SECTION 4:** 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 **12<sup>th</sup>** day of **December, 2016**.

ATTEST:

\_\_\_\_\_  
JENNIFER EVANS, CITY SECRETARY

\_\_\_\_\_  
BOB BRUGGEMAN, MAYOR

Attachment: 2016-121 RES Authorizing CM to enter into incentive agreement (1554 : 2016-121 RES authorizing the City Manager to enter into

**City of Texarkana, Texas**  
**Chapter 380 Program Requirements**

**Preamble**

Pursuant to Chapter 380 of the Texas Local Government Code, the City Council of the City of Texarkana, Texas, establishes a program for making loans and grants of public money and providing personnel and services of the City to promote local economic development and to stimulate business and commercial activity in the City.

**Policy Statement**

The City Council chooses to extend business incentives as authorized by Texas law when such incentives improve the quality of life for all citizens through the creation and retention of job opportunities within the community. The program requirements provide the criteria for City administrative review and City Council consideration when exercising discretion to grant business incentives. This program neither requires nor binds the City Council to grant any business incentive.

**Effective Date and Duration**

These program requirements are effective upon the date of the City Council's adoption. The City Council may, at any time, eliminate the program or modify any provision.

**Section 1. Definitions.**

- 1.1 "Agreement" means a written contract authorized by resolution of the City Council and signed by the City Manager and the Business Incentive Prospect.
- 1.2 "Business Incentive" means any financial or non-financial inducement offered by the City to a Business Incentive Prospect.
- 1.3 "Business Incentive Period" means the commencement date and termination date of the Business Incentive.
- 1.4 "Business Incentive Prospect" means a property owner, lessor, or lessee who proposes a project for consideration of a Business Incentive.
- 1.5 "City" or "Texarkana" means the City of Texarkana, Texas.
- 1.6 "City Council" means the City's elective Council as constituted by Texarkana's City Charter.

- 1.7 “Deferred Maintenance Improvements” means improvements necessary for continued operation that either do not improve productivity or do not alter the process technology.
- 1.8 “Eligible Project” means Eligible Property, Exceptional Project, Existing Facility, Expanded Facility, Facility Modernization, or New Facility which, as a direct result of granting a Business Incentive, is reasonably likely to cause (1) the retention or expansion of primary employment, (2) an increase in the City's property tax base, or (3) the attraction of a major investment that would contribute to new economic development within the City.
- 1.9 “Eligible Property” means buildings, structures, fixed machinery and equipment, site improvements, or related fixed improvements, made or added subsequent to and specified in an Agreement. “Eligible Property” does not include “Ineligible Property”.
- 1.10 “Exceptional Project” means a project that makes use of an underutilized asset, diversifies the local economic base, creates leverage with local economic interests, expands the local market for a good or service, or is located in a designated redevelopment or historical area or neighborhood.
- 1.11 “Expanded Facility” means the addition of buildings, structures, machinery, equipment or payroll to an Existing Facility for purposes of increasing production capacity.
- 1.12 “Existing Facility” means property improvements completed or in the process of construction which together comprise an integral whole.
- 1.13 “Facility Modernization” means replacing or upgrading an Existing Facility, through one or more combinations of construction, alteration, or installation of buildings, structures, machinery, or equipment, which increases the productive input or output, updates the technology, or substantially lowers the unit cost of an operation.
- 1.14 “Force Majeure” means an event, circumstance, or act of a third party that is beyond the control of either the City or the Business Incentive Prospect (e.g., “acts of God” as recognized by law; an act of the public enemy; an act of a government entity; acts of war; compliance with laws or regulations; strikes or other labor disturbances; hurricanes; earthquakes; fires; floods; epidemics; embargoes; war; and riots).
- 1.15 “Ineligible Property” means land, inventories, housing, supplies, tools, furnishings, other personal property, Deferred Maintenance Improvements, and property which has a Productive Life of less than ten (10) years.
- 1.16 “Leased Property” means the property associated with or related to an Eligible Project which is offered or intended to be offered for lease.
- 1.17 “New Facility” means a property previously undeveloped which is placed into service by means other than or in conjunction with an Expanded Facility or Facility Modernization.

- 1.18 “Non-appropriations Event” means a lack of sufficient funding or revenue, funds becoming unavailable, no funds appropriated by the City, or insufficient funds appropriated by the City, for any Business Incentive due under the Agreement or any other performance of City obligations under the Agreement.
- 1.19 “Productive Life” means the number of years a property improvement is expected to be in service.

## **Section 2. Limited Availability, Exclusions, and Threshold Prerequisites**

- 2.1 *Limited Availability.* Subject to Section 2.2, a Business Incentive shall be available only for an Eligible Project.
- 2.2 *Exclusions to Eligible Project.* A Business Incentive shall not be available to an otherwise Eligible Project in the event of any of the following:
- 2.2.1 Any proposed project activity (not including the Business Incentive Prospect's planning and due diligence) occurs prior to the filing of an application for a Business Incentive.
  - 2.2.2 The Business Incentive Prospect, including any business or property owned or leased in whole or in part by the Business Incentive Prospect, has an outstanding tax lien owing to any governmental entity.
  - 2.2.3 The Business Incentive Prospect, including any business or property owned or leased in whole or in part by the Business Incentive Prospect, within the five-year period preceding the date of filing the application, has been cited, noticed, or fined for noncompliance or violation of a federal law or regulation, a state law or regulation, or a City code, ordinance, or resolution.
  - 2.2.4 The Business Incentive Prospect, including any business or property owned or leased in whole or in part by the Business Incentive Prospect, is a party to a claim or proceeding against the City or is implicated in a claim or proceeding against a third party that may hinder or interfere with the efficacy of the Business Incentive.
- 2.3 *Threshold Prerequisites.* As a condition for application filing and City administrative evaluation, the project must:
- 2.3.1 Conform to the City's Comprehensive Zoning Ordinance;
  - 2.3.2 Comply with all City ordinances and state and federal laws and regulations;
  - 2.3.3 Meet at least one of the following:

- 2.3.3.1 The project value, including land, construction and fixed improvements, totals at least \$10,000,000 for new Construction or at least \$5,000,000 for an Existing Facility;
- 2.3.3.2 The City deems the project an Exceptional Project;
- 2.3.3.3 The project contributes to the retention or expansion of employment;
- 2.3.3.4 The project contributes substantially to redevelopment efforts as opposed to merely transferring employment from one business in the City to another;
- 2.3.3.5 At least fifty (50) jobs will be created or retained that meet or exceed the per capita income level in the Texarkana MSA.
- 2.3.3.6 At least \$5,000,000 in annual payroll will be paid by the project; or
- 2.3.3.7 At least \$400,000 in local sales taxes are to be directly generated by the project.

### **Section 3. Application Guidelines and Evaluation.**

- 3.1 *Application.* Any Business Incentive Prospect may request the consideration of a Business Incentive by filing a completed Business Incentive Program Application with the City Secretary.
  - 3.1.1 *Map, Description, and Schedule.* The Business Incentive Prospect must include with the application submission a detailed map and property description together with a time schedule for undertaking and completing the project.
  - 3.1.2 *Application materials.* The Business Incentive Prospect must submit detailed financial and other information to enable City to evaluate the proposed project with the evaluative criteria set forth in section 3.2. Any required appraisal or appraised value required in section 3.2 by shall be performed or otherwise secured from the Chief Appraiser of the Bowie Central Appraisal District.
  - 3.1.3 *Administrative rejection of application without prejudice.* The City administration shall reject any incomplete application or an application proposing a project that does not conform with the Section 2 requirements. The Business Incentive Prospect may submit a new application to cure any incomplete or deficient application rejected under this subsection.
- 3.2 *Administrative evaluation.* The City administration shall review each application on its individual merits utilizing the following criteria as applicable to the proposed project.



- 3.2.1 The Business Incentive Prospect's financial capacity and available resources to fund, develop, and complete the proposed project, excluding consideration of any Business Incentive.
- 3.2.2 The assessed, taxable value of land and existing improvements, if any, associated with the project, separately stated for real and personal property, for the tax year immediately preceding the year of application.
- 3.2.3 Type, value, and Productive Life of proposed project improvements.
- 3.2.4 Number of existing jobs that meet or exceed the per capita income level for the Texarkana MSA to be retained by the proposed project.
- 3.2.5 Number and type of new jobs that meet or exceed the per capita income level for the Texarkana MSA to be created by the proposed project, and whether the new jobs will be filled by persons residing or projected to reside within the Texarkana MSA.
- 3.2.6 Amount of payroll within the City's territorial jurisdiction to be created or retained by the proposed project.
- 3.2.7 Amount of payroll within the City's extraterritorial jurisdiction to be created or retained by the proposed project.
- 3.2.8 Amount of local sales tax to be generated directly by the proposed project.
- 3.2.9 Amount of property tax base valuation that will be increased during and after the Business Incentive Period.
- 3.2.10 City costs to be incurred to provide facilities or services directly resulting from the proposed project.
- 3.2.11 The amount of ad valorem taxes to be paid to the City during the Business Incentive Period, taking into consideration the pre-application values, the amount and type of the Business Incentive, the Business Incentive Period, and the value after expiration of the Business Incentive Period.
- 3.2.12 The population growth of the City that occurs directly as a result of the proposed project.
- 3.2.13 The types and values of public improvements, if any, to be made by the Business Incentive Prospect.
- 3.2.14 Whether the proposed project restricts or enhances the business opportunities of existing businesses within the City.

- 3.2.15 Whether the proposed project attracts other new business or new economic development to the area.
  - 3.2.16 Whether the project is environmentally compatible with the City as it exists prior to receipt of the application.
  - 3.2.17 Whether the proposed project will generate a negative impact on the quality of life within the City, constitute a nuisance, or constitute a hazard to public safety, health, and welfare.
  - 3.2.18 Whether and to what extent the proposed project makes a substantial contribution to redevelopment efforts or special area plans by enhancing either functional or visual characteristics (examples include historical structures, traffic circulation, parking, facades, signs, materials, and urban design).
  - 3.2.19 Whether the location of the proposed project furthers the City's development goals.
  - 3.2.20 Whether the proposed project or requested Business Incentive would result in an adverse effect on government services or the local tax base.
  - 3.2.21 Whether the proposed project or requested Business Incentive would decrease or exclude the amount of the tax increment of any taxing unit or any deposit made by any taxing unit to the tax increment fund for the City's Tax Increment Reinvestment Zones.
- 3.3 *Confidential or Proprietary Information.* Submission of an application shall be deemed an acknowledgement by the Business Incentive Prospect that the City is subject to Chapter 552 of the Texas Government Code, otherwise known as the "Texas Public Information Act" or "Texas Open Records Act" ("the Act"), the City has made no representation as to whether any information contained in the application is excepted from required disclosure under the Act, the Business Incentive Prospect has had the opportunity to consult with its own legal counsel regarding the Act, and the Business Incentive Prospect agrees to the following with regard to the information it provides to the City:
- 3.3.1 Unless disclosure is required by law, the City shall exercise reasonable measures to safeguard information that the Business Incentive Prospect deems confidential or proprietary; provided that prior to submission to the City, the Business Incentive Prospect explicitly identifies and marks any such information as to document, page, paragraph, and sentence, as applicable, identifying the asserted section(s) of the Act authorizing withholding as required by the Act for the purpose of asserting a statutory exception to withhold information from public disclosure.
  - 3.3.2 Information shall not be considered proprietary in the following circumstances: the Business Incentive Prospect authorizes disclosure or has already publicized

the information; the City obtained the information from a source independent of the Business Incentive Prospect; or an opinion of the Attorney General of the State of Texas or court order requires disclosure.

- 3.3.3 In the event the City receives a third-party request for information pursuant to the Act that affects information contained in the application, then upon notice to the Business Incentive Prospect of such request, the Business Incentive Prospect shall state in writing to the City within three (3) business days of receiving the City's notice whether it intends to approve release of the requested information or assert to the Attorney General statutory exceptions to withhold the information from public disclosure. If the Business Incentive Prospect decides to assert exceptions to the Act in response to the request, then the Business Incentive Prospect shall, at its own expense, prepare and send the notices, comments, and briefing for its submission to the Attorney General in accordance with the substantive requirements and time periods provided in the Act. The Business Incentive Prospect shall also prepare at its expense for the City's use the notices, comments, and briefing for the City's submission to the Attorney General in accordance with the substantive requirements and time periods provided in the Act.
- 3.3.4 In the event the Business Incentive Prospect seeks a judicial ruling on its asserted statutory exceptions to withholding information requested under the Act by a third party, for any lawsuit pursuant to Sections 552.324 and 552.325 of the Act, the Business Incentive Prospect shall bear all litigation costs, expenses, attorney's fees, and assessments, including the costs, expenses, and attorney's fees incurred by the City and any adverse assessments against the City arising out of the City being a named party to such a suit. As a condition precedent to City's involvement in such a suit, the Business Incentive Prospect shall deposit with the City the dollar amount estimated by the City that will be incurred for costs, expenses, and attorney's fees.
- 3.4 *City Council consideration.* City administration shall prepare a recommendation on the application and submit the recommendation to the City Council for consideration.
  - 3.4.1 The City Council shall receive a first briefing on the recommendation during a regular council meeting.
  - 3.4.2 Following the first briefing, the City Council shall conduct at least one public hearing to be held at a subsequent regular council meeting, at which hearing the Business Incentive Prospect applicant and any interested person shall have the opportunity to comment.
  - 3.4.3 A Business Incentive shall only be approved by formal resolution of the City Council authorizing an Agreement. Any motion to approve a Business Incentive that fails to secure the affirmative votes required by the City Charter shall bar the Business Incentive Prospect from submitting an application for the same or

similar project for a calendar year from the date of the council meeting at which the motion to approve failed.

