

AGENDAS

FOR THE AMARILLO CITY COUNCIL WORK SESSION TO BE HELD ON TUESDAY, FEBRUARY 7, 2017 AT 4:00 P.M. AND THE REGULAR MEETING OF THE AMARILLO CITY COUNCIL AT 5:00 P.M., CITY HALL, 509 SOUTHEAST 7th AVENUE, COUNCIL CHAMBER ON THE THIRD FLOOR OF CITY HALL, AMARILLO, TEXAS.

Please note: The City Council may take up items out of the order shown on any Agenda. The City Council reserves the right to discuss all or part of any item in an executive session at any time during a meeting or work session, as necessary and allowed by state law. Votes or final decisions are made only in open Regular or Special meetings, not in either a work session or executive session.

WORK SESSION

- A. City Council will discuss or receive reports on the following current matters or projects.
- (1) Review agenda items for regular meeting and attachments;
 - (2) Discussion on Public Forum; and
 - (3) Consider future Agenda items and request reports from City Manager.
- B. City Council may convene in Executive Session to receive reports on or discuss any of the following pending projects or matters.
- (1) Section 551.074 - Discuss the appointment, employment, evaluation, reassignment, duties, and qualifications of a public officer or employee, in accordance with the Texas Open Meetings Act.
 - (a) Consider appointments to Boards and Commissions:
Amarillo Economic Development Corporation
Amarillo-Potter Events Venue District

REGULAR MEETING ITEMS

INVOCATION:

PROCLAMATION: "Better Business Bureau – Recognizing Ethical Business Practices"

INTRODUCTIONS: New City Staff

1. **MINUTES:**
Approval of the City Council minutes of the regular meeting held on January 31, 2017.
2. **PUBLIC HEARING AND CONSIDERATION OF ORDINANCE NO. 7653:**
This item is a public hearing and first reading of an ordinance adopting the Community Investment Program (CIP) FY 2016/2017 – FY 2020-2021, which will guide capital investment decisions for the next five-years.
3. **PRESENTATION AND CONSIDERATION OF ORDINANCE NO. 7654:**
This ordinance amends the City of Amarillo 2015/2016 Budget, the Colonies Public Improvement District (PID) 2015/2016 Budget, and the Point West PID 2015/2016 Budget.
4. **ORDINANCE NO. 7650:**
This is the second and final reading of an ordinance rezoning of Lot 7, Block 141, Glidden & Sanborn Addition, Section 169, Block 2, AB&M Survey, Potter County, Texas, plus one-half of all bounding streets, alleys, and public ways to change from Light Industrial (I-1) to Multi Family 1 (MF-1). (Vicinity: Madison Street and Northwest 3rd Avenue.)
5. **ORDINANCE NO. 7651:**
This is the second and final reading of an ordinance rezoning of Lot 5, Block 8, Fairview Townsite Unit No. 1, Section 123, Block 2, AB&M Survey, Potter County, Texas, plus one-half of all bounding streets, alleys, and public ways to change from Residential District 3 to Residential District 3 with a Specific Use

Permit for the placement of a Type B Manufactured Home. (Vicinity: Southeast 6th Avenue and South Dallas Street.)

6. **ORDINANCE NO. 7652:**

This is the second and final reading of an ordinance rezoning of Lots 5-8, Block 494, Mirror Addition Unit No. 1, Section 155, Block 2, AB&M Survey, Potter County, Texas plus one-half of all bounding streets, alleys, and public ways to change from Residential District 3 (R-3) to Heavy Commercial District (HC). (Vicinity: Interstate 40 and South Houston Street.)

7. **CONSIDER APPOINTMENTS TO BOARDS AND COMMISSIONS:**

This item is for discussion and consideration of appointments to vacant and expiring positions on Boards and Commissions:

Amarillo Economic Development Corporation
Amarillo-Potter Events Venue District
Animal Management & Welfare
Community Development Advisory Committee
Construction Advisory and Appeals Board
Quail Creek Public Improvement District Advisory Board

8. **CONSENT AGENDA:**

It is recommended that the following items be approved and that the City Manager be authorized to execute all documents necessary for each transaction:

A. **Purchase – B4 Aggregate (Pre-coated):**

Award to low bidder meeting specifications: J. Lee Milligan Inc., -- \$688,187.50

This item awards a contract for purchase of Pre-coated B4 Aggregate, used during the summer for sealcoating of paved streets.

B. **Award – Plumbing and Mechanical Annual Contract:**

Awarded on Buyboard to Morrison Supply Company in an amount not to exceed \$746,290.00

This award is to approve a contract for the purchase of the plumbing and mechanical annual contract.

C. **Award – HVAC Filters Annual Contract:**

Awarded on Buyboard to Grainger Industrial Supply in an amount not to exceed \$88,000.00

This award is to approve a contract for the purchase of the HVAC filters annual contract.

D. **Award – Unitrends Backup Appliance:**

Cima Solutions Group -- \$96,287.25

This purchase will replace an appliance that has been in operation since 2012 while adding additional capacity for City servers.

E. **Approval – Amendment No. 1 to the Airline Use and Lease Agreement:**

Parties: Southwest Airlines Co. and Rick Husband Amarillo International Airport:

This item is Amendment No. 1 to the Airline Use and Lease Agreement between Southwest Airlines Co. and Rick Husband Amarillo International Airport. The original agreement was approved for signature at the Amarillo City Council meeting held on September 27, 2016. Amendment No. 1 provides further clarification concerning a minimum space requirement subsequent to the original Airline Use and Lease Agreement.

F. **Approval – Airline Use and Lease Agreement and Amendment No. 1:**

Parties: American Airlines, Inc. and Rick Husband Amarillo International Airport

This item is a three-year lease agreement for the use and lease of terminal areas and landing facilities at the Rick Husband Amarillo International Airport. Amendment No. 1 provides further clarification concerning a minimum space requirement to the original Airline Use and Lease Agreement.

- G. Approval – Task Order 23 between RS&H, Inc. and the Rick Husband Amarillo International Airport for Design and Bid Services for Terminal Mechanical System Upgrades in the amount of \$68,915.00:
This Task Order specifically focuses on the Design and Bid services for upgrades that include the replacement of the existing steam boiler system with a new hot water boiler heating system, replacement of the water treatment system for the hot water system, replacement of the domestic hot water heater, and repair of leaking heating hot water piping. These recommendations came out of a Mechanical Assessment dated December 9, 2016.
- H. Approval - Amendment Number Three to Existing Lease for the Amarillo Botanical Gardens:
Amendment Number 3 between the City of Amarillo and the Amarillo Botanical Gardens provides a three-year lease option of additional property located directly to the south of the existing facility to fully fund and construct a Children’s Cottage and Garden. This amendment increases the size of the leasehold by 1.162 acres if all terms and conditions are met.
- I. Approval - WIC Nutrition Program Contract for FY2017:
FY2017 Award Not to Exceed: \$1,543,420.00
The FY2017 Women, Infant, and Children’s (WIC) Nutrition Program is a pass-through contract from the Department of State Health Services to the City of Amarillo for the period of October 1, 2016 through September 30, 2017.

PUBLIC FORUM

Comments from interested citizens on matters not on the Agenda pertaining to City policies, programs or services. *(This is the opportunity for visitors and guests to address the City Council on any issue. The City Council may not discuss any presented issue, nor may any action be taken on any issue at this time. Texas Attorney General Opinion JC-0169)*

MISCELLANEOUS

1. Boards and Commissions – appointments as listed on attached.

Amarillo City Hall is accessible to individuals with disabilities through its main entry on the south side (Southeast 7th Avenue) of the building. An access ramp leading to the main entry is located at the southwest corner of the building. Parking spaces for individuals with disabilities are available in the south parking lot. City Hall is equipped with restroom facilities, communications equipment and elevators that are accessible. Individuals with disabilities who require special accommodations or a sign language interpreter must contact the City Secretary’s Office 48 hours prior to meeting time by telephoning 378-3013 or the City TDD number at 378-4229.

Posted this 3rd day of February 2017.

<p>Amarillo City Council meetings stream live on Cable Channel 110 and are available online at: www.amarillo.gov/granicus Archived meetings are also available.</p>
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STATE OF TEXAS
 COUNTIES OF POTTER
 AND RANDALL
 CITY OF AMARILLO

On the 31st day of January 2017, the Amarillo City Council met at 4:00 p.m. for a work session, and the regular session was held at 5:00 p.m. in the Council Chamber located on the third floor of City Hall at 509 Southeast 7th Avenue, with the following members present:

PAUL HARPOLE	MAYOR
ELISHA DEMERSON	COUNCILMEMBER NO. 1
LISA BLAKE	COUNCILMEMBER NO. 2
RANDY BURKETT	COUNCILMEMBER NO. 3
MARK NAIR	COUNCILMEMBER NO. 4

Absent were none. Also in attendance were the following administrative officials:

BOB COWELL	INTERIM CITY MANAGER
MICK MCKAMIE	CITY ATTORNEY
BLAIR SNOW	MANAGEMENT ANALYST
FRANCES HIBBS	CITY SECRETARY

The invocation was given by Bob Schroeder, Hillside Christian Church. Mayor Harpole led the audience in the Pledge of Allegiance.

Brian Bruckner, Amarillo Economic Development Corporation (AEDC), Chairman, introduced of Barry Albrecht, AEDC, president and CEO.

Bob Cowell stated this was an opportunity to acknowledge all the assistance received during a recent ice storm. Ronnie Walker, Xcel Regional Manager, presented a powerpoint presentation on Winter Storm Jupiter which occurred January 13-15, 2017. There were 58,000 Xcel customers affected by this ice storm. Brad Baldrige, Xcel Senior Director, discussed the restoration efforts. He stated SPS deployed 977 employees, contractors and mutual aid partners. Dru Chidester, Xcel Community Relations, stated the Panhandle Spirit should also be recognized because of its volunteers and the food services that were provided.

Mayor Harpole established a quorum, called the meeting to order, welcomed those in attendance and the following items of business were conducted:

ITEM 1: Mayor Harpole presented the minutes for January 24, 2017. Motion was made by Councilmember Burkett to approve the minutes, seconded by Councilmember Blake, and unanimously carried to approve the minutes.

ITEM 2: Mayor Harpole presented the first reading of an ordinance rezoning Lot 7, Block 141, Glidden and Sanborn Addition, Section 169, Block 2, AB&M Survey, Potter County, Texas, plus one-half of all bounding streets, alleys, and public ways to change from Light Industrial (I-1) to Multi Family 1 (MF-1). (Vicinity: Madison Street and Northwest 3rd Avenue.) AJ Fawver presented this item. Motion was made by Councilmember Demerson, seconded by Councilmember Nair, that the following captioned ordinance be passed on first reading:

ORDINANCE NO. 7650

AN ORDINANCE OF THE CITY OF AMARILLO, TEXAS: PROVIDING FOR SPECIFIED CHANGES IN THE OFFICIAL ZONING MAP OF THE CITY OF AMARILLO, TEXAS; PROVIDING FOR CHANGE OF USE DISTRICT CLASSIFICATION OF SPECIFIED PROPERTY IN THE VICINITY OF MADISON STREET AND NORTHWEST 3RD AVENUE, POTTER COUNTY, TEXAS; PROVIDING A SAVINGS CLAUSE; PROVIDING A REPEALER CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

Voting AYE were Mayor Harpole, Councilmembers Blake, Demerson, Burkett and Nair; voting NO were none; the motion carried by a 5:0 vote of the Council.

ITEM 3: Mayor Harpole presented the first reading of an ordinance rezoning Lot 5, Block 8, Fairview Townsite Unit No. 1, Section 123, Block 2, AB&M Survey, Potter County, Texas, plus one-half of all bounding streets, alleys, and public ways to change from Residential District 3 to Residential District 3 with a Specific Use Permit for the placement of a Type B Manufactured Home. (Vicinity: Southeast 6th Avenue and South Dallas Street.) AJ Fawver presented this item. Motion was made by Councilmember Nair, seconded by Councilmember Blake, that the following captioned ordinance be passed on first reading:

ORDINANCE NO. 7651

AN ORDINANCE OF THE CITY OF AMARILLO, TEXAS: PROVIDING FOR SPECIFIED CHANGES IN THE OFFICIAL ZONING MAP OF THE CITY OF AMARILLO, TEXAS; PROVIDING FOR CHANGE OF USE DISTRICT CLASSIFICATION OF SPECIFIED PROPERTY IN THE VICINITY OF SOUTHEAST SIXTH AVENUE AND SOUTH DALLAS STREET, POTTER COUNTY, TEXAS; PROVIDING A SAVINGS CLAUSE; PROVIDING A REPEALER CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

Voting AYE were Mayor Harpole, Councilmembers Blake, Demerson, Burkett and Nair; voting NO were none; the motion carried by a 5:0 vote of the Council.

ITEM 4: Mayor Harpole presented the first reading of an ordinance rezoning Lots 5-8, Block 494, Mirror Addition Unit No. 1, Section 155, Block 2, AB&M Survey, Potter County, Texas plus one-half of all bounding streets, alleys, and public ways to change from Residential District 3 (R-3) to Heavy Commercial District (HC). (Vicinity: Interstate 40 and South Houston Street.) AJ Fawver presented this item. Motion was made by Councilmember Blake, seconded by Councilmember Burkett, that the following captioned ordinance be passed on first reading:

ORDINANCE NO. 7652

AN ORDINANCE OF THE CITY OF AMARILLO, TEXAS: PROVIDING FOR SPECIFIED CHANGES IN THE OFFICIAL ZONING MAP OF THE CITY OF AMARILLO, TEXAS; PROVIDING FOR CHANGE OF USE DISTRICT CLASSIFICATION OF SPECIFIED PROPERTY IN THE VICINITY OF INTERSTATE 40 AND SOUTH HOUSTON STREET, POTTER COUNTY, TEXAS; PROVIDING A SAVINGS CLAUSE; PROVIDING A REPEALER CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

Voting AYE were Mayor Harpole, Councilmembers Blake, Demerson, Burkett and Nair; voting NO were none; the motion carried by a 5:0 vote of the Council.

ITEM 5: Mayor Harpole presented a resolution supporting an application for Affordable Housing to the Texas Department of Housing and Community Affairs, Housing Tax Credit Program by Canyons TC, LLC, a private entity, Canyons at 45 West, a development for affordable rental property located at 4101 Southwest 45th Avenue. James Allen, Community Development, stated there were three resolutions and three different projects. The first developer has not been in Amarillo before. It is the rehabilitation of an existing property. The entire complex would be affordable housing. Scott Pickett, stated this resolution was requesting support of this project. The complex is currently 80% occupied and consists of 328 units built in 1974. He proposed purchasing the property and renovating it with federal tax credits. This project would increase the City's affordable housing units while utilizing and maximizing existing property. Construction is estimated to be 18 months and 75% of the existing tenants will qualify for the improved housing. The total cost of the project is \$13 million. Melody Malouf, 7911 Fenley Drive, inquired if the other 5% of the tenants would be asked to leave. Mr. Pickett stated they would assist them with any moving needs, and help them in finding new housing options. James Schenck, 6216 Gainsborough Street, inquired what the City's support would include. Mr. Cowell stated the project would receive points for things accomplished, which includes receiving a resolution for support. Jim Lowder, 6723 Emerald Court, inquired if there were testimonials from people that were previously displaced. Mr. Pickett stated that all tenants have contractual leases.

Unqualified tenants will have to go to other complexes when their leases end. James Allen, stated this complex would increase housing opportunities. Deb Buntzen, 3409 South Rusk Street, inquired if the residents who do not qualify receive relocation services, fees, and if they are monitored. James Allen, replied it was not an obligation of the City of Amarillo. Motion was made by Councilmember Nair, seconded by Councilmember Burkett, that the following captioned resolution be passed:

RESOLUTION NO. 01-31-17-1

A RESOLUTION BY THE CITY OF AMARILLO, TEXAS, DECLARING SUPPORT FOR CANYONS TC, LLC, A DEVELOPMENT FOR AFFORDABLE RENTAL PROPERTY LOCATED AT 4101 SOUTHWEST 45TH AVENUE; AND PROVIDING AN EFFECTIVE DATE.

Voting AYE were Mayor Harpole, Councilmembers Blake, Demerson, Burkett and Nair; voting NO were none; the motion carried by a 5:0 vote of the Council.

ITEM 6: Mayor Harpole presented a resolution supporting an application for Affordable Housing to the Texas Department of Housing and Community Affairs, Housing Tax Credit Program by SH Amarillo Boulevard, LP, a private entity, Marabella, a development for affordable rental property located at +/- 2.96 acres near the southeast corner of Amarillo Boulevard and Gem Lake Road. Motion was made by Councilmember Burkett, seconded by Councilmember Demerson, that the following captioned resolution be passed:

RESOLUTION NO. 01-31-17-2

A RESOLUTION BY THE CITY OF AMARILLO, TEXAS, DECLARING SUPPORT FOR SH AMARILLO BOULEVARD, LP, A DEVELOPMENT FOR AFFORDABLE RENTAL PROPERTY LOCATED AT +/-2.96 ACRES NEAR THE SOUTHEAST CORNER OF AMARILLO BOULEVARD AND GEM LAKE ROAD; AND PROVIDING AN EFFECTIVE DATE.

Voting AYE were Mayor Harpole, Councilmembers Demerson, Blake, Burkett and Nair; Voting NO were none; the motion carried by a 5:0 vote of the Council.

ITEM 7: Mayor Harpole presented a resolution supporting an application for Affordable Housing to the Texas Department of Housing and Community Affairs, Housing Tax Credit Program by SH Amarillo Gem Lake, LP, a private entity, Residences at Gem Lake, a development for affordable rental property located at +/- 2.00 acres near the southeast corner of Amarillo Boulevard and Gem Lake Road. James Allen, Community Development, stated this item was from the same developer but using the 9% tax credit option. Amarillo has not had a 9% project approved. Councilmember Nair inquired if Council could get an update and whether or not these projects are approved. Mayor Harpole stated there is a need in the community and this was an investment in the community. Mr. Allen stated this project was a senior project. Paul Stellar, stated he was asking Council for a resolution in support, and a small commitment of \$10-\$100 fee waiver that will allow extra points. Mr. Stellar stated this was not a HUD project and that residents will pay 100% of the housing costs. Motion was made by Councilmember Demerson, seconded by Councilmember Nair, that the following captioned resolution be passed:

RESOLUTION NO. 01-31-17-3

A RESOLUTION BY THE CITY OF AMARILLO, TEXAS, DECLARING SUPPORT FOR SH AMARILLO GEM LAKE, LP, A DEVELOPMENT FOR AFFORDABLE RENTAL PROPERTY LOCATED AT +/-2.00 ACRES NEAR THE SOUTHEAST CORNER OF AMARILLO BOULEVARD AND GEM LAKE ROAD; AND PROVIDING AN EFFECTIVE DATE.

Voting AYE were Mayor Harpole, Councilmembers Demerson, Blake, Burkett and Nair; Voting NO were none; the motion carried by a 5:0 vote of the Council.

ITEM 8: Mayor Harpole presented a resolution calling the regular municipal election to be held on May 6, 2017. The election will be for the offices of Mayor, Councilmember Place 1, Councilmember Place 2, Councilmember Place 3, and Councilmember Place 4. Motion was made by Councilmember Nair, seconded by Councilmember Blake, that the following captioned resolution be passed:

RESOLUTION NO. 01-31-17-4

A RESOLUTION OF THE AMARILLO CITY COUNCIL: ORDERING THE REGULAR MUNICIPAL ELECTION OF THE CITY OF AMARILLO, TEXAS TO BE CONDUCTED ON MAY 6, 2017 IN THE CITY OF AMARILLO, TEXAS; AS A JOINT ELECTION WITH ONE OR MORE OTHER ENTITIES; DESIGNATING POLLING PLACES AND VOTE CENTERS; DESIGNATING JUNE 10, 2017 AS THE RUN-OFF ELECTION DATE; AND PROVIDING FOR THE CONDUCT OF SUCH ELECTION, EARLY VOTING, PAYMENT OF ELECTION EXPENSES, PROVIDING FOR OTHER ADMINISTRATIVE CLAUSES.

Voting AYE were Mayor Harpole, Councilmembers Demerson, Blake, Burkett and Nair; Voting NO were none; the motion carried by a 5:0 vote of the Council.

ITEM 9: Mayor Harpole advised that appointments are needed for certain boards and commissions. Motion was made by Councilmember Nair to appoint Jared Miller, City Manager to replace Terry Childers on the Amarillo MPO Policy Committee, seconded by Councilmember Burkett.

Voting AYE were Mayor Harpole, Councilmembers Demerson, Blake, Burkett and Nair; voting NO were none; the motion carried by a 5:0 vote of the Council.

Motion was made by Councilmember Burkett to appoint Thomas Warren, III to replace Maury Roman Jordan on the Library Advisory Board, seconded by Councilmember Blake.

Voting AYE were Mayor Harpole, Councilmembers Demerson, Blake, Burkett and Nair; voting NO were none; the motion carried by a 5:0 vote of the Council.

Motion was made by Councilmember Blake to appoint Jason Boyett to replace Linda Pitner on the Board of Review – Landmarks and Historic Districts, seconded by Councilmember Demerson.

Voting AYE were Mayor Harpole, Councilmembers Demerson, Blake, Burkett and Nair; voting NO were none; the motion carried by a 5:0 vote of the Council.

Motion was made by Councilmember Burkett to reappoint Jeff Bryant to the Construction Advisory and Appeals Board, seconded by Councilmember Demerson.

Voting AYE were Mayor Harpole, Councilmembers Demerson, Blake, Burkett and Nair; voting NO were none; the motion carried by a 5:0 vote of the Council.

Motion was made by Councilmember Nair to reappoint Richard Constancio to the Construction Advisory and Appeals Board, seconded by Councilmember Burkett.

Voting AYE were Mayor Harpole, Councilmembers Demerson, Blake, Burkett and Nair; voting NO were none; the motion carried by a 5:0 vote of the Council.

Motion was made by Councilmember Nair to reappoint Smith Ellis on the Amarillo Hospital District Board of Managers, seconded by Councilmember Burkett.

Voting AYE were Mayor Harpole, Councilmembers Demerson, Blake, Burkett and Nair; voting NO were none; the motion carried by a 5:0 vote of the Council.

Motion was made by Councilmember Burkett to appoint Mendi Lu Seymour Perementer to replace Mark Logsdon on the Amarillo Hospital District Board of Managers, seconded by Councilmember Nair.

Voting AYE were Mayor Harpole, Councilmembers Demerson, Blake, Burkett and Nair; voting NO were none; the motion carried by a 5:0 vote of the Council.

Motion was made by Councilmember Nair to appoint Williams Biggs, MD to replace Chuck Speed on the Amarillo Hospital District Board of Managers, seconded by Councilmember Blake.

Voting AYE were Mayor Harpole, Councilmembers Demerson, Blake, Burkett and Nair; voting NO were none; the motion carried by a 5:0 vote of the Council.

Motion was made by Councilmember Blake to appoint: Charlene Cole, Amarillo Senior Citizens Association; Tim Williams, Hilltop Senior Center; Liz Rascon Alaniz, Wesley Community Center; Melissa Carter, Panhandle Area Agency Aging; Judy Day, Mary E. Bivins Foundation; Clay Stribling, Amarillo Area Foundation; Steve Dalrymple, Baptist Community Services; Mary Coyne, United Way; Jelanie Workman, Senior Ambassadors Coalition; Toni Gray, Amarillo College; and Terry Price, City of Amarillo, Parks Board to

the 21st Century Senior Services Development Advisory Board, seconded by Councilmember Burkett.

Voting AYE were Mayor Harpole, Councilmembers Demerson, Blake, Burkett and Nair; voting NO were none; the motion carried by a 5:0 vote of the Council.

Motion was made by Councilmember Burkett to appoint Bob Goodrich to the 21st Century Senior Services Development Advisory Board, seconded by Councilmember Nair.

Voting AYE were Councilmembers Demerson, Blake, Burkett and Nair; voting NO was Mayor Harpole; the motion carried by a 4:1 vote of the Council.

Motion was made by Councilmember Burkett to appoint Christine Bell to the 21st Century Senior Services Development Advisory Board, seconded by Councilmember Demerson.

Voting AYE were Mayor Harpole, Councilmembers Demerson, Blake, Burkett and Nair; voting NO were none; the motion carried by a 5:0 vote of the Council.

Motion was made by Councilmember Nair to appoint Steve Hoyl to the 21st Century Senior Services Development Advisory Board, seconded by Councilmember Blake.

Voting AYE were Mayor Harpole, Councilmembers Demerson, Blake and Nair; voting NO was Councilmember Burkett; the motion carried by a 4:1 vote of the Council.

Motion was made by Councilmember Demerson to appoint Shirley Heard to the 21st Century Senior Services Development Advisory Board, seconded by Councilmember Burkett.

Voting AYE were Mayor Harpole, Councilmembers Demerson, Blake, Burkett and Nair; voting NO were none; the motion carried by a 5:0 vote of the Council.

Motion was made by Councilmember Demerson to appoint Mariah Strong-Woods to replace Lo Van Pham on the Community Development Advisory Committee, seconded by Councilmember Burkett.

Voting AYE were Mayor Harpole, Councilmembers Demerson, Blake, Burkett and Nair; voting NO were none; the motion carried by a 5:0 vote of the Council.

Motion was made by Councilmember Burkett to reappoint Gilbert Guzman to the Community Development Advisory Committee, seconded by Councilmember Demerson.

Voting AYE were Mayor Harpole, Councilmembers Demerson, Blake, Burkett and Nair; voting NO were none; the motion carried by a 5:0 vote of the Council.

ITEM 10: Mayor Harpole presented the consent agenda and asked if any item should be removed for discussion or separate consideration. Councilmember Nair asked for clarification on Item 10A. Motion was made by Councilmember Nair to approval of Items 10B, C, and D, seconded by Councilmember Burkett.

Voting AYE were Mayor Harpole, Councilmembers Demerson, Blake, Burkett and Nair; voting NO were none; the motion carried by a 5:0 vote of the Council.

Trent Davis, Purchasing Agent, explained the purchasing bidding policies and procedures. He stated there are 98 registered vendors for trucks. The vendors were mailed letters and 34 vendors downloaded the bid. The City received 14 bids from 5 bidders. Motion was made by Councilmember Nair to approve Item 10A, seconded by Councilmember Blake.

A. Purchase – Heavy Trucks:

Award to low bidders meeting specifications as follows:

Summit Truck Center 119856 – Lines 1,2,3,5,6,9	\$611,444.00
Premier Truck Group 445261 – Lines 4,8	\$978,518.00
Bruckner Truck Sales, Inc. 458789 – Line 7	\$222,838.00
Associated Supply Co. 116139 – Line 10	\$49,975.00
Total Award	\$1,862,775.00

This item is the scheduled replacement of heavy trucks, and trailers that have reached or exceeded usable life and additional equipment approved in the 2016-2017 budget. Funding for this award is available in the approved FY 2016-2017 Fleet Services Rolling Stock Budget.

- B. Approval – Water Tower Lease Agreement:
This item authorizes a lease renewal between AMA Communications, LLC and the City of Amarillo. The lease site is located at Southwest 58th and Western Street (also known as the 58th Water Tower). The initial term shall be for five (5) years.
- C. Approval – Authorize Two Year Extension of Ambulance Service Permit Granted to American Medical Response, Inc. (AMR):
This item extends for two years the ambulance permit granted to AMR to operate an ambulance service within the corporate limits of Amarillo beginning January 1, 2018 and expiring two-years from the date of commencement.
- D. Approval – American Medical Response, Inc. Extraordinary Rate Increase:
This item approves a new rate schedule for the ambulance service provider permit. The extraordinary increase only applies to transport rates and is intended to cover AMR's portion of increased operating costs at the Amarillo Emergency Communications Center. All other rates will be increased in accordance with the permit, based on consumer price index.

Voting AYE were Mayor Harpole, Councilmembers Blake, Demerson, Burkett and Nair; voting NO were none; the motion carried by a 5:0 vote of the Council.

Mayor Harpole announced that this is the end of the regular agenda, but this time is reserved to hear from any citizen concerning matters pertaining to City policies, programs or services not on today's agenda. The public forum is set under the Open Meetings Act and that during the public forum the City Council can respond with a statement of fact, a statement of City policy or decide whether to place an item on a future agenda.

Jim Lowder, 6723 Emerald Court, announced he was running for Mayor. Edie Mosa (sp), 1613 Bowie Street, requested protection for the migrants and refugees in Amarillo. Gus Cory, 2804 South Bonham Street, stated Amarillo has one of the largest refugee populations in the country which adds to its diversity. Mark Gold, 517 Southwest 7th Avenue, commented on Councilmember Burkett's comments on social media and the aggressive dialogue coming from the Councilmember. Kathleen Fairweather, 5306 South Fannin Street, stated there was a need for a policy on external communication for city employees. Virginia Trice Williams, 1504 Bowie Street, stated it has nearly been a year since the ad hoc committee was formed and there is still not a low-barrier shelter for the homeless. Councilmember Burkett asked Mr. Cowell to check into the costs for maintaining a low-barrier shelter. Mr. Cowell stated he will present Council with a written report.

James Schenck, 6216 Gainsborough Street, stated the public forum for citizens was critical. Mayor Harpole asked for a future discussion on public forum. Melody Malouf, 7911 Fenley Drive, stated she was grateful some of bonds passed. She inquired about street maintenance in Puckett West and the need to have loose rocks swept. Mayor Harpole requested a rolling patrol to look at all the streets. Mr. Cowell stated they could focus on the recent sealcoated streets. Kit Rudd, 6850 Grande, stated he was working on a work program for the homeless and requested support. Jesse Pfrimmer, 5723 South Milam Street, inquired about loose rocks on the sidewalk at 58th and Washington Street. Alexa Roberts, 1924 South Seminole Street, stated Amarillo's community is comprised of many cultures, and the boards and commissions should represent the best of Amarillo. There were no further comments.

Mayor Harpole advised that the meeting was adjourned.

ATTEST:

Frances Hibbs, City Secretary

Paul Harpole, Mayor

Amarillo City Council Agenda Transmittal Memo



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Meeting Date	February 7, 2017	Council Priority	Best Practices and Infrastructure
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Department	City Manager's Office
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Agenda Caption

Public Hearing and First Reading of an Ordinance Adopting the Amarillo Community Investment Program (CIP) FY16/17-FY20-21

This item is a public hearing and first reading of an ordinance adopting the City's CIP which will guide capital investment decisions for the next five years

Agenda Item Summary

This item considers an Ordinance adopting the City's 5-year CIP which will guide capital investments over the next five years including allocation of proceeds from debt issued based on authorization by the voters in the November 2016 election.

The requested action follows more than one year of community workshops, multimedia outreach, several Council workshops and presentations and an election on bond propositions.

Requested Action

Conduct Public Hearing and approve the Ordinance adopting the CIP

Funding Summary

See the CIP document and the approved FY16/17 annual budget

Community Engagement Summary

Extensive community outreach, workshops, multi-media presentations, Council workshops, and an election.

City Manager's Recommendation

Recommend approval of the proposed Ordinance

1/31/17

ORDINANCE NO. 76.53

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AMARILLO, TEXAS, APPROVING AND ADOPTING THE FIVE-YEAR COMMUNITY INVESTMENT PROGRAM FOR FY 2017-2021; AND MAKING CERTAIN FINDINGS; PROVIDING REPEALER; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, City Council of the City of Amarillo, Texas, has directed the City staff to prepare and present a statement of capital projects planned for the next succeeding five (5) fiscal years, with estimates of their cost; and

WHEREAS, the Interim City Manager has presented in detail to the City Council a proposed Community Investment Program (CIP) for Fiscal Years 2017 through 2021: and

WHEREAS, the City Council has considered the input of the public and the recommendations of its staff and hereby determines it to be in the public interest to adopt a five-year Community Investment Program for Fiscal Years 2017 through 2021 to service the public health, safety and general welfare of the citizens; and

WHEREAS, a copy of the Community Investment Program for Fiscal Years 2017 through 2021 has been made available for public review and the City Council desires to adopt the Program; and

WHEREAS, the FY 2017-2021 Community Investment Program provides a general framework to guide project planning and financing over a five-year period; and

WHEREAS, the FY 2017-2021 Community Investment Program is based on general priorities and available financing as can be anticipated at the present time; and

WHEREAS, it is the intention of the City Council that the Community Investment Program will be updated annually and include five years of planned and affordable projects while considering projects that have been completed in the prior fiscal year.

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

SECTION 1. The findings and recitations set out in the preamble to this Ordinance are found to be true and correct and they are hereby adopted by the City Council and made a part hereof for all purposes.

SECTION 2. The certain compilation identified as the Proposed Community Investment Program for Fiscal Years 2017 through 2021, a copy of which is attached hereto, is hereby incorporated in full by this reference and is hereby adopted as the five-year Community Investment Program for the City of Amarillo, Texas.

1/31/17

SECTION 3. The Community Investment Program will be updated each year to recognize changes in the Program as the result of completed projects, changes in project cost and current financing capability of the City.

SECTION 4. The first year of the Community Investment Program will be adopted each year as the Community budget for the current fiscal year through the annual budget ordinance.

SECTION 5. Repealer. All Ordinances or parts thereof in conflict herewith are repealed to the extent of such conflict only.

SECTION 6. Effective Date. This ordinance shall become effective on and after its passage.

INTRODUCED AND PASSED by the City Council of the City of Amarillo, Texas, on First Reading this the 7th day of February 2017; and **PASSED** on Second and Final Reading the 14th day of February 2017.

Paul Harpole, Mayor

ATTEST:

Frances Hibbs, City Secretary

APPROVED AS TO FORM:

William M. McKamie, City Attorney



Amarillo City Council Agenda Transmittal Memo



Meeting Date	2/7/2017	Council Priority	N/A
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Department	Finance
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Agenda Caption

Ordinance – Amendment to the City of Amarillo 2015/2016 Budget, the Colonies Public Improvement District (PID) 2015/2016 Budget, and the Point West PID 2015/2016 Budget

Agenda Item Summary

This is the first reading of an ordinance to amend the City of Amarillo 2015/2016 Budget, specifically the Compensated Absences 2015/2016 budget. This ordinance also amends the Colonies PID 2015/2016 Budget and the Point West PID 2015/2016 Budget.

The Colonies PID Board and Point West PID Board will be meeting to recommend approval of their respective budget amendments before the second reading of this ordinance on February 14, 2017.

Requested Action

Approval of the ordinance amending the Compensated Absences Fund 2015/2016 budget, the Colonies PID 2015/2016 Budget, and the Point West PID 2015/2016 Budget.

Funding Summary

N/A

Community Engagement Summary

N/A

City Manager Recommendation

Recommend approval of this item.

01/31/17

ORDINANCE NO. 7654

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AMARILLO, ADOPTING THE BUDGET AMENDMENTS PERTAINING TO THE FISCAL YEAR 2015-2016 BUDGET; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, City ordinance requires City Council to approve a budget amendment and upon approval such amendment shall become an attachment to the original budget; and

WHEREAS, a budget amendment has been prepared for certain appropriations and expenditures in the 2015-2016 budget and submitted to the City Council for approval and a true and correct copy is attached hereto as Exhibit "A".

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

SECTION 1. Pursuant to City ordinance, a budget amendment attached as Exhibit "A" is hereby authorized and approved for the fiscal year 2015-2016.

SECTION 2. That this ordinance shall be effective on and after its adoption;

INTRODUCED AND PASSED by the City Council of the City of Amarillo, Texas, on First Reading the _____ day of February 2017; and PASSED on Second and Final Reading the _____ day of February 2017.

Paul Harpole, Mayor

ATTEST:

Frances Hibbs, City Secretary

APPROVED AS TO FORM:

William M. McKamie, City Attorney

EXHIBIT "A"

1. **Compensated Absences Fund–**
Revenue Budget, Account 31100.37110 Interest Income = \$60,000 reduction
Expenditure Budget, Account 31100.41100 Salaries and Wages = \$160,000 addition
2. **The Colonies PID Expenditure Budget, Account 27300.53200 Water and Sewer= \$45,000 addition ****
3. **Point West PID Expenditure Budget, Account 27510.67600 Temporary Labor = \$10,000 addition ****

****** These amendments have been approved by the Board of Directors of the respective Public Improvement Districts

Amarillo City Council

Agenda Transmittal Memo



4

Meeting Date	January 31, 2017	Council Priority	Community Appearance
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Department	Planning Department
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Agenda Caption

Vicinity: Madison St. & NW 3rd Ave.

Rezoning of Lot 7, Block 141, Glidden & Sanborn Addition, Section 169, Block 2, AB&M Survey, Potter County, Texas, plus one-half of all bounding streets, alleys, and public ways to change from Light Industrial (I-1) to Multi Family 1 (MF-1).

Agenda Item Summary

Staff's analysis of zoning change requests begins with referring to the Comprehensive Plan's Future Land Use and Character Map in order to identify what it recommends for future land uses. Staff also considers how any zoning change would impact the Comprehensive Plan's recommended Neighborhood Unit Concept (NUC) of development whereby non-residential land uses are encouraged at section-line arterial intersections with a transition to residential uses as development occurs away and inward from the arterial intersections. Staff also considers existing zoning and development patterns in the area. This is an unusual area where the existing land uses and underlying zoning do not necessarily align.

When performing a site visit, staff noticed residential uses in all directions, despite the underlying zoning of those parcels. This requested zoning would be a logical continuation of this land use, which is already established in this area. The 1948 zoning map established this area to be an industrial zoning. Although, this area was originally platted in 1891 with a residential setting, such as an alley and 60x140 lots. This zoning will be the first residential zoning for the area and will protect the existing immediately adjacent residential uses from industrial uses. However, this zoning does not follow the Neighborhood Unit Concept due to nonexistent transitions and rezoning of a single lot.

This zoning request is currently consistent with the FLUC (Future Land Use & Character) map, established in 2010; however, the request is inconsistent with the existing zoning since the entire area is zoned Light Industrial (I-1). Analysis of this area has shown an opportunity for incorporating a "general residential" land use and character that could be beneficial to the surrounding neighborhood by protecting residents from industrial uses. . This rezoning will promote other residential dwellings in this area. The requested MF-1 zoning does encompass uses consistent with the "General Residential" land use category; that is, residential uses with a mix of housing types and varying densities.

This rezoning is also consistent with the strategies implemented by the approved North Height Neighborhood Plan, adopted in 2017, which supports the creation of high quality, well maintained, mixed income housing that accommodates families and individuals. This proposal also supports redevelopment of vacant and unused properties.

Staff also assessed this proposal in the context of the "land use guiding principles" adopted as part of

Amarillo City Council

Agenda Transmittal Memo



the North Heights Neighborhood Plan. These principles focus on the health, stability, and functionality of the North Heights neighborhood area while ensuring consistency in decision making.

- Determine that the decision will not create an arbitrary development pattern.
- Plan for an adequate and diverse supply of housing for all income levels.
- Minimize negative effects between incompatible land uses and ensure adequate transitions.
- Distinguish suitable areas for public uses.
- Discourage intense uses within or adjacent to residential areas.
- Diversify the types of commercial activity.
- Limit development in floodplains and environmentally sensitive areas.
- Consider public safety as it relates to future developments.
- Protect and promote areas of historical and cultural significance.
- Avoid creating undesirable precedents.
- Promote expansion of the economic base to create job opportunities.
- Ensure consistency of land use decisions on similar properties.
- Keep infrastructure in mind when making land use decisions.
- Advance development that serves the needs of a diverse population.
- Promote redevelopment and infill that meets community needs and is complimentary to the neighborhood.
- Enhance neighborhood identity and investment where possible.
- Make decisions that result in the highest level of service to the neighborhood possible.
- Maintain a safe and efficient street network while improving multi-modal transportation options by increasing bicycle and pedestrian connections to key destinations within and around the neighborhood.

This being said, the request may not follow strictly the Neighborhood Unit Concept, but it does follow other elements of the Comprehensive Plan, justifying a recommendation of approval.

Requested Action

The applicant is requesting the zoning of a 0.19 acre tract of land, previously zoned Light Industrial (I-1), to change to Multi Family (MF-1), in order to develop the land with a duplex.

Funding Summary

N/A

Community Engagement Summary

The item was distributed to all applicable internal and external entities. Notices have been sent out to 13 property owners within 200 feet regarding this proposed rezoning. At the time of this writing, the Planning Department has received no comments regarding this request, either in favor of or in opposition to the request.

Amarillo City Council

Agenda Transmittal Memo



The item was recommended for approval by 7:0 vote of the Planning and Zoning Commission at its January 23, 2017 public meeting.

City Manager Recommendation

Planning Staff has reviewed the associated ordinance and exhibit and recommends the City Council approve the item as submitted.

ORDINANCE NO. 7650

AN ORDINANCE OF THE CITY OF AMARILLO, TEXAS: PROVIDING FOR SPECIFIED CHANGES IN THE OFFICIAL ZONING MAP OF THE CITY OF AMARILLO, TEXAS; PROVIDING FOR CHANGE OF USE DISTRICT CLASSIFICATION OF SPECIFIED PROPERTY IN THE VICINITY OF MADISON STREET & NW 3rd AVENUE, POTTER COUNTY, TEXAS; PROVIDING A SAVINGS CLAUSE; PROVIDING A REPEALER CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Planning and Zoning Commission has held public hearings on proposed zoning changes on the property hereinafter described and has filed its final recommendation and report on such proposed zoning changes with the City Council; and,

WHEREAS, the City Council has considered the final recommendation and report of the Planning and Zoning Commission and has held public hearings on such proposed zoning changes, all as required by law; now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AMARILLO:

SECTION 1. The zoning map of the City of Amarillo adopted by Section 4-10 of the Amarillo Municipal Code and on file in the office of the Planning Director is hereby amended to reflect the following zoning use changes:

Rezoning of Lot 7, Block 141, Glidden & Sanborn Addition, Section 169, Block 2, AB&M Survey, Potter County, Texas, plus one-half of all bounding streets, alleys, and public ways to change from Light Industrial (I-1) to Multi Family 1 (MF-1).

SECTION 2. All ordinances and resolutions or parts thereof that conflict with this ordinance are hereby repealed, to the extent of such conflict.

SECTION 3. In the event this ordinance or any part hereof is found to be invalid, such invalidity shall not affect the remaining portions of the ordinance, and such remaining portions shall continue to be in full force and effect. The Director of Planning is authorized to make corrections and minor changes to the site plan or development documents to the extent that such does not materially alter the nature, scope, or intent of the approval granted by this ordinance.

SECTION 4. This ordinance shall become effective from and after its date of final passage.

INTRODUCED AND PASSED by the City Council of the City of Amarillo, Texas, on First Reading on this the ____ day of January, 2017 and PASSED on Second and Final Reading on this the _____ day of February, 2017.

Paul Harpole, Mayor

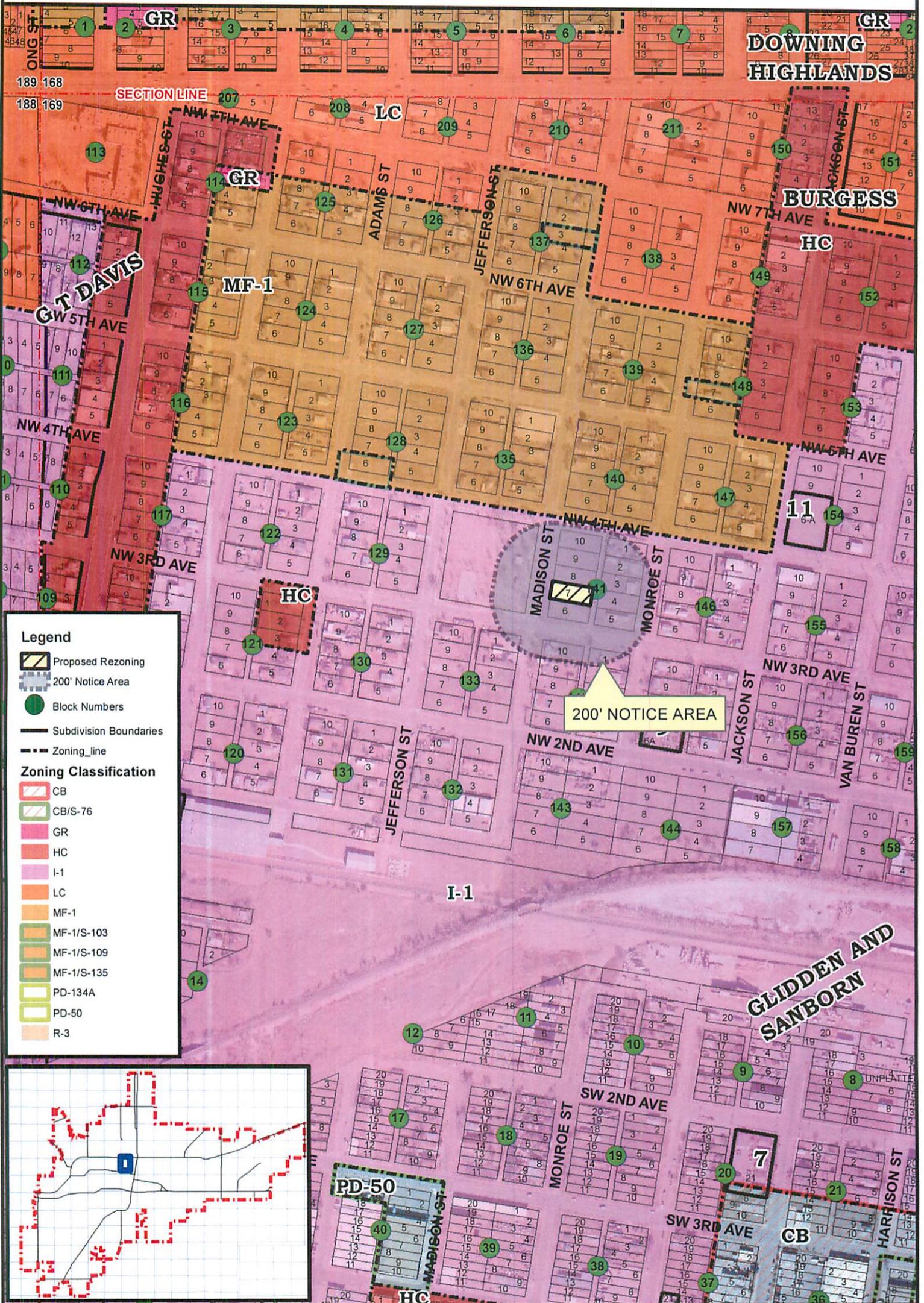
ATTEST:

Frances Hibbs, City Secretary

APPROVED AS TO FORM:

William M. McKamie, City Attorney

REZONING FROM I-1 TO MF-1



CITY OF AMARILLO PLANNING DEPARTMENT

Scale: 1" = 400'
Date: 1-13-17
Case No: Z-17-05



Z-17-05 Rezoning of Lot 7, Block 141, Glidden & Sanborn Addition, Section 169, Block 2, AB&M Survey, Potter County, Texas, plus one-half of all bounding streets, alleys, and public ways to change from Light Industrial (I-1) to Multi Family 1 (MF-1).

Applicant: Collins Family Properties

Vicinity: Madison St. & NW 3rd Ave

AP: N-11

Amarillo City Council Agenda Transmittal Memo



65

Meeting Date	January 31, 2017	Council Priority	Community Appearance
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Department	Planning Department
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Agenda Caption

Vicinity: SE 6th Ave. and S. Dallas St.

Rezoning of Lot 5, Block 8, Fairview Townsite Unit No. 1, Section 123, Block 2, AB&M Survey, Potter County, Texas, plus one-half of all bounding streets, alleys, and public ways to change from Residential District 3 to Residential District 3 with a Specific Use Permit for the placement of a Type B Manufactured Home.

Agenda Item Summary

Section 4-10-87 (Manufactured Home Standards) of the City's Zoning Ordinance only allows placement of a Type B Manufactured Home in Residential District 3 (R-3) Districts with the approval of a Specific Use Permit (SUP) [Zoning Ordinance 4-10-87 (1) (a)].

Section 4-10-83 (8b) defines a Type B manufactured home as "a manufactured home meeting the definition of "manufactured home (Type A) – No older than from 1976" in which was manufactured six (6) years or less prior to the year of installation and shall meet the site requirements set forth in Section 4-10-87 for manufactured home (Type B)."

Also in 4-10-87 (1) (a) it states that for a Type C manufactured home (2017 and never been used) that it must be a double wide trailer with a minimum width of 28 feet to be allowed by right in the zoning district R-3, but this manufactured home for consideration is 16 ft wide, therefore triggering the need for a specific use permit. That would classify it now as a Type B manufactured home. For a Type B the minimum width is 15 feet wide.

When analyzing an SUP request, staff observes the surrounding area to see what impacts the manufactured home could have on the overall character of the neighborhood. Staff considers the manufactured home's setbacks, existing trees and fences within the front-yard area, and other existing elements that may disrupt the streetscape character.

In surveying the surrounding area, the neighboring lot to 609 South Dallas Street was vacant to the north and single family residential homes were nearby. There are two SUP to the north and south of this property along South Dallas Street. The first is SUP-161 (600 S Dallas St.) which was approved in 2011 for the use of a Type B manufactured home. The second is SUP-171 (617 S Dallas St.) which was approved in 2013 for the use of a Type B manufactured home. A third SUP (SUP-179) was located over on South Spring Street, one street over from South Dallas Street, with a Type B manufactured home at 621 S Spring Street that was approved in 2016.

This zoning request is not in conflict with the adopted 2010 Comprehensive Future Land Use and

Amarillo City Council

Agenda Transmittal Memo



Character Map, which indicates general residential land use for this area, and all other zoning regulations will follow the Residential District 3 (R-3) zoning regulations that already apply to this property. Therefore, staff views this zoning request as appropriate due to the lack of disruption to the existing streetscape character.

Requested Action

The applicant is requesting a change in zoning from Residential District 3 (R-3) to R-3 with an SUP in order to place a manufactured home on the property at 609 South Dallas Street. The applicant wants to place a 16' x 72' x 13' (single-wide) 2017 manufactured home in the front yard.

Funding Summary

N/A

Community Engagement Summary

The item was distributed to all applicable internal and external entities. Notices have been sent out to 20 property owners within 200 feet regarding this proposed rezoning. At the time of this writing, the Planning Department has received no comments regarding this request, either in favor of or in opposition to the request.

The item was recommended for approval by 7:0 vote of the Planning and Zoning Commission at its January 23, 2017 public meeting.

City Manager Recommendation

Planning Staff has reviewed the associated ordinance and exhibit and recommends the City Council approve the item as submitted.

ORDINANCE NO. 7051

AN ORDINANCE OF THE CITY OF AMARILLO, TEXAS: PROVIDING FOR SPECIFIED CHANGES IN THE OFFICIAL ZONING MAP OF THE CITY OF AMARILLO, TEXAS; PROVIDING FOR CHANGE OF USE DISTRICT CLASSIFICATION OF SPECIFIED PROPERTY IN THE VICINITY OF SOUTHEAST SIXTH AVENUE AND SOUTH DALLAS STREET, POTTER COUNTY, TEXAS; PROVIDING A SAVINGS CLAUSE; PROVIDING A REPEALER CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Planning and Zoning Commission has held public hearings on proposed zoning changes on the property hereinafter described and has filed its final recommendation and report on such proposed zoning changes with the City Council; and,

WHEREAS, the City Council has considered the final recommendation and report of the Planning and Zoning Commission and has held public hearings on such proposed zoning changes, all as required by law; now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AMARILLO:

SECTION 1. The zoning map of the City of Amarillo adopted by Section 4-10 of the Amarillo Municipal Code and on file in the office of the Planning Director is hereby amended to reflect the following zoning use changes:

Rezoning of Lot 5, Block 8, Fairview Townsite Unit No. 1, Section 123, Block 2, AB&M Survey, Potter County, Texas, plus one-half of all bounding streets, alleys, and public ways to change from Residential District 3 to Residential District 3 with a Specific Use Permit (SUP-188) for the placement of a Type B Manufactured Home.

SECTION 2. All ordinances and resolutions or parts thereof that conflict with this ordinance are hereby repealed, to the extent of such conflict.

SECTION 3. In the event this ordinance or any part hereof is found to be invalid, such invalidity shall not affect the remaining portions of the ordinance, and such remaining portions shall continue to be in full force and effect. The Director of Planning is authorized to make corrections and minor changes to the site plan or development documents to the extent that such does not materially alter the nature, scope, or intent of the approval granted by this ordinance.

SECTION 4. This ordinance shall become effective from and after its date of final passage.

INTRODUCED AND PASSED by the City Council of the City of Amarillo, Texas, on First Reading on this the ____ day of January, 2017 and PASSED on Second and Final Reading on this the _____ day of February, 2017.

Paul Harpole, Mayor

ATTEST:

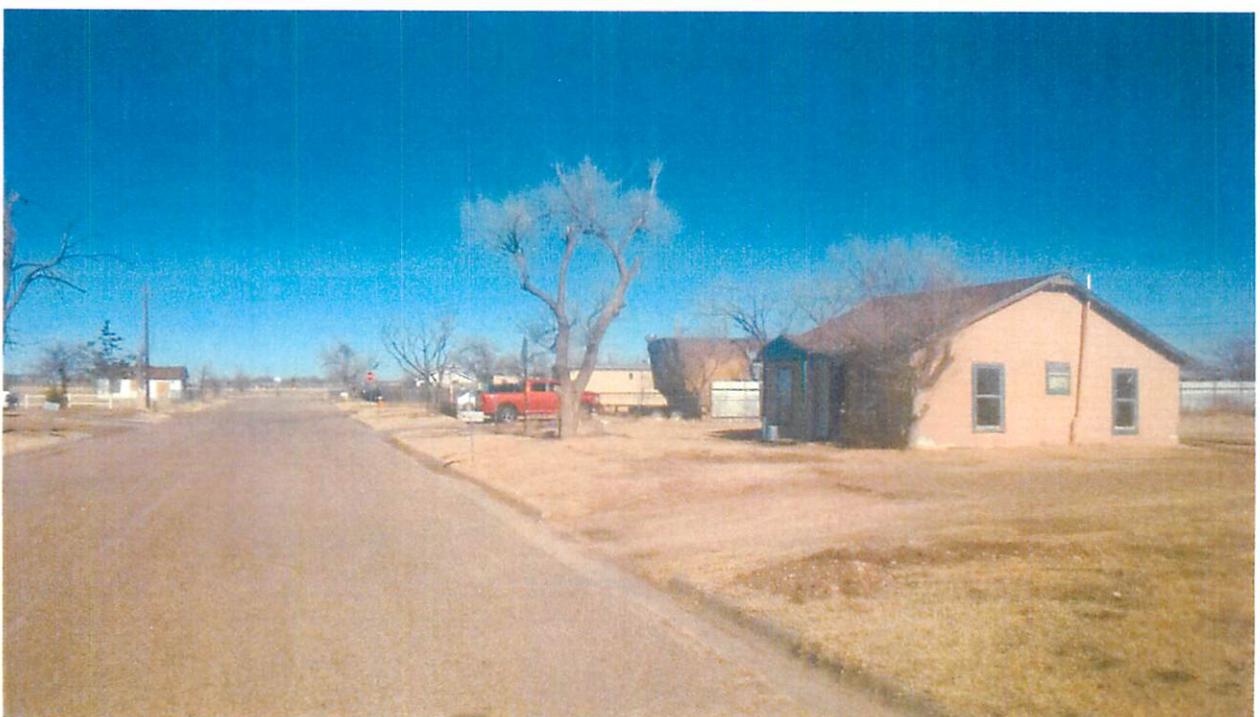
Frances Hibbs, City Secretary

APPROVED AS TO FORM:

William M. McKamie, City Attorney



Looking east from South Dallas Street at the property for consideration.



Looking north up South Dallas Street from the property for consideration.