3.4.4 *City signing of Agreement.* The signing of any Agreement authorized by the City Council shall be delayed indefinitely until such time that:

3.4.4.1 The Business Incentive Prospect has provided all necessary information and documentation to the City for implementation of the Business Incentive and preparation of the Agreement; and

3.4.4.2 The Agreement contains, to the satisfaction of the City Manager and City Attorney, the required provisions set forth in Section 4 and any other provisions required by City ordinance, state and federal law, and the resolution of the City Council authorizing the Agreement.

#### **Section 4. Required Agreement Provisions.**

Any Agreement authorized by the City Council shall include the following provisions:

##### **4.1 Business Incentive specific provisions**

4.1.1 The type and value of the Business Incentive, deducting general fees set by the City Council for City functions involved with the proposed project, and deducting City costs and expenses specific to the proposed project.

4.1.2 The Business Incentive Period, including provisions for City recovery of any Business Incentive, as applicable, in the event the Business Incentive Prospect relocates, sells, closes, or discontinues the business relating to the proposed project (examples including the Business Incentive Prospect bearing responsibility for payment of any remaining balance of a loan or execution of a promissory note with sufficient security for such balance).

4.1.3 The proposed project and intended use of project features (including such particulars, as applicable, identifying the nature of construction and project improvements, time schedule for construction and completion, City remedies for project delay, size of investment and average number of new jobs specific to the proposed project, and description and map of affected property).

4.1.4 For an Agreement involving Leased Property, the lessor(s) and lessee(s) shall sign the Agreement and shall each agree to joint and several responsibility for compliance with the Agreement.

4.1.5 Reasonable access by City to the areas of the proposed project and access to current financial documentation to evaluate performance of the Agreement.

- 4.1.6 For an Agreement involving construction, a payment bond or other comparable security to ensure full and timely payment to contractors and subcontractors.
- 4.1.7 A condition precedent to all City obligations under the Agreement, including the Business Incentive, shall be availability of funds out of current revenues and appropriated for such purposes. In the event a Non-appropriations Event occurs, City will notify the Business Incentive Prospect of such occurrence and the Agreement shall terminate, without penalty or expense to the City of any kind whatsoever, on the last day of the fiscal period for which appropriations were received or the day previously-appropriated funds have been exhausted or become unavailable, whichever is earlier. Upon City's termination due to a Non-appropriations Event, each party shall return all documentation and other information disclosed or otherwise delivered to the other party prior to such termination.
- 4.1.8 For an Agreement involving capital improvements, a periodic report from the Business Incentive Prospect delivered to City stating (i) the value of capital improvements made during the prior year, (ii) the number of new full-time employees employed during the preceding calendar year, including the number of hours worked, and (iii) the amount of ad valorem taxes paid by the Business Incentive Prospect with regard to the facility for which the improvements are intended for the immediately preceding calendar year, including, if known, the amount of such taxes that constitute real property taxes.
- 4.1.9 City right of offset with respect to any amounts due from a Business against any debt (including taxes) lawfully due to the City from the Business Incentive Prospect and any affiliated persons, regardless of whether the debt arises pursuant to the terms of the Agreement and regardless of whether the debt has been adjudicated.
- 4.1.10 When the Business Incentive Prospect is a corporation, company, partnership or other entity, a personal guarantee shall be executed by all owners of the Business Incentive Prospect having an ownership interest of five percent (5%) or more.
- 4.1.12 Business Incentive Prospect shall make representations with respect to the proposed project property regarding environmental issues, as applicable, stating that there are no pending environmental actions, no releases on the proposed project property, no underground storage tanks, no presence of asbestos, no hazardous substances, and no other environmental conditions on the proposed project property.
- 4.1.13 Business Incentive Prospect shall represent that it has not previously been, nor to its present knowledge, is not now in violation of or noncompliant with any City codes, ordinances, or resolutions, or any state or federal laws or regulations, including environmental laws or environmental permits.



- 4.1.14 City, through its designated agents or auditors, shall have the right at all reasonable times to audit, review and examine by any means, including electronically through the use of telecommunications devices or otherwise, at City's expense, the books, records, accounts and tax returns of Business Incentive Prospect to ensure compliance with the terms of the Agreement.
- 4.1.15 Other provisions specific to the proposed project and Business Incentive as deemed necessary by the City Manager and City Attorney.
- 4.2 Restrictions on assignment
- 4.2.1 Assignment shall only be authorized by a new resolution of the City Council.
- 4.2.2 Prospective Assignee must submit audited financial documentation proving financial capacity and capability to perform Agreement.
- 4.2.3 No proposed assignment shall be submitted to the City Council for consideration if any party to the Agreement or a proposed assignee is delinquent on paying any obligation to any third party.
- 4.3 Termination and Default provisions
- 4.3.1 Grounds for termination of the Agreement and a reasonable period for the Business Incentive Prospect to cure a default or breach of the Agreement.
- 4.3.2 Termination of the Agreement in the event of Force Majeure.
- 4.3.3 Suspension of Business Incentive during any cure period, dispute resolution period, or Force Majeure.
- 4.3.4 City recapture or recovery of Business Incentive with interest as provided under Chapter 2264 of the Texas Government Code in the event of the Business Incentive Prospect's default or breach of the Agreement, violation of state or federal law, or delinquency on payment of ad valorem taxes owed to City.
- 4.4 Insurance provisions
- 4.4.1 Throughout the term of the Agreement, the Business Incentive Prospect shall, at its expense, maintain in full force and effect the following insurance:
- |                       |                                       |
|-----------------------|---------------------------------------|
| Type of Insurance     | Amount                                |
| Worker's Compensation | as required by law                    |
| Commercial General    | \$1,000,000 Each Accident/Occurrence. |

|                           |                                                                              |
|---------------------------|------------------------------------------------------------------------------|
| Builder's risk insurance  | in the amount of the construction values                                     |
| Liability (Public)        | \$1,000,000 Aggregate; \$1,000,000 Products & Completed Operations Aggregate |
| Owner's Protective        | \$600,000 per occurrence                                                     |
| Liability Insurance       | \$1,000,000 aggregate                                                        |
| Excess/Umbrella Liability | \$10,000,000 per occurrence w/drop-down coverage                             |
| Automobile Liability      | \$1,000,000 Combined single limit per occurrence                             |
| Environmental Insurance   | \$1,000,000                                                                  |

4.4.2 All insurance and certificate(s) of insurance shall contain the following provisions:

- 4.4.4.1 name the City, its officers, agents and employees as additional insureds as to all applicable coverage with the exception of Workers Compensation Insurance;
- 4.4.4.2 provide for at least thirty (30) days prior written notice to the City for cancellation, non-renewal or material change of the insurance; and
- 4.4.4.3 provide for a waiver of subrogation against the City for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance.

4.4.3 All insurance companies providing the required insurance shall be authorized to transact business in Texas and rated at least "A" by AM Best or other equivalent rating service.

4.4.4 A certificate of insurance evidencing the required insurance shall be submitted to the City prior to any implementation of the Business Incentive.

4.4.5 Without limiting any of the other obligations or liabilities of the Business Incentive Prospect, the Business Incentive Prospect shall require its general contractors, at the general contractor's own expense, to maintain during the term of the Agreement the required insurance coverage, the required certificate, and the policy conditions as stated in this section 4.4.

4.5 Dispute resolution provisions

4.5.1 Initial resolution process requiring the party raising a dispute to provide written notice to the other party with sufficient detail describing the provision of the

Agreement alleged to be breached, the underlying facts of the dispute, a proposed solution consistent with the terms of the Agreement, and the relief sought.

- 4.5.2 A required meeting of the designated representatives of the parties within thirty (30) days following receipt of the written notice to discuss the dispute.
- 4.5.3 Mandatory arbitration, if initial resolution process results in an impasse, in accordance with and governed by Texas state law: the City and the Business Incentive Prospect shall each select a disinterested representative who shall be either a qualified registered engineer or certified public accountant experienced in economic development projects; the two selected representatives then choosing a third person similarly qualified; the three persons shall comprise the “arbitration panel”, with authority as provided under Chapter 171 of the Texas Civil Practice and Remedies Code, to render a binding decision on the matter in dispute; each party shall compensate its respective panel member and also shall equally share responsibility for compensating the third panel member; and the breaching party, as determined by the arbitration panel, shall pay the non-breaching party's costs, expenses, attorney's fees, expert fees, and fees and costs for arbitration panel members.
- 4.6 Confidential or Proprietary Information
  - 4.6.1 Same provisions as set forth in Section 3.3 of these program requirements, covering specific information identified and marked by the Business Incentive Prospect prior to the Agreement, and any specific information identified and marked by the Business Incentive Prospect provided after City Council approval of the Agreement and during the Business Incentive Period.
- 4.7 Indemnity / Hold Harmless provisions:
  - 4.7.1 Business Incentive Prospect shall indemnify, defend, and hold harmless City from and against any and all suits, actions, losses, damages, claims or liability of any character, type or description, including all reasonable expenses of litigation, court costs, and attorney's fees, for injury or death to any person, or injury or loss to any property, received or sustained by any person or persons, including the Business Incentive Prospect, relating to, occasioned by, or arising from the performance of the Agreement.
  - 4.7.2 With regard to the proposed project property, Business Incentive Prospect shall indemnify and hold harmless City from and against, and shall reimburse City for any and all losses arising out of, based on or in any way relating to any environmental claim arising under federal or state environmental laws or regulations, or relating to any remedial action arising pursuant to any federal or state environmental laws or regulations. Such claims or actions may include, but shall not be limited to, investigation, remediation, treatment, or cleanup of any hazardous substance which has been or is present, released, or disposed of on the

proposed project property, or which has migrated or has been discharged or transported from the proposed project property in violation of environmental laws. Business Incentive Prospect shall also agree to indemnify, defend, and hold harmless City from and against any and all suits, actions, losses, damages, claims or liability of any character, type or description, including all reasonable expenses of litigation, court costs, and attorney's fees, for injury or death to any person, or injury or loss to any property, received or sustained by any person or persons, including the Business Incentive Prospect, relating to, occasioned by, or arising from any environmental claim with regard to the proposed project property; any such defense of the City shall be made by legal counsel, acceptable to City, who is retained and paid for by the Business Incentive Prospect.

4.7.3 The indemnity and hold harmless provisions shall be solely for the benefit of the City and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

4.7.4 The indemnity and hold harmless provisions shall be extended by the Business Incentive Prospect to indemnify and protect the City from the negligent, reckless, or intentional acts of the Business Incentive Prospect, its officers, employees, agents, contractors, and privies, regardless of whether such acts are the sole or partial cause of any such injury, death, or damage.

#### 4.8 Limitation of City's Liability and Attorney's Fees:

4.8.1 The parties agree that City's liability, if any, for breach of contract shall be governed and limited as provided in Chapter 271, subchapter I, of the Texas Local Government Code.

4.8.2 In the event any legal action or proceeding is commenced between the City and the Business Incentive Prospect to enforce provisions of the Agreement, the prevailing party in such legal action shall be entitled to recover its reasonable attorney's fees and expenses incurred by reason of such action to the extent allowed by law and subject to the limitations of Chapter 271, subchapter I, of the Texas Local Government Code.

#### 4.9 General Provisions:

4.9.1 *No Third Party Beneficiaries.* Nothing in the Agreement should be construed to benefit any person or entity not a signatory to the Agreement.

4.9.2 *Governing Law and Venue.* The Agreement shall be governed exclusively by the laws of the State of Texas with venue fixed in Bowie County, Texas.

4.9.3 *Construction.* In construing the Agreement, none of the parties shall have any term or provision, or any uncertainty or ambiguity as to any provisions, construed against such party solely by reason of such party having drafted the same.

- 4.9.4 *Independent Contractors.* The parties to the Agreement shall be independent contractors. No party shall exercise control over either the performance of the other party or the employees of the other party; and no party shall be deemed to be the agent, employee, or representative of the other party.
- 4.9.5 *No Liability of City Officials.* No City councilmember, officer, agent, employee, or independent contractor shall be personally responsible for any liability arising under or growing out of the Agreement.
- 4.9.6 *No Creation of Debt.* Any Business Incentive extended under the Agreement shall not be construed nor deemed to create a debt under Texas law.
- 4.9.7 *Execution of Agreement.* The Agreement shall be approved by all applicable and requisite corporate or company actions of the Business Incentive Prospect, with a representation that the signatory on behalf of the Business Incentive Prospect has legal authority to enter into the Agreement.
- 4.9.8 *Not Conflict with Business Incentive Prospect's Other Agreements.* Business Incentive Prospect shall represent and warrant that the Agreement, the consummation of the transactions contemplated in the Agreement, and the fulfillment of and compliance with the terms and conditions in the Agreement, do not and will not result in either a breach or default of any agreement or instrument to which Business Incentive Prospect is a party or beneficiary, or a right of the Business Incentive Prospect to cancel any agreement or instrument to which Business Incentive Prospect is a party.
- 4.9.9 The Agreement shall bind, and the benefits thereof shall inure, to the respective parties to the Agreement and their representatives, executors, administrators, successors and assigns.
- 4.9.10 The Agreement constitutes the entire agreement between the parties. Any and all negotiations and oral understandings between the parties shall be merged into the Agreement and superseded by the Agreement. The Agreement may only be amended or changed by a written document executed by all contracting parties.



2016-121  
Legato Holdings LLC  
Chapter 380 agreement application  
Briefing Sheet

**PROGRAM:** Chapter 380 agreement incentive  
**FUNDING SOURCE:** GENERAL FUND  
**PROJECT:** Construction of commercial building (former Robbins Toyota/Texarkana College)  
**Objective:** Retain & create jobs and increase gross payroll in non-redevelopment area  
**Impact:** Increased wages in non-redevelopment area  
**Narrative:**

Legato Holdings LLC has a contract with State of Texas agency to relocate office space with 37 existing jobs. A second State of Texas agency wants to move an operation from Austin creating 38 new jobs in Texarkana. According to the application:

- The estimated value of the building after renovations is \$3,000,000.
- There will be an increase of 38 jobs. The majority of those jobs are above the current per capita income
- The cost to remodel the structure will increase property tax. This property has not been on the tax rolls while owned by Texarkana College and unoccupied.