Looking west from South Dallas Street across from the property for consideration.



Looking south down South Dallas Street from the property of consideration (SUP-171 is in the background).



Located north of the property for consideration on South Dallas Street, SUP-161 (Approved 2011).

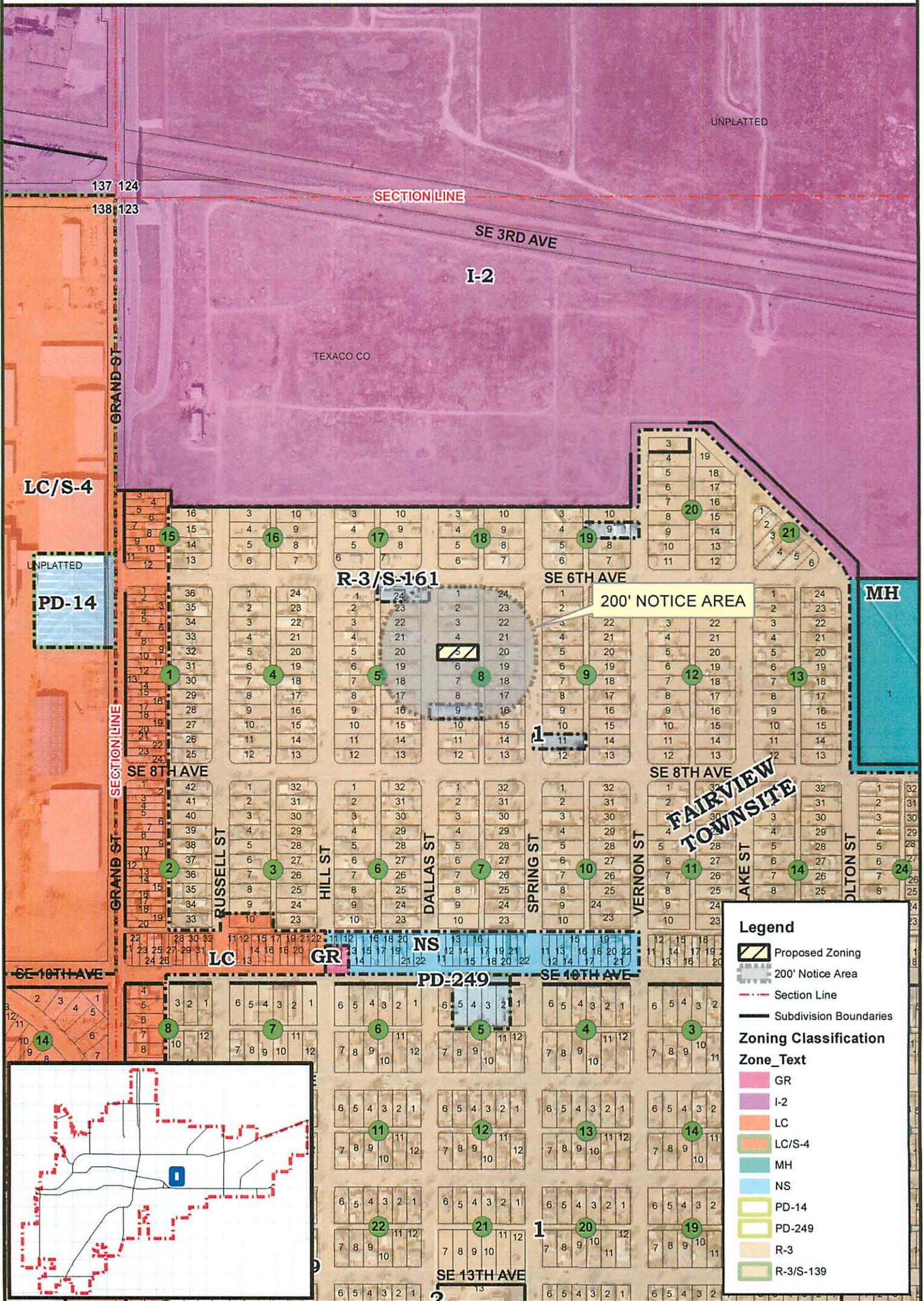


Located south of the property for consideration on South Dallas Street, SUP-171 (Approved 2013).



Located one street over east on South Spring Street from the property of consideration, SUP-179 (Approved in 2016).

REZONING FROM R-3 TO R-3 W/ SUP



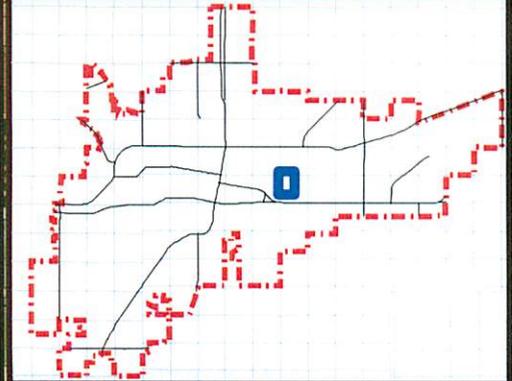
Legend

- Proposed Zoning
- 200' Notice Area
- Section Line
- Subdivision Boundaries

Zoning Classification

Zone_Text

- GR
- I-2
- LC
- LC/S-4
- MH
- NS
- PD-14
- PD-249
- R-3
- R-3/S-139



CITY OF AMARILLO PLANNING DEPARTMENT

Scale: 1" = 400'
Date: 12-13-16
Case No: Z-17-01



Z-17-01 Rezoning of Lot 5, Block 8, Fairview Townsite Unit No. 1, Section 123, Block 2, AB&M Survey, Potter County, Texas, plus one-half of all bounding streets, alleys, and public ways to change from Residential District 3 to Residential District 3 with a Specific Use Permit for the placement of a Type A Manufactured Home.

Applicant: Jaquelin Flores

Vicinity: SE 6th Ave & Dallas St

AP: Q-12

Amarillo City Council Agenda Transmittal Memo



4

Meeting Date	January 31, 2017	Council Priority	Community Appearance
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Department	Planning Department
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Agenda Caption

Vicinity: Interstate 40 & South Houston Street

Consideration and possible action on an ordinance rezoning of Lots 5-8, Block 494, Mirror Addition Unit No. 1, Section 155, Block 2, AB&M Survey, Potter County, Texas, plus one-half of all bounding streets, alleys, and public ways to change from Residential District 3 (R-3) to Heavy Commercial District (HC).

Agenda Item Summary

The applicant is requesting the zoning of 0.3 acre tract of land, previously zoned Residential District 3 (R-3), to change to Heavy Commercial District (HC), in order to develop with commercial use in the future.

This tract of land is located directly adjacent to Interstate 40 and approximately 2 blocks east of the railroad station.

During the site visit, Planning Department staff noticed some of the following conditions in the area. North of this property, along Houston Street, are some residential uses, a school on the west side of Houston Street, and a park on the east side. Traffic through the streets within and alongside this neighborhood seemed to be at higher frequency and speed than typical residential streets. This could be from the close proximity to the interstate and Arthur Street, which is a collector road (Amarillo Urban Transportation Plan).

The 2014 City of Amarillo Zoning Ordinance also sets forth a concept for transitions between zoning districts to help ease any negative effects of having higher intensity uses next to lower intensity or residential uses. This concept is not supported by this zoning request as it would designate these lots for a commercial zoning adjacent to residential zoned lots; however, this concept is not currently followed in this area as there is not transition from the land already zoned HC to the land zoned R-3.

Also, this rezoning request is consistent with the adopted 2010 Comprehensive Future Land Use and Character Map which designates this area for a future "general commercial" land use. The Comprehensive Plan states characteristics of this use type are to be of an "auto-oriented character", which can be offset by things such as enhanced building design and landscaping. Heavy Commercial zoning next to an interstate or arterial road will require the site to meet the minimum landscaping requirements set forth in the 2014 Zoning Ordinance (4.10.248-255), further supporting the fit into a future "general commercial" land use. Heavy commercial character type is also listed under the "industrial" land use identified in the 2010 Comprehensive Plan; however, when we analyze what uses are permitted through the 2014 Zoning Ordinance in order to determine which of the two land use categories HC zoning would best fit, we notice that all but three industrial processes listed are not allowed in the HC zoning district; two of which are only allowed through the Specific Use Permit process.

Amarillo City Council

Agenda Transmittal Memo



Thus, the HC zoning district then, in this instance, displays greater affiliation with the "general commercial" land use.

Prior to the establishment of I-40 in this location, this property was zoned for dwelling uses. When the interstate was built, the zoning was not changed to reflect the changing conditions in the area. This rezoning request is consistent with the changing conditions in the area as the property is directly adjacent to the interstate.

In addition, the requested zoning would be a logical continuation of the zoning pattern established in this area as the properties to the west along the interstate and railroad are zoned HC.

Based on the above analysis, planning staff believes the requested rezoning seems appropriate.

Requested Action

Planning Staff and Planning & Zoning Commissioners have reviewed the associated rezoning and exhibit and recommend the City Council approve the item as submitted.

Funding Summary

N/A

Community Engagement Summary

The item was distributed to all applicable internal and external entities. Notices have been sent out to 10 property owners within 200 feet regarding this proposed rezoning. At the time of this writing, the Planning Department has received one call regarding this request; however, the respondent did not want to leave a comment at this time.

The item was recommended for approval by 7:0 vote of the Planning and Zoning Commission at its January 23, 2017 public meeting.

City Manager Recommendation

Planning Staff has reviewed the associated ordinance and exhibit and recommends the City Council approve the item as submitted.

ORDINANCE NO. 7452

AN ORDINANCE OF THE CITY OF AMARILLO, TEXAS: PROVIDING FOR SPECIFIED CHANGES IN THE OFFICIAL ZONING MAP OF THE CITY OF AMARILLO, TEXAS; PROVIDING FOR CHANGE OF USE DISTRICT CLASSIFICATION OF SPECIFIED PROPERTY IN THE VICINITY OF INTERSTATE 40 AND SOUTH HOUSTON STREET, POTTER COUNTY, TEXAS; PROVIDING A SAVINGS CLAUSE; PROVIDING A REPEALER CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Planning and Zoning Commission has held public hearings on proposed zoning changes on the property hereinafter described and has filed its final recommendation and report on such proposed zoning changes with the City Council; and,

WHEREAS, the City Council has considered the final recommendation and report of the Planning and Zoning Commission and has held public hearings on such proposed zoning changes, all as required by law; now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AMARILLO:

SECTION 1. The zoning map of the City of Amarillo adopted by Section 4-10 of the Amarillo Municipal Code and on file in the office of the Planning Director is hereby amended to reflect the following zoning use changes:

Rezoning of Lots 5-8, Block 494, Mirror Addition Unit No. 1, Section 155, Block 2, AB&M Survey, Potter County, Texas, plus one-half of all bounding streets, alleys, and public ways to change from Residential District 3 (R-3) to Heavy Commercial District (HC).

SECTION 2. All ordinances and resolutions or parts thereof that conflict with this ordinance are hereby repealed, to the extent of such conflict.

SECTION 3. In the event this ordinance or any part hereof is found to be invalid, such invalidity shall not affect the remaining portions of the ordinance, and such remaining portions shall continue to be in full force and effect. The Director of Planning is authorized to make corrections and minor changes to the site plan or development documents to the extent that such does not materially alter the nature, scope, or intent of the approval granted by this ordinance.

SECTION 4. This ordinance shall become effective from and after its date of final passage.

INTRODUCED AND PASSED by the City Council of the City of Amarillo, Texas, on First Reading on this the ____ day of January, 2017 and PASSED on Second and Final Reading on this the _____ day of February, 2017.

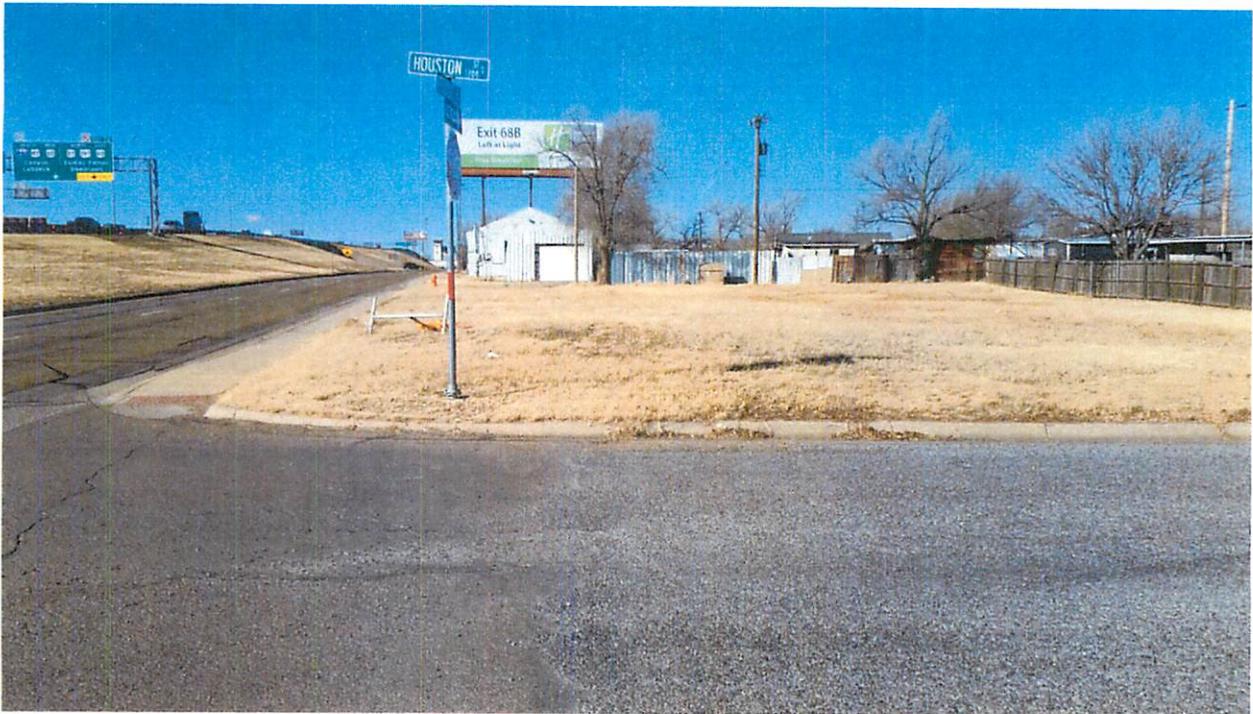
Paul Harpole, Mayor

ATTEST:

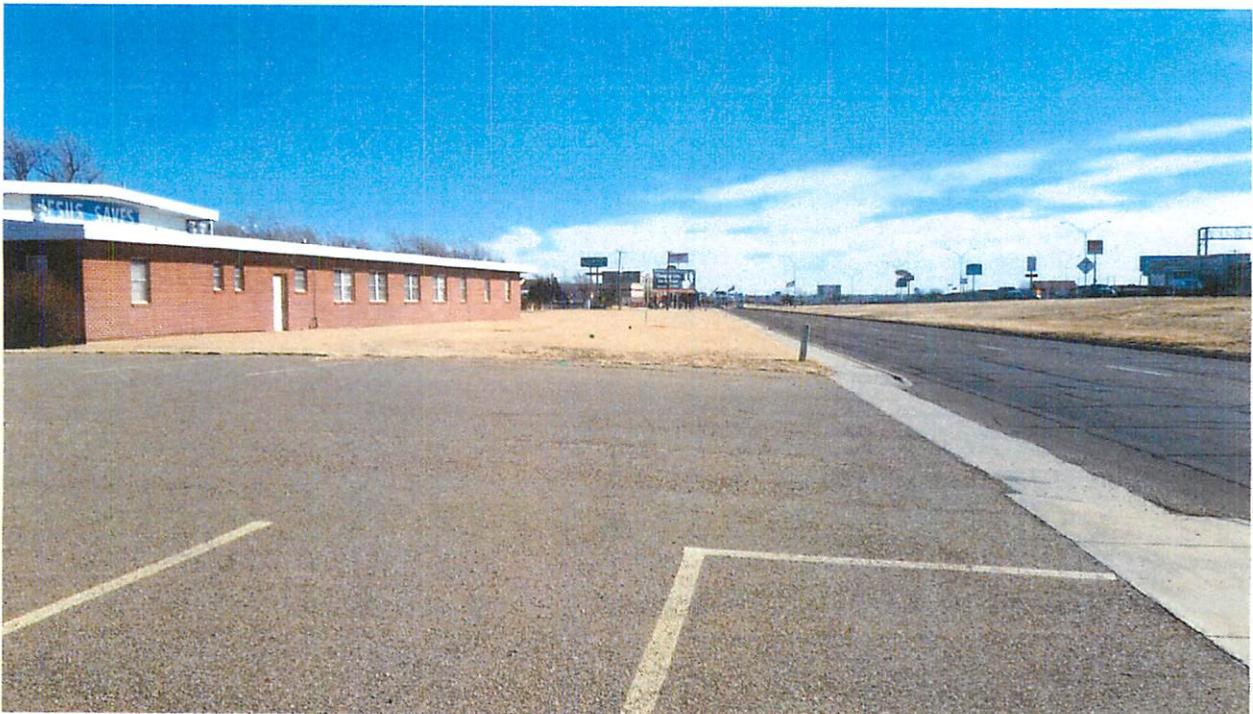
Frances Hibbs, City Secretary

APPROVED AS TO FORM:

William M. McKamie, City Attorney



Looking west from I-40 & Houston St. at subject property. Commercial use and sign on lot across alley.



Looking East from I-40 & Houston St. at church and access road.

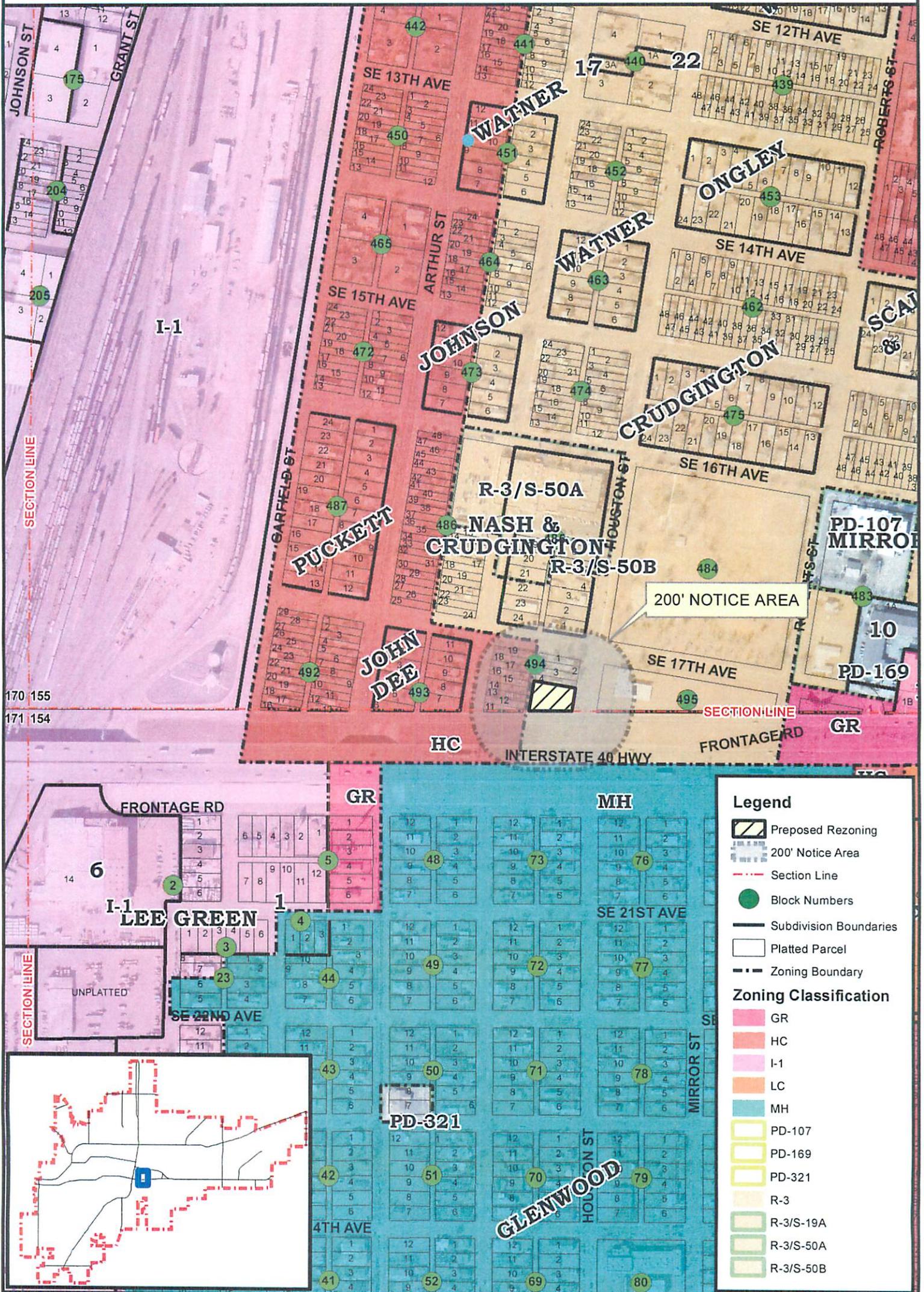


Looking North from I-40 & Houston St. at R-3 houses (left) and a park (right).



Looking Southwest from I-40 & Houston St. at adjacent Interstate 40 and access road.

REZONING FROM R-3 TO HC



CITY OF AMARILLO PLANNING DEPARTMENT

Scale: 1" = 400'
Date: 1-12-17
Case No: Z-17-04



Z-17-04 Rezoning of Lots 5-8, Block 494, Mirror Addition Unit No. 1, Section 155, Block 2, AB&M Survey, Potter County, Texas, plus one-half of all bounding streets, alleys, and public ways to change from Residential District 3 (R-3) to Heavy Commercial District (HC).

Applicant: Fred Salamy

Vicinity: IH 40 & S Houston St.

AP: O-12

A



Amarillo City Council Agenda Transmittal Memo



Meeting Date	February 7, 2017	Council Priority	Long Term Plan for Infrastructure
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Department	Street / 1420
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Agenda Caption

Purchase – B4 Aggregate (Pre-coated): Award to low bidder meeting specifications, J. Lee Milligan Inc., - \$688,187.50. This item awards a contract for purchase of Pre-coated B4 Aggregate, used during the summer for sealcoating of paved streets.

Agenda Item Summary

Pre-coated B4 Aggregate, in conjunction with Asphaltic Cement (AC-5), is used during the summer sealcoating process. Asphaltic Cement (AC-5) is applied to the street surface as a sealant, followed by the pre-coated B4 which adheres to the AC-5 forming a new driving surface. The sealcoating process is essential to extending the life of City streets.

Requested Action

Award this contract to low bidder meeting specification, J. Lee Milligan Inc., at the price of \$78.65 per cubic yard. This amount is the same as last year's price.

Funding Summary

Funding in the amount of \$700,000.00 (8,750 cy @ \$80.00/cy) for the purchase of B4 Aggregate (pre-coated) is available in the approved 2016/2017 Street Department budget. The \$688,187.50 cost is approx. 1.69% less than budgeted. No State or Federal funds will be used for the purchase of these materials.

Community Engagement Summary

B4 Aggregate (pre-coated) is used by the Street Department as part of the sealcoating process for extending the life of City streets. Pre-coated B4 Aggregate is used in conjunction with AC-5 forming a new driving surface on residential City streets. This process is essential to extending the life of City streets, as well as, improving the overall appearance of the City's paved streets.

Staff Recommendation

Street Department recommends acceptance of this bid.

Bid No. 5629 B-4 AGGREGATE PRECOATED ANNUAL CONTRACT

Opened 4:00 p.m. January 5, 2017

To be awarded as one lot		J LEE MILLIGAN INC	LA FULLER & SONS CONSTRUCTION LTD
Line 1 Aggregate Grade 4, per specifications			
8,750 ea			
Unit Price	\$78.650	\$88.100	
Extended Price	688,187.50	770,875.00	
Bid Total	688,187.50	770,875.00	
Award by Vendor	688,187.50		



Amarillo City Council Agenda Transmittal Memo



Meeting Date	February 7, 2017	Council Priority	N/A
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Department	Various City Departments
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Agenda Caption

Award –Plumbing and Mechanical Annual Contract

Award to Morrison Supply Company in an amount not to exceed \$746,290.00

Plumbing and Mechanical Annual Contract awarded on Buyboard Purchasing Cooperative Contract #501-15 & 509-16

This award is to approve a contract for the purchase of the Plumbing and Mechanical Annual Contract

Agenda Item Summary

Award of Plumbing and Mechanical Annual Contract to be used by various City Departments

Requested Action

Consider approval and award for the Plumbing and Mechanical Annual Contract.

Funding Summary

Funding for this award is available in the department’s Facilities-R&M Improvements, Park Maintenance- R&M Improvements, Ross Rogers-R&M Improvements, Commanche Trail- R&M Improvements, Osage Surface Water-R&M Improvements, Airport-R&M Building Terminal, and Hollywood Road Plant Account: 1252.68100,1861.68100,1811.68100,18.12.68100,52200.68100, 54110.68101,52270.68300

Community Engagement Summary

N/A

Staff Recommendation

City Staff is recommending approval and award of the contract.

Bid No. 5643 PLUMBING & MECHANICAL ANNUAL CONTRACT
Opened 4:00 p.m. January 4, 2017

To be awarded as one lot MORRISON SUPPLY COMPANY

Line 1 Plumbing equipment, accessorie,
per specifications

1 ea	
Unit Price	\$746,290.000
Extended Price	746,290.00

Bid Total 746,290.00

Award by Vendor 746,290.00



Amarillo City Council Agenda Transmittal Memo



Meeting Date	February 7, 2017	Council Priority	N/A
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Department	Various City Departments
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Agenda Caption

Award –HVAC Filters Annual Contract

Award to Grainger Industrial Supply in an amount not to exceed \$88,000

HVAC Filters Annual Contract awarded on Buyboard Purchasing Cooperative Contract #501-15

This award is to approve a contract for the purchase of the HVAC Filters Annual Contract

Agenda Item Summary

Award of HVAC Filters to be used by various City Departments

Requested Action

Consider approval and award for the HVAC Filters Annual Contract.

Funding Summary

Funding for this award is available in the department’s Facilities Account: 1252.68100, 54110.51801

Community Engagement Summary

N/A

Staff Recommendation

City Staff is recommending approval and award of the contract.

Bid No. 5653 HVAC FILTERS

Opened 4:00 p.m. December 21, 2016

To be awarded as one lot

GRAINGER INC

Line 1 Filters, air conditioning/furnace,
per specifications

1 ea

Unit Price \$88,000.000

Extended Price 88,000.00

Bid Total

88,000.00

Award by Vendor

88,000.00

Amarillo City Council Agenda Transmittal Memo



D

Meeting Date	February 7, 2017	Council Priority	N/A
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Department	Information Technology
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Agenda Caption

Award - Unitrends Backup Appliance:
Cima Solutions Group -- \$96,287.25

The purchase will replace a backup appliance which has been in operation since 2012 while adding additional capacity for City servers.

Agenda Item Summary

This purchase will replace an appliance that has been in operation since 2012 which has been experiencing an increased rate of hardware failures. The resulting solution would improve reliability of the City's data backups while adding significant capacity, which is needed to support increased data growth across City servers.

Requested Action

Approval of award to Cima Solutions Group in the amount of \$96,287.25.

Funding Summary

Funding is available in Information Technology account 62032.84630.

Community Engagement Summary

N/A

Staff Recommendation

Staff recommends approval of award.

Bid No. 5669 NETWORK HARDWARE DATA BACKUP APPLIANCE
Opened 4:00 p.m. JANUARY 19, 2017

To be awarded as one lot	CIMA SOLUTIONS GROUP
Line 1 Installation of computers, per specifications 1 ea Unit Price Extended Price	 \$1,895.250 1,895.25
Line 2 Storage system, Proliant, toer model UE (exapansion encl) RS-944SHDW-FREE-P, per specifications 1 ea Unit Price Extended Price	 \$0.000 -
Line 3 Support services, computer, miscellaneous, per specifications 1 ea Unit Price Extended Price	 \$94,392.000 94,392.00
Line 4 Storage system, proliant, tower model UE (Exapansion Encl) solution-cred support, per specifications 1 ea Unit Price Extended Price	 \$0.000 -
Bid Total	96,287.25
Award by Vendor	96,287.25

E



Amarillo City Council Agenda Transmittal Memo



Meeting Date	02/07/2017	Council Priority	Best Practices
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Department	Aviation
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Agenda Caption

Approve Amendment #1 to the Airline Use and Lease Agreement (AULA) between Southwest Airlines, Co. and Rick Husband Amarillo International Airport.

Agenda Item Summary

This item is Amendment #1 to the AULA between Southwest Airlines, Co. and Rick Husband Amarillo International Airport. The original agreement was approved for signature in the Amarillo City Council meeting held on September 27, 2016. Amendment #1 provides further clarification concerning a minimum space requirement subsequent to the original AULA. The changes do not negatively impact the airport but did give airline partners greater clarity to the intent of the original agreement.

Requested Action

Recommend approval of Amendment #1.

Funding Summary

This is a revenue lease agreement including Amendment #1.

Community Engagement Summary

Amendment #1 negotiations started December 12, 2016.

Staff Recommendation

Staff recommends the approval of Amendment #1 to the Airline Use and Lease Agreement (AULA) between Southwest Airlines, Co. and Rick Husband Amarillo International Airport.

**RICK HUSBAND AMARILLO INTERNATIONAL AIRPORT
AIRPORT USE AND LEASE AGREEMENT**

FIRST AMENDMENT

THIS FIRST AMENDMENT (hereinafter referred to as the "Amendment") to the AIRPORT USE AND LEASE AGREEMENT dated October 1, 2016 ("Agreement"), is entered into this ____ day of _____, 2016, by and between the **CITY OF AMARILLO, TEXAS** ("City") and, Southwest Airlines Co., a corporation organized and existing under the laws of the State of TEXAS ("Airline").

WITNESSETH:

WHEREAS, City and Airline have entered into an airport and airline Agreement at the Rick Husband Amarillo International Airport ("Airport"); and

WHEREAS, City and Airline desire to amend the terms, covenants, and conditions of that Agreement pursuant to this Amendment; and

WHEREAS, the City and Airline have the power and authority to enter into this Amendment;

NOW, THEREFORE, and in consideration of the mutual covenants, agreements, and conditions contained herein, the parties hereto agree to modify the Agreement as follows:

1. Section 1.01 Definitions. The definition of "Signatory Airline(s)" shall be replaced with the following modified definition:

"Signatory Airline(s)" or "Signatory" means those Air Transportation Companies that have executed this Agreement with the City. An Affiliate of a Signatory Airline, as defined herein, shall be treated as a Signatory Airline for the purposes of this Agreement, subject to certain restrictions and requirements as defined herein. A Signatory Airline must lease a minimum of 200 square feet of Preferential Use Space plus one, two-position ticket counter (as well as reasonable additional space, if required by the Director of Aviation).

2. Section 6.03(B) Terminal Building Rentals. The following sentence shall be added:

At any time during the Term of this Agreement, if any Air Transportation Company meets or exceeds the five percent (5%) of the Airport's total Enplaned Passengers threshold for a period of three (3) consecutive

months, it shall then be obligated to pay pursuant to the calculation of the 20% amount under (1) above for the remainder of the Term, even if it has fewer than five (5%) of the Airport's total Enplaned Passengers at the Airport subsequent to that period of time.

3. Except as specifically amended herein, the terms and conditions of this Agreement remain unchanged and in full force and effect. Terms and phrases not defined in the Amendment shall have the meaning ascribed to them in the Agreement.

IN WITNESS WHEREOF, the above parties have executed this Amendment to the Agreement this _____ day of December, 2016.

CITY

AIRLINE

By: _____

By: Bob Montgomery

Name: _____

Name: Bob Montgomery

Title: _____

Title: Vice President - Airport Affairs

F



Amarillo City Council Agenda Transmittal Memo



Meeting Date	02/07/2017	Council Priority	Best Practices
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Department	Aviation
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Agenda Caption

Approve a three year Airline Use and Lease Agreement (AULA) between American Airlines Inc., and Rick Husband Amarillo International Airport and Amendment #1 of the agreement.

Agenda Item Summary

This item is a 3 year lease agreement for the use and lease of terminal areas and landing facilities at the Rick Husband Amarillo International Airport. Landing fees and terminal rental rates are calculated each year of the agreement based on a financial model of a combination of enplanements, aircraft landed weights and airport's operating expenses allocated to airline use. There are two one year renewal options that may be exercised at the agreement of both parties. Amendment #1 provides further clarification concerning a minimum space requirement subsequent to the original AULA. The changes do not negatively impact the airport but did give airline partners greater clarity to the intent of the original agreement.

Requested Action

Recommend approval of the presented lease agreement and Amendment #1.

Funding Summary

This is a revenue lease agreement.

Community Engagement Summary

Contract negotiations started in January of 2016.

Staff Recommendation

Staff recommends the approval of the three year Airline Use and Lease Agreement (AULA) and Amendment #1 between American Airlines Inc., and Rick Husband Amarillo International Airport.

**RICK HUSBAND AMARILLO INTERNATIONAL AIRPORT
AIRPORT USE AND LEASE AGREEMENT**

BY AND BETWEEN

THE CITY OF AMARILLO

AND

AMERICAN AIRLINES GROUP, INC.

AIRPORT USE AND LEASE AGREEMENT

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**RICK HUSBAND AMARILLO INTERNATIONAL AIRPORT
AIRPORT USE AND LEASE AGREEMENT**

THIS AIRPORT USE AND LEASE AGREEMENT (hereinafter referred to as the "Agreement") is entered into this 9th day of January, 2017, by and between the CITY OF AMARILLO, TEXAS ("City") and, AMERICAN AIRLINES GROUP, INC., a corporation organized and existing under the laws of the State of Delaware ("Airline").

WITNESSETH:

WHEREAS, the Municipal Airports Act of the State of Texas authorizes municipal airports, as governmental entities, to assess charges, rentals or fees for the privilege of supplying goods, commodities, things, services or facilities at municipal airports, with due regard to the property and improvements used and the expenses of operation to the municipality; and

WHEREAS, Airline is engaged in the business of transportation of persons, property, or mail by air and desires to use certain facilities at the Rick Husband Amarillo International Airport ("Airport") and lease from City certain premises and facilities in connection with its use of the Airport; and

WHEREAS, in furtherance of its authority, City desires to lease to Airline certain facilities located at said Airport in accordance with the terms, covenants, and conditions hereinafter set forth in this Agreement; and

WHEREAS, the City and Airline have the power and authority to enter into this Agreement;

NOW, THEREFORE, and in consideration of the mutual covenants, agreements, and conditions contained herein, the parties hereto agree as follows:

ARTICLE 1 - DEFINITIONS

SECTION 1.01 DEFINITIONS

The following words and phrases, wherever used in this Agreement, shall, for the purpose of this Agreement, have the following meanings:

"Affiliate Airline" or "Affiliate" shall mean any (i) contract regional airline that operates flights under the designator code of the Signatory Airline, as designated in writing by such Signatory Airline from time to time; (ii) party that operates under essentially the same trade name, or uses essentially the same livery, as the Signatory Airline at the Airport; or (iii) party controlling, controlled by, or under common control with the Signatory Airline. Affiliate Airline shall have the rights afforded the Signatory

Airline without payment of any additional charges or premiums provided the Signatory Airline: (a) remains a Signatory to this Agreement; (b) agrees and shall be obligated to serve as a financial guarantor for all rents, fees, and charges incurred by the Affiliate Airline of the Signatory Airline and the Signatory Airline has designated the Affiliate Airline to operate on its behalf at the Airport; and (c) has executed an operating agreement with City. A Signatory Airline and any designated Affiliate Airline shall be counted as one airline for the purposes of computing any Joint Use Space charges provided the Affiliate Airline has executed an operating agreement with City; provided however, that the Signatory Airline shall be responsible for the actions and any and all charges of (including the payment of any activity fees incurred by) any such designated Affiliate Airline while such designated Affiliate Airline operates at the Airport on behalf of Signatory Airline. Airline must provide City with a listing in writing of all of Airline's designated Affiliate Airlines, and the relationship each Affiliate Airline has with Airline (i.e., Airline is a parent corporation to Affiliate Airline; Airline is in a partnership / contract with the designated Affiliate Airline, etc.). Airline shall give City reasonable advanced written notice of any change to the Affiliate designation. Airline will use commercially reasonable efforts to assist City in having its designated Affiliates execute an operating agreement with City.

"Agreement" means this Airport Use and Lease Agreement between City and Airline, as the same may be amended, modified, or altered from time to time pursuant to the terms hereof.

"Air Transportation Business" means that business operated by Airline at the Airport for the commercial transportation by air of persons, property, mail, parcels, and/or cargo.

"Air Transportation Company" means the legal entity engaged in the business of scheduled or nonscheduled commercial transportation by air of persons, property, mail, parcels, and/or cargo.

"Aircraft Arrival" means any aircraft arrival at the Airport, including, without limitation, scheduled, non-scheduled, diverted, training, ferry, testing, charter, or any other flight operated by an Air Transportation Company. Aircraft Arrivals exclude flights, which are forced to return and land at the Airport because of meteorological conditions, mechanical causes, or emergency or precautionary reasons.

"Airport" means Rick Husband Amarillo International Airport, as shown in Exhibit A, Cost Centers, attached hereto and made a part hereof, as it may be modified or developed from time to time, including all real property easements or any other interest therein as well as all improvements and appurtenances thereto, structures, buildings, fixtures, and all tangible personal property or interest in any of the foregoing, now or hereafter owned, leased, or operated by City.

"Airport Cost Centers" means the cost centers to be used in accounting for Airport revenues and expenses and for calculating and adjusting certain rentals, fees, and

charges described herein, as they now exist or may hereafter be modified, changed, or developed, as more particularly described below and depicted on Exhibit A as such Exhibit may be modified by the City from time to time:

- “Terminal Building” means the passenger terminal building and associated curbside entrance areas and adjoining landscaped areas. This cost center also includes the aircraft aprons at the Terminal Building.
- “Airfield” means that portion of the Airport providing for the landing, taking off, and taxiing of aircraft, including runways, taxiways, approach and runway protection zones, safety areas, infield areas, landing and navigational aids, and land areas required by or related to aeronautical use of the Airport.
- “Other” means those portions of the Airport not part of the Terminal Building or Airfield cost centers and generally set aside for non-aviation related commercial and industrial uses located, now or as may be located in the future, in any portion of the Airport.

“Airline Terminal Support System” means any system or service supporting Airline operations in the Terminal Building, whether proprietary or common use, including but not limited to, telecommunications, security, access control, paging, flight or baggage information display or similar systems or services.

“Bond Ordinance” means any ordinance of City regulating or authorizing the issuance of bonds, for Airport purposes, or payable from Airport revenues, as the same may from time to time be adopted, amended, or supplemented.

“Bonds” means any airport revenue bonds or any other similar or substitute financing instruments issued for Airport purposes under and pursuant to authorizing legislation.

“Capital Improvement Program” means the Airport’s program of Capital Improvements as such program may be amended from time to time at City’s discretion.

“Capital Improvement” means any single item or project costing more than one hundred thousand and 00/100 dollars (\$100,000) net of PFC revenue and grants-in-aid and having a useful life in excess of five (5) years that is acquired, purchased, or constructed by City to improve, maintain, preserve, or develop the Airport. Capital Improvements shall include, but not be limited to: (1) the acquisition of land or easements; (2) the purchase of machinery, equipment, or rolling stock; (3) the planning, engineering, design, and construction of new facilities; or (4) the performance of any extraordinary, non-recurring major maintenance or replacement of existing facilities.

“City” means the City of Amarillo, a municipal corporation organized under the laws of the State of Texas.

“Coverage” for any series of Bonds means, for any Fiscal Year, the dollar amount computed by multiplying the rate covenant percentage set forth in any Bond Ordinance adopted by City by the annual debt service requirement for such Fiscal Year.

“Director” or “Director of Aviation” means the Director of Aviation of the City’s Department of Aviation or other person properly authorized to act on behalf of Director.

“Enplaned Passengers” means all local, interline transfer, and intraline transfer passengers boarding flights of Airline, Airline’s designated Affiliate(s), or any other Air Transportation Companies using any of the Leased Premises of Airline at the Airport including revenue and non-revenue passengers but excluding Airline employees.

“Environmental Laws” means all present or future local, state or federal statutes, ordinances, rules, regulations, permits, citations, orders, directives, or consent decrees or other enforceable requirement of any federal, state or local entity, agency or body, or subdivision thereof (including specifically but without limitation, the City of Amarillo), having governmental authority, relating to:

- (1) the protection of health, safety and the indoor or outdoor environment;
- (2) the conservation, management or use of natural resources and wildlife;
- (3) the protection or use of surface water and ground water;
- (4) the management, manufacture, possession, presence, use, generation, transportation, treatment, storage, disposal, release or threatened release, abatement, removal, remediation or handling of, or exposure to any Hazardous Materials (as defined below); or
- (5) pollution (including any release or threatened release discharge or emission to air, land, surface water, or ground water);

including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §9601 et seq.), the Hazardous Material Transportation Act (49 U.S.C. §18091 et seq.), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §6901 et seq.), The Clean Water Act (33 U.S.C. §1251 et seq.), the Toxic Substances Control Act of 1976 (15 U.S.C. §2601 et seq.), the Safe Drinking Water Act (U.S.C. §300f-§300j-11 et seq.), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. §11001 et seq.), the Occupational Safety and Health Act, the Clean Air Act, 42 U.S.C. Section 7401 et seq. and any state counterpart, each as heretofore and hereafter amended or supplemented, and any analogous future or present local, state or federal statutes, rules and regulations promulgated thereunder or pursuant thereto, and any other present or future law, ordinance, rule, regulation, permit or permit condition, order, or directive regulating, relating to or imposing liability standards of conduct concerning any Hazardous Materials, or special wastes or by the federal government, any state or any political subdivision thereof, exercising executive, legislative, judicial, regulatory, or administrative functions. The reference to Hazardous Materials in the immediately preceding sentence shall not limit the application of this

paragraph to laws dealing with Hazardous Materials, it being the intention of the parties that all environmental laws dealing with activities having an impact on the environment be included within the scope of this paragraph.

“FAA” means the Federal Aviation Administration of the U.S. Department of Transportation or any agency(s) succeeding to its jurisdiction.

“Fiscal Year” means City’s fiscal year, which is the twelve-month period commencing October 1 and extending to September 30 of the following year, or such other twelve-month period as may be adopted for the operation of City or Airport.

“Hazardous Materials” means any hazardous or toxic substances, materials, or wastes, including, but not limited to, those substances, materials, and wastes listed in the U. S. Department of Transportation Hazardous Materials Table (49 CFR 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302) or as extremely hazardous substances under 40 CFR Part 355 and amendments thereto, or such substances, materials, and wastes that are or become regulated under any applicable Environmental Laws.

“Joint Use Space or Premises” means those Terminal Building areas which may be assigned to two or more Air Transportation Companies, as shown on Exhibit B, attached hereto. Such space includes baggage make-up, baggage claim, tug drives, and holdrooms.

“Leased Premises” means any areas on the Airport leased by City to Airline, whether on a Joint Use Space, Preferential Use Space, or assigned basis, as depicted on Exhibit B as attached hereto and made a part hereof.

“Maintenance and Operating Expenses” (or “M&O Expenses”) means, for any Fiscal Year, all expenses, paid or accrued, to maintain, repair, operate and administer the Airport, including, but not limited to, taxes and assessments, if any, and expenses for defending, settling, or satisfying litigation.

“Maximum Gross Landed Weight” means the maximum allowable landing weight of each aircraft type operated by Airline at the Airport as authorized by the FAA and recited in Airline’s flight manual governing that aircraft.

“Non-Signatory Airline” or “Non-Signatory” means those Air Transportation Companies operating at the Airport that are neither a Signatory Airline or an Affiliate Airline, and which Air Transportation Companies shall be subject to a premium fee on its assessed rates and charges.

“Operating Agreement” means an agreement entered into by any third party company and the City that defines the operational rights, responsibilities and liability requirements of the company at the Airport.

“Passenger Facility Charge” or “PFC” means the fees authorized by 49 USC 40117 and regulated by 14 CFR Part 158 as such statutes and regulations currently exist or as they may be amended, modified, or supplemented during the Term of this Agreement.

“Preferential Use Space or Premises” means those portions of the Terminal Building assigned to Airline, as shown on Exhibit B, attached hereto, to which Airline shall have priority over other users. Such space includes ticket counters, ticket counter queue, airline ticket offices and operations space.

“Public Space” means that space in the terminal that is not Rentable Space.

“Rentable Space” means that space made available in the Terminal Building for rental by tenants.

“Rules and Regulations” means those rules, regulations, policies, and procedures that have been established by City for the orderly and efficient use of the Airport by airlines and other tenants and users as the same may be amended, modified, or supplemented from time to time, which Rules and Regulations and any amendments, modification, or supplements thereto, shall not be inconsistent with the financial methodologies set forth in this Agreement. Such Rules and Regulations shall be made available by City to Airline upon request of Airline.

“Signatory Airline(s)” or “Signatory” means those Air Transportation Companies that have executed this Agreement with the City. An Affiliate of a Signatory Airline, as defined herein, shall be treated as a Signatory Airline for the purposes of this Agreement, subject to certain restrictions and requirements as defined herein.

“Total Airline Landed Weight” means the sum of the Maximum Certificated Gross Landing Weights for all Aircraft Arrivals of Airline over a stated period of time.

“TSA” means the Transportation Security Administration of the Department of Homeland Security, or its authorized successor.

Additional words and phrases used in this Agreement but not defined either in this Article 1 or elsewhere herein shall have the meanings as defined under the Bond Ordinance or, if not so set forth, shall have their usual and customary meaning.

SECTION 1.02 CROSS-REFERENCES

References in the text of this Agreement to articles, sections, or exhibits pertain to articles, sections, or exhibits of this Agreement, unless otherwise specified.

ARTICLE 2 - TERM

SECTION 2.01 TERM

This Agreement shall commence on October 1, 2016 (“Effective Date”) and terminate at midnight on September 30, 2019, unless cancelled sooner as provided herein (“Term”).

SECTION 2.02 TERMINATION OF EXISTING AGREEMENTS

Any Airline lease agreements and Operating Agreements heretofore executed between the parties covering or pertaining to the Airport are canceled and terminated as of the Effective Date of this Agreement, provided that such cancellation and termination shall not be construed as a waiver, relinquishment, or release of any claims, damages, liability, rights of action, or causes of action that either of the parties hereto may have against the other under such existing leases and agreements and that have accrued before the Effective Date of this Agreement.

SECTION 2.03 HOLDING OVER

It is agreed and understood that any holding over by Airline of the Leased Premises at the expiration or cancellation of this Agreement without City’s consent shall operate and be construed as a tenancy from month to month at rates, fees, charges, and provisions as set forth herein and the applicable City budget resolution. Airline shall be liable to City for any loss or damage on account of any holding over without City’s consent after the expiration or cancellation of this Agreement.

SECTION 2.04 EXTENSION

In the event Airline is not in default of any terms of this Agreement, the Term of this Agreement may be extended for one (1) two-year renewal period, from October 1, 2019 through September 30, 2021 To extend the term of this Agreement, the City shall give written notice to Airline of City’s intent to extend the Agreement no less than six (6) months prior to the expiration of the Term of this Agreement. If Airline is willing to renew for the extension period, it will provide the City written notice of its intent within thirty (30) days from the notification of the City’s intent to extend the term. Unless a majority of Signatory Airlines (majority, as measured both by number of Airlines and by total enplanements) specifically withhold concurrence to extend the Term, this Agreement shall renew for the designated extension period. If Airline does not provide prompt written notice of its intent to extend, Airline will be released from its obligation to extend the Agreement term and will continue on a month to month holding over pursuant to Section 2.03. During any extension period, the Agreement shall be extended on the same terms and conditions, except Airline shall pay all rates, charges, and fees as set forth herein and any applicable City rate ordinance.

ARTICLE 3 - RIGHTS AND SPECIFIC PRIVILEGES

SECTION 3.01 USE OF THE AIRPORT

Airline, its employees, passengers, guests, patrons, agents, independent contractors and invitees shall have the right to use, in common or jointly with other duly authorized users, those

portions of the Airport, together with all facilities, improvements, equipment, and services that have been or may hereafter be provided for their joint use, subject to the Rules and Regulations.

SECTION 3.02 SPECIFIC RIGHTS OF AIRLINE AT THE AIRPORT

Airline shall have the right, subject to conditions contained herein and in addition to all rights elsewhere granted in this Agreement, to use the Airport for the following purposes, subject to the Rules and Regulations:

- A. The operation of an Air Transportation Business, including all activities reasonably necessary to such operation.
- B. The landing, taking off, flying over, taxiing, pushing, towing, loading, unloading, repairing, maintaining, conditioning, servicing, parking, storing, or testing of aircraft or other equipment of or operated by Airline, subject to the availability of space, and subject to such reasonable charges, regulations, and/or restrictions City may establish; provided however, Airline shall not permit the use of the Airfield by any aircraft operated or controlled by Airline which exceeds the design strength or capability of the Airfield as described in the then-current FAA-approved Airport Layout Plan (ALP) or other engineering evaluations performed subsequent to the then-current ALP.
- C. The sale of air transportation tickets and services, the processing of passengers and their baggage for air travel, the sale, handling, and providing of mail, freight, and express services, and reasonable and customary airline activities.
- D. The training of persons and testing of aircraft and other equipment at the Airport, such training and testing to be limited to that incidental to Airline's Air Transportation Business, and shall not unreasonably hamper or interfere with the use of the Airport and its facilities by others entitled to the use of same. Flight training and aircraft testing shall be undertaken by Airline only to the extent permitted by and subject to the Rules and Regulations and in only those areas designated by Director. City reserves the right to restrict or prohibit such training and testing operations which it deems to interfere with the use of the Airport, including excessive noise as reasonably determined by City.
- E. The servicing by Airline, or by its suppliers of materials or its furnishers of services, of aircraft and other equipment operated by Airline with line maintenance or other materials or supplies, at its Assigned Aircraft Parking Areas or other aircraft parking positions designated by Director subject to the Rules and Regulations. Director reserves the right, at any time, to designate other locations reasonably accessible from the Terminal Building for the performance of aircraft maintenance and service activities if Director believes that such activities would interfere with aircraft operations of other Air Transportation Companies at the Terminal Building.

- F. The installation and operation of identifying signs and graphics on Airline's Preferential Use Space, subject to the prior written approval of Director, provided that such signs shall be: (1) substantially uniform in size, type, and location with those of other Air Transportation Companies; (2) consistent with City's graphics standards as established from time to time by Director; (3) in compliance with the Rules and Regulations; and (4) in compliance with Municipal Code and all local laws and ordinances. However, Airline shall not install any promotional displays or advertising displays in its Joint Use Space unless authorized in writing, in advance, by City at its sole discretion.

- G. The installation, maintenance, and operation of such radio, communication, meteorological, and aerial navigation equipment and facilities at suitable locations on the Airport, including computer equipment at passenger check-in counters in the Terminal Building, as may be necessary for Airline's operations; provided that such equipment and facilities do not interfere with other Airport communication, meteorological, or aerial navigation systems. The location of such equipment and facilities, method of installation and type of equipment shall require the prior written approval of Director and shall conform with all applicable federal, state, and local requirements. Airline is required to use the City's Multi-user Flight Information Display System (MUFIDS) and agrees to abide by the rules established by City for its use.

All rights and privileges not specifically granted to Airline for its use of and operations at the Airport pursuant to the Agreement are reserved for and to City.

SECTION 3.03 EMPLOYEE PARKING FACILITIES

Airline's employees working at the Terminal Building will be provided vehicular parking facilities, if available, in common with other employees. Such facilities must be lit and shall be located in an area designated by Director. City may assess a reasonable charge to Airline or its employees for such parking facilities. Rates for employee parking may be adjusted annually.

SECTION 3.04 LIMITATIONS ON USE BY AIRLINE

In connection with the exercise of its rights under this Agreement, Airline:

- A. Shall not do or permit to be done anything at or about the Airport that may interfere with the use, operation, or maintenance of the Airport, including but not limited to effectiveness or accessibility of the water system, drainage and sewage system, fire protection system, sprinkler system, alarm system, fire hydrants and hoses, heating or ventilation system, air conditioning system, electrical system, natural gas, or other Airport systems installed or located on or within the Leased Premises or the Airport. None of the above systems may be inactivated or altered by Airline or its agents. Water supply lines and electrical supply to the fire protection system cannot be interrupted without scheduling in advance with the Director to coordinate and follow-up to ensure the system is activated in a timely

manner. Any "hot" work (that which produces sparks or flames) must be approved by the Director prior to commencement.

- B. Shall not do or permit to be done anything, either by act or failure to act, that shall cause the cancellation or violation of the provisions, or any part thereof, of any policy of insurance for the Airport, or that shall cause a hazardous condition so as to increase the risks normally attendant upon operations permitted by this Agreement. If Airline shall do or permit to be done any act not permitted under this Agreement, or fail to do any act required under this Agreement, regardless of whether such act shall constitute a breach of this Agreement, which act or failure, in and of itself, causes an increase in City's insurance premiums, Airline shall immediately remedy such actions and/or pay the increase in premiums, upon notice from Director to do so.
- C. Shall not dispose of or permit any employee, agent or contractor to dispose of any waste material taken from, or products used with respect to, its aircraft into the sanitary or storm sewers at the Airport or any other location on the Airport (whether liquid or solid), including but not limited to Hazardous Materials, unless such waste material or products first are properly treated by equipment installed with the approval of City and any other administrative body having appropriate jurisdiction, in accordance with applicable Environmental Laws.
- D. Shall not keep or store any Hazardous Materials such as flammable liquids and solids, corrosive liquids, compressed gases, or magnetized or radioactive materials on the Airport except when all the following conditions are met: (1) in accordance with standards established by the National Board of Fire Underwriters, any liquids having a flash point of less than one hundred degrees (100°) Fahrenheit shall be kept and stored in safety containers of a type approved by the Underwriters Laboratories; (2) said materials shall be under the control and care of designated and properly qualified Airline personnel; (3) said materials shall be packaged, handled and stored in compliance with applicable U.S. Department of Transportation, Environmental Protection Agency, and other applicable regulations for transport, pre-transport and storage of hazardous articles and materials; and (4) said materials shall be only stored in such storage areas as are designated and approved by Director through the Airport Rules and Regulations.
- E. Shall not install fuel storage tanks or pumping facilities for use in fueling any aircraft at the Airport.
- F. Shall not maintain or operate in the Terminal Building or elsewhere at the Airport, a cafeteria, restaurant, bar or cocktail lounge for the purpose of selling or dispensing food or beverages to the public, its employees, or passengers; nor shall Airline in any manner otherwise provide for the sale or dispensing of food and beverages at the Airport except that Airline may dispense food and beverages on board Airline's aircraft and provide vending machines in Airline's Preferential

Use Space and not accessible to the general public solely for the sale beverages, food, and confections to Airline employees. In the event of extraordinary irregular operations where Airline has a designated flight delay program to provide distressed passengers with complimentary food and beverages and Airline may not otherwise utilize the Airport food and beverage concessionaire, then Airline may, on a limited and temporary basis, provide those distressed passengers with complimentary food and beverages. Further, where Airline has a system wide celebratory event, Airline may provide complimentary food and beverages pursuant to that event's criteria.