**Staff comments:**

- This project would provide incentives to move jobs.
- The project does meet some of the “threshold prerequisites” established in the Chapter 380 program.
- The application asks for an 80% ad valorem tax rebate plus a rebate of sales tax.

**Staff recommendations/options:**

1. Rebate 50% of the ad valorem tax for a period of up to five (5) years based upon continuous occupancy.
2. Upon a review of the total investment and the number of jobs retained or created, City will consider a renewal of the 50% rebate of the ad valorem tax for an additional five (5) years.

**City of Texarkana**  
Chapter 380 agreement request  
Legato Holdings-Summerhill Road

| <b>FYE</b>    | <b>Incremental</b>    | <b>City of</b>   | <b>Bowie</b>    | <b>Total</b>     | <b>Gross</b>        | <i>Estimated</i>   | <b>Total</b>       | <b>Rebate</b>         |
|---------------|-----------------------|------------------|-----------------|------------------|---------------------|--------------------|--------------------|-----------------------|
| <b>30-Sep</b> | <b>Taxable</b>        | <b>Texarkana</b> | <b>County</b>   | <b>Operating</b> | <b>Property Tax</b> | <b>Incremental</b> | <b>Incremental</b> | <b>Recommendation</b> |
|               | <b>Assessed Value</b> | <b>Tax Rate</b>  | <b>Tax Rate</b> | <b>Tax Rates</b> | <b>Contribution</b> | <b>Sales Tax</b>   | <b>Revenue</b>     | <b>50%</b>            |
| 2016          | \$ 3,000,000          | 0.7000           |                 | 0.7000           |                     | \$ -               | \$ -               |                       |
| 2017          | \$ 3,000,000          | 0.7000           |                 | 0.7000           | \$ 21,000           |                    | \$ 21,000          | \$ 10,500.0           |
| 2018          | \$ 3,000,000          | 0.7000           |                 | 0.7000           | \$ 21,000           |                    | \$ 21,000          | \$ 10,500.0           |
| 2019          | \$ 3,000,000          | 0.7000           |                 | 0.7000           | \$ 21,000           |                    | \$ 21,000          | \$ 10,500.0           |
| 2020          | \$ 3,000,000          | 0.7000           |                 | 0.7000           | \$ 21,000           |                    | \$ 21,000          | \$ 10,500.0           |
| 2021          | \$ 3,000,000          | 0.7000           |                 | 0.7000           | \$ 21,000           |                    | \$ 21,000          | \$ 10,500.0           |
| 2022          | \$ 3,000,000          | 0.7000           |                 | 0.7000           | \$ 21,000           |                    | \$ 21,000          |                       |
| 2023          | \$ 3,000,000          | 0.7000           |                 | 0.7000           | \$ 21,000           |                    | \$ 21,000          |                       |
| 2024          | \$ 3,000,000          | 0.7000           |                 | 0.7000           | \$ 21,000           |                    | \$ 21,000          |                       |
| 2025          | \$ 3,000,000          | 0.7000           |                 | 0.7000           | \$ 21,000           |                    | \$ 21,000          |                       |
| 2026          | \$ 3,000,000          | 0.7000           |                 | 0.7000           | \$ 21,000           |                    | \$ 21,000          |                       |
| 2027          | \$ 3,000,000          | 0.7000           |                 | 0.7000           | \$ 21,000           |                    | \$ 21,000          |                       |
| 2028          | \$ 3,000,000          | 0.7000           |                 | 0.7000           | \$ 21,000           |                    | \$ 21,000          |                       |
| 2029          | \$ 3,000,000          | 0.7000           |                 | 0.7000           | \$ 21,000           |                    | \$ 21,000          |                       |
| 2030          | \$ 3,000,000          | 0.7000           |                 | 0.7000           | \$ 21,000           |                    | \$ 21,000          |                       |
| 2031          | \$ 3,000,000          | 0.7000           |                 | 0.7000           | \$ 21,000           |                    | \$ 21,000          |                       |
| 2032          | \$ 3,000,000          | 0.7000           |                 | 0.7000           | \$ 21,000           |                    | \$ 21,000          |                       |
| 2033          | \$ 3,000,000          | 0.7000           |                 | 0.7000           | \$ 21,000           |                    | \$ 21,000          |                       |
| 2034          | \$ 3,000,000          | 0.7000           |                 | 0.7000           | \$ 21,000           |                    | \$ 21,000          |                       |
| 2035          | \$ 3,000,000          | 0.7000           |                 | 0.7000           | \$ 21,000           |                    | \$ 21,000          |                       |
|               |                       |                  |                 |                  | <u>\$ 399,000</u>   | <u>\$ -</u>        | <u>\$ 399,000</u>  | <u>\$ 52,500</u>      |

**Assumption**

**No changes to valuation**

**No changes made to property tax rate**

**Application for Business Incentive  
Chapter 380 Program (Res. # 2015-120)****Business Incentive Prospect ("BIP")**

|                                              |                             |
|----------------------------------------------|-----------------------------|
| BIP Name [see below if BIP is an entity]     | Legato Holdings, LLC        |
| Primary Contact                              | David J. Potter II          |
| Address                                      | 2 Forrest Brook             |
| City                                         | Texarkana, TX               |
| State/Zip                                    | Texas 75503                 |
| Phone                                        | 870-216-1611                |
| Email                                        | david@potter-properties.com |
| Fax                                          | 870-216-2081                |
| Cell                                         | 903-278-7448                |
| Source of referral: (Chamber, realtor, etc.) | Contacted Jerry Sparks      |
| BIP's NAICS Code                             | 531120                      |

**If BIP is an entity:** Attach documentation that identifies the legal status, verifies the entity's right to transact business in the State of Texas, and discloses the entity's officers, directors, and owners.

**Project Description**

Describe your project with sufficient detail so that a determination may be made as to its eligibility for a business incentive according to the definition of "Eligible Project" in the program requirements.

The application must include a detailed map and property description together with a time schedule for undertaking and completing the project.

Attached please find a map, special warranty deed (which includes a legal description), proposed floor plan, building elevations, and site plan. The first phase of the project is due to be complete by April 1, 2017. The second phase (call center) has not yet been awarded, the anticipated completion would be January 2018.

7. The project should be deemed an Exceptional Project (defined as a project that makes use of an underutilized asset, diversifies the local economic base, creates leverage with local economic interests, expands the local market for a good or service, or is located in a designated redevelopment or historical area or neighborhood).

☒ Yes ☐ No

(If you answered “yes” to no. 7, explain why the project should be deemed an Exceptional Project. Attach additional sheets if necessary.)

Describe how your proposed project conforms to the Comprehensive Zoning Ordinance of the City of Texarkana, Texas, and complies with all City ordinances and state and federal laws and regulations. Include in your response whether the project will require any zoning changes or special use permits.

### Business Incentive Requested

Describe the requested “Business Incentive” and “Business Incentive Period” as those terms are defined in the program requirements.

#### Business Incentive:

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#### Business Incentive Period:

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Disclose your efforts, if any, to request similar incentives from any other public or private entity, and the progress of those efforts.

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### Specific Review Criteria

Provide responses to each of the criteria below, or explain why a particular criterion should not apply to your project.

1. Disclose the BIP's financial capacity and available resources to fund, develop, and complete the proposed project, excluding consideration of any Business Incentive. (*Note: disclosure of financial capacity and available resources typically involves providing business plans together with audited financial statements and tax returns from the preceding three years.*)

### Exclusions and Threshold Prerequisites

Answer "yes" or "no" the following:

1. Has any proposed project activity (not including the BIP's planning and due diligence) occurred prior to the filing of this application? ☐ Yes ☒ No
2. Does the BIP, including any business or property owned or leased in whole or in part by the BIP, have an outstanding tax lien owing to any governmental entity? ☐ Yes ☒ No
3. Has the BIP, including any business or property owned or leased in whole or in part by the BIP, within the five-year period preceding the date of filing this application, been cited, noticed, or fined for noncompliance or violation of a federal law or regulation, a state law or regulation, or a Texarkana, Texas, city code, ordinance, or resolution? ☐ Yes ☒ No
4. Is the BIP, including any business or property owned or leased in whole or in part by the BIP, a party to a claim or proceeding against the City of Texarkana, Texas, or is implicated in a claim or proceeding against a third party that may hinder or interfere with the efficacy of the Business Incentive requested? ☐ Yes ☒ No

Answer "yes" or "no" for any item listed below that applies to your proposed project:

1. The project value, including land, construction and fixed improvements, totals at least \$10,000,000 for new Construction or at least \$5,000,000 for an Existing Facility. ☐ Yes ☒ No
2. The project contributes to the retention or expansion of employment. ☒ Yes ☐ No
3. The project contributes substantially to redevelopment efforts as opposed to merely transferring employment from one business in the City to another. ☒ Yes ☐ No
4. At least fifty (50) jobs will be created or retained that meet or exceed the per capita income level in the Texarkana MSA. ☒ Yes ☐ No
5. At least \$5,000,000 in annual payroll will be paid by the project. ☐ Yes ☒ No
6. At least \$400,000 in local sales taxes are to be directly generated by the project. ☐ Yes ☒ No



4

2. Disclose the assessed, taxable value of land and existing improvements, if any, associated with the project, separately stated for real and personal property, for the tax year immediately preceding the year of application.
3. Disclose the type, value, and Productive Life of proposed project improvements.
4. Identify the number of existing jobs that meet or exceed the per capita income level for the Texarkana MSA to be retained by the proposed project.
5. Identify the number and type of new jobs that meet or exceed the per capita income level for the Texarkana MSA to be created by the proposed project, and whether the new jobs will be filled by persons residing or projected to reside within the Texarkana MSA.
6. Disclose the amount of payroll within the territorial jurisdiction of the City of Texarkana, Texas, to be created or retained by the proposed project.
7. Disclose the amount of payroll within the extraterritorial jurisdiction of the City of Texarkana, Texas, to be created or retained by the proposed project.
8. Disclose the amount of local sales tax to be generated directly by the proposed project.
9. Disclose the amount of property tax base valuation that will be increased during and after the Business Incentive Period.
10. Identify or otherwise disclose costs to be incurred by the City of Texarkana, Texas, to provide facilities or services directly resulting from the proposed project.
11. Disclose the amount of ad valorem taxes to be paid to the City of Texarkana, Texas, during the Business Incentive Period, taking into consideration the pre-application values, the amount and type of the Business Incentive, the Business Incentive Period, and the value after expiration of the Business Incentive Period.
12. Disclose your projection of the population growth of the City of Texarkana, Texas, that will occur directly as a result of the proposed project.
13. Identify the types and values of public improvements, if any, to be made by the BIP.

14. Disclose whether the proposed project restricts or enhances the business opportunities of existing businesses within the City of Texarkana, Texas.
15. Disclose whether the proposed project attracts other new business or new economic development to the area.
16. Disclose whether the project is environmentally compatible with the City of Texarkana, Texas, as it exists prior to receipt of the application.
17. Disclose whether the proposed project will generate a negative impact on the quality of life within the City of Texarkana, Texas, constitute a nuisance, or constitute a hazard to public safety, health, and welfare.
18. Disclose whether and to what extent the proposed project makes a substantial contribution to redevelopment efforts or special area plans by enhancing either functional or visual characteristics (examples include historical structures, traffic circulation, parking, facades, signs, materials, and urban design).
19. Disclose whether the location of the proposed project furthers the development goals of the City of Texarkana, Texas.
20. Disclose whether the proposed project or requested Business Incentive would result in an adverse effect on government services or the local tax base.
21. Disclose whether the proposed project or requested Business Incentive would decrease or exclude the amount of the tax increment of any taxing unit or any deposit made by any taxing unit to the tax increment fund for the Tax Increment Reinvestment Zones of the City of Texarkana, Texas.

The City may contact the BIP for additional information specific to the proposed project and Business Incentive as deemed necessary by the City Manager and City Attorney (*see* § 4.1.15 of the Program Requirements).

#### **Acknowledgement of Business Incentive Prospect**

The undersigned, whether individually as the Business Incentive Prospect or in a representative capacity as authorized by the Business Incentive Prospect, acknowledges reading the Chapter 380 Program Requirements, including but not limited to the specific provisions pertaining to Confidential or Proprietary Information and required Agreement provisions in the event the City Council authorizes an Agreement for a Business Incentive. The undersigned affirms having full authority to submit this

application, that the Business Incentive Prospect shall comply fully with all Program Requirements, and that the information attached to this application and answers provided herein are true and correct.

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Dated: \_\_\_\_\_

Return completed application form and requested information to:

Jerry Sparks  
Economic Developer  
City of Texarkana, Texas  
P. O. Box 1967- 220 Texas Blvd.  
Texarkana Texas 75504-1967  
Office 903.798.1715 Cell 903.278.0102

Required attachments:

Business Plan  
Financial statements (corporate, partnership, or personal)  
Project costs documentation

## Answers to Application for Business Incentive Chapter 380 Program

### ***Project Description:***

The project is a redevelopment of the Old Robins Toyota Building located at 3103 Summerhill Road. The facility was sold to Texarkana College prior to the Toyota's relocation to its new facility. Robins leased the facility back from Texarkana College for approximately one year, before relocating in 2009. The property has remained vacant or underutilized since Robins relocated. The redevelopment of the property includes the remodel, expansion, and modernization of the existing building for use by the Texas Department of Health and Human Services (HHSC). In addition to the Texas Department of Health and Human Services, the location of a State of Texas operated call center would lead to the construction of an additional 6800 to 7000 square feet.