- G. Agrees to comply with all security measures required of Airline or City by the FAA or contained in City's FAA-approved Master Security Plan for the Airport, as such plan may be amended from time to time, or in any Airport Tenant Security Program as outlined in 49 CFR Part 1542 with respect to Airline's Leased Premises. Any fines and/or penalties levied against City for security violations at the Airport resulting from any non-compliance of Airline, its employees, officers, agents, affiliates, contractors, or suppliers while under its control, shall be immediately due and payable to City by Airline. However, Airline shall have a right to challenge the levy of the fine and the City will cooperate to the extent possible in the challenge, but City shall not be required to incur any expense in the challenge.
- H. The rights and privileges granted Airline under this Agreement with respect to the performance of ground services and activities in connection with its Air Transportation Business at the Airport may be exercised by Airline for and on behalf of Airline's regularly scheduled or unscheduled services and those of its Affiliates. Airline may perform ground services for any other Air Transportation Company using the Airport provided that Airline shall be solely responsible for the reporting to City of all such Air Transportation Company's and its designated Affiliate Airline(s) landings, landed weights, and passengers and for the payment of all fees and amounts payable excluding PFCs, by or on account of such Air Transportation Company to City under this Agreement unless such Air Transportation Company is a Signatory Airline. It is understood and agreed that City reserves the right to control access to restricted areas and to collect reasonable fees or commissions for the provision of inflight catering, vending, ground transportation, ground support, or other services by Airline for any Air Transportation Company other than Airline and for any services or facilities provided by or for Airline in competition with concessionaires and operators operating under an agreement with City. Notwithstanding the foregoing, no such fees or commissions shall be charged for Airline providing such services to its Airline Affiliate or an Airline Affiliate providing such services to Airline.
- I. Shall park ground service or other equipment on the Terminal Building aircraft apron only at areas designated on Exhibit E or otherwise designated by the Director.

- J. Shall not install any coin-operated or card operated machine(s) or device(s), except for: (1) non-concession fee-based machines for the sale of Airline's tickets or other Airline services and travel options, or issuance of boarding passes located on Airline's Leased Premises or other areas approved in writing by Director; or (2) beverage or snack machines as provided in Section 3.04 (F) above.
- K. Shall not modify, alter, or interfere with Airport-owned information technology systems such as IT infrastructure, backbone, fiber, etc. without express permission from the Director and with coordination with Airport staff. Airline staff shall coordinate with Director so as to properly communicate any potential interference by or with Airline systems that may occur so that both parties may prevent disruptions.

SECTION 3.05 AIRPORT USE SUMMARY

Airline shall file with Director an Airport Use Summary, in a form acceptable to Director, providing the information specified below and such other information as Director may reasonably request regarding Airline's operation at the Airport. Airline shall, at all times, maintain a current version of such Airport Use Summary on file with Director. The Airport Use Summary shall include the following information:

- Names, addresses, and telephone numbers of Airline officials responsible for station operations, flight operations, properties, and facilities.
- Airline's aircraft recovery plan for disabled aircraft or contact information for an approved aircraft recovery vendor.

ARTICLE 4 - PREMISES

SECTION 4.01 PREMISES

A. Categories of Space.

Airline shall lease areas in or adjacent to the Terminal Building on a Preferential Use or Joint Use basis as follows and as more particularly delineated on Exhibit B, as such exhibit may be modified.

B. Space in Terminal Building.

At the Effective Date of this Agreement, Airline shall lease or use the areas in or adjacent to the Terminal Building shown on Exhibit B. Airline's Leased Premises in the Terminal Building shall be subject to change from time to time. Any such changes to Airline's Preferential Use Space, to which Director and Airline must mutually agree, shall be incorporated herein by Director transmitting to Airline a replacement Exhibit B.

- C. City may, during the Term of this Agreement, expand or modify the leasehold dimensions or location of Joint Use Space. If City elects to expand or modify the dimensions or location of such space, Director shall consult with and consider any suggestions of Airline, but the approval of Airline shall not be required for any such expansion or modification by Director.
- D. The dimensions on Exhibit B, as such exhibit may be modified, shall be the basis for determining the amount of the rentals payable pursuant to Articles 6 and 7. Director shall issue a new Exhibit B after any Terminal Building expansion or modification.

SECTION 4.02 EQUIPMENT AND AIRCRAFT PARKING AREAS AND HOLDROOMS

- A. Aircraft Parking Areas, including associated aircraft loading positions, apron areas and loading bridges ("gates") as shown on Exhibit B, as such exhibit may be amended from time to time by Director, and other associated Joint Use Space inside the Terminal Building gate areas ("holdrooms"), shall be "assigned" to Airline by Director on a nonexclusive use basis upon execution of this Agreement. Airline shall have "priority use" of the gate(s) and holdroom(s) assigned to it to accommodate its flights provided that Director may authorize other Air Transportation Companies to use such gate(s) and holdroom(s) at the Director's sole discretion. "Priority use" of the gate(s) and holdroom(s) shall mean the designated location for Airline's aircraft parking, loading, unloading, equipment staging, and passenger boarding. Each Airline shall have at least one (1) gate assigned for its "priority use".
- B. Airline shall park all its ground service equipment in its assigned Equipment Parking Area associated with each gate as set forth on Exhibit B. In the event Airline requires additional equipment parking, such parking shall be subject to availability and charges, the written approval of Director, and applicable Rules and Regulations.
- C. Airline shall have the right to park one aircraft overnight per assigned gate. Airline may park more than one aircraft overnight per assigned gate subject to the prior approval of Director and only if such parking does not conflict with the adjacent parking position safety envelope.
- D. Airline shall cooperate with City to accommodate other Air Transportation companies from time to time, as deemed necessary by Director for situations including, but not limited to, aircraft gauge requirements, unscheduled flights (including charters), mechanical problems, and diversions due to weather

SECTION 4.03 USE OF CITY LOADING BRIDGES

- A. All City-owned loading bridges shall be made available to all Air Transportation Companies serving the Airport on a joint use basis.

- B. The use of City-owned loading bridges by Airline shall be subject to the following terms and conditions:
1. The loading bridges shall be operated only by employees, contractors, or agents of Airline, who are fully trained, approved and qualified to operate the loading bridges. Airline shall keep on file the training records of each operator of the loading bridges.
 2. Airline shall be solely responsible for any and all damages, claims, or injuries which may be caused by the operation of the loading bridges by Airline's employees, contractors, or agents, and shall indemnify and hold harmless City for such operation in accordance with Section 11.02.
 3. Airline shall be solely responsible for the costs to replace or repair any damage to loading bridges or other property caused by the operation of the loading bridges by Airline's employees, contractors, or agents.
 4. City, during the Term of this Agreement, shall maintain and keep in good repair the City-owned loading bridges referred to herein.

SECTION 4.04 SURRENDER OF THE PREMISES

- A. Airline covenants and agrees that on expiration of the Term of this Agreement, or on earlier termination as hereinafter provided, or on reassignment of the Leased Premises as heretofore provided, it will peaceably surrender possession of the Leased Premises hereunder in good condition, reasonable wear and tear excepted, and City shall have the right to take possession of the Leased Premises. City shall not be required to give notice to quit possession at the expiration of the term (or any extension thereof) of this Agreement.
- B. Airline shall have the right, on expiration or early termination and within thirty (30) calendar days thereafter, at its expense to remove or dispose of all trade fixtures and equipment and other personal property installed or placed by Airline in, on, or about the Airport, subject to any valid lien that City may have thereon for unpaid rents or fees
- C. Any and all property not removed by Airline within the said thirty (30) day period shall, at the option of City, thereupon become a part of the property on which it is located, and title thereto shall thereupon vest in City. Airline agrees to reimburse City for any costs incurred by City if City elects to remove or dispose of any remaining Airline property after such thirty (30) day period.

SECTION 4.05 ACCESS

- A. Subject to the provisions herein, the Rules and Regulations, and such other reasonably and non-discriminatory restrictions as City may reasonably impose with respect to Airline's use of Leased Premises, City hereby grants to Airline, its

agents, suppliers, employees, contractors, passengers, guests, and invitees, the right and privilege of free and unrestricted access, ingress, and egress to Airline's Leased Premises and to public areas and public facilities of the Terminal Building.

- B. The ingress and egress provided for in Section 4.05(A) shall not be used, enjoyed, or extended to any person engaging in any activity or performing any act or furnishing any service for or on behalf of Airline that Airline is not authorized to engage in or perform under the provisions hereof unless expressly authorized in advance and in writing by Director.
- C. City shall have the right at any time or times to close, relocate, reconstruct, change, alter, or modify any such means of access provided for Airline's use pursuant to this Agreement or otherwise, either temporarily or permanently, provided that reasonable written notice to Airline and a reasonably convenient and adequate means of access, ingress, and egress shall exist or be provided in lieu thereof. City shall suffer no liability by reason thereof and such action shall in no way alter or affect any of Airline's obligations under this Agreement.
- D. Airline agrees that all of its tenants, subtenants, patrons, invitees, agents, employees, or independent contractors must be authorized by the City to enter restricted areas. Airline agrees that no person authorized to enter a restricted area by virtue of this Agreement shall permit any person who is not otherwise authorized to enter a restricted area unless such unauthorized person is, at all times while in the restricted area, in the company of an authorized person.
- E. Airline understands and agrees that, in the event the Federal Aviation Administration assesses a civil penalty against the City for any violation of 49 CFR Part 1542 or any successor or additional regulation pertaining to security at the Airport, as a result of any act or failure to act on part of Airline, its tenants, subtenants, patrons, agents, servants, employees, invitees Airline shall immediately reimburse the City in the amount of the civil penalty assessed. City acknowledges Airline's right to challenge the levy of the civil penalty assessed by the Federal Aviation Administration and City will cooperate to the extent possible in the challenge, but City shall not be required to incur any expense in the challenge.

ARTICLE 5 - CAPITAL IMPROVEMENTS

SECTION 5.01 CAPITAL IMPROVEMENTS

During the Term of this Agreement, City shall notify Airline of the Capital Improvements for the subsequent year not previously included on the Airport CIP and attached as Exhibit F, which may be modified from time to time at the Director's sole discretion. After giving consideration to any comments provided by the Signatory Airlines, City may proceed with any of the following Capital Improvements and include the cost of such Capital Improvement in the

subsequent Fiscal Year's calculation, net of PFC's or grants, for the rentals, fees, and charges of the Signatory Airlines:

A Capital Improvement is necessary or prudent to:

- a. Assure or facilitate compliance with a rule, regulation, or order of any federal, state, or other governmental agency that has jurisdiction over the operation of the Airport.
- b. Maintain, operate, or create Airport system functional capability and capacity at a level that is required (i) by public health, safety, access or security or (ii) by the trustee for the security of the Bonds.
- c. Satisfy judgments or fines against City imposed by an agency of federal or state government or rendered by a court of competent jurisdiction.
- d. Repair casualty damage net of insurance proceeds to Airport property.
- e. Acquire land to preserve, protect, or enhance the Airport.
- f. Expenditures for architectural, engineering, or economic studies or other professional services of planned Airport facilities.

ARTICLE 6 - REPORTS, RENTALS, CHARGES, AND FEES

SECTION 6.01 GENERAL

- A. In consideration for use of the Leased Premises and for the various rights, licenses, and privileges granted hereunder and for the undertakings of City, Airline agrees to pay City, during the Term of this Agreement, without deduction or set-off, rentals, charges, and fees to be calculated as set forth herein. City shall invoice Airline monthly for all such rentals, charges, and fees except terminal building rentals, which shall be payable by Airline without invoice. Payment shall be made by Airline in accordance with Section 6.08 hereof.

SECTION 6.02 MONTHLY ACTIVITY REPORT

- A. Airline shall furnish to Director, on or before the tenth (10th) day of each month, an accurate report of Airline's operations at the Airport during the preceding month, setting forth all data necessary to calculate the rentals, fees, and charges due under this Agreement (a "Monthly Activity Report"). Said Monthly Activity Report shall include, but shall not necessarily be limited to: (1) Airline's total number of Aircraft Arrivals for the month by type of aircraft, the Maximum Gross Landed Weight of each aircraft, and the Total Airline Landed Weight for the month to include any non-scheduled and charter operations; (2) the total number of Enplaned Passengers to include any non-scheduled and charter operations; and (3) any other data necessary to establish and assess rates and charges. Airline shall also report the activities set forth herein for any Affiliate or charter of Airline. City shall be able to use its reasonable discretion based on objective historical data to modify Airline's submitted forecasts for the purposes of setting rentals, fees and charges.

SECTION 6.03 TERMINAL BUILDING RENTALS

- A. Airline shall pay to City for its Preferential Use and Joint Use space in the Terminal Building, as set forth on Exhibit B, monthly rentals based on annual rental rates to be calculated each Fiscal Year, as set forth in Section 7.04.
- B. Rentals for Joint Use space shall be prorated among Air Transportation Companies at the Airport on the basis of: (1) 20% of the total monthly rental apportioned evenly among all Air Transportation Companies using such space; and (2) the remaining 80% of the total monthly rental apportioned among all Air Transportation Companies using such space on the ratio of each airline's Enplaned Passengers to the total number of Enplaned Passengers of all such Air Transportation Companies. Airline shall be grouped with its Affiliates as a single entity for apportioning the 20% amount under (1) above. Any Air Transportation Company accounting for less than five percent (5%) of the Airport's total Enplaned Passengers shall be exempt from the calculation of the 20% amount under (1) above. If Airline ceases service at the Airport before the expiration of the Term of this Agreement, Airline shall remain responsible for paying its pro rata share of the 20% apportionment under (1) above throughout the remainder of the Term of this Agreement. Also, included in the rentals for Joint Use space shall be costs for security fees (pursuant to 49 CFR Part 1542).

SECTION 6.04 ELECTRICITY CHARGES FOR EXTRAORDINARY USAGE

Airline shall pay City charges for the extraordinary usage of electrical power in its Preferential Use space and assigned gates based on the cost, without mark-up, to City for such extraordinary usage of electricity by Airline as arrived at through separate metering or computation by City. Airline shall report to Director any plans to decrease or increase its extraordinary usage of electrical equipment or electricity.

SECTION 6.05 LANDING FEES

Airline shall pay to City monthly landing fees to be determined by multiplying the number of one thousand (1,000) pound units of Total Airline Landed Weight for Airline during the month by the then-current Landing Fee Rate established pursuant to Section 7.05 herein.

SECTION 6.06 ADDITIONAL EQUIPMENT PARKING RENTALS

Airline shall pay City, as rent, for any additional equipment parking above and beyond its assigned Equipment Parking Area, a monthly rental computed at the rate set forth in the applicable City budget resolution.

SECTION 6.07 [RESERVED]

SECTION 6.08 PAYMENT PROVISIONS/INTEREST ON OVERDUE AMOUNTS

- A. All Preferential Use and additional Assigned Equipment Parking Area rentals shall be due and payable the first day of each month, in advance, without invoice.
- B. Landing fees shall be due and payable on or before the twentieth (20th) day of each month, without invoice.
- C. Other fees and charges, including Joint Use charges and security fees shall be due and payable on invoice within thirty (30) days of the date of invoice.
- D. The acceptance by City of any payment made by Airline shall not preclude City from identifying the accuracy of computations in Airline's Monthly Activity Report, submitted to Director as provided in Section 6.02, or from recovering any additional payment actually due from Airline.
- E. If any payment is not received by City within five (5) days of the due date, City may, at its discretion, charge Airline interest at eighteen percent (18%) per annum.

All payments due and payable herein shall be paid in lawful money of the United States of America, without set-off, electronically by Automated Clearing House (ACH), or by check made payable to City and delivered or wired, as applicable, to the following address, or to such other address or account as City may notify Airline in writing from time to time:

Via Mail

Airport Administration
Rick Husband Amarillo International Airport
10801 Airport Blvd
Amarillo, Texas 79111

SECTION 6.09 TAXES AND OTHER CHARGES

Airline shall pay all taxes and governmental charges of any kind whatsoever that may be lawfully assessed against Airline or City, with respect to the Leased Premises, Airline's use and/or occupancy of the Leased Premises, or any improvements thereon, during the Term of this Agreement, including any holdovers or extension periods granted thereto.

Airline in good faith may contest any tax or governmental charge; provided that Airline may not permit such tax or governmental charge to remain unpaid during the period of such contest and any appeal therefrom unless, in the opinion of counsel satisfactory to the City, such action will not adversely affect any right or interest of the City.

SECTION 6.10 PASSENGER FACILITY CHARGE

City reserves the right to assess and collect PFC's subject to the terms and conditions set forth in the Aviation Safety and Capacity Expansion Act of 1990, Section 9110 (the PFC Act)

and implementing regulations as may be supplemented or amended from time to time. Airline shall collect and pay all PFC's for which it is responsible under the provisions of 14 CFR Part 158. Failure by Airline to remit PFC's within the time frame required by 14 CFR Part 158 shall be deemed an event of default pursuant to Section 13.01.

SECTION 6.11 RECORDS OF AIRLINE

Airline shall keep and maintain a complete and adequate set of records of all landing weights and other information specified in Section 6.02 hereof or otherwise required for the calculation or payment of fees required under this Agreement for the current Fiscal Year and the three (3) immediately preceding Fiscal Years, and shall make such records available for inspection by Director at any and all reasonable hours and times in Amarillo, Texas.

SECTION 6.12 OTHER FEES AND CHARGES

City expressly reserves the right to assess and collect (1) reasonable and nondiscriminatory fees and charges for services or facilities not enumerated in this Agreement, but provided by City and accepted by Airline, including, but not limited to, special maintenance of Airline Leased Premises, equipment vehicle storage, disposal fees, utility fees, remote ramp aircraft parking fees, and gate usage per turn fees; and (2) reasonable and nondiscriminatory fee for any employee parking area(s) provided at the Airport.

Anything in this Agreement to the contrary notwithstanding, this Section shall not be interpreted or understood as contracting away the City's governmental authority and shall not be construed to waive any lawfully assessed taxes or any governmental charges.

SECTION 6.13 RIGHT OF SET OFF

City shall have the right to set off any past due amount(s) by applying all or a portion of current payments to such past due amount(s). Past due amounts may include sums due under prior agreements, this Agreement, or for usage of the Airport as a Non-Signatory Airline. In the event City exercises the right of set off it shall notify Airline. Airline shall be responsible for immediately submitting such a sum as will reflect the total amount needed to satisfy current amounts due.

SECTION 6.14 SECURITY DEPOSIT

If, at any time during the Term of this Agreement, Airline shall commit an event of default and fails to cure such default as defined under Section 13.01 of this Agreement, City shall thereupon have the right, by written notice to Airline, to require Airline to provide to City an irrevocable letter of credit or acceptable surety bond ("Security Deposit") in an amount equal to three (3) months fees and charges payable by Airline under Article 6 of this Agreement, to guarantee the faithful performance by Airline of its obligations under this Agreement and the payment of all fees and charges due hereunder. Airline shall then be obligated to maintain such Security Deposit in effect until the expiration of this Agreement. Airline shall, within ten (10) days from its receipt of any such written notice, provide City with the required Security Deposit. Such Security Deposit shall be in such form and issued by a bank or other entity as shall be

acceptable to City in its reasonable discretion. In the event that any such Security Deposit shall be for a period of less than the full period required by this Agreement, or if such Security Deposit is canceled, Airline shall provide a renewal or replacement Security Deposit for the period following the expiration or cancellation of such Security Deposit previously provided at least sixty (60) days prior to the date on which such previous Security Deposit expires or at least sixty (60) days prior to the effective date of such cancellation. City's rights under this Section 6.14 shall be in addition to all other rights and remedies provided to the City under this Agreement.

ARTICLE 7 - CALCULATION OF RENTALS, CHARGES, AND FEES

SECTION 7.01 RENTALS, CHARGES, AND FEES

Rentals, charges, and fees shall, subject to the provisions of Section 7.06 hereof, be reviewed and recalculated annually based on the principles and procedures set forth in this Article 7, and shall become effective on the Effective Date of this Agreement and each October 1st thereafter of each year of the Agreement.

SECTION 7.02 ACCOUNTING RECORDS

- A. City shall establish, and thereafter maintain, accounting records that will document the following items for each of the Airport Cost Centers: (1) revenues; (2) Maintenance and Operating Expenses; (3) annual debt service on Bonds; and (4) any other funding requirements imposed by law or judgments.
- B. City shall provide to Airline its annual budget and financial statements as well as any supplemental financial data reasonably required to assess the adequacy of rates and charges established under this Agreement. The annual budget shall be provided as far in advance as reasonably possible of the commencement of the Airport's Fiscal Year.

SECTION 7.03 COORDINATION PROCEDURES, BUDGET REVIEW AND CALCULATION OF RENTALS, CHARGES, AND FEES

- A. Upon request by Director, on or about 120 days prior to the beginning of each Fiscal Year, Airline shall submit to Director, in writing, its Total Airline Landed Weight forecast and Enplanements forecast for that Fiscal Year. City shall combine Airline's forecast with the Landed Weight forecasts of all other Signatory Airlines and make such adjustments as City deems reasonably appropriate to arrive at an estimated Total Airline Landed Weight of all Signatory Airlines to be used in the calculation of Landing Fee Rates established pursuant to Section 7.05 herein.
- B. On or before sixty (60) days prior to the beginning of each Fiscal Year, City shall make available the following reports:

1. The City's proposed annual budget for the Fiscal Year, including all estimated Maintenance and Operating Expenses, estimated annual debt service on Bonds, and proposed expenditures for Capital Improvements for the Airport, all allocated to Airport Cost Centers on a consistent basis from year to year.
 2. City's calculation of proposed airline rentals, charges, and fees for the Fiscal Year, based on the procedures set forth in this Agreement.
- C. Within thirty (30) calendar days after receipt of the reports, a meeting, if requested by Airline or other Signatory Airline, shall be held between Director and the Signatory Airlines to discuss the proposed rentals, charges, and fees. Director shall give due consideration to any comments and suggestions of Airline regarding the proposed annual budget or the proposed rentals, charges, and fees.
- D. The City shall adopt an annual budget, which may, in the sole discretion of City, include revisions made as a result of Director's discussions with Signatory Airlines or otherwise. City shall promptly furnish Airline with a copy of the adopted annual budget, together with the calculation of rentals, charges, and fees that will become effective as of the first day of the Fiscal Year.
- E. If, for any reason, the annual budget has not been adopted by City as of the first day of any Fiscal Year, the rentals, charges, and fees in effect during the preceding Fiscal Year shall continue in effect until: (1) the new annual budget has been adopted by the City; and (2) City has calculated the rentals, charges, and fees in accordance therewith. Once established, the new rentals, charges, and fees shall then be made effective retroactive to the first day of such Fiscal Year.

SECTION 7.04 CALCULATION OF TERMINAL BUILDING RENTAL RATES

Terminal Building Rental Rates shall be calculated for each Fiscal Year in the following manner, as illustrated on Exhibit C attached hereto and made a part hereof:

- A. City's estimated total "Terminal Building Cost" shall be calculated by totaling the following amounts:
1. The total of estimated direct and indirect Maintenance and Operating Expenses, including any bad debt expense, allocable to the Terminal Building.
 2. The pro rata portion of annual debt service on Bonds, net of applicable PFC revenue received, plus Coverage allocable to the Terminal Building.
 3. The estimated amount of any assessment, judgment, settlement, or charge to become payable by City and not covered by the proceeds of City's insurance relating directly to the Airport or its operations and allocable to the Terminal Building.

4. The estimated costs associated with security fees (pursuant to 49 CFR Part 1542).
 5. The annual expense resulting from the depreciation or amortization of any of the City's funds invested in a Capital Improvement at the Airport over the useful life of the Capital Improvement.
- B. The estimated Terminal Building Requirement for the Fiscal Year shall then be divided by the total amount of Rentable Space in the Terminal Building to determine the Average Terminal Building Rental Rate per square foot.
- C. The Average Terminal Building Rental Rate per square foot shall be multiplied by the total square footage leased to Signatory Airlines to determine the annual Signatory Airline Rental Requirement.

SECTION 7.05 CALCULATION OF LANDING FEE RATES

A "Landing Fee Rate" per one thousand (1,000) pounds of landed weight shall be calculated in each Fiscal Year in the following manner, as illustrated on Exhibit C, attached hereto and made a part hereof.

- A. City's estimated "Landing Area Cost" for the Fiscal Year shall be calculated by totaling the following amounts:
1. The total of estimated direct and indirect Maintenance and Operating Expenses including any allocable bad debt expense allocable to the "Landing Area" (airfield cost center).
 2. The pro rata portion of annual debt service on Bonds, net of applicable PFC revenue received, plus Coverage allocable to the Landing Area.
 3. The pro rata portion allocable to the Landing Area of any other deposits to reserve accounts as set forth in Article 8 and established pursuant to the Bond Ordinance.
 4. The estimated amount of any assessment, judgment, or charge to become payable by City net of proceeds of City's insurance relating directly to the Airport or its operation and allocable to the Landing Area.
 5. The annual expense resulting from the depreciation or amortization of any of the City's funds invested in a Capital Improvement at the Airport over the useful life of the Capital Improvement.
- B. The Landing Area Cost shall then be credited with all revenues derived from the operation of the Landing Area (except revenues derived from Signatory Airline landing fees), as estimated by City, to determine the "Landing Fee Requirement."

- C. The Landing Fee Requirement shall then be divided by the estimated Total Airline Landed Weight of all Signatory Airlines to determine the Landing Fee Rate per one thousand pound unit.

SECTION 7.06 EXTRAORDINARY RATE ADJUSTMENTS

- A. In the event that, at any time during a Fiscal Year, any of the components of Terminal Building Cost, Landing Area Cost, Landing Area revenues or the Total Airline Landed Weight of Aircraft Arrivals of all Signatory Airlines varies materially from the estimates used in setting the Average Terminal Building Rental Rate or Landing Fee Rate, such rates may be adjusted either upward or downward for the balance of such Fiscal Year, if such adjustment is deemed necessary by City to ensure that adequate revenues will be available to cover the estimated Terminal Building Requirement and Landing Fee Requirement for the Fiscal Year.
- B. In addition to the provisions of Section 7.06 (A), City reserves the right to adjust the Average Terminal Building Rental Rate or Landing Fee Rate or both in the event that a Signatory Airline is delinquent in the payment of such rentals and fees by more than sixty (60) days.

SECTION 7.07 SETTLEMENT

Within one hundred eighty (180) days following the close of each Fiscal Year, or as soon as audited financial data for said Fiscal Year is available, rates for Landing Fees for the preceding Fiscal Year shall be recalculated using audited financial data and the methods set forth in this Agreement. Upon the determination of any difference(s) between the actual Landing Fees paid by Signatory Airlines (including Affiliates) during the preceding Fiscal Year and the Landing Fees that would have been paid by Signatory Airlines (including Affiliates) using said recalculated rates, City shall, in the event of overpayment, promptly credit to Airline the amount of such overpayment, reduced by any accounts receivable due City greater than sixty (60) days, and in the event of underpayment, invoice Airline for the amount of such underpayment. Said invoiced amount shall be due within thirty (30) days of invoice mailing date.

ARTICLE 8 - BOND ORDINANCE

SECTION 8.01 SUBORDINATION TO BOND ORDINANCE

- A. This Agreement and all rights of Airline hereunder are expressly subordinated and subject to the lien and provisions of any pledge, transfer, hypothecation, or assignment made at any time by City pursuant to the terms, covenants, and conditions of the Bond Ordinance.
- B. In conflicts between this Agreement and the Bond Ordinance, the Bond Ordinance shall govern except that no change in the method of calculation of

rentals and fees payable shall govern to the extent that it materially adversely affects the rights of Airline hereunder.

- C. All definitional terms in this Article 8 that are not specifically defined herein are to have the meanings set forth in the Bond Ordinance.

ARTICLE 9 - MAINTENANCE AND OPERATION OF AIRPORT

SECTION 9.01 DESIGNATION OF OPERATION AND MAINTENANCE

RESPONSIBILITIES.

In addition to the obligations of Airline and City set forth in this Article 9, responsibilities for maintenance, cleaning, and operation of the Airport shall be as set forth in Exhibit D, attached hereto and made a part hereof.