### ***The project meets the "Eligible Project" definition because:***

- 1) The project will help retain and expand jobs associated with the HHSC. In addition to the jobs retained and created within the HHSC, the new State of Texas operated call center would create 38 new full time positions.
- 2) The project will return the property to the tax rolls and increase the base. The property in recent years has been tax exempt or underutilized.
- 3) The development will also contribute the redevelopment and stabilization of the immediate area surrounding the property.

### ***Business Incentive Requested:***

The request is for an 80% rebate of the city property tax.

### ***Business Incentive Period:***

The incentive period would be for a term of ten (10) years.

### ***Disclose your efforts, if any, to request similar incentives from any other public or private entity, and progress of those efforts.***

I meet with Jerry Sparks to discuss available incentive programs that would help in the recruitment of the State of Texas operated call center. After describing the project to Mr. Sparks, he suggested that I might pursue the Business Incentive Chapter 380 program. I understand that Bowie County may offer a similar program. We will be pursuing the same incentive program through Bowie County.

## Specific Review Criteria

1) See Attached

2) The property was previously valued at \$1,084,671 by Bowie County, but was owned by Texarkana College and was tax exempt. The college signed a lease with a commercial tenant. Based upon the lease of part of the building to a non-exempt tenant, in 2015 the total taxable market value assessed by the Bowie County Appraisal District was \$346,303. In February 2016 the tenant relocated and thus the property would have been fully exempt under the Texarkana College umbrella in the upcoming 2017 tax year. Details Attached.

3) The improvements will be the expansion and modernization of the existing facility which will include the new construction of 6800 to 7000 for a State of Texas operated call center. The facility is under design at this time. The building will receive a complete new finish out, to include a new façade, plumbing, electrical, roof, parking lot renovations, roof, and removal of the existing in-ground lifts and tanks. The overall productive life of the improvements, if maintained, is 50 years.

4) The number of existing jobs that meet or exceed the per capita income level for the Texarkana MSA for the proposed project is Seventy (70).

5) The number of new jobs that meet or exceed the per capita income level for the Texarkana MSA for the proposed project is Thirty-Eight (38).

6) The existing state agencies that will occupy the building include Health and Human Services Commission (HHSC), Department of Family and Protective Services (DFPS), Department of State Health Services (DSHS), and Department of Aging and Disability Services (DADS). Each agency runs its own payroll. I was unable to obtain an exact figure for total payroll within the Territorial Jurisdiction of the City of Texarkana, Texas. However, the total payroll including the new call center will exceed \$4,000,000 per year.

7) Not Applicable as the project is entirely located within the territorial jurisdiction of the City of Texarkana, Texas.

8) The total construction cost is estimated to be \$2,100,000. If city receives 1.5% of the 8.25% local sales tax, the city's portion would be \$173,250.00.

9) The property was formerly owned by Texarkana College. Texarkana College is tax exempt. The increase property tax base is effectively from zero (0) up to \$3,000,000, if the new call center is awarded.



10) No known cost to the City of Texarkana, Texas to provide services as a result of the proposed project.

11) The current property tax rate in Texarkana, Texas is .669293 per \$100 dollars. Divide \$3 million by \$100 equals \$30,000. Multiply \$30,000 by .669293 equals \$20,078.79. Multiply \$20,078.79 by .2 equals \$4,015.76 on new tax revenue to the city per years or \$40,157.58 over the ten years Business Incentive Period. The value to the City of Texarkana, Texas after the incentive period is \$30,000 in new revenue per year or \$300,000 over ten years.

12) I do not believe any meaningful population growth will result from this project. The proposed facility will serve the residents of Bowie County.

13) Not applicable

14) I do not believe the proposed project restricts business opportunities other business in Texarkana, Texas nor do I believe the proposed project will restrict business opportunities for neighboring businesses. I believe the proposed project contributes to the resurgence of the Summerhill Road area. The adjacent area has seen a new Walmart Neighborhood Center, the remodel of the McLarty Ford dealership, and the opening of the new Orr Max.

15) As stated above, I believe the proposed project contributes to the resurgence of the Summerhill Road area. The adjacent area has seen a new Walmart Neighborhood Center, the remodel of the McLarty Ford dealership, and the opening of the new Orr Max.

16) The proposed project will be environmentally compatible with the City of Texarkana, Texas. The project includes the removal of stored oil and hydraulic fluid and six in-ground lifts associated with the operation of the former Toyota dealership.

17) The proposed project will not be a negative impact on the quality of life within the City of Texarkana, Texas, nor will the project constitute a nuisance, or constitute a hazard to public safety, health, and welfare. The proposed project will serve residence of Texarkana, Texas and Bowie County. Additionally, the project provides employment for 108 of our residence.

18) As stated above, I believe the proposed project contributes to the resurgence of the Summerhill Road area. The adjacent area has seen a new Walmart Neighborhood Center, the remodel of the McLarty Ford dealership, and the opening of the new Orr Max. The proposed project will convert a vacant and largely underutilized property to like new condition, including the addition of 6800 to 7000 square feet of new construction. The proposed project will make a substantial contribution to the redevelopment efforts of Summerhill Road. The new facility will enhance functional and visual characteristics of the area. I will construct or erect signage conforming to the wishes of the city.

19) I believe the proposed project is consistent with the development goals of the City.

20) The proposed project and Business Incentive will improve government services to the and increase the local tax base.

21) The proposed project and Business Incentive would not decrease or exclude tax revenue to any taxing entity or Tax Increment Reinvestment Zones of the City of Texarkana, Texas. The property was formerly owned by Texarkana College and was tax exempt.

Google Maps



3103 Summerhill Rd  
Texarkana, TX 75503

## Property Details

PIDN: 30040003800 Long Account Number: 30040003800

Owner Name **TEXARKANA COLLEGE**  
Mailing 2500 N ROBISON RD  
Address TEXARKANA, TX 75501-3249  
Location 3103 SUMMERHILL RD  
Legal W W WOOTEN A-652  
42 43 47A  
5477/086 10/02/08  
BLK/TRACT 40 41  
3.55 ACRES

Total Market Value **\$346,303**  
Previous Year Value \$1,084,671  
Percent Change -68.07%  
Total Assessed Value \$346,303  
Improvement Value \$215,765  
Land Value \$130,538  
Agri Prod Value \$0  
Timber Prod Value \$0  
Restricted Product Value \$0

Data up to date as of Jul 22, 2015 Including 2015 Certified values.

## Property Map



## Property Details

|                    |                  |
|--------------------|------------------|
| Exemptions         | ABS,             |
| Freeze Exempt      | N                |
| Agent Code         |                  |
| Living Area (sqft) | 21244            |
| Land Acres         | 3.550            |
| State Code         | XF1              |
| Neighborhood Code  | 30040            |
| Neighborhood       | W W WOOTEN A-652 |
| Abstract           | 0                |

## Estimated Taxes

| Code | Entity Name                          | Appraised Value | Exemption Amount | Taxable |
|------|--------------------------------------|-----------------|------------------|---------|
| 01B  | Bowie County                         | \$346,303       | \$346,303        | \$0     |
| 02T  | Texarkana                            | \$346,303       | \$346,303        | \$0     |
| 03T  | Texarkana ISD                        | \$346,303       | \$346,303        | \$0     |
| 04C  | Texarkana Community College District | \$346,303       | \$346,303        | \$0     |

## Improvement Information

| Description | SQFT   | Year Built |
|-------------|--------|------------|
| PO04SA      | 8,016  | 1986       |
| WW05SA      | 12,220 | 1986       |
| PO03FA      | 1,008  | 1992       |

## Segment Information

| Imp ID | Seg ID | Description | Class  | Area   |
|--------|--------|-------------|--------|--------|
| 1      | 1      | COMMERCIAL  | PO04SA | 8,016  |
| 1      | 2      | OPEN PORCH  | PO04SA | 525    |
| 2      | 1      | COMMERCIAL  | WW05SA | 12,220 |
| 3      | 1      | COMMERCIAL  | PO03FA | 1,008  |
| 3      | 2      | OPEN PORCH  | PO03FA | 192    |
| 3      | 3      | OPEN PORCH  | PO03FA | 16     |

## Land Information

| Land Seq | SPTB Code | Class | Homesite | Size      | Size Unit |
|----------|-----------|-------|----------|-----------|-----------|
|          | XF1       | LSCM  | N        | 87025.000 | SQFT      |
|          | XF1       | LSFM  | N        | 67600.000 | SQFT      |





Bowie  
Tina Petty  
County Clerk  
New Boston, Texas 75570



70 2016 00007721

Instrument Number: 2016-7721

Recorded On: June 22, 2016

As  
Recording

Parties: TEXARKANA COLLEGE

To LEGATO HOLDINGS LLC

Billable Pages: 4

Number of Pages:

Comment: SPECIAL WARRANTY DEED

( Parties listed above are for Clerks reference only )

**\*\* THIS IS NOT A BILL \*\***

|                         |              |
|-------------------------|--------------|
| Recording               | 38.00        |
| <b>Total Recording:</b> | <b>38.00</b> |

\*\*\*\*\* DO NOT REMOVE. THIS PAGE IS PART OF THE INSTRUMENT \*\*\*\*\*

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY  
because of color or race is invalid and unenforceable under federal law.

**File Information:**

Document Number: 2016-7721

Receipt Number: 333795

Recorded Date/Time: June 22, 2016 01:42:05P

**Record and Return To:**

TWIN CITY TITLE COMPANY

3615 RICHMOND ROAD

TEXARKANA TX 75503

User / Station: A Dorsey - Cash Station #3

Attachment: 2016-121 ATTH 04 ApplicationLegato Holds LLC (1554 : 2016-121 RES authorizing the City Manager to enter into incentive

Filed For Record In:  
Bowie County, Texas  
Tina Petty  
County Clerk  
On: Jun 22, 2016 at 01:42P

**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.**

### Special Warranty Deed

**Date:** June 17, 2016

1613690  
MJ

**Grantor:** TEXARKANA COLLEGE

**Grantor's Mailing Address:**

TEXARKANA COLLEGE  
2500 N. Robinson Road  
Texarkana, Texas 75501

**Grantee:** LEGATO HOLDINGS, LLC, a Texas limited liability company

**Grantee's Mailing Address:**

LEGATO HOLDINGS, LLC  
210 N. State Line Avenue  
Texarkana, Arkansas 71854

**Consideration:**

Cash and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged.

**Property (including any improvements):**

All that certain tract or parcel of land situated in and being a part of the W.W. WOOTEN HEADRIGHT SURVEY, Abstract No. 652, Bowie County, Texas and the herein described tract of land being those certain tracts conveyed from Eddie E. Robbins and wife, Janis P. Robbins to Eddie E. Robbins Family Limited Partnership by Warranty Deed dated January 3, 2000 and recorded in Volume 3196, Page 11-12 of the Real Property Records of Bowie County, Texas and the subject tract being more particularly described by metes and bounds as follows:

BEGINNING at a 1/2 inch reinforcing steel rod set for corner at an existing fence corner at the Southwest corner of said Robbins tract and being the Northwest corner of a certain

tract of land conveyed to Fleeman Family Limited Partnership by Deed dated January 3, 2003 and recorded in Volume 3889, Page 23 of the Real Property Records of Bowie County, Texas;

THENCE: N 01 degrees 52' 22" W, 423.98 feet with the West line of said Robbins tract and with the East line of Brookhaven addition to the City of Texarkana, Texas by Deed recorded in Volume 204, Page 73 of the Plat Records of Bowie County, Texas, and subsequently with the East line of a certain tract conveyed to Samuel J. Cornelius by Deed dated December 19, 1975 and recorded in Volume 594, Page 106 of the Deed Records of Bowie County, Texas, to a 1/2 inch reinforcing steel rod set for corner at an existing fence corner at the Northwest corner of said Robbins tract and the Southwest corner of a certain tract conveyed to Crane Lincoln Mercury by Deed dated August 14, 1986 and recorded in Volume 879, Page 81 of the Real Property Records of Bowie County, Texas;

THENCE: N 88 degrees 27' 52" E, 361.35 feet with the North line of said Robbins tract and the South line of said Crane Lincoln Mercury tract to a 1/2 inch reinforcing steel rod set for corner in the West right-of-way line of Texas State Highway No. 93 (Summerhill Road);

THENCE: Southeasterly with the West right-of-way line of State Highway No. 93, being a curve to the left having a radius of 3707.46 feet, a distance of 256.23 feet through a central angle of 3 degrees 57' 35" (chord being S 15 degrees 41' 12" E, 256.18 feet) to an "X" marked in concrete at the end of said curve at a point being 50.00 feet at right angles from centerline Station No. 415+00.00 of State Highway No. 93;

THENCE: S 17 degrees 40' 00" E, 84.87 feet with the West right-of-way line of State Highway No. 93 to a 1/2 inch reinforcing steel rod found for corner on the South line of said Robbins tract;

THENCE: S 76 degrees 32' 00" W, 454.89 feet along an existing fence line and with the South line of said Robbins tract and the North line of said Fleeman Family tract to the POINT OF BEGINNING and containing 3.520 acres of land, more or less.

#### **Reservations from Conveyance:**

None

#### **Exceptions to Conveyance and Warranty:**

Easement dated June 28, 1985 in favor of Southwestern Electric Power Company and recorded in Volume 773, Page 703 of the Real Property Records of Bowie County, Texas.

Easement dated October 21, 1986 in favor of Southwestern Electric Power Co. and recorded in Volume 911, Page 177 of the Real Property Records of Bowie County, Texas.

Drainage Easement dated April 29, 1991 in favor of the City of Texarkana, Texas and recorded in Volume 1616, Page 39 of the Real Property Records of Bowie County, Texas.