SECTION 9.02 CITY'S RESPONSIBILITIES

- A. City shall, with reasonable diligence, prudently develop, improve, and at all times maintain and operate the Airport in a prudent manner consistent with airports of similar size with qualified personnel and keep the Airport in an orderly, clean, neat and sanitary condition, and good repair, unless such maintenance, operation, or repair shall be Airline's obligation pursuant to Section 9.03 and Exhibit D.
- B. City shall, to the extent it is legally able to do so, use reasonable efforts to keep the Airport and its aerial approaches free from ground obstruction for the safe and proper use thereof by Airline.
- C. City shall not be liable to Airline for temporary failure to furnish all or any of such services to be provided in accordance with this Section 9.02 and Exhibit D when such failure is due to mechanical breakdown or loss of electrical power not caused by City's negligence or any other cause beyond reasonable control of City.
- D. City shall operate the Airport and shall exercise these rights in accordance with applicable laws and regulations.

SECTION 9.03 AIRLINE'S RESPONSIBILITIES

Subject to the provisions of Section 9.05:

- A. Airline shall, at all times, preserve and keep its Preferential Use Space in an orderly, clean, neat, and sanitary condition, free from trash and debris resulting from Airline's operations, provided, however, this requirement shall not be construed to mean Airline shall have janitorial responsibilities designated to be those of City pursuant to Exhibit D.

- B. Airline shall operate and maintain at its own expense any improvements and/or equipment installed by Airline for the exclusive use of Airline.
- C. Airline shall not erect, maintain, or display in its Preferential Use Space or anywhere in the Terminal Building in the public view any billboards, banners, advertising, promotional signs, or materials without the prior written approval of Director. It is understood that Airline may provide corporate related materials at its Preferential Use Space ticket counters for passenger information.

SECTION 9.04 CITY'S RIGHT OF ENTRY

City, by its Director or other authorized officers, employees, agents, contractors, subcontractors, or other representatives, shall have the right during normal business hours upon reasonable written notice or, in the case of emergencies, without notice, to enter upon Airline's Leased Premises space, accompanied by an authorized Airline representative, if practicable, for the following purposes:

- A. To inspect such space to determine whether Airline has complied and is in compliance with the terms and conditions of this Agreement.
- B. Upon reasonable written notice, except in emergencies, to perform such maintenance, cleaning, or repair as City reasonably deems necessary if Airline fails to perform its obligations under this Agreement (after any applicable cure period), and to recover the actual cost of such maintenance, cleaning, or repair from Airline through a separate invoice, plus a fifteen-percent (15%) administrative charge from Airline.
- C. Upon reasonable written notice, except in emergencies, to perform such maintenance, cleaning, or repair as City reasonably deems necessary and which is the responsibility of City under this Agreement.
- D. During the last ninety (90) days of the Term, for the purpose of exhibiting same to prospective tenants, purchasers or others.

The exercise of this right of entry shall not be deemed an eviction or disturbance of Airline's use or possession provided City shall exercise its best efforts not to interfere with Airline's normal operations in the Leased Premises.

SECTION 9.05 ALTERATIONS AND IMPROVEMENTS

- A. Airline shall make no repairs, alterations, additions, improvements to, or installations on the Leased Premises without the prior written approval of Director.
- B. Plans and specifications for any such work shall be filed with and subject to the approval of Director and all work shall be done in accordance with local ordinances and State and Federal laws and regulations.

- C. All Airline alterations and improvements other than movable furniture, personal property, equipment, and trade fixtures shall become part of the realty and title shall vest with City upon expiration, or early termination, of this Agreement.

SECTION 9.06 ENVIRONMENTAL REGULATIONS

Airline shall comply with the following environmental regulations:

- A. Airline shall not cause or permit any Hazardous Materials, as defined in Section 1.01 herein, to be stored or used on or about the Airport by Airline, its agents, or employees, except in compliance with applicable Environmental Laws.
- B. Airline shall, at all times and in all respects in connection with its use and occupancy of the Airport, comply with all applicable Environmental Laws. Airline shall also comply with permits held by City as and to the extent the terms of such permits are applicable to Airlines activities may impact City's ability to comply with such permits including, but not limited to, the Airport stormwater permit issued pursuant to the Clean Water Act, the Municipal Separate Storm Water permit issued pursuant to the Clean Water Act or any reissued version of either permit, whether issued by the US EPA or the Texas Commission on Environmental Quality (TCEQ) or any predecessor agencies. This list of permits is provided by way of example only and is not intended to be fully inclusive. During the term of this Agreement, if City becomes aware of other permits which are impacted by the Airlines activities, it will provide Airline with written notice of those permits.
- C. Airline shall, at its sole expense, procure, maintain in effect, and comply with all conditions of any permits, licenses, and other governmental and regulatory approvals required for Airline's use of the Airport, including, without limitation, discharge of materials or wastes into or through any storm or sanitary sewer serving the Airport. Airline shall cause any and all Hazardous Materials removed from the Airport to be removed and transported solely by duly licensed haulers to duly licensed facilities for disposal. Airline shall in all respects handle, treat and manage any and all Hazardous Materials on or about the Airport in conformity with all applicable Environmental Laws or any successor laws thereto and prudent industry practices regarding the management of such Hazardous Materials. Upon the expiration or earlier termination of the term of this Agreement, Airline shall cause all Hazardous Materials stored or released by Airline at the Airport, to be removed from the Airport and to be transported for use, storage, or disposal in accordance and compliance with all applicable Environmental Laws; provided, however, that Airline shall, except in the case of emergency, not take any remedial action in response to the presence of any Hazardous Materials on or about the Airport, nor enter into any settlement agreement, consent decree, or other compromise with respect to any claims relating to any Hazardous Materials in any way connected with the Airport without first notifying City in writing of Airline's intention to do so and affording City ample opportunity to appear,

intervene, or otherwise appropriately assert and protect City's interest with respect thereto.

- D. If at any time Airline shall become aware, or have reasonable cause to believe, the presence of any Hazardous Material on or about the Airport as a result of Airline's violation or potential violation of Environmental Laws, Airline shall, immediately upon discovering such presence or suspected presence of the Hazardous Material, provide City with written notice of that condition. In addition, Airline shall immediately notify City in writing of: (1) any enforcement, cleanup, removal, or other governmental or regulatory action instituted or threatened against Airline at the Airport pursuant to any Environmental Laws; (2) any claim made or threatened by any person against Airline relating to damage, contribution, cost recovery, compensation, loss, or injury resulting from or claimed to result from any Hazardous Materials at the Airport; and (3) any reports made by Airline to any local, state, or federal environmental agency arising out of or in connection with any violation of Environmental Laws relating to Hazardous Materials on or removed from the Airport, including any complaints, notices, warnings, or asserted violations in connection therewith.

Airline shall also supply to City as promptly as possible, and in any event within five (5) business days after Airline first receives or sends the same, copies of all claims, reports, complaints, notices, warnings, or asserted violations relating in any way to the Airport or Airline's use thereof. Airline, upon request by City, shall promptly deliver to City copies of hazardous waste manifests reflecting the legal and proper disposal of all Hazardous Materials removed from the Airport by or on behalf of Airline.

ARTICLE 10 - DAMAGE OR DESTRUCTION OF PREMISES

SECTION 10.01 DAMAGE OR DESTRUCTION

If the Leased Premises or any portions thereof, or buildings or structures of which such space may be a part, be damaged by fire or other casualty not caused by Airline, Director shall notify Airline within sixty (60) days whether the space shall be repaired. If the space is to be repaired, it shall be repaired with due diligence by City, and the rental allocable to the particular building, rooms, or other portion of the Leased Premises rendered untenable shall be abated for the period from the occurrence of the damage to the completion of the repairs, provided that City shall exert its best effort to provide Airline with temporary substitute space, if available, at such rent as deemed necessary and reasonable by City, until such time as the repairs are completed; provided, however, that rent for the temporary substitute space shall not be greater than rent for the Leased Premises unless such additional space is requested by Airline. If the space shall not be repaired, City may terminate this Agreement upon notice to Airline.

SECTION 10.02 DAMAGE CAUSED BY AIRLINE

If the Leased Premises or any portions thereof, or buildings or structures of which such space may be a part, becomes damaged by fire or other casualty not caused by Airline, Director shall notify Airline within sixty (60) days whether the space shall be repaired. Notwithstanding the provisions of this Article 10, in the event that due to the negligence or willful act or omission of Airline, its employees, its agents, or licensees, the Leased Premises shall be damaged or destroyed by fire, other casualty or otherwise, there shall be no abatement of rent during the repair or replacement of said Leased Premises. To the extent that the costs of repair or replacement shall exceed the amount of any insurance proceeds payable to City by reason of such damage or destruction, Airline shall pay the amount of such additional costs to City. If the space shall not be repaired, City may terminate this Agreement upon notice to Airline.

ARTICLE 11 - INSURANCE AND INDEMNIFICATION

SECTION 11.01 INSURANCE

- A. Airline shall, without expense to City, and upon commencement of the term hereof, obtain and cause to be kept in force liability insurance coverage, with limits as hereinafter stated, insuring against the liabilities set forth in this Section.
- B. Such insurance shall include, by way of example but not by way of limitation, comprehensive general liability coverage and motor vehicle liability insurance coverage and shall not be in amounts less than hereinafter stated. Such insurance coverage shall be provided by policies issued by a company or companies of sound and adequate financial responsibility. Such insurance policies shall contain an endorsement providing that City will be given not less than thirty (30) calendar days' written notice prior to the cancellation or material adverse change of the provisions or coverages affecting the interest of City provided by said policies. The comprehensive general liability policies shall include contractual liability coverage and shall make reference to this Agreement.
- C. Airline shall cause a certificate of insurance (along with a letter on company letterhead including equivalent policy language and conferring additional insured rights for the City on all relevant coverages below) to be furnished to City within thirty (30) days from the effective date of this Agreement, evidencing such insurance coverage.. If City is notified that any of the coverage required herein is to be canceled or changed in such a manner as not to comply with the requirements of this Agreement, Airline shall, prior to the effective date of such cancellation or change, obtain and provide City with certificates evidencing the reestablishment of the insurance coverage required hereby. If Airline does not notify City by the effective date of such cancellation or change, this will constitute a breach by Airline and permit City to terminate this Agreement pursuant to Section 14.03.
- D. The minimum limits of coverage shall be as follows:

1. Airline, at its own expense, shall procure and maintain for the benefit of City and itself, as their respective interests shall appear, aviation general liability insurance with insurance underwriters authorized to do business in the State of Texas, satisfactory to City and with the following minimum limits:

For Aviation General Liability:

\$200,000,000 Combined Single Limit, Each Occurrence and Aggregate

For Aircraft liability:

\$100,000,000 for all cargo operators and Airlines

2. Comprehensive motor vehicle liability policy in a minimum amount of five million dollars (\$5,000,000) for both bodily injury and property damage.
 3. Comprehensive general liability policy in minimum amount of ten million dollars (\$10,000,000) for bodily injury and property damage.
 4. Workers' compensation insurance in a minimum amount as required by State law and employer's liability in a minimum amount of one million (\$1,000,000) limit each accident, disease aggregate, and disease each employee, and include a waiver of subrogation in favor of City for all work performed for or on behalf of the City.
- E. Insofar as said insurance provides protection against liability for damages to third parties for bodily injury, death, and property damage, City shall be included as an additional insured throughout the term of the Agreement; provided such liability insurance coverage shall also extend to damage, destruction, and injury to City-owned or City-leased property and City personnel, and caused by, or resulting from the negligent work, acts, operations, or omissions of Airline, its officers, agents, employees, invitees, and independent contractors on the Airport. Airline shall show City as an additional insured with respects to Airline's operation at the Airport, provided, that Airline shall then also show on the insurance policy that liability insurance coverage also includes contractual liability coverage. Airline shall name City as an additional insured as respects the comprehensive motor vehicle liability and comprehensive general liability.
- F. Any and all of the above insurance coverages shall be on an "occurrence" basis, not on a "claims made" basis.
- G. City shall have no liability for any premiums charged for such coverage, and the inclusion of City as an additional insured is not intended to, and shall not, make City a partner or joint venturer with Airline in its operations at the Airport.

SECTION 11.02 INDEMNIFICATION

- A. Airline shall indemnify, defend, and hold City and its officers, agents, and employees harmless from and against any and all liabilities, losses, suits, claims, judgments, fines, interest or demands arising by reason of injury or death of any person or damage to any property, including all reasonable costs for investigation and defense thereof (including but not limited to attorneys' reasonable attorney fees, court costs, and expert fees), of any nature whatsoever arising out of or incident to this Agreement and/or the use of, occupancy of, or operations of Airline at or about the Airport or the acts or omissions of Airline's officers, agents, employees, contractors, subcontractors, licensees, invitees (except passengers in public spaces), or affiliates, on Airport premises except claims and damages arising from the gross negligence or willful misconduct of City, its employees, officers, agents, contractors, subcontractors, licensees, invitees, or affiliates. Director shall give to Airline prompt notice of any such claims or actions. Airline shall also use counsel reasonably acceptable to City in carrying out its obligations hereunder. The provisions of this Section shall survive the expiration or early termination of this Agreement with respect to matters arising before such expiration or early termination.

Furthermore and without limiting the foregoing, Airline shall indemnify, defend and hold harmless City, its officers, employees, successors and assigns, from and against any and all claims, liabilities, penalties, fines, judgments, forfeitures, losses, interest, damages (including damages for the loss or restriction on use of rentable or usable space or of any amenity of the Leased Premises) costs, or expenses (including reasonable attorneys' fees, consultant fees, and expert fees) for the death of or injury to any person or damage to the Airport or any property from which such Airport activity is impacted, arising from or caused by the Airline's alleged failure to comply with any Environmental Laws in connection with the Airlines use and occupancy of the Airport or any covenants, terms or conditions relating to environmental matters, except claims and damages arising from the gross negligence or willful misconduct of City, its employees, officers, agents, contractors, subcontractors, licensees, invitees or affiliates. Airline's obligations under this paragraph shall include, without limitation any and all costs incurred in connection with any investigation of the condition of the Airport, and any and all costs of any required or necessary repair, cleanup, decontamination or remediation of the Airport and the preparation and implementation of any closure, remedial action, or other plans required by applicable Environmental Laws. Airline's obligation to indemnify City under this paragraph shall include the costs of defense of actions seeking injunctive relief related to Airline's failure to comply with Environmental Laws in connection with the Airlines use and occupancy of the Airport. Airline's obligations under this paragraph shall survive the expiration or earlier termination of the term of this Agreement.

- B. Airline agrees to require all independent contractors that enter the Airport to perform work for, or to supply to, Airline to maintain liability insurance coverage. All improvements made on the Leased Premises by contractors shall require the prior written approval of the Director and shall conform to all applicable regulations, building codes and health standards. Prior to commencing work, Airline shall supply Director with the contractor's certificate of insurance and executed payment and performance bonds, as applicable.
- C. Except as provided above, Airline agrees to assume all risks of loss to its personal property resulting from any fire, theft, and/or vandalism, occurring on the Leased Premises, except to the extent caused by the City, its employees, officers, agents, contractors, subcontractors, licensees, invitees or affiliates.

SECTION 11.03 NON-LIABILITY OF CITY

City shall not in any event be liable for any acts or omissions of Airline, its officers, agents, employees, invitees and independent contractors, or for any conditions resulting from the operations or activities of any such lessee, tenant, or concessionaire, Airline officers, agents, employees, invitees, or independent contractors, or for any conditions resulting from the operations or activities of Airline's officers, agents, employees, invitees or independent contractors either to Airline or to any other person.

City shall not be liable for Airline's failure to perform any of the obligations under this Agreement or for any delay in the performance thereof.

SECTION 11.04 RELEASE OF LIABILITY REGARDING CERTAIN DAMAGES

City shall not be liable for, and is hereby released from all liability to Airline, to Airline's insurance carrier, or to anyone claiming under or through Airline for any loss or damage whatsoever to the property or effects of Airline resulting from the accidental discharge or discharge beyond City's control, of water or other substances from pipes, sprinklers, or conduits, containers or appurtenances thereto, or for any damage resulting from the discharge or failure of electrical current regardless of cause or origin, except to the extent caused by the gross negligence or willful misconduct of City. The provisions of this Section 11.04 shall not be construed as a limitation of City's rights pursuant to Section 11.03, but are additional to the rights and exclusions from liability provided in Section 11.03.

ARTICLE 12 - ASSIGNMENT OR SUBLEASE

SECTION 12.01 GENERAL

Airline shall not at any time transfer, convey, sublet, mortgage, pledge, or encumber its interest under this Agreement or any part of the Leased Premises. Airline shall not assign or sublease its interest under this Agreement or any part of the Leased Premises to any party

without prior written approval of Director. Any failure of Airline to obtain City's prior approval shall be a material breach of this Agreement

SECTION 12.02 BANKRUPTCY

Section 12.01 shall not apply to any valid assumption or assignment of this Agreement, the Leased Premises, or any part thereof, by a trustee, or by Airline as a debtor in possession under the Bankruptcy Code of 1978, as amended, provided that adequate assurance of future performance as provided by the Bankruptcy Code of 1978, as amended, is to be provided, in writing, as a condition of the assumption or assignment of this Agreement. Such assurance shall include but shall not be limited to:

- A. Adequate assurance of the reliability of the proposed source for the rentals, fees, and charges due under this Agreement upon the assumption or assignment of this Agreement;
- B. Adequate assurance that all other consideration due under this Agreement shall be forthcoming after the assumption or assignment of this Agreement; and
- C. The procurement of a bond from a financially reputable surety provider covering any costs or damages which City reasonably estimates City would incur in the event that City, within three (3) years following the assumption or assignment of this Agreement, becomes entitled to and exercises any right to reassign the Leased Premises covered by this Agreement.

SECTION 12.03 APPROVAL

Approval by City to any type of transfer provided for by this Article 12 shall not in any way be construed to relieve Airline from obtaining further approval for any subsequent transfer or assignment of any nature whatsoever.

SECTION 12.04 CORPORATE REORGANIZATION

Notwithstanding anything contained in this Article 12 to the contrary, no approval shall be required for any transfer or assignment of Airline's interest in this Agreement by operation of law or otherwise in connection with a merger, consolidation or other corporate reorganizations, or in connection with a sale of all or substantially all of Airline's assets.

ARTICLE 13 – DEFAULTS

SECTION 13.01 DEFAULT

If Airline: (1) fails to pay rent or any other payment past due hereunder within thirty (30) calendar days after receipt of written notice of a past due account; or (2) fails to commence immediately to keep and perform any of its other covenants and agreements within thirty (30) calendar days after receipt of written notice of such failure, or, if by its nature, such failure

cannot be cured within such thirty (30) day period, fails to commence to cure such failure within said thirty (30) day period and to diligently continue to cure the same as promptly as possible:

- A. Without terminating this Agreement, City may reenter the Leased Premises and improve and relet all or any part of it to others at its sole discretion. Any reasonable costs of renovation necessitated by the neglect of Airline, its agents, or its employees and an administrative fee to City for all costs incurred shall be invoice to and promptly paid by Airline. In addition, Airline shall promptly reimburse City for any deficiency in rentals or other payments received under such reletting, as compared to Airline's obligations hereunder.
- B. At any time before or after a reentry and reletting as provided in Section 13.01(A), City may terminate Airline's rights under this Agreement as provided in Section 14.03, without any restriction upon recovery by City for past due rentals and other obligations of Airline. City shall have all additional rights and remedies as may be provided to landlords by law.
- E. If any of the above obligations are not promptly made by Airline, City retains its rights to the Security Deposit provided under Section 6.14.

ARTICLE 14 - TERMINATION

SECTION 14.01 EVENTS PERMITTING TERMINATION BY AIRLINE

Airline may terminate this Agreement and all of its future obligations hereunder, at any time that Airline is not in default in its payments or other obligations to City hereunder, by giving City advance written notice only if: (1) Airline is prohibited by lawful authority from using the Airport for a period exceeding sixty (60) consecutive calendar days because of any deficiency of the Airport or an unsafe operating condition existing at the Airport; or (2) City is in breach of any of the covenants or agreements contained in this Agreement which materially and adversely affect the operation of Airline for a period exceeding thirty (30) consecutive calendar days after receipt of written notice of such breach from Airline and City's failure to cure such breach.

SECTION 14.02 CONDITIONS OF PREMISES AT TERMINATION

Upon termination of this Agreement, Airline shall yield and deliver to City the Leased Premises promptly and in a clean, sanitary condition, and, if necessary, restored to the satisfaction of Director, reasonable wear and tear excepted.

SECTION 14.03 EVENTS PERMITTING TERMINATION BY CITY

City may terminate this Agreement and all of its obligations hereunder upon thirty (30) calendar days' written notice and may thereafter exercise all rights of entry and reentry upon the Leased Premises, with or without process of law, upon or after the occurrence of any one of the following events:

- A. Airline files in any court a petition in bankruptcy or insolvency or for the appointment of a receiver or trustee of all or a portion of Airline's property, or is adjudged bankrupt in involuntary bankruptcy proceedings;
- B. Airline makes any general assignment for the benefit of creditors;
- C. Airline abandons the Leased Premises;
- D. Airline defaults in the performance of any of the covenants and conditions required herein (except rental payments) to be kept and performed by Airline, and such default continues for a period of thirty (30) days after receipt of written notice from Director to cure such default, or, if by its nature, such default cannot be cured within such thirty (30) day period, Airline fails to commence to cure such default within said thirty (30) day period and to diligently continue to cure the same as promptly as possible;
- E. Airline is made a party to any receivership proceeding in which a receiver is appointed for the property or affairs of Airline where such receivership is not vacated within sixty (60) days after the appointment of such receiver;
- F. The abolition, limitation, or restriction by any act of the Texas Legislature or Law of Congress of the powers of City under which these premises are being leased, except with respect to legislation that grants authority to a successor;
- G. Airline fails to remit PFC revenue to City within the time limits established by federal regulation, and such failure continues for ten (10) days after receipt of written notice from Director of such failure;
- H. Required redevelopment of the Airport caused by circumstances unplanned or uncontrolled by the Airport which necessitates relocation of Airline from the Leased Premises; or

In any of the aforesaid events and after the notice period, City may take immediate possession of the Leased Premises including any and all improvements thereon and remove Airline's effects, forcibly if necessary, without being deemed guilty of trespassing.

Failure of City to declare this Agreement terminated upon the default of Airline for any of the reasons set out above shall not operate to bar or destroy the right of City to terminate this Agreement by reason of any subsequent violation of the terms of this Agreement.

No receipt or acceptance of money by City from Airline after the expiration or cancellation of this Agreement, or after the service of any notice, or after the commencement of any suit, or after final judgment for possession of the Leased Premises, shall reinstate, continue, or extend the terms of this Agreement, or affect any such notice, demand or suit or imply consent for any action for which City's consent is required or operate as a waiver of any right of City to retake and resume possession of the Leased Premises.

ARTICLE 15 - GENERAL PROVISIONS

SECTION 15.01 RULES AND REGULATIONS

- A. Airline shall observe and obey all Rules and Regulations established, promulgated, or adopted consistent with this Agreement from time to time during the term hereof, by City governing conduct on and operations at the Airport and use of its facilities. City shall provide Airline reasonable notice prior to the enactment of any amendment of the Rules and Regulations, and shall duly consider Airline's input. Copies of the current Rules and Regulations are available in the Director's office.
- B. Airline shall not violate, nor knowingly permit its officers, agents, employees, invitees or independent contractors acting on Airline's behalf to violate any such Rules and Regulations.

SECTION 15.02 COMPLIANCE WITH LAW

- A. Airline shall not use the Leased Premises or any part thereof, or knowingly permit the same to be used by any of its employees, officers, agents, subtenants, invitees, or licensees for any illegal purposes and shall, at all times during the term of this Agreement, comply with all applicable ordinances and laws of any City, county, or state government or of the U.S. Government, and of any political division or subdivision or agency, authority, or commission thereof which may have jurisdiction to pass laws or ordinances or to make and enforce rules or regulations with respect to the uses hereunder or the Leased Premises.
- B. At all times during the term of this Agreement, Airline shall, in connection with its activities and operations at the Airport:
 - 1. Comply with and conform to all present and future statutes and ordinances, rules and regulations promulgated thereunder, of all federal, state, and other government bodies of competent jurisdiction that apply to or affect, either directly or indirectly, Airline or Airline's operations and activities under this Agreement.
 - 2. Make, at its own expense, all nonstructural improvements, repairs, and alterations to its Preferential Use Space (subject to prior written approval of City), equipment, and personal property that are required to comply with or conform to any such statutes and ordinances, and regulations, which are promulgated or enacted by City.
 - 3. Be and remain an independent contractor with respect to all installations, construction, and services performed by the Airline or on behalf of Airline hereunder.

SECTION 15.03 NONDISCRIMINATION

Airline, for itself, its heirs, personal representatives, successors in interest and assigns, as part of the consideration hereof, does hereby covenant and agree as follows:

- A. That no person on the grounds of race, creed, color, sex, age, disability, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Leased Premises.
- B. That in the construction of any improvements on, over, or under the Leased Premises and the furnishing of services thereon, no person on the grounds of race, creed, color, sex, age, disability, or national origin shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination.
- C. That Airline shall use the Airport in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulation may be amended. Airline shall also comply with the applicable provisions of Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112) and 49 CFR Part 27.

SECTION 15.04 AFFIRMATIVE ACTION

Airline assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, and any amendments thereto, and any other federal statutes or regulations applicable to the receipt of federal assistance from the Department of Transportation by local governments for Airport use, or otherwise applicable to persons leasing premises from City, to insure that no person shall, on the grounds of race, creed, color, sex, age, disability, or national origin be excluded from participating in or receiving the services or benefits of any program of activity covered by this Section. Airline assures that it will require that its covered suborganizations (sublessees) provide assurances to City, as set forth herein, that they similarly will undertake affirmative action programs, and that they will require assurance from their suborganizations (sublessees) to the same effect.

SECTION 15.05 NOTICES

- A. Except as otherwise provided elsewhere in this Agreement, any notice under the terms of this Agreement shall be in writing. If such notice is given by Airline, it shall be submitted to Director of Aviation, Rick Husband Amarillo International Airport, 10801 Airport Boulevard, Amarillo, Texas 79111, or to such revised address as notified by Director.

If given by Director, such notice shall be submitted to the address of Airline at the following address:

Airline:

Vice President Corporate Real Estate
American Airlines
4333 Amon Carter Blvd. MD5317
Ft. Worth, TX 76155

- B. If notice is given in any other manner or at any other place, it will also be given at the place and in the manner specified above.
- C. Any notice so given shall be deemed properly delivered, given, served, or received on the date shown for delivery or rejection on the return receipt. Either party may change the address to which notices shall thereafter be given upon five (5) days prior written notice to the other party in the manner set forth in this Section.

SECTION 15.06 SUBORDINATION TO AGREEMENTS WITH U. S. GOVERNMENT

This Agreement is subject and subordinate to the provisions of any agreements heretofore or hereafter made between City and the United States relative to the operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of federal rights or property to City for Airport purposes, or to the expenditure of federal funds for the improvement or development of the Airport, including the expenditure of federal funds for the development of the Airport in accordance with the provisions of the Federal Aviation Act of 1958, as it has been amended from time to time.

SECTION 15.07 NONWAIVER OF RIGHTS

The non-enforcement by either party of the breach of any term, covenant or condition herein stipulated shall never be construed to be a waiver of any other or succeeding breach of any term, covenant or condition herein imposed upon the other party, and the acceptance of payments of any amounts due or to become due hereunder in any other way or manner, or at any other time than herein provided, shall never be construed as a waiver of the right of City of any of the provisions herein imposed upon Airline.

SECTION 15.08 FEDERAL AVIATION ACT, SECTION 308

Nothing herein contained shall be deemed to grant to Airline any exclusive right or privilege within the meaning of Section 308 of the Federal Aviation Act, as amended or succeeded, for the conduct of any activity on the Airport, except that, subject to the terms and provisions hereof.

SECTION 15.09 SEVERABILITY

If any provision of this Agreement is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remainder of this Agreement shall not be affected, and in lieu of each provision which is found to be illegal, invalid, or unenforceable, there shall be added

as part of this Agreement a provision as similar to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

SECTION 15.10 HEADINGS

The headings of the articles and sections of this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope or intent of any provisions of this Agreement and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

SECTION 15.11 ASSIGNMENT BY CITY OR OTHER SUCCESSOR IN INTEREST

City may assign or otherwise convey its interest, rights, duties and/or obligations hereunder to any airport authority or other successor in interest. City, airport authority, or other successor in interest may assign, pledge, or take other appropriate action with respect to this Agreement and their rights and interests hereunder for any purpose relating to the issuance of Bonds or other revenue generating devices.

SECTION 15.12 APPROVALS BY CITY OR DIRECTOR

Unless otherwise stated in this Agreement, any prior written approvals required to be made by the City or Director shall not be unreasonably withheld, conditioned, or delayed.

SECTION 15.13 REMOVAL OF DISABLED AIRCRAFT

Airline shall promptly remove, upon release from any governmental agency with jurisdiction if required, any of its disabled aircraft from any part of the Airport (including, without limitation, runways, taxiways, aprons, and aircraft parking positions) and place any such disabled aircraft in such storage area as may be designated by Director. Airline may store such disabled aircraft only for such length of time and on such terms and conditions as may be established by City. If Airline fails to remove any of its disabled aircraft promptly, City may, but shall not be obligated to, cause the removal of such disabled aircraft; provided, however, the obligation to remove or store such disabled aircraft shall be consistent with federal laws and regulations, including those of the FAA and the National Transportation Safety Board (NTSB). Airline agrees to reimburse City for all costs of such removal; and Airline, furthermore, hereby releases City from any and all claims for damage to the disabled aircraft or otherwise arising from or in any way connected with such removal by City except to the extent caused by City's gross negligence or willful misconduct.

SECTION 15.14 QUIET ENJOYMENT

City covenants and agrees that Airline on paying the rentals, fees and charges herein provided for and observing and keeping all the covenants, conditions, and terms of this Agreement, shall lawfully and quietly hold, occupy and enjoy the Leased Premises during the term of this Agreement without hindrance or molestation by City or any person claiming under City.

SECTION 15.15 MOST FAVORABLE TERMS

City agrees not to enter into any Agreement with any other 14 CFR Part 121 Air Transportation companies conducting similar operations at the Airport after the date of this Agreement which contains more favorable terms and conditions, landing fees, space rentals or other charges than those provided in this Agreement. Such "similar operations at the Airport" means regularly scheduled commercial service that shall be conducted at the Terminal Building. Notwithstanding the foregoing, City may offer incentives or discounts consistent with FAA guidelines and/or policies in setting landing fees, space rentals or other charges to any Air Transportation company.

SECTION 15.16 FORCE MAJEURE

No party to this Agreement is responsible to the other party for nonperformance or delay in performance of the terms and conditions herein due to acts of God, acts of government, wars, riots, strikes, accidents in transportation, fuel or materials shortages, or other causes beyond the control of the parties.

SECTION 15.17 ENTIRE AGREEMENT

This Agreement, together with all exhibits attached hereto, constitutes the entire agreement between the parties hereto, and all other representations or statements heretofore made, verbal or written, are merged herein, and this Agreement may be amended only in writing, and executed by duly authorized representatives of the parties hereto.

SECTION 15.18 TIME IS OF THE ESSENCE

Time is and shall be deemed of the essence in respect to the performance of each provision of this Agreement.

SECTION 15.19 ATTORNEY'S FEES

If either party brings any action or proceedings to enforce, protect, or establish any right or remedy under the terms and conditions of this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees, as determined by a court of competent jurisdiction, in addition to any other relief awarded.

SECTION 15.20 AGREEMENT MADE IN TEXAS

The laws of the State of Texas and any applicable federal law shall govern the validity, interpretation, performance and enforcement of this Agreement. Venue shall be in the federal or state courts of proper jurisdiction located in Potter County, Texas.

SECTION 15.21 CUMULATIVE RIGHTS AND REMEDIES

All rights and remedies of City here enumerated shall be cumulative and none shall exclude any other right or remedy allowed by law. Likewise, the exercise by City of any remedy provided for herein or allowed by law shall not be to the exclusion of any other remedy.

SECTION 15.22 INTERPRETATION

Words of gender used in this Agreement shall be held and construed to include any other gender, and words in the singular shall be held to include the plural and vice versa unless the context otherwise requires.

SECTION 15.23 AGREEMENT MADE IN WRITING

This Agreement contains all of the agreements and conditions made between the parties hereto and may not be modified orally or in any manner other than by agreement in writing signed by the parties hereto or their respective successors in interest.

SECTION 15.24 SUCCESSORS AND ASSIGNS

All of the terms, provisions, covenants, and conditions of this Agreement shall inure to the benefit of and be binding upon City and Airline and their successors, assigns, legal representatives, heirs, executors and administrators.

SECTION 15.25 AUTHORIZATION TO ENTER LEASE

If Airline signs this Agreement as a corporation, each of the persons executing this Agreement on behalf of Airline warrants to City that Airline is a duly authorized and existing corporation, that Airline is qualified to do business in the State of Texas, that Airline has full right and authority to enter into this Agreement, and that each and every person signing on behalf of Airline is authorized to do so. Upon Director's request, Airline will provide evidence satisfactory to Director confirming these representations.

SECTION 15.26 COMPLIANCE WITH ADA AND OTHER DISABLED ACCESS LAWS

Airline agrees that with respect to the Leased Premises, Airline shall be responsible, at Airline's cost, for compliance with the Americans with Disabilities Act of 1990 ("ADA", 42 U.S.C. §§12101 *et seq.*) and the regulations and Accessibility Guidelines for Buildings and Facilities issued pursuant thereto. Airline recognizes that City is a public entity subject to Title II of the ADA. To the extent permitted by law, Airline shall assume and be obligated to comply with any obligations to which City may be subject under Title II of the ADA with respect to any programs, services, activities, alterations, or construction conducted or undertaken by Airline in the Leased Premises. Airline shall also be responsible, at Airline's cost, for compliance with any other applicable disabled accessibility laws, including, but not limited to, the Air Carriers Access Act ("ACAA", 49 U.S.C. §41705), and regulations implementing the ACAA.

(SIGNATURES BEGIN ON THE FOLLOWING PAGE)

IN WITNESS WHEREOF, these presents have been executed and attested by the parties hereto or their proper officials, pursuant to due and legal action authorizing the same to be done, the day and year first above written.

CITY OF AMARILLO

_____, City Manager

ATTEST:

_____, City Clerk

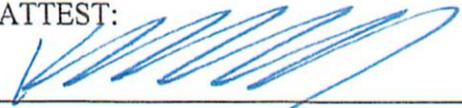
APPROVED AS TO FORM:

_____, City Attorney

APPROVED AS TO CONTENT:

Tyler Hurst, Acting Director of Aviation

ATTEST:



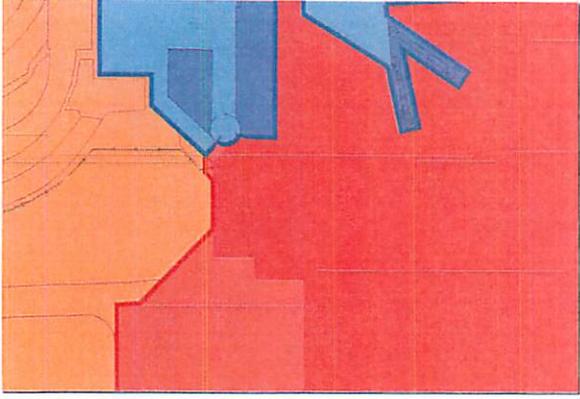
Printed Name: _____
Title: _____
Date: _____
Kenneth W. Wimberly
Vice President and
Deputy General Counsel

1/20/17

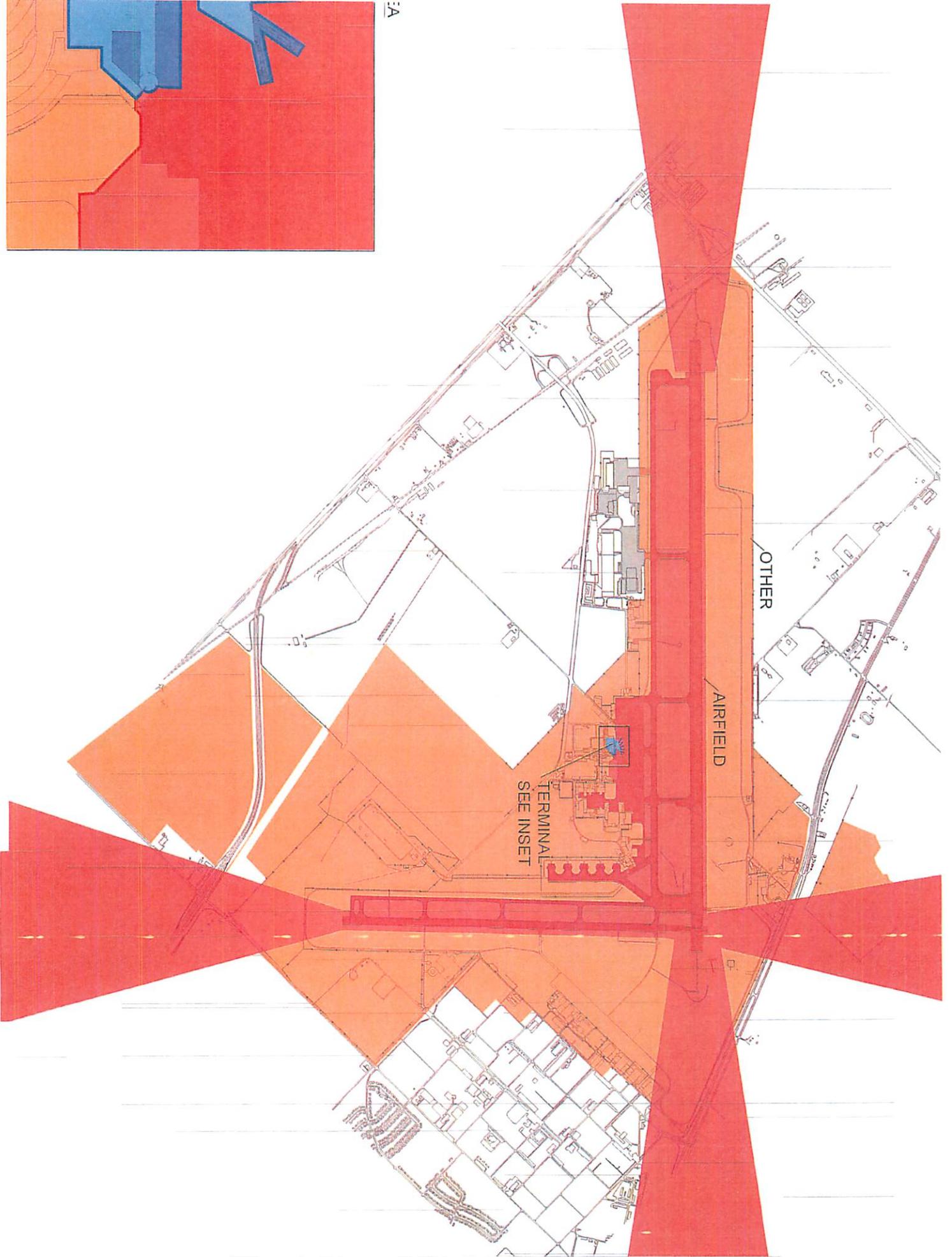
AIRLINE:

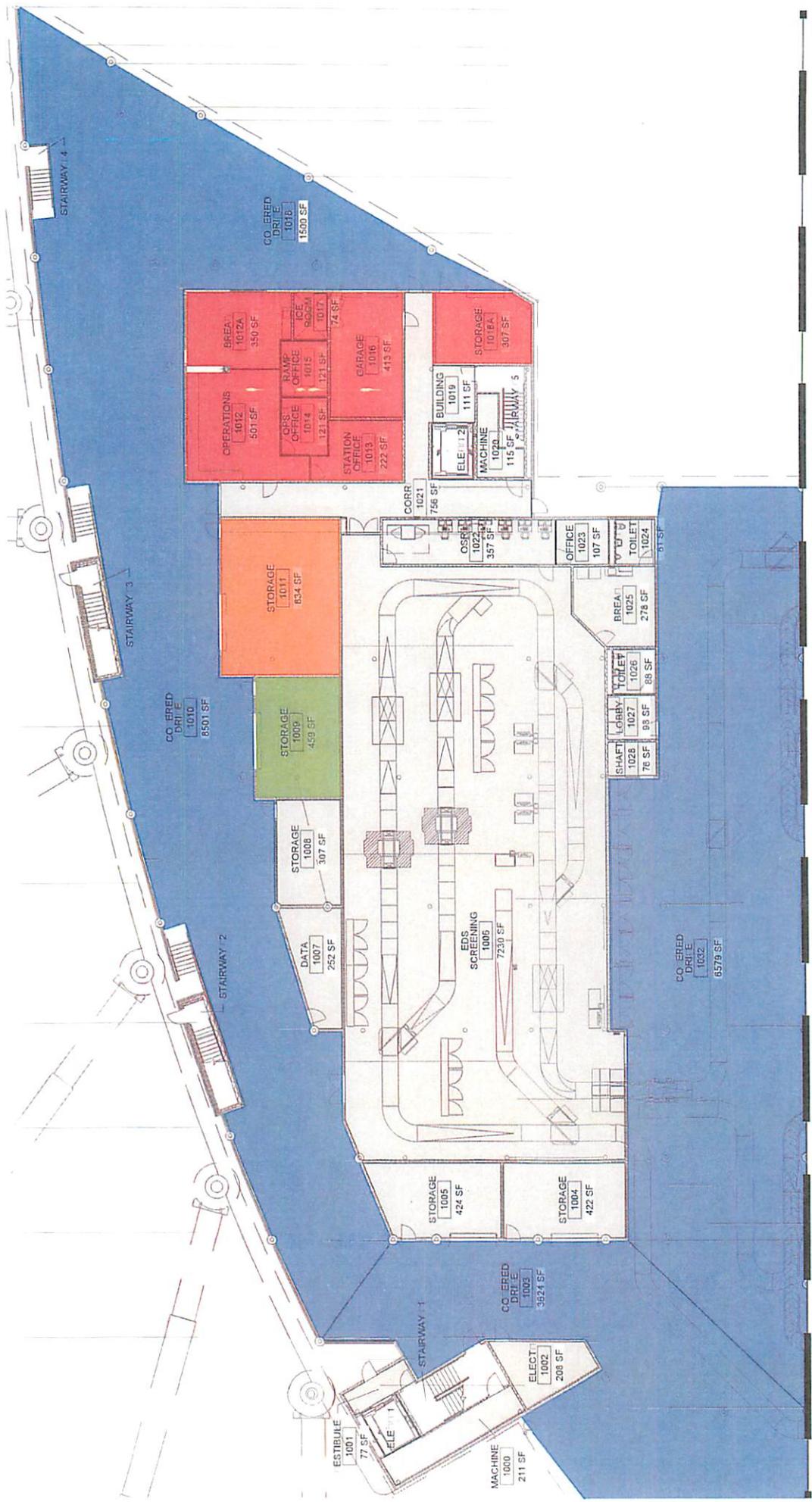


Printed Name: Christopher J. Collison
Title: Director Real Estate
Date: 1/19/17



3A





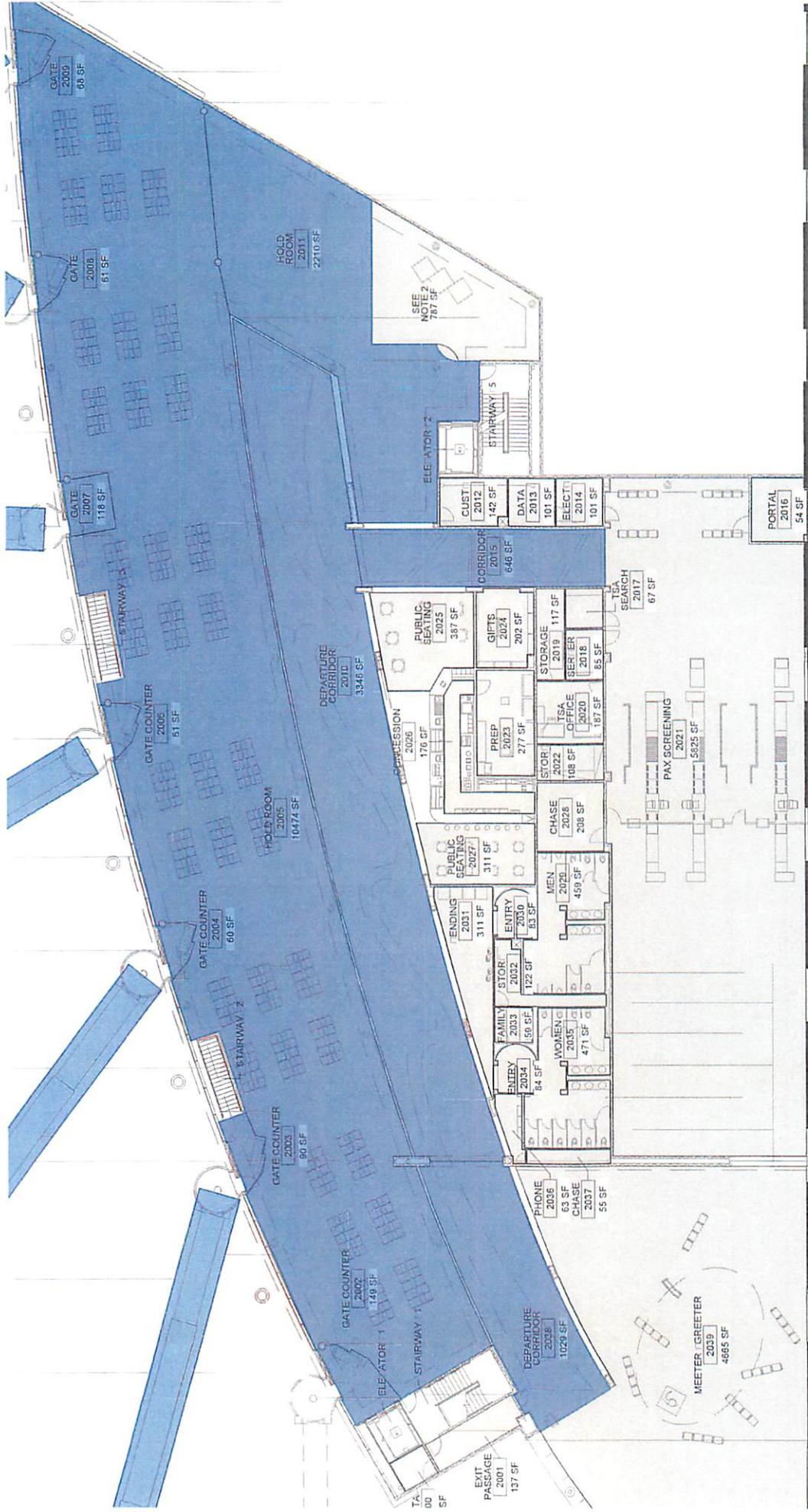
MATCHLINE - SEE AREA 1A

LEGEND

- SOUTHWEST AIRLINES
- AMERICAN AIRLINES
- UNITED AIRLINES
- JOINT USE AREAS

Note

1. Room dimensions and square footages are determined from information shown in the 2009 Air Terminal Addition and Modifications or Rick Husband Amarillo International Airport Actual dimensions and room usage may need verification, and are shown for informational purposes only.



- LEGEND**
- SOUTHWEST AIRLINES
 - AMERICAN AIRLINES
 - UNITED AIRLINES
 - JOINT USE AREAS

- Note**
1. Room dimensions and square footages are determined from information shown in the 2009 Air Terminal Addition and Modifications or Rick Husband Amarillo International Airport. Actual dimensions and room usage may need verification, and are shown for informational purposes only.
 2. Room not identified on the floor plan.

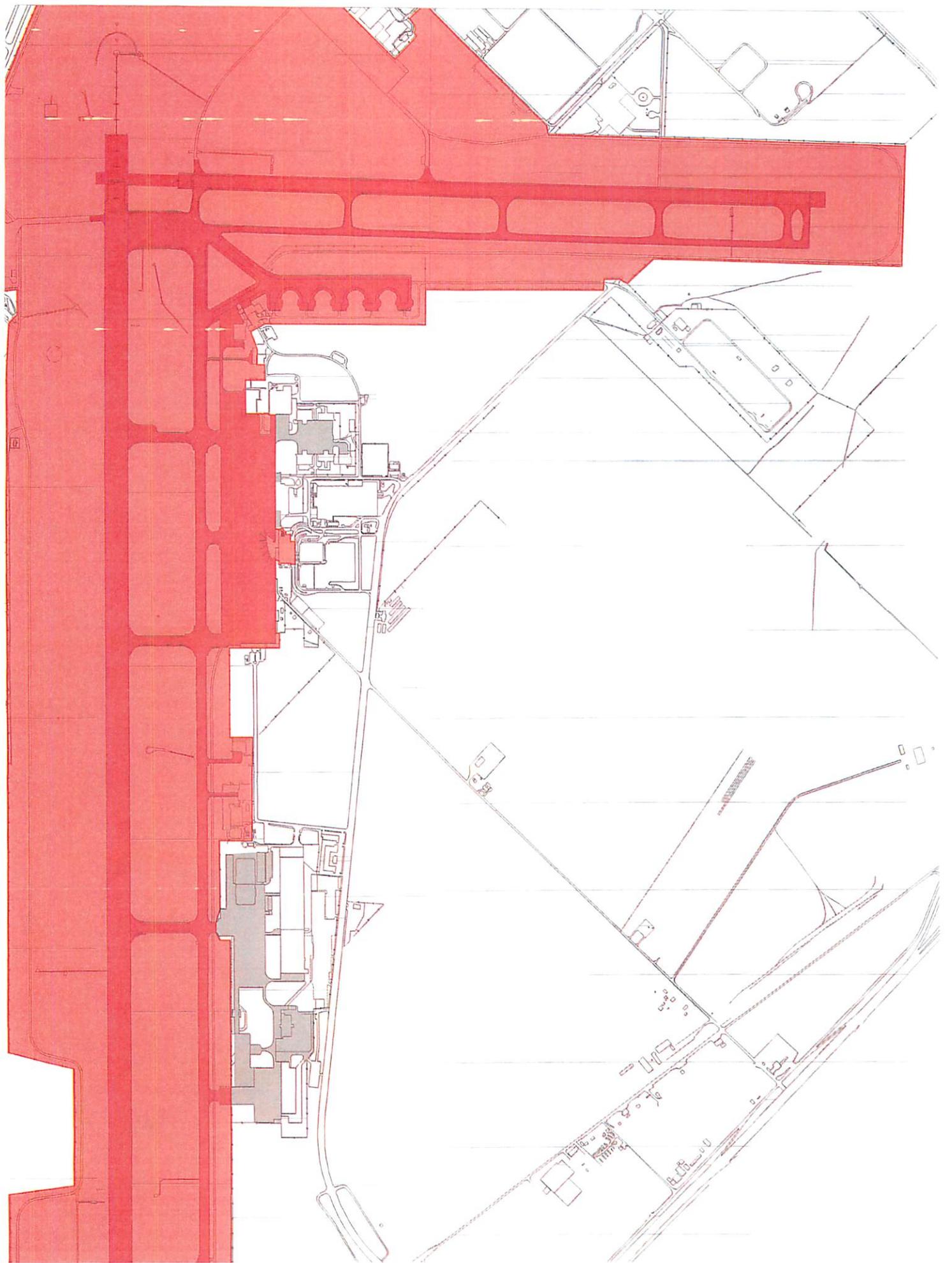
MATCHLINE - SEE AREA 2A

**RICK HUSBAND AMARILLO INTERNATIONAL AIRPORT
EXHIBIT C**

RATE MODEL ILLUSTRATION
(for demonstrative purposes only)

LANDING FEE	Example Fiscal Year
<u>Airfield Requirement:</u>	
Operating Expense	\$2,823,791
Debt Service	99,025
Airfield Capital Expense	248,000
Total Requirement	[A] \$3,170,816
<u>Airfield Credits:</u>	
Non-Airline Revenue	\$188,644
Total Airfield Credits	[B] \$188,644
Net Airfield Requirement	[C=A-B] \$2,982,172
Landed Weight (1000-lb units):	[D] 469,089
Landing Fee Rate (per 1000-lb units)	[E=C/D] \$6.36
Discretionary Revenue Share Credit	[F] \$2,466,174
Revised Landing Fee Rate	[G=(C-F)/D] \$1.10
Total Landing Fee Revenue	[H=D*G] \$515,998

TERMINAL RENTAL RATE	Example Fiscal Year
<u>Terminal Requirement:</u>	
Operating Expenses	\$3,597,200
Debt Service	297,075
Terminal Capital Expense	50,000
Total Requirement	[A] \$3,944,275
<u>Terminal Credits:</u>	
Non-Airline Revenue	\$566,521
Applied PFCs	\$297,075
Total Terminal Credits	[B] \$863,596
Net Terminal Requirement	[C=A-B] \$3,080,679
Airline Rentable Space	[D] 87,911
Average Terminal Rental Rate	[E=C/D] \$35.04
Net Terminal Requirement (after Discretionary Revenue Applied)	[F] \$2,048,936
Revised Terminal Rental Rate	[G=F/D] \$23.31



**RICK HUSBAND AMARILLO INTERNATIONAL AIRPORT
AIRPORT USE AND LEASE AGREEMENT**

FIRST AMENDMENT

THIS FIRST AMENDMENT (hereinafter referred to as the "Amendment") to the AIRPORT USE AND LEASE AGREEMENT dated October 1, 2016 ("Agreement"), is entered into this 9th day of January, 2017, by and between the CITY OF AMARILLO, TEXAS ("City") and, American Airlines Inc., a corporation organized and existing under the laws of the State of Delaware ("Airline").

WITNESSETH:

WHEREAS, City and Airline have entered into an airport and airline Agreement at the Rick Husband Amarillo International Airport ("Airport"); and

WHEREAS, City and Airline desire to amend the terms, covenants, and conditions of that Agreement pursuant to this Amendment; and

WHEREAS, the City and Airline have the power and authority to enter into this Amendment;

NOW, THEREFORE, and in consideration of the mutual covenants, agreements, and conditions contained herein, the parties hereto agree to modify the Agreement as follows:

1. Section 1.01 Definitions. The definition of "Signatory Airline(s)" shall be replaced with the following modified definition:

"Signatory Airline(s)" or "Signatory" means those Air Transportation Companies that have executed this Agreement with the City. An Affiliate of a Signatory Airline, as defined herein, shall be treated as a Signatory Airline for the purposes of this Agreement, subject to certain restrictions and requirements as defined herein. A Signatory Airline must lease a minimum of 200 square feet of Preferential Use Space plus one, two-position ticket counter (as well as reasonable additional space, if required by the Director of Aviation).

2. Section 6.03(B) Terminal Building Rentals. The following sentence shall be added:

At any time during the Term of this Agreement, if any Air Transportation Company meets or exceeds the five percent (5%) of the Airport's total Enplaned Passengers threshold for a period of three (3) consecutive

months, it shall then be obligated to pay pursuant to the calculation of the 20% amount under (1) above for the remainder of the Term, even if it has fewer than five (5%) of the Airport's total Enplaned Passengers at the Airport subsequent to that period of time.

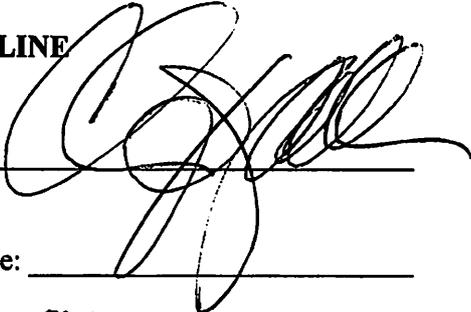
3. Except as specifically amended herein, the terms and conditions of this Agreement remain unchanged and in full force and effect. Terms and phrases not defined in the Amendment shall have the meaning ascribed to them in the Agreement.