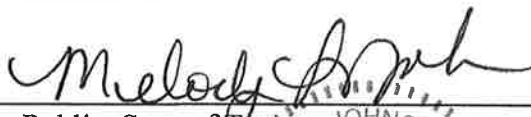
Taxes for 2016, which Grantee assumes and agrees to pay, but not subsequent assessments

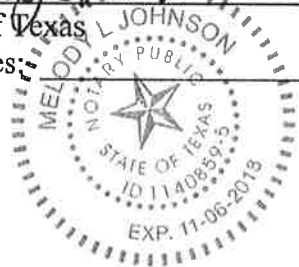
STATE OF TEXAS )

COUNTY OF BOWIE )

Before me, the undersigned notary public, on this day personally appeared JAMES HENRY RUSSELL, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same as the act of TEXARKANA COLLEGE, as its President, for the purposes and consideration therein expressed.

Given under my hand and seal of office this 17 day of June, 2016.

  
 Notary Public, State of Texas  
 My commission expires:



PREPARED IN THE OFFICE OF:

LANGDON ★ DAVIS  
 P.O. Box 1221  
 New Boston, TX 75570  
 Tel: (903) 628-5571  
 Fax: (903) 628-5868  
 Email: kdavis@ldatty.com

AFTER RECORDING RETURN TO:  
 TWIN CITY TITLE  
 3615 Richmond Road  
 Texarkana, Texas 75503  
 Tel: (903) 793-7671

When recorded return to  
 Twin City Title Company  
 3615 Richmond Rd  
 Texarkana, TX 75503

Filed For Record In:  
 Bowie County, Texas  
 Tina Petty  
 County Clerk  
 On: Jun 22, 2016 at 01:42P

RENOVATION OF AN EXISTING BUILDING  
TO HOUSE OFFICES FOR  
TEXAS HHSC-OES/  
DFPS/DSHS/DADS  
TEXARKANA, TEXAS

| REGIONS |              |
|---------|--------------|
| NO      | DATE         |
|         | REGISTRATION |
|         |              |
|         |              |
|         |              |

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### KEY PLAN



WILSON

### PACKAGE CONSTRUCTION DOCUMENTS

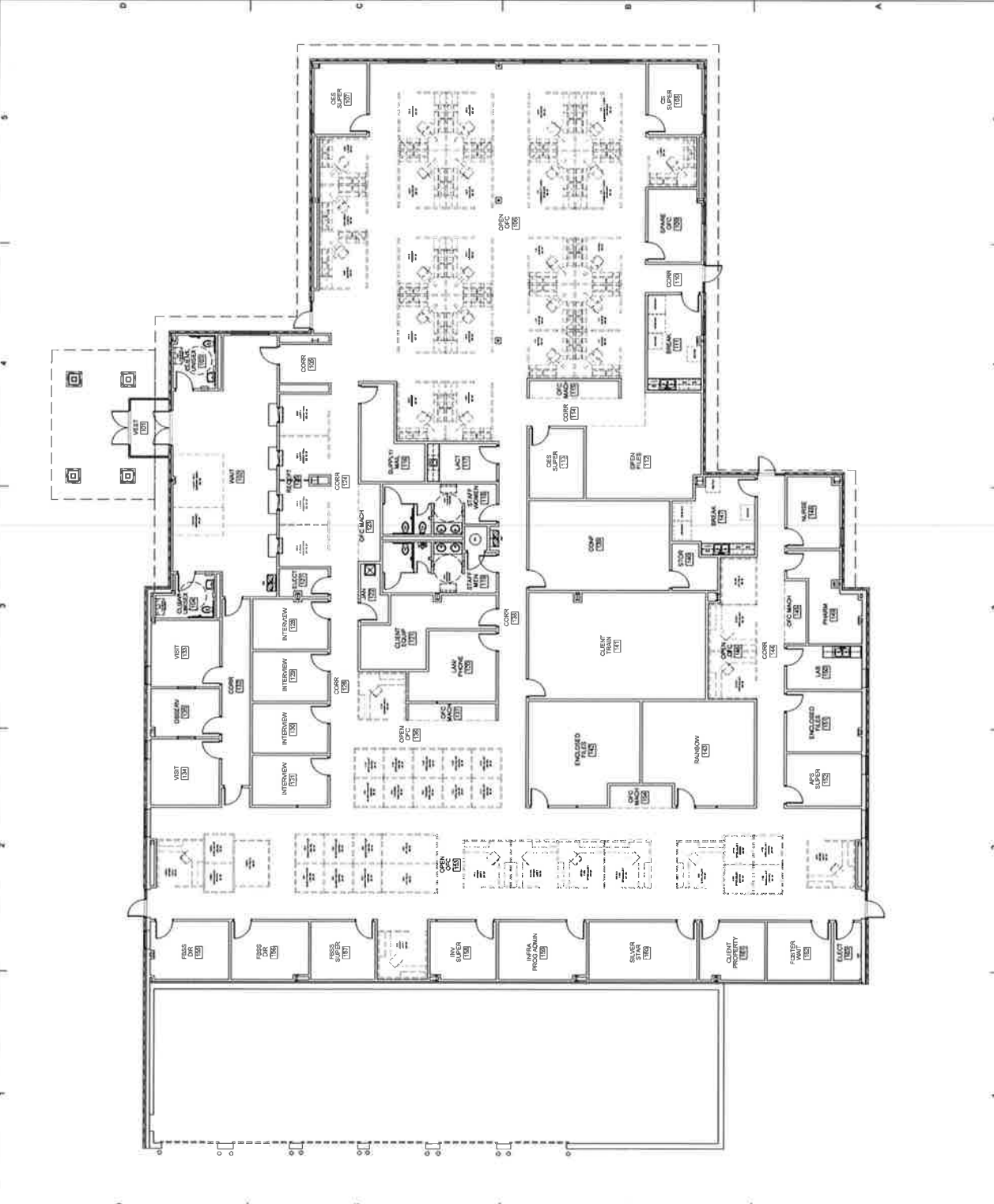
YOUR DATE \_\_\_\_\_

[illegible]

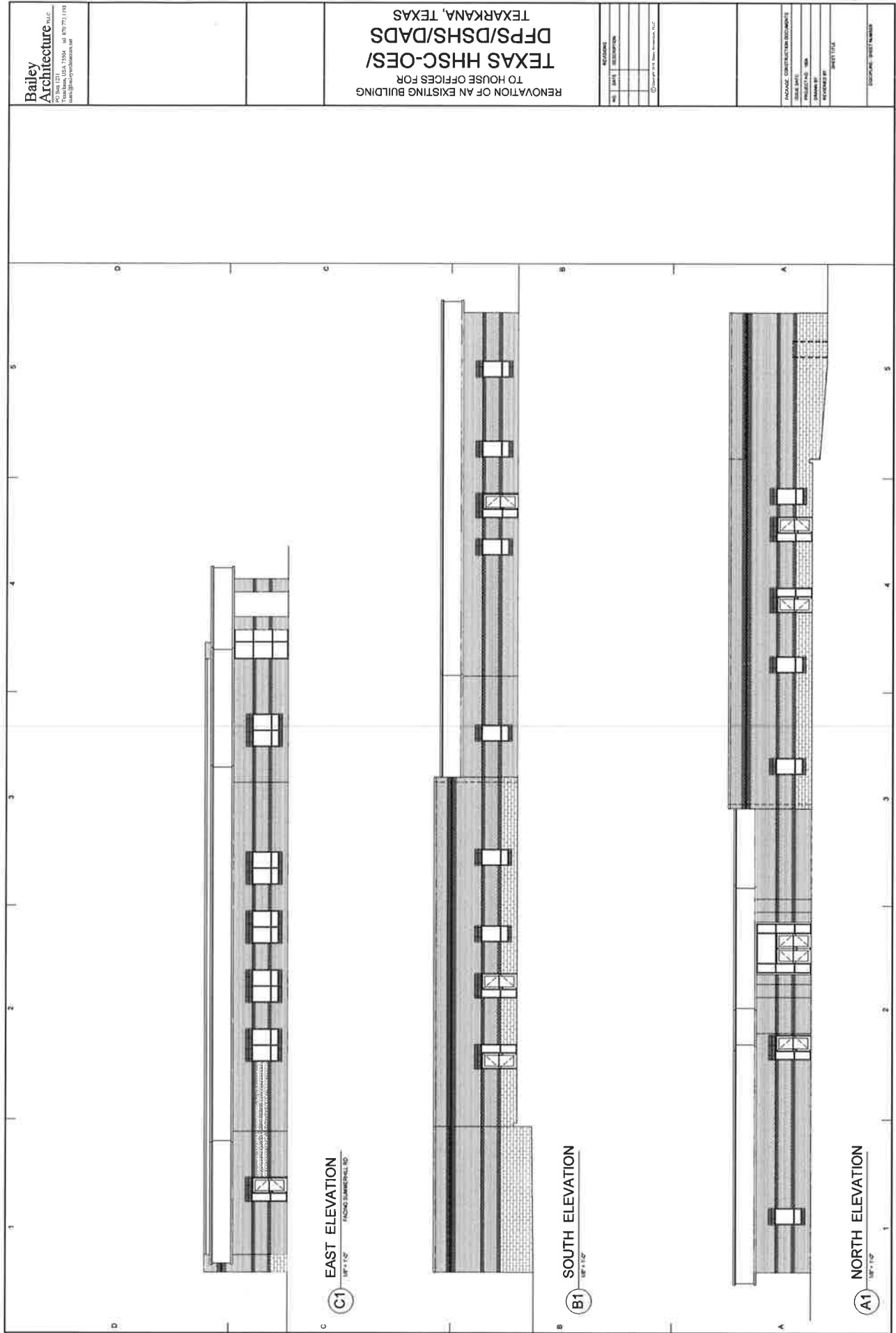
**Author's address:**

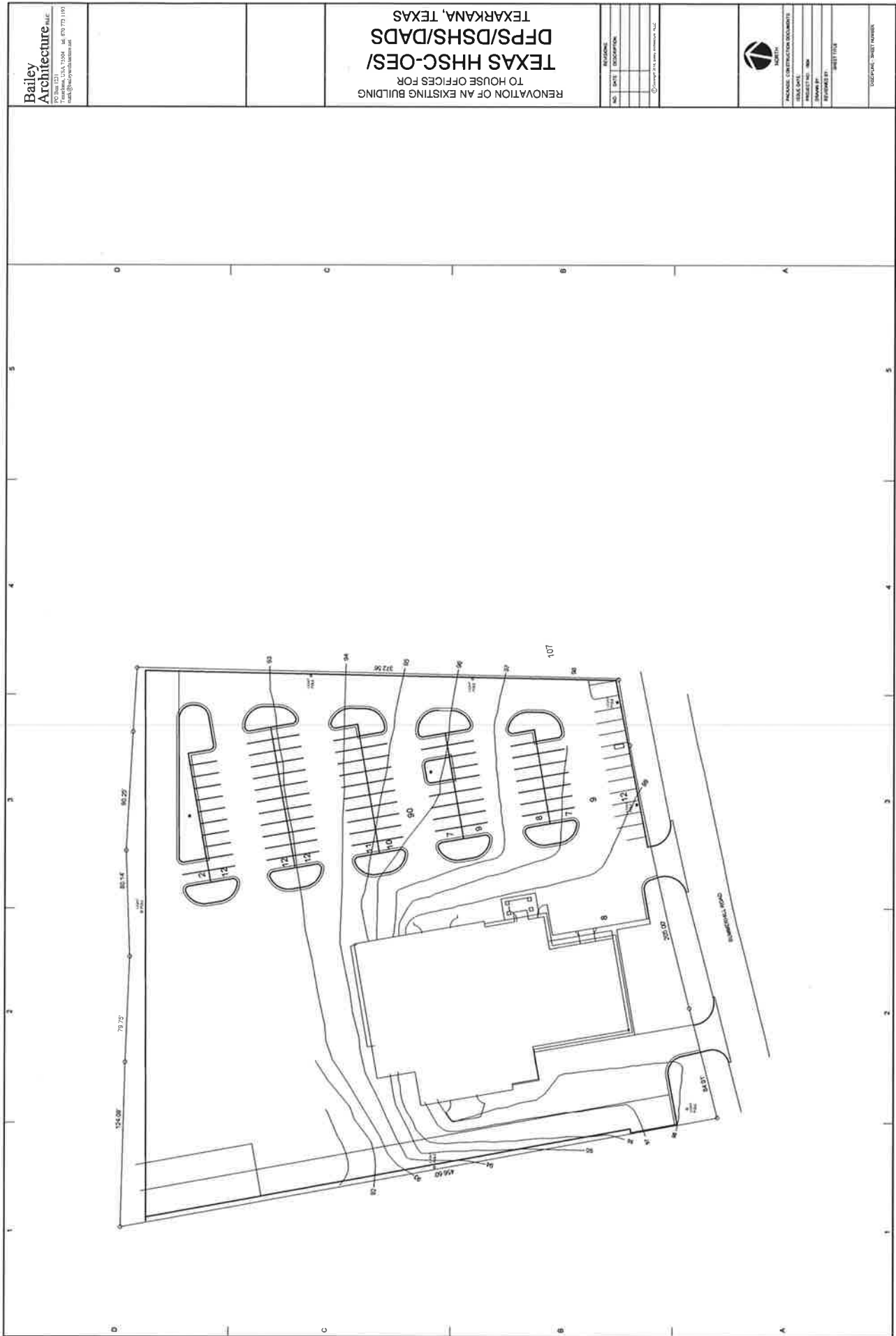
## References

**THE UNIVERSITY OF CHICAGO**











September 22, 2016

City of Texarkana, Texas  
Attn: Jerry Sparks  
P.O. Box 1967  
Texarkana, TX 75504

Re: Legato Holdings, LLC, Financial Capacity Letter, Application of Business Incentive

Dear Mr. Sparks

This letter is to serve as a Financial Capacity letter for Legato Holdings, LLC (the Business Incentive Prospect, "BIP") to satisfy their current Application for Business Incentive Plan Chapter 380 Program (Res. # 2015-120) submitted to the City of Texarkana, Texas. We state that Legato Holdings, LLC has the financial capacity and available resources to fund, develop, and complete the proposed project at 3101 Summerhill Road, excluding consideration of any Business Incentive granted by the City. I hope this satisfies the needs of City in this application process, and as always, if you have any questions, or if I can be of any further help, please contact me directly.

Sincerely,

A handwritten signature in blue ink that reads "Philip K. Mobley". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Philip K. Mobley  
Senior Vice President

Attachment: 2016-121 ATTH 05 Legato Holdings Finn Cap Letter (1554 : 2016-121 RES authorizing the City Manager to enter into incentive

## City of Texarkana, Texas

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

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

**Perspectives and Goals Additional Comments:**

NONE

**Resource Impact:**

Staff time required if item is approved: No Additional

**Other Potential Impacts:**

NONE APPLICABLE

**Public Information Plan:**

|                                                                 |                                                               |
|-----------------------------------------------------------------|---------------------------------------------------------------|
| <input type="checkbox"/> Newspaper Notice (Required by Statute) | <input type="checkbox"/> Public Hearing (Required by Statute) |
| <input type="checkbox"/> Public Forum/Input Session             | <input type="checkbox"/> Press Release                        |
| <input type="checkbox"/> E-News Distribution                    | <input type="checkbox"/> Website Notice                       |
| <input type="checkbox"/> Social Media (Twitter, Facebook, etc.) | <input type="checkbox"/> Special Mailing                      |
| <input type="checkbox"/> Flyers Posted                          | <input type="checkbox"/> Banners Posted                       |
| <input type="checkbox"/> Survey                                 | <input type="checkbox"/> Automated Phone Call                 |
| <input checked="" type="checkbox"/> None Required               | <input type="checkbox"/>                                      |

Other:



## RESOLUTION NO. 2016-121

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEXARKANA, TEXAS, AUTHORIZING THE CITY MANAGER TO ENTER INTO AN INCENTIVE AGREEMENT, USING GUIDELINES APPROVED IN RESOLUTION NO. 2015-120 OF THE CITY OF TEXARKANA UNDER CHAPTER 380 OF THE TEXAS LOCAL GOVERNMENT CODE, FUNDED BY A REBATE OF AN AMOUNT NOT TO EXCEED FIFTY PERCENT (50%) OF THE CITY'S PORTION OF THE AD VALOREM TAX PAID BY LEGATO HOLDINGS LLC FOR A TERM NOT TO EXCEED FIVE (5) YEARS WITH A POTENTIAL FIVE YEAR (5) RENEWAL; AUTHORIZING THE CITY MANAGER TO EXECUTE THE NECESSARY DOCUMENTS; AND ESTABLISHING AN EFFECTIVE DATE.

**WHEREAS**, the City Council established in Resolution No. 2015-120 a policy for the use of Chapter 380 of the Texas Local Government Code to provide incentives for specified activities; and

**WHEREAS**, Legato Holdings LLC has requested an incentive in response to their plans to remodel a facility at 3103 Summerhill Road that will retain existing jobs and create new jobs in our community.

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

**SECTION 1:** That the City Manager, be and is hereby authorized to enter into an incentive agreement with Legato Holdings LLC to rebate an amount not to exceed fifty percent (50%) of the City's portion of paid ad valorem taxes for the property at 3103 Summerhill Road for a period of no more than five (5) years.

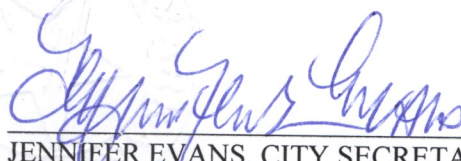
**SECTION 2:** That said agreement will have the potential for a five-year renewal based upon the number of jobs retained, the number of jobs created and the continuous occupancy of the facility.

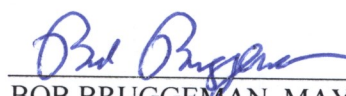
**SECTION 3:** That the City Manager is hereby authorized to execute the necessary documents to enter into said incentive agreement.

**SECTION 4:** 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 14<sup>th</sup> day of November, 2016.

ATTEST:

  
JENNIFER EVANS, CITY SECRETARY

  
BOB BRUGGEMAN, MAYOR

6:58 p.m.



## City of Texarkana, Texas

Version: B

Update Date: 11/8/2016 9:46 AM

**Briefing Sheet**

**Lead Department:** Building Code Administration **Action Officer:** Lynn Henry  
**Subject:** Ordinance No. 2016-117 amending Chapter 11 Sec. 105-99 of the International Residential Code.  
**Briefing:** 11/28/2016 **Public Hearing:** 10/24/2016 **Second Briefing:** November 14, 2016 **Council Vote:** 11/28/2016

**Item Schedule****Updates/History of Briefing:**

NOT APPLICABLE

**Executive Summary and Background Information:**

Beginning with all new homes permitted September 1, the statewide move to the 2015 energy code ushered in significant changes for single-family and low-rise (three stories and lower) multifamily construction. The catalyst for these changes was HB 1736, a Texas Association of Builders priority bill, passed by the legislature last session. The bill made Texas one of the first states to adopt the energy Chapter (Chapter 11) of the 2015 International Residential Code (IRC), while Texas remained in the 2009

Version. While the statute makes clear that the energy efficiency chapter of the IRC was adopted statewide on September 1, local amendments in these areas can be less stringent than the unamended 2015 Code. A jurisdiction like Texarkana that is outside of what is referred to as a non-attainment area or affected county can take action to amend the 2015 energy code, as prescribed by state law, back to the framework that was in place prior to September 1.

The 2015 energy code requirements will increase the cost of residential construction in Texarkana. Therefore, staff recommends taking action to amend the 2015 energy code back to the framework that was in place prior to September 1. This will require amending the Code of Ordinances to reflect that Chapter 11- Energy Conservation from the 2015 International Residential Code is deleted, and to reflect re-adoption of the corresponding chapter from the 2009 code.

**Potential Options:**

- Leave the 2015 Code intact.
- 

**Fiscal Implications:**

## City of Texarkana, Texas

None

### Staff Recommendation:

Staff recommends adoption of this ordinance.

### Advisory Board/Committee Review:

None

### Board/Committee Recommendation:

NOT APPLICABLE

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

NOT APPLICABLE

### Attachments

- a. 2016-117 ORD Amending Code Sec. 105-99 (DOC)
- b. 2016-117 ATTH 1 comparison (DOCX)
- c. 2016-117 Goals & Perspectives (DOCX)
- d. 2016-117 ORD Amending Code Sec. 105-99 signed(PDF)

### Staff Coordination

|                                    |                                |                           |
|------------------------------------|--------------------------------|---------------------------|
| Building Code Administration       | Lynn Henry                     | Department Head Review    |
| Completed                          | 09/29/2016 10:07 AM            |                           |
| Municipal Prosecutor Deborah Jones | Asst. City Attorney Review     | Completed                 |
| 09/29/2016 11:18 AM                |                                |                           |
| Assistant City Manager             | Shirley Jaster                 | Asst. City Manager Review |
| Completed                          | 09/29/2016 11:23 AM            |                           |
| City Attorney Jeffery C. Lewis     | City Attorney Review Completed | 09/29/2016                |
| 12:48 PM                           |                                |                           |
| Assistant City Manager             | Shirley Jaster                 | Assistant City Manager    |
| Review Completed                   | 09/29/2016 1:22 PM             |                           |
| Public Information Officer         | Lisa Thompson                  | PIO Review Completed      |
| 09/29/2016 1:39 PM                 |                                |                           |
| City Manager John Whitson          | City Manager Review Completed  | 10/06/2016                |
| 11:02 AM                           |                                |                           |
| City Council Jennifer Evans        | Meeting Completed              | 10/10/2016                |
| 6:00 PM                            |                                |                           |

### Meeting History

|          |              |               |                |
|----------|--------------|---------------|----------------|
| 10/10/16 | City Council | MOVED FORWARD | Next: 10/24/16 |
| 10/24/16 | City Council | MOVED FORWARD | Next: 11/14/16 |

PUBLISH

**ORDINANCE NO. 2016-117**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEXARKANA, TEXAS, AMENDING THE LAND DEVELOPMENT CODE, BUILDING AND CONSTRUCTION, SECTION 105-99, OF THE CODE OF ORDINANCES OF THE CITY OF TEXARKANA, TEXAS, AND PROVIDING FOR PUBLICATION; PROVIDING FOR A REPEALER CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, with all new homes permitted September 1, the statewide move to the 2015 energy code by HB 1736, adopted by the Texas Legislature last session, ushered in significant changes for single-family and low-rise multifamily construction; and

**WHEREAS**, the 2015 energy code requirements will increase the cost of residential construction in Texarkana; and

**WHEREAS**, Texarkana is a jurisdiction outside of what is referred to as a non-attainment area or an affected county as defined by law; and

**WHEREAS**, Texas law makes clear that a jurisdiction outside of what is referred to as a non-attainment area or an affected county can take action to amend the 2015 energy code with less stringent energy efficiencies, such as the framework under the 2009 code that existed prior to September 1; and

**WHEREAS**, to avoid an increase in the cost of residential construction in Texarkana, the City Council finds and determines that the Code of Ordinances should be amended to delete the 2015 energy code and adopt the 2009 energy code as allowed by state law.

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

**SECTION 1:** That Section 105-99 of the Code of Ordinances of the City of Texarkana, Texas, is hereby amended with the following additions to this existing section, which read as follows:

*Chapter 11, Energy conservation*, of the said International Residential Code 2015 adopted by Section 105-98 herein, is hereby deleted in its entirety.

With respect to energy conservation, there is hereby adopted by the city, for the purpose of regulating and governing the conditions and maintenance of all property, buildings and structures; by providing the standards for supplied utilities and facilities and other physical things and conditions essential to ensure that structures are safe, sanitary and fit for occupation and use; and providing for permits and penalties, that certain *Chapter 11, Energy Conservation*, of the building code known as the International Residential Code, 2009 edition ("IRC 2009"), said Chapter 11 of the IRC 2009 being incorporated herein as if fully set out herein; and with respect to the subject matter in said chapter, the

Attachment: 2016-117 ORD Amending Code Sec. 105-99 [Revision 2] (1546 : 2016-117 ORD amend Sec. 105-99)

**PUBLISH**

provisions thereof shall be controlling in the condition and maintenance of all property, buildings and structures contained within the corporate limits of the city.

**SECTION 2:** That 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 3:** That all ordinances or parts of ordinances in conflict herewith are specifically repealed.

**SECTION 4:** That 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.

**SECTION 5:** That 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 **14<sup>th</sup> day of November, 2016.**

---

BOB BRUGGEMAN, MAYOR

ATTEST:

---

JENNIFER EVANS, CITY SECRETARY

2009

Eliminate the requirement of dust blast  
and blower door testing

A programmable thermostat **but** eliminate  
programmable thermostat  
set by the manufacturer.

Require the placement of an energy certificate  
visual inspection of ductwork and insulation  
by a third party

2015

Requirement of dust blast  
and blower door testing.

Programmable thermostat  
set by the manufacturer.  
78 degrees max cool  
70 degrees max heat



## City of Texarkana, Texas

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

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

## Perspectives and Goals Additional Comments:

NONE

## Resource Impact:

Staff time required if item is approved: No Additional

## Other Potential Impacts:

NONE APPLICABLE

## Public Information Plan:

|                                                                 |                                                               |
|-----------------------------------------------------------------|---------------------------------------------------------------|
| <input type="checkbox"/> Newspaper Notice (Required by Statute) | <input type="checkbox"/> Public Hearing (Required by Statute) |
| <input type="checkbox"/> Public Forum/Input Session             | <input type="checkbox"/> Press Release                        |
| <input type="checkbox"/> E-News Distribution                    | <input type="checkbox"/> Website Notice                       |
| <input type="checkbox"/> Social Media (Twitter, Facebook, etc.) | <input type="checkbox"/> Special Mailing                      |
| <input type="checkbox"/> Flyers Posted                          | <input type="checkbox"/> Banners Posted                       |
| <input type="checkbox"/> Survey                                 | <input type="checkbox"/> Automated Phone Call                 |
| <input checked="" type="checkbox"/> None Required               | <input type="checkbox"/>                                      |

Other:

PUBLISH

## ORDINANCE NO. 2016-117

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEXARKANA, TEXAS, AMENDING THE LAND DEVELOPMENT CODE, BUILDING AND CONSTRUCTION, SECTION 105-99, OF THE CODE OF ORDINANCES OF THE CITY OF TEXARKANA, TEXAS, AND PROVIDING FOR PUBLICATION; PROVIDING FOR A REPEALER CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, with all new homes permitted September 1, the statewide move to the 2015 energy code by HB 1736, adopted by the Texas Legislature last session, ushered in significant changes for single-family and low-rise multifamily construction; and

**WHEREAS**, the 2015 energy code requirements will increase the cost of residential construction in Texarkana; and

**WHEREAS**, Texarkana is a jurisdiction outside of what is referred to as a non-attainment area or an affected county as defined by law; and

**WHEREAS**, Texas law makes clear that a jurisdiction outside of what is referred to as a non-attainment area or an affected county can take action to amend the 2015 energy code with less stringent energy efficiencies, such as the framework under the 2009 code that existed prior to September 1; and

**WHEREAS**, to avoid an increase in the cost of residential construction in Texarkana, the City Council finds and determines that the Code of Ordinances should be amended to delete the 2015 energy code and adopt the 2009 energy code as allowed by state law.

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

**SECTION 1:** That Section 105-99 of the Code of Ordinances of the City of Texarkana, Texas, is hereby amended with the following additions to this existing section, which read as follows:

*Chapter 11, Energy conservation*, of the said International Residential Code 2015 adopted by Section 105-98 herein, is hereby deleted in its entirety.

With respect to energy conservation, there is hereby adopted by the city, for the purpose of regulating and governing the conditions and maintenance of all property, buildings and structures; by providing the standards for supplied utilities and facilities and other physical things and conditions essential to ensure that structures are safe, sanitary and fit for occupation and use; and providing for permits and penalties, that certain *Chapter 11, Energy Conservation*, of the building code known as the International Residential Code, 2009 edition ("IRC 2009"), said Chapter 11 of the IRC 2009 being incorporated herein as if fully set out herein; and with respect to the subject matter in said chapter, the

Attachment: 2016-117 ORD Amending Code Sec. 105-99 signed (1546 : 2016-117 ORD amend Sec. 105-99)

**PUBLISH**

provisions thereof shall be controlling in the condition and maintenance of all property, buildings and structures contained within the corporate limits of the city.

**SECTION 2:** That 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.

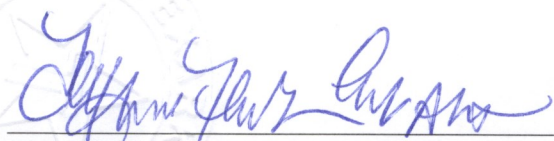
**SECTION 3:** That all ordinances or parts of ordinances in conflict herewith are specifically repealed.

**SECTION 4:** That 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.

**SECTION 5:** That 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 **28<sup>th</sup> day of November, 2016.**

ATTEST:

  
JENNIFER EVANS, CITY SECRETARY

  
BOB BRUGGEMAN, MAYOR

6:26

Attachment: 2016-117 ORD Amending Code Sec. 105-99 signed (1546 : 2016-117 ORD amend Sec. 105-99)



## City of Texarkana, Texas

Version: G

Update Date: 10/17/2016 3:49 PM

## Briefing Sheet

**Lead Department:** Assistant City Manager **Action Officer:** Shirley Jaster, Assistant City Manager  
**Subject:** Ordinance No. 2016-119 amending the Code of Ordinances Secs. 28-1(b), 130-5, 140-179 and 140-239 for sidewalk board type signs to be allowed for advertising in the Central Business zoning district.  
**Briefing:** 11/28/2016 **Public Hearing:** 10/24/2016 **Second Briefing:** November 14, 2016 **Council Vote:** 11/28/2016

## Item Schedule

Schedule 1: Brief twice - vote once (six weeks)

## Updates/History of Briefing:

Creating a definition of this type sandwich or stand up temporary sign was presented to the planning and zoning commission for their review and recommendation in September.

## Executive Summary and Background Information:

This is a request to amend the Code of Ordinances, Land Development Code,  
 Following are the highlighted proposed changes:

- Amend 28-1 b  
 Sec. 28-1. - Advertisements, handbills, etc.  
 (b) All advertising of any form, whether temporary or permanent, is hereby prohibited on all streets, sidewalks, rights-of-way, easements, parks or any other public property within the corporate limits of the city; provided, however, that the city council may by ordinance identify zones or specific public rights-of-way for placement by license of private advertising on or within public rights-of-way when said advertising is done in connection with either promotion of a business adjoining the public rights-of-way or projects beneficial to the public interest. The city manager or designee may require the removal of said advertising at any time that it violates any provision of this Code or otherwise becomes destroyed, unsightly, or deteriorated.
- Amend Section 130-5 to regulate and add guidelines for public sidewalk and other ROWs that grant an encumbrance exemption for sidewalk board and stand up type temporary signs in the downtown, Central Business zoning district as shown in Exhibit A of the proposed ordinance. Other changes include language for benches, tables, planters and other items regulated as to ADA requirements for sidewalk clearances, dimensions etc. (See attachment 1 for a red line version and key highlighted changes and sidewalk board type sign information)
- Add a new definition to Section 140-179 "Special definitions and explanations noted in use regulations to read as follows:

*Sign, sandwich or stand-up*, means an advertising sign displaying predominately legible words and constructed with durable material that will withstand inclement weather.

## City of Texarkana, Texas

- Add this new signage “sandwich or stand-up sign” to the chart in Section 140-239 “Temporary Type Signs” as follows. (This type signage will only be allowed in the downtown Central Business District and the maximum size will be 3 ½ feet in height and 2 feet in width.)

| <b>Temporary Type Signs:</b> |                            |                                              |                                                                                             |
|------------------------------|----------------------------|----------------------------------------------|---------------------------------------------------------------------------------------------|
| Real estate                  | 12 square feet             | All residential districts.                   | One for each platted lot or tract and for acreage-One for each 200 feet of street frontage. |
|                              | No restriction             | In all districts, except residential.        | None specified.                                                                             |
| Construction sign            | 60 square feet             | In all districts                             | None                                                                                        |
| Promotional/banner sign      | 64 square feet             | In all districts                             | See section 140-79 ( <i>Sign, temporary</i> )                                               |
| Development sign             | 400 square feet            | In all districts                             | **See below                                                                                 |
| “Sandwich” or stand-up sign  | H: 3 1/2 feet<br>W: 2 feet | CB, license only - see section 130-5(d)(1-a) | See sections 130-5(d)(1-a), 140-79                                                          |

### Potential Options:

Approve, amend or deny the ordinance

### Fiscal Implications:

\$ 10 fee per sign (sandwich board or stand up) in downtown CB zoning district.

### Staff Recommendation:

Approval

### Advisory Board/Committee Review:

Planning and Zoning Commission on zoning code changes Sections 140-179 and 140-239.

### Board/Committee Recommendation:

Planning and Zoning Commission recommended approval

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

Meeting date September 6, 2016

### Attachments

- a. ORD 2016-119 amending secs 28-1b, 130-5, 140-179 and 140-239 of the code of ordinances (DOCX)
- b. 2016-119 ATTH 2 red line Sec 130-5 (DOCX)
- c. 2016-119 ATTH 1 red line Sec 28-1 (DOCX)
- d. 2016-119 Goals & Perspectives (DOCX)
- e. 2016-119 ORD Code for CB District Sandwich Signs signed (PDF)

### Staff Coordination

|                                     |                            |                        |
|-------------------------------------|----------------------------|------------------------|
| Assistant City Manager              | Shirley Jaster             | Department Head Review |
| Completed                           | 09/29/2016 10:13 AM        |                        |
| Municipal Prosecutor Shirley Jaster | Asst. City Attorney Review | Skipped                |
| 09/28/2016 5:15 PM                  |                            |                        |



### City of Texarkana, Texas

|                                    |                     |                           |                      |
|------------------------------------|---------------------|---------------------------|----------------------|
| Assistant City Manager             | Shirley Jaster      | Asst. City Manager Review |                      |
| Completed                          | 09/29/2016 10:13 AM |                           |                      |
| City Attorney                      | Jeffery C. Lewis    | City Attorney Review      | Completed 10/03/2016 |
| 4:57 PM                            |                     |                           |                      |
| Public Works Department            | Kyle Dooley         | Review                    | Completed            |
| 10/04/2016 11:37 AM                |                     |                           |                      |
| Planning and Community Development | David Orr           | Review                    | Completed            |
| 10/04/2016 2:30 PM                 |                     |                           |                      |
| Assistant City Manager             | Shirley Jaster      | Assistant City Manager    |                      |
| Review                             | Completed           | 10/04/2016 2:47 PM        |                      |
| Public Information Officer         | Lisa Thompson       | PIO Review                | Completed            |
| 10/04/2016 2:50 PM                 |                     |                           |                      |
| City Manager                       | John Whitson        | City Manager Review       | Completed 10/06/2016 |
| 11:02 AM                           |                     |                           |                      |
| City Council                       | Jennifer Evans      | Meeting                   | Completed 10/10/2016 |
| 6:00 PM                            |                     |                           |                      |

#### Meeting History

|          |              |               |                |
|----------|--------------|---------------|----------------|
| 10/10/16 | City Council | MOVED FORWARD | Next: 10/24/16 |
| 10/24/16 | City Council | MOVED FORWARD | Next: 11/14/16 |

**ORDINANCE NO. 2016-119**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEXARKANA, TEXAS, REVISING LICENSING PROVISIONS TO ENCUMBER RIGHT-OF-WAY OR EASEMENTS AND ESTABLISHING NEW LICENSING PROVISIONS TO ENCUMBER SIDEWALKS IN THE CB CENTRAL BUSINESS DISTRICT BY AMENDING SECTIONS 28-1(b), 130-5, 140-179, AND 140-239 OF THE CODE OF ORDINANCES OF THE CITY OF TEXARKANA, TEXAS; CONTAINING A REPEALER CLAUSE; CONTAINING A SEVERABILITY CLAUSE; PROVIDING FOR PUBLICATION; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, the city has received several requests for sandwich or stand-up type advertising signs to be used in the downtown or CB, Central Business zoning district; and

**WHEREAS**, in the downtown area all sidewalks are public right of way(s), ROW, and not private property; and

**WHEREAS**, the use of public ROW is not allowed for private use unless an encumbrance is granted by the city.

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

**SECTION 1:** Section 28-1(b), “Advertisements, handbills, etc.”, of Article I. - In General, of Chapter 28 of the Code of Ordinances of the City of Texarkana, Texas, shall be amended in its entirety as follows:

(b) All advertising of any form, whether temporary or permanent, is hereby prohibited on all streets, sidewalks, rights-of-way, easements, parks or any other public property within the corporate limits of the city; provided, however, that the city council may by ordinance identify zones or specific public rights-of-way for placement by license of private advertising on or within public rights-of-way when said advertising is done in connection with either promotion of a business adjoining the public rights-of-way or projects beneficial to the public interest. The city manager or designee may require the removal of said advertising at any time that it violates any provision of this Code or otherwise becomes destroyed, unsightly, or deteriorated.

**SECTION 2:** Section 130-5, “Encumbrances and obstructions on streets, sidewalks and other public rights-of-way”, of Article I. - In General, of the Land Development Code of the City of Texarkana, Texas, shall be amended in its entirety as set forth in **Exhibit A** to this Ordinance, incorporated herein by reference for all purposes.

**SECTION 3:** Section 140-179, “Special definitions and explanations noted in use regulations,” of Article VII, “Supplemental Regulations” of the Land Development Code of the City of Texarkana, Texas, is hereby amended to add the following definition:

*Sign, sandwich or stand-up*, means an advertising sign displaying predominantly legible words and constructed with durable material that will withstand inclement weather (see section 130-5).

**SECTION 4:** That the City Council approves the amendment to the Code of Ordinances, Land Development Code, Chapter 140, Zoning, Section 140-239, “Permanent type signs,” by changing the caption to “Permanent and temporary type signs” and by amending the chart of “Temporary Type Signs” to add the following:

|                             |                            |                                              |                                    |
|-----------------------------|----------------------------|----------------------------------------------|------------------------------------|
| “Sandwich” or stand-up sign | H: 3 1/2 feet<br>W: 2 feet | CB, license only - see section 130-5(d)(1-a) | See sections 130-5(d)(1-a), 140-79 |
|-----------------------------|----------------------------|----------------------------------------------|------------------------------------|

**SECTION 5:** All ordinances or parts of ordinances in conflict herewith are specifically repealed to the extent of such conflict.

**SECTION 6:** 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 7:** 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.

**SECTION 8:** 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 **28<sup>th</sup> day of November, 2016.**

\_\_\_\_\_  
BOB BRUGGEMAN, MAYOR

ATTEST:

\_\_\_\_\_  
JENNIFER EVANS, CITY SECRETARY

**EXHIBIT A**

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 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 for each person for bodily injury and \$500,000 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. ~~The applicant is responsible for the establishment of 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 adjacent properties. The nonrefundable deposit 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.~~
- (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
- (i) restricted to the front of the applicant's licensed business and used solely for purposes directly related to the applicant's licensed business;
- (ii) placed in such a manner as to leave a minimum unobstructed sidewalk width of four feet (4'), a minimum of one foot (1') 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
- (iii) limited to chairs, benches, tables, window boxes, and one "sandwich board" or stand-up sign per license, with display of advertising restricted solely to "sandwich boards" or stand-up signs (see secs. 140-179, 140-239).
- c. The following placement of encumbrances shall be prohibited:
- (i) placement in front of any door or other means of ingress or egress;
- (ii) placement which blocks or hinders access to the adjoining property;
- (iii) placement which blocks or hinders visibility of drivers or pedestrians;
- (iv) placement on a corner lot within twenty feet (20') of the points of intersection of the joining street rights-of-way;
- (v) placement on the sidewalk of any hazardous material; and
- (vi) 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.
- (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) ~~Subject to the exemptions set forth~~Unless otherwise specified in this subsection~~-(e) of this section~~, no license shall be issued or granted for an encumbrance of the public right-of-way for less than a three-foot width.
  - (4) ~~Subject to the exemptions set forth~~Unless otherwise specified in this subsection~~-(e) of this section~~, 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 encroachment at the ground level, the annual license fee shall be 100 percent 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.
  - ~~(5) Said. The applicant is responsible for the establishment of the fair market value in the areas of consideration for license fee for each licensee. Fair market value may be subject to established by use of the county appraisal district records for adjacent properties.~~
  - ~~(5) Unless otherwise specified in this subsection, any deposits, license fees or annual review fees required by this section shall be in an amount as established by the city council from time to time and is subject to change 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 drafted~~issued~~ by the ~~city attorney's office~~Public Works Department.
  - (8) ~~In the event any individual, firm, person or corporation is~~Any applicant denied a license, ~~they~~ 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 ~~their~~ 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.*
- (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. 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. ~~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.~~

- (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 ~~and/or~~ activities.* The applicant shall use reasonable care in conducting its work ~~and/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) *Jurisdiction.* Any agreement shall be construed under and in accordance with the laws of the state, and all obligations of the parties hereunder are performable in the county.~~

Publish

~~(m)~~(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 the right of a holder of a lawfully granted franchise.

~~(n) *Penalty*. That any person found guilty of violating any of the provisions of this section shall be deemed guilty of a misdemeanor, and, upon conviction, shall be subject to the fine as prescribed by law for Class C misdemeanors and that each day of any such violation shall be a separate offense.~~

~~(Code 1961, § 24-5; Ord. of 11-8-1920, § 1; Ord. No. 359-91, § 1, 12-9-1991; Ord. No. 254-2000, § 1, 8-28-2000; Ord. No. 293-06, § 1, 10-9-2006)~~

**EXHIBIT A**

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 curblane 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 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 for each person for bodily injury and \$500,000 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. The applicant is responsible for the establishment of 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 adjacent properties. The nonrefundable deposit 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.

(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
  - (i) restricted to the front of the applicant's licensed business and used solely for purposes directly related to the applicant's licensed business;
  - (ii) placed in such a manner as to leave a minimum unobstructed sidewalk width of four feet (4'), a minimum of one foot (1') 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
  - (iii) limited to chairs, benches, tables, window boxes, and one "sandwich board" or stand-up sign per license, with display of advertising restricted solely to "sandwich boards" or stand-up signs (see secs. 140-179, 140-239).
- c. The following placement of encumbrances shall be prohibited:
  - (i) placement in front of any door or other means of ingress or egress;
  - (ii) placement which blocks or hinders access to the adjoining property;
  - (iii) placement which blocks or hinders visibility of drivers or pedestrians;
  - (iv) placement on a corner lot within twenty feet (20') of the points of intersection of the joining street rights-of-way;
  - (v) placement on the sidewalk of any hazardous material; and
  - (vi) 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.

- (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) ~~Subject to the exemptions set forth~~Unless otherwise specified in this subsection ~~(e) of this section~~, no license shall be issued or granted for an encumbrance of the public right-of-way for less than a three-foot width.
  - (4) ~~Subject to the exemptions set forth~~Unless otherwise specified in this subsection ~~(e) of this section~~, 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 encroachment at the ground level, the annual license fee shall be 100 percent 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.
  - ~~(5) Said. The applicant is responsible for the establishment of the fair market value in the areas of consideration for license fee for each licensee. Fair market value may be subject to established by use of the county appraisal district records for adjacent properties.~~
  - ~~(5) Unless otherwise specified in this subsection, any deposits, license fees or annual review fees required by this section shall be in an amount as established by the city council from time to time and is subject to change 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 draftedissued by the city attorney's officePublic Works Department.
  - (8) ~~In the event any individual, firm, person or corporation is~~Any applicant denied a license, ~~they~~ 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 ~~their~~ 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.*
- (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. 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. ~~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.~~

- (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 ~~and/or~~ activities.* The applicant shall use reasonable care in conducting its work ~~and/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) *Jurisdiction.* Any agreement shall be construed under and in accordance with the laws of the state, and all obligations of the parties hereunder are performable in the county.~~

~~(m)~~(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 the right of a holder of a lawfully granted franchise.

~~(n) *Penalty.* That any person found guilty of violating any of the provisions of this section shall be deemed guilty of a misdemeanor, and, upon conviction, shall be subject to the fine as prescribed by law for Class C misdemeanors and that each day of any such violation shall be a separate offense.~~

~~(Code 1961, § 24-5; Ord. of 11-8-1920, § 1; Ord. No. 359-91, § 1, 12-9-1991; Ord. No. 254-2000, § 1, 8-28-2000; Ord. No. 293-06, § 1, 10-9-2006)~~

Sec. 28-1. - Advertisements, handbills, etc.

- (a) The printing, pasting, stitching or placing of any advertisement, handbill or placard or any printed, pictured or written matter upon any house, wall, building, fence or other private property without the permission of the owner or person in charge thereof is hereby prohibited.
- (b) All advertising of any form, whether temporary or permanent, is hereby prohibited on all streets, sidewalks, rights-of-way, easements, parks or any other public property within the corporate limits of the city; provided, however, that the city council may, ~~after hearing, grant to civic organizations the privilege by ordinance identify zones or specific public rights-of-placing-way for placement by license of~~ private advertising on ~~or within~~ public ~~property~~ rights-of-way when said advertising is done in connection with either promotion of a business adjoining the public rights-of-way or projects beneficial to the public interest. The city ~~council~~ manager or designee may require the removal of said advertising at any time that it violates any provision of this Code or otherwise becomes destroyed, unsightly, or deteriorated ~~or in bad taste~~.
- (c) Any such advertisement not in compliance with this section which is not removed by the owner or person in charge thereof shall be removed by the proper city officials and disposed of.

~~(Code 1961, § 15-2; Ord. of 6-23-1953, § 7; Ord. No. 39-70, § 1, 3-9-1970; Ord. No. 121-71, § 1, 6-28-1971; Ord. No. 49-98, § 1, 3-9-1998)~~

## City of Texarkana, Texas

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

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

## Perspectives and Goals Additional Comments:

NONE

## Resource Impact:

NA

No Additional

## Other Potential Impacts:

NA

## Public Information Plan:

|                                     |                                        |                                     |                                      |
|-------------------------------------|----------------------------------------|-------------------------------------|--------------------------------------|
| <input checked="" type="checkbox"/> | Newspaper Notice (Required by Statute) | <input checked="" type="checkbox"/> | Public Hearing (Required by Statute) |
| <input type="checkbox"/>            | Public Forum/Input Session             | <input type="checkbox"/>            | Press Release                        |
| <input type="checkbox"/>            | E-News Distribution                    | <input checked="" type="checkbox"/> | Website Notice                       |
| <input type="checkbox"/>            | Social Media (Twitter, Facebook, etc.) | <input type="checkbox"/>            | Special Mailing                      |
| <input type="checkbox"/>            | Flyers Posted                          | <input type="checkbox"/>            | Banners Posted                       |
| <input type="checkbox"/>            | Survey                                 | <input type="checkbox"/>            | Automated Phone Call                 |
| <input type="checkbox"/>            | None Required                          | <input type="checkbox"/>            | Sign Posted                          |

Other:

Attachment: 2016-119 Goals &amp; Perspectives (1550 : 2016-119 ORD amend code - sandwich board signs)



**ORDINANCE NO. 2016-119**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEXARKANA, TEXAS, REVISING LICENSING PROVISIONS TO ENCUMBER RIGHT-OF-WAY OR EASEMENTS AND ESTABLISHING NEW LICENSING PROVISIONS TO ENCUMBER SIDEWALKS IN THE CB CENTRAL BUSINESS DISTRICT BY AMENDING SECTIONS 28-1(b), 130-5, 140-179, AND 140-239 OF THE CODE OF ORDINANCES OF THE CITY OF TEXARKANA, TEXAS; CONTAINING A REPEALER CLAUSE; CONTAINING A SEVERABILITY CLAUSE; PROVIDING FOR PUBLICATION; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, the city has received several requests for sandwich or stand-up type advertising signs to be used in the downtown or CB, Central Business zoning district; and

**WHEREAS**, in the downtown area all sidewalks are public right of way(s), ROW, and not private property; and

**WHEREAS**, the use of public ROW is not allowed for private use unless an encumbrance is granted by the city.

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

**SECTION 1:** Section 28-1(b), "Advertisements, handbills, etc.", of Article I. - In General, of Chapter 28 of the Code of Ordinances of the City of Texarkana, Texas, shall be amended in its entirety as follows:

(b) All advertising of any form, whether temporary or permanent, is hereby prohibited on all streets, sidewalks, rights-of-way, easements, parks or any other public property within the corporate limits of the city; provided, however, that the city council may by ordinance identify zones or specific public rights-of-way for placement by license of private advertising on or within public rights-of-way when said advertising is done in connection with either promotion of a business adjoining the public rights-of-way or projects beneficial to the public interest. The city manager or designee may require the removal of said advertising at any time that it violates any provision of this Code or otherwise becomes destroyed, unsightly, or deteriorated.

**SECTION 2:** Section 130-5, "Encumbrances and obstructions on streets, sidewalks and other public rights-of-way", of Article I. - In General, of the Land Development Code of the City of Texarkana, Texas, shall be amended in its entirety as set forth in **Exhibit A** to this Ordinance, incorporated herein by reference for all purposes.

**SECTION 3:** Section 140-179, "Special definitions and explanations noted in use regulations," of Article VII, "Supplemental Regulations" of the Land Development Code of the City of Texarkana, Texas, is hereby amended to add the following definition:

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*Sign, sandwich or stand-up*, means an advertising sign displaying predominantly legible words and constructed with durable material that will withstand inclement weather (see section 130-5).

**SECTION 4:** That the City Council approves the amendment to the Code of Ordinances, Land Development Code, Chapter 140, Zoning, Section 140-239, "Permanent type signs," by changing the caption to "Permanent and temporary type signs" and by amending the chart of "Temporary Type Signs" to add the following:

|                             |                            |                                              |                                    |
|-----------------------------|----------------------------|----------------------------------------------|------------------------------------|
| "Sandwich" or stand-up sign | H: 3 1/2 feet<br>W: 2 feet | CB, license only - see section 130-5(d)(1-a) | See sections 130-5(d)(1-a), 140-79 |
|-----------------------------|----------------------------|----------------------------------------------|------------------------------------|

**SECTION 5:** All ordinances or parts of ordinances in conflict herewith are specifically repealed to the extent of such conflict.

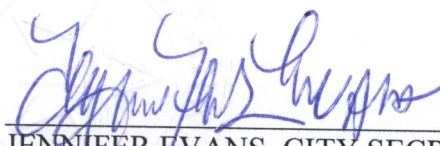
**SECTION 6:** In case a section, clause, sentence or part of this Ordinance shall be deemed or adjudged by a court of competent jurisdiction to be invalid, then such invalidity shall not affect, impair, or invalidate the remainder of this Ordinance.

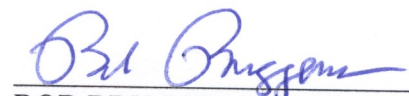
**SECTION 7:** The City Secretary shall give notice of the passage of this Ordinance as provided in Article XI, Section 3 of the Charter of the City of Texarkana, Texas.

**SECTION 8:** 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 **28<sup>th</sup>** day of November, 2016.

ATTEST:

  
JENNIFER EVANS, CITY SECRETARY

  
BOB BRUGGEMAN, MAYOR

6:26 p.m.

Attachment: 2016-119 ORD Code for CB District Sandwich Signs signed (1550 : 2016-119 ORD amend code - sandwich board signs)



**EXHIBIT A**

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 curblin 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 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 for each person for bodily injury and \$500,000 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. The applicant is responsible for the establishment of 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 adjacent properties. The nonrefundable deposit 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.
- (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
    - (i) restricted to the front of the applicant's licensed business and used solely for purposes directly related to the applicant's licensed business;
    - (ii) placed in such a manner as to leave a minimum unobstructed sidewalk width of four feet (4'), a minimum of one foot (1') 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
    - (iii) limited to chairs, benches, tables, window boxes, and one "sandwich board" or stand-up sign per license, with display of advertising restricted solely to "sandwich boards" or stand-up signs (see secs. 140-179, 140-239).
  - c. The following placement of encumbrances shall be prohibited:
    - (i) placement in front of any door or other means of ingress or egress;
    - (ii) placement which blocks or hinders access to the adjoining property;
    - (iii) placement which blocks or hinders visibility of drivers or pedestrians;
    - (iv) placement on a corner lot within twenty feet (20') of the points of intersection of the joining street rights-of-way;
    - (v) placement on the sidewalk of any hazardous material; and



(vi) 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.~~

(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) ~~Subject to the exemptions set forth~~Unless otherwise specified in this subsection (e) of this section, no license shall be issued or granted for an encumbrance of the public right-of-way for less than a three-foot width.

(4) ~~Subject to the exemptions set forth~~Unless otherwise specified in this subsection (e) of this section, 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 encroachment at the ground level, the annual license fee shall be 100 percent 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.

(5) ~~Said~~ The applicant is responsible for the establishment of the fair market value in the areas of consideration for license fee for each licensee. Fair market value may be subject to established by use of the county appraisal district records for adjacent properties.

(5) Unless otherwise specified in this subsection, any deposits, license fees or annual review fees required by this section shall be in an amount as established by the city council from time to time and is subject to change 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 drafted ~~issued~~ by the city attorney's office Public Works Department.

(8) ~~In the event any individual, firm, person or corporation is~~Any applicant denied a license, they 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 their 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.*

(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. 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. ~~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.~~

- (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 ~~and/or~~ activities.* The applicant shall use reasonable care in conducting its work ~~and/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) ~~*Jurisdiction.* Any agreement shall be construed under and in accordance with the laws of the state, and all obligations of the parties hereunder are performable in the county.~~
- (m)(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 the right of a holder of a lawfully granted franchise.
- (n) ~~*Penalty.* That any person found guilty of violating any of the provisions of this section shall be deemed guilty of a misdemeanor, and, upon conviction, shall be subject to the fine as prescribed by law for Class C misdemeanors and that each day of any such violation shall be a separate offense.~~
- (Code 1961, § 24-5; Ord. of 11-8-1920, § 1; Ord. No. 359-91, § 1, 12-9-1991; Ord. No. 254-2000, § 1, 8-28-2000; Ord. No. 293-06, § 1, 10-9-2006)

Attachment: 2016-119 ORD Code for CB District Sandwich Signs signed (1550 : 2016-119 ORD amend code - sandwich board signs)