IN WITNESS WHEREOF, the above parties have executed this Amendment to the Agreement this _____ day of _____, 2016.

CITY

AIRLINE

By: _____

By:  _____

Name: _____

Name: _____

Title: _____

Title: **Christopher J. Collison**
Director Real Estate



Amarillo City Council Agenda Transmittal Memo



Meeting Date	02/07/2017	Council Priority	Long Term Plan for Infrastructure
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Department	Aviation
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Agenda Caption

Approve Task Order 23 between RS&H, Inc. and the Rick Husband Amarillo International Airport for Design and Bid services for terminal mechanical system upgrades in the amount of \$68,915.

Agenda Item Summary

This Task Order specifically focuses the Design and Bid services for upgrades that included the replacement of the existing steam boiler system with a new hot water boiler heating system, replacement of the water treatment system for the hot water system, replacement of the domestic hot water heater, and repair of leaking heating hot water piping. These recommendations came out of a Mechanical Assessment dated December 9, 2016.

Requested Action

Recommend approval of Task Order 23.

Funding Summary

Funding for this Task Order will be from project 540140 Terminal Boiler Replacement Project. This project is in the Airport's 16/17 CIP budget.

Community Engagement Summary

N/A.

Staff Recommendation

Staff recommends the approval of Task Order 23 between RS&H, Inc. and Rick Husband Amarillo International Airport to execute Design and Bid services for terminal mechanical system upgrades.

RS&H Project No. 227.0247.023
 Short Title: Mechanical Systems Upgrade
 Effective Date: January 20th, 2017

TASK ORDER NO. 23

RS&H, INC., a Florida corporation (hereinafter "Consultant") agrees to perform and complete the following work (hereinafter "Work") for the City of Amarillo, Texas which owns and operates Rick Husband Amarillo International Airport (hereinafter "Client"), in accordance with the terms and conditions of the Master Consulting Service Agreement, dated December 8, 2014, all of which terms and conditions are incorporated herein by reference:

Project Location and Description:

Project Location: Rick Husband Amarillo International Airport (AMA)

Project Description: This project includes the preparation of bid documents for upgrades to the existing terminal mechanical systems (as detailed in "Attachment A") and bidding/award services.

Scope of Services and Deliverables

The full scope of services and deliverables are described in "Attachment A", which is made a part hereof.

Compensation Terms

The method of payment shall be Lump Sum. The total compensation shall be \$68,915 for services described in "Attachment A". Breakdown for tasks is as follows:

TASK	CONTRACT VALUE
Task 1 – 60% Design	\$31,502
Task 2 – 90% Design	\$20,166
Task 3 – 100% (Bid Documents) Design	\$9,457
Task 4 – Bid/Award Phase Services	\$7,791
TOTAL:	\$68,915

Schedule

Schedule shall be as described in "Attachment A".

CLIENT
 CITY OF AMARILLO, TEXAS

CONSULTANT
 RS&H, INC.

By: _____

By: Rodney L. Bishop Jr.

Typed Name: Bob Cowell

Typed Name: Rodney L. Bishop Jr.

Title: Interim Deputy City Manager

Title: Vice President

Attest: _____

Attest: Melanie L. Nichols

Typed Name: Frances Hibbs

Typed Name: Melanie L. Nichols

Title: City Secretary

Title: Asst. Corporate Secretary

[CORPORATE SEAL]

[CORPORATE SEAL]



“ATTACHMENT A”



Rick Husband-Amarillo International Airport

Mechanical Systems Upgrade

PROJECT PROPOSAL / SCOPE OF WORK

RS&H Project No: 227-0247-023

AMA Project No: 540140



RS&H, Inc.

11011 Richmond Avenue, Suite 900

Houston, Texas 77042

713.914.4455 (P) 713.914.0155 (F)

January 20th, 2017

MECHANICAL SYSTEMS UPGRADE PROJECT PROPOSAL AND SCOPE OF WORK

1. Project Description

The City of Amarillo, Texas, which owns and operates Rick Husband International Airport (Airport) has requested RS&H, Inc. (Consultant) to assist the Airport with the replacement and upgrade of existing terminal mechanical systems, primarily the heating systems. The scope of this replacement was determined based on the items indicated as Immediate Recommendations in the assessment report completed by the Consultant on December 9, 2016. The scope of the upgrades include replacement of the existing steam boiler system with a new hot water boiler heating system, replacement of the water treatment system for the hot water system, replacement of the domestic hot water heater, and repair of leaking heating hot water piping.

The project will be performed by RS&H as outlined in this proposal. The project will include the following tasks:

- Task 1 – 60% Design
- Task 2 – 90% Design
- Task 3 – Bid Documents
- Task 4 – Bid/Award Services
-

Initial estimate of probable construction cost is approximately \$800,000. The actual cost could vary as the project design progresses and/or the scope changes.

For the project defined above, this proposal consists of professional engineering design services as outlined herein.

2. Scope of Services

TASK 1: 60% Design

Task 1.1 Kick-Off Meeting with Airport Staff

The Consultant shall prepare for and attend one pre-design meeting with the Airport staff and other appropriate federal and/or state agencies to establish the preliminary design goals and methods. The kickoff meeting will be held at the Amarillo International Airport administrative offices. This meeting will review the recommendations outlined in the assessment report to confirm the scope of this design.

Task 1.2 Records Review

The Consultant shall review available data related to the project. The Airport will provide to the Consultant any relevant information to the project such as previous as-built drawings, historical survey data, and previous design plans/specifications.

Task 1.3 Prepare 60% Design Documents

The Consultant shall prepare 60% design drawings, plans, outline specifications, estimate of probable construction cost, and Preliminary Engineer's Report. The preliminary design shall evaluate and identify specific elements of the project for a technically and economically sound project. The development of the preliminary design will be in coordination with the Airport's authorized representative(s) for their input.

Task 1.4 Quality Control Review

The Consultant shall conduct in-house quality control review of the preliminary design plans, specifications, estimate of probable construction cost, and Engineer's Report prior to submittal to the Airport's authorized representative(s).

Task 1.5 Submit 60% Design Deliverable

The Consultant shall submit and distribute three (3) sets of the 60% plans, specifications, estimate of probable construction cost, and Engineer's Report to the Airport for review, comment, and approval to proceed to 90% design.

Task 1.6 60% Design Review Meeting

The Consultant shall coordinate and attend one (1) teleconference to review the 60% design submittal. The Consultant will provide written minutes of the meeting and distribute to all attendees.

Task 1.7 Project Management

The Consultant shall administer the project in coordination with assigned airport staff. The Consultant shall manage the project, coordinate with AMA staff, assign qualified individuals or sub-consultants to the project, and shall complete the efforts within a reasonable and agreeable time frame.

TASK 1 SCHEDULED MEETING SUMMARY

- (1) Kick-Off Meeting (3 People)
- (1) 60% Review Meeting(Teleconference)

TASK 1 DELIVERABLES

- 60% Schematic Plans
- Specifications Outline
- Preliminary Engineer's Design Report
- Engineer's Estimate of Probable Construction Cost

TASK 1 SCHEDULE

A preliminary schedule follows:

- Prepare 60% Design Documents6-Week Duration
- Quality Control Review and 60% Submittal1-Week Duration
- 60% Design Review Meeting1-Week after submission of 60% documents

TASK 2: 90% DESIGN

Task 2.1 *Incorporate 60% Design Review Comments*

The Consultant shall prepare for and incorporate all comments received from the Airport's authorized representative(s) from the 60% design submittal review into plans, specifications, estimate of probable construction cost, and Engineer's Report. The Consultant shall provide a written report on each comment on how it will be incorporated into the documents, or why it was not applicable.

Task 2.2 *Prepare 90% Design Documents*

The Consultant shall prepare 90% plans, specifications, estimate of probable construction cost, and Engineer's Report. The development of the 90% design documents will be in coordination with the Airport's authorized representative(s) for their input.

Task 2.3 *Quality Control Review*

The Consultant shall conduct in-house quality control review of the 90% design plans, specifications, estimate of probable construction cost, and Engineer's Report prior to submittal to the Airport's authorized representative(s).

Task 2.4 *Submit 90% Design Deliverable*

The Consultant shall submit and distribute three (3) sets of the 90% plans, specifications, estimate of probable construction cost, and Engineer's Report to the Airport for review, comment, and approval to proceed to 100% design.

Task 2.5 *90% Design Review Meeting*

The Consultant shall coordinate and attend one (1) final design meeting at the Airport to review the 90% design submittal. The Consultant will provide written minutes of the meeting and distribute to all attendees. The 90% design review meeting will be held at the Amarillo International Airport administrative offices. This meeting will finalize the 90% design documents.

Task 2.6 *Project Management*

The Consultant shall administer the project in coordination with assigned airport staff. The Consultant shall manage the project, coordinate with AMA staff, assign qualified individuals or sub-consultants to the project, and shall complete the efforts within a reasonable and agreeable time frame.

TASK 2 SCHEDULED MEETING SUMMARY

- (1) 90% on site Design Review Meeting

TASK 2 DELIVERABLES

- 90% Plans
- 90% Specifications
- 90% Engineer's Design Report Update
- 90% Engineer's Estimate of Probable Construction Cost

TASK 2 SCHEDULE

A preliminary schedule follows:

- Prepare 90% Design Documents4-Week Duration
- Quality Control Review and 90% Submittal1-Week Duration
- 90% on site Design Review Meeting(2 people)1-Week after submission of 90% documents

TASK 3: BID DOCUMENTS (100% DESIGN)

Task 3.1 Incorporate 90% Design Review Comments

The Consultant shall review all comments received from the Airport’s authorized representative(s) from the 90% design submittal review and incorporate applicable comments into plans, specifications, estimate of probable construction cost, and Engineer’s Report. The Consultant shall provide a written report on each comment on how it will be incorporated into the documents, or why it was not applicable.

Task 3.2 Prepare Bid (100 % Design) Documents

The Consultant shall prepare 100% Bid Documents and technical specifications. Specifications shall be based on a unit price total cost construction contract. Front-end specification requirements and format shall be provided by the Airport including, but not limited to, the advertisement to bid, legal requirements, proposal, contract, bond forms, general provisions, labor rates, minority participation requirements, special conditions, insurance requirements, and any other pertinent and or required information.

Task 3.3 Quality Control Review

The Consultant shall conduct in-house quality control review of the Bid Set design plans, specifications, estimate of probable construction cost, and Engineer’s Report prior to submittal to the Airport’s authorized representative(s).

Task 3.4 Submit Bid Set Design Deliverable

The Consultant shall submit and distribute three (3) sets of the Bid Set plans, specifications, estimate of probable construction cost, and Engineer’s Report to the Airport as well as electronic files in PDF and MS Word format for use and distribution during the bidding phase.

Task 3.5 Project Management

The Consultant shall administer the project in coordination with assigned airport staff. The Consultant shall manage the project, coordinate with AMA staff, assign qualified individuals or sub-consultants to the project, and shall complete the efforts within a reasonable and agreeable time frame.

TASK 3 SCHEDULED MEETING SUMMARY

- None

TASK 3 DELIVERABLES

- 100% Bid Set Plans
- 100% Bid Set Specifications
- 100% Final Engineer's Design Report
- 100% Engineer's Estimate of Probable Construction Cost

TASK 3 SCHEDULE

A preliminary schedule follows:

- Prepare 100% Bid Set Design Documents.....3-Week Duration

TASK 4: BID/AWARD PHASE SERVICES

Task 4.1 Pre-Bid Conference

The Consultant shall attend a pre-bid conference at the Airport, receive comments, record the minutes of the conference and distribute to the Airport's authorized representative(s) and prospective contractors.

Task 4.2 Issue Addenda

The Consultant shall issue required addenda to revise plans, specifications and other contract documents prepared by the Consultant in order to provide clarifications, correct discrepancies, or correct errors and/or omissions.

Task 4.3 Bid Tabulation and Award Recommendation

The Consultant shall develop a tabulation of all bids received and provide evaluation of checking for correctness, qualifications of apparent low bidder, DBE participation goals, etc., and make recommendations of award based solely on apparent low bidder.

TASK 4 SCHEDULED MEETING SUMMARY

- Pre-Bid Conference

TASK 4 DELIVERABLES

- Bid Tabulation
- Award Recommendation

3. Exclusions and Assumptions

The following are excluded from this proposal:

- Commissioning of newly installed systems
- Design of upgrades to building hot water distribution system, except repair of leaks identified in assessment report
- Design of upgrades for plumbing systems other than hot water heater replacement
- Design of upgrades or repairs for chilled water or condenser water systems
- Design of electrical system upgrades, other than design of circuits and connections for new equipment
- Any Construction Administration services
- Any other services not explicitly defined

The following are assumed for this proposal:

- All ladders, lifts and escorts will be provided by AMA as needed.
- Available record documents will be provided by AMA personnel



Rick Husband Amarillo International Airport
Mechanical Systems Upgrade

SCOPE / TASK TITLE	RB	NG	KN	TK	CS or SM/IA	TOTAL
	PROJECT OFFICER	PROJECT DIRECTOR	PROJECT MANAGER	ENGR III	ENGINEER II	
BASIC SERVICES						
TASK 1: 60% DESIGN						
Task 1.1 Kick-Off Meeting	1	2	16	16	16	51
Task 1.2 Records Review			4	12		16
Task 1.3 Prepare Preliminary Design Documents			3	35	32	70
Task 1.4 Quality Control Review			2	8	2	12
Task 1.5 Submit 60% Design Deliverable			1	20	2	23
Task 1.6 Preliminary Design Review Meeting			4	4	4	12
Task 1.7 Project Management			2	2	8	12
TOTAL HOURS	1	2	32	97	64	196
BURDENED RATE	\$ 292.36	\$ 246.93	\$ 226.54	\$ 147.71	\$ 95.40	
TOTAL BURDENED LABOR	\$ 292	\$ 494	\$ 7,249	\$ 14,328	\$ 6,106	\$ 28,469
OTHER DIRECT NON-SALARY COSTS						
REPRODUCTION						
	# DWGS	# PAGES			#SETS	
	@	@				
	\$1.60	\$0.10				
Drawings	8				3	\$38
Reports/Specifications		200			3	\$60
TOTAL REPRODUCTION						\$98
POSTAGE/DELIVERY						
	# PCKGS	# PCKGS				
	@	@				
	\$15.00	\$3.00				
Drawings and Specifications		2				\$6
TOTAL POSTAGE/DELIVERY						\$6
SPECIALTY SUBCONSULTANTS						
TOTAL SPECIALTY SUBCONSULTANTS						\$0
TOTAL DBE PERCENTAGE (THIS TASK)	0.00%					
TRAVEL						
	# People	# Days	Airfare @	Lodging @	Per Diem @	
			\$750	\$150	\$51	
Kick-Off Meeting	3	1	\$2,250	\$450	\$153	\$2,853
TOTAL						\$2,853
MILEAGE						
	150	Miles @	\$0.50			\$75
ODC's						\$3,032
Total Proposed Fee for:	TASK 1: 60% DESIGN					\$ 31,502
TASK 2: 90% DESIGN						
Task 2.1 Incorporate 60% Design Review Comments			2	8	2	12
Task 2.2 Prepare 90% Design Documents			2	40	2	44
Task 2.3 Quality Control Review		2	2	8	4	16
Task 2.4 Submit 90% Design Deliverable			2	8		10
Task 2.5 90% Design on site Review Meeting			8	8	8	16
Task 2.6 Project Management			8	4	8	20
TOTAL HOURS	0	2	16	76	24	118
BURDENED RATE	\$ 292.36	\$ 246.93	\$ 226.54	\$ 147.71	\$ 95.40	
TOTAL BURDENED LABOR	\$ -	\$ 494	\$ 3,625	\$ 11,226	\$ 2,290	\$ 17,634
OTHER DIRECT NON-SALARY COSTS						
REPRODUCTION						
	# DWGS	# PAGES			#SETS	
	@	@				
	\$1.60	\$0.10				
Drawings	8				3	\$38
Reports/Specifications		200			3	\$60
TOTAL REPRODUCTION						\$98
POSTAGE/DELIVERY						
	# PCKGS	# PCKGS				
	@	@				
	\$15.00	\$3.00				
Drawings and Specifications	3	3				\$54
TOTAL POSTAGE/DELIVERY						\$54
SPECIALTY SUBCONSULTANTS						
TOTAL SPECIALTY SUBCONSULTANTS						\$0
TOTAL DBE PERCENTAGE (THIS TASK)	0.00%					
TRAVEL						
	# People	# Days	Airfare @	Lodging @	Per Diem @	
			\$750	\$150	\$51	
90% Design Review Meeting	2	2	\$1,500	\$600	\$204	\$2,304
TOTAL						\$2,304
MILEAGE						
	150	Miles @	\$0.50			\$75
ODC's						\$2,531
Total Proposed Fee for:	TASK 2: 90% DESIGN					\$ 20,166



Rick Husband Amarillo International Airport
Mechanical Systems Upgrade

SCOPE / TASK TITLE	RR	NG	KN	TK	CS or SAMMA		TOTAL
	PROJECT OFFICER	PROJECT DIRECTOR	PROJECT MANAGER	ENGR III	ENGINEER II		
TASK 3: 100% (BID DOCUMENTS) DESIGN							
Task 3.1 Incorporate 90% Design Review Comments			1	0	4		13
Task 3.2 Prepare 100% Design Documents			1	0	10		19
Task 3.3 Quality Control Review			2	0	4		12
Task 3.4 Submit 100% Bid Set Design Deliverable			1	0	1		10
Task 3.5 Project Management			4	4	4		12
TOTAL HOURS	0	0	9	34	23		66
BURDENED RATE	\$ 292.36	\$ 246.93	\$ 226.54	\$ 147.71	\$ 95.40		
TOTAL BURDENED LABOR	\$ -	\$ -	\$ 2,039	\$ 5,022	\$ 2,194		\$ 9,255
OTHER DIRECT NON-SALARY COSTS							
REPRODUCTION	# DWGS	# PAGES			#SETS		
	@	@					
	\$1.00	\$0.10					
Drawings	8				3		\$13
Reports/Specifications		200			3		\$60
TOTAL REPRODUCTION							\$73
POSTAGE/DELIVERY	# PCKGS	# PCKGS					
	@	@					
	\$15.00	\$3.00					
Drawings and Specifications	3	3					\$54
TOTAL POSTAGE/DELIVERY							\$54
SPECIALTY SUBCONSULTANTS							
TOTAL SPECIALTY SUBCONSULTANTS							\$0
TOTAL DBE PERCENTAGE (THIS TASK):	0.00%						
TRAVEL	# People	# Days	Airfare @	Lodging @	Per Diem @		
			\$750	\$150	\$51		
TOTAL							\$0
MILEAGE	150	Miles @	\$0.50				\$75
ODC's							\$202
Total Proposed Fee for:	TASK 3: 100% (BID DOCUMENTS) DESIGN						\$ 9,457
TASK 4: BID/AWARD PHASE SERVICES							
Task 4.1 Pre-Bid Conference			2	10	8		20
Task 4.2 Issue Addenda			1	13	2		16
Task 4.3 Bid Tabulation & Award Recommendation				4	2		6
TOTAL HOURS	0	0	3	27	12		42
BURDENED RATE	\$ 292.36	\$ 246.93	\$ 226.54	\$ 147.71	\$ 95.40		
TOTAL BURDENED LABOR	\$ -	\$ -	\$ 680	\$ 3,988	\$ 1,145		\$ 5,813
OTHER DIRECT NON-SALARY COSTS							
REPRODUCTION	# DWGS	# PAGES			#SETS		
	@	@					
	\$1.00	\$0.10					
Drawings					3		\$0
Reports/Specifications					3		\$0
TOTAL REPRODUCTION							\$0
POSTAGE/DELIVERY	# PCKGS	# PCKGS					
	@	@					
	\$15.00	\$3.00					
Drawings and Specifications							\$0
TOTAL POSTAGE/DELIVERY							\$0
SPECIALTY SUBCONSULTANTS	None						
TOTAL SPECIALTY SUBCONSULTANTS							\$0
TOTAL DBE PERCENTAGE (THIS TASK):	0.00%						
TRAVEL	# People	# Days	Airfare @	Lodging @	Per Diem @		
			\$750	\$150	\$51		
Pre-Bid Meeting	2	1	\$1,500	\$300	\$103		\$1,903
TOTAL							\$1,903
MILEAGE	150	Miles @	\$0.50				\$75
ODC's							\$1,978
Total Proposed Fee for:	TASK 4: BID/AWARD PHASE SERVICES						\$ 7,791
TOTAL LUMP SUM FEE FOR ALL TASKS:							\$ 68,915



Amarillo City Council Agenda Transmittal Memo



Meeting Date	2/07/17	Council Priority	N/A
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Department	Parks & Recreation
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Agenda Caption

Approval of Amendment Number Three to the existing lease for the Amarillo Botanical Gardens.

Agenda Item Summary

Amendment Number 3 between the City of Amarillo and the Amarillo Botanical Gardens provides a three year lease option of additional property located directly to the south of the existing facility to fully fund and construct a Children’s Cottage and Garden. The expansion will include playground features, educational gardens and a small amphitheater with seating and a lecture area. This amendment increases the size of the leasehold by 1.162 acres if all terms and conditions are met.

Requested Action

Approval of Amendment Number Three to the lease Agreement between the City of Amarillo and the Amarillo Botanical Gardens.

Funding Summary

N/A

Community Engagement Summary

N/A

Staff Recommendation

Staff recommends approval of the amendment to increase the current lease property by the Amarillo Botanical Gardens for the purpose of a Children’s Cottage and Garden per the terms and conditions stated in the amendment.

11/14/2016BSM

**AMENDMENT NUMBER THREE
TO AGREEMENT BETWEEN THE CITY OF AMARILLO AND
THE AMARILLO BOTANICAL GARDENS**

RECITALS

- 1) The City of Amarillo ("Lessor") by "Agreement between the City of Amarillo and the Amarillo Botanical Gardens" dated September 29, 1998 ("Agreement"), as amended by Amendment Number 1 dated February 27, 2009, leased a portion of Section 26, Block 9, BS&F Survey, Potter County, Texas to the Amarillo Botanical Gardens ("Lessee") for construction of botanical gardens and related improvements.
- 2) Lessor and Lessee now desire to provide Lessee an option to lease property for the botanical gardens by this amendment to the Agreement.

NOW THEREFORE Lessor and Lessee hereby agree to amend the Agreement by deleting Section II "Lease Option" as previously amended and substituting therefore the following:

**SECTION II
LEASE OPTION**

Lessor hereby grants to Lessee an option for a term of three (3) years from the date of execution of this Amendment Number Three by Lessor to lease the property highlighted as a portion of Parcel 1 on Plat (Exhibit "A") attached to this Amendment and by this reference made a part of this Amendment (hereinafter referred to as "Parcel 1"). The following terms and conditions will apply to Lessee's execution of the Lease Option:

- A) Lessee must exercise its option by giving written notice to Lessor during the three year option term and must be in compliance with the terms and conditions of the Agreement.
- B) Improvements to Parcel 1 must be made on a turnkey basis.
- C) At the time Lessee exercises the lease option Lessee must, in addition to the written notice provide written documentation to the Lessor that all funding for Lessee's intended turnkey improvement of Parcel 1 is on deposit and dedicated solely for that use. Lessor will only consider adding Parcel 1 to the Agreement

with proof that full funding is available. Pledges for funding via future private contributions shall not be considered acceptable.

- D) Lessor shall have the right to review, approve, deny and request modification of Lessee's proposed plans for the development of Parcel 1.
- E) If Lessee exercises the option on Parcel 1, which includes complying with the conditions noted above, Parcel 1 shall thereafter be incorporated into and made subject to the Agreement.
- F) The parties acknowledge that this option does not include any area other than Parcel 1.

Except as specifically changed herein all other terms, conditions, obligations rights and privileges of the above described Agreement remain in full force and effect.

EXECUTED by the parties as of the date shown below, to be effective as of the date of execution by Lessor.

ATTEST:

CITY OF AMARILLO
(Lessor)

Frances Hibbs, City Secretary

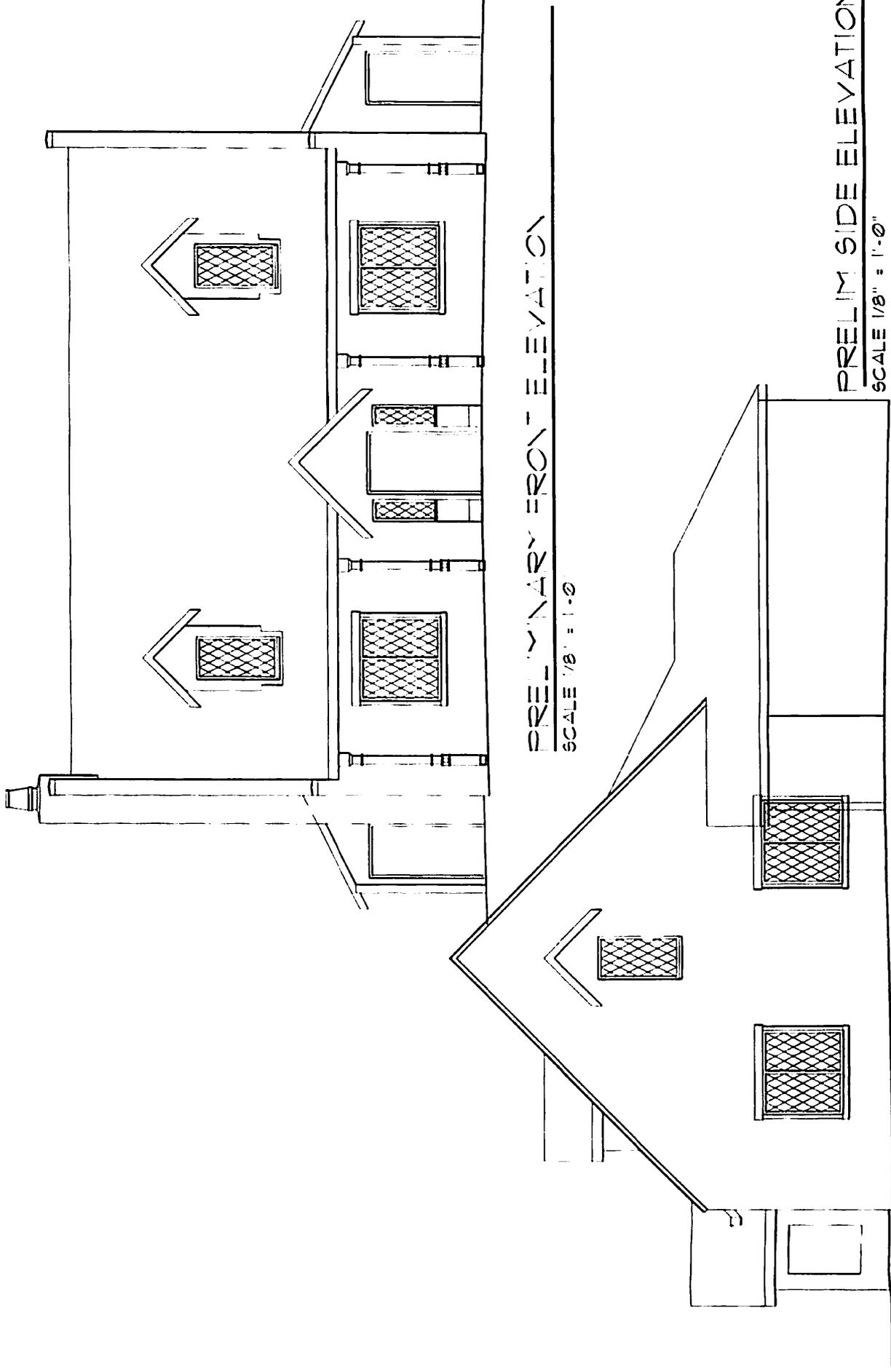
By: _____
Bob Cowell, Deputy City Manager

Date: _____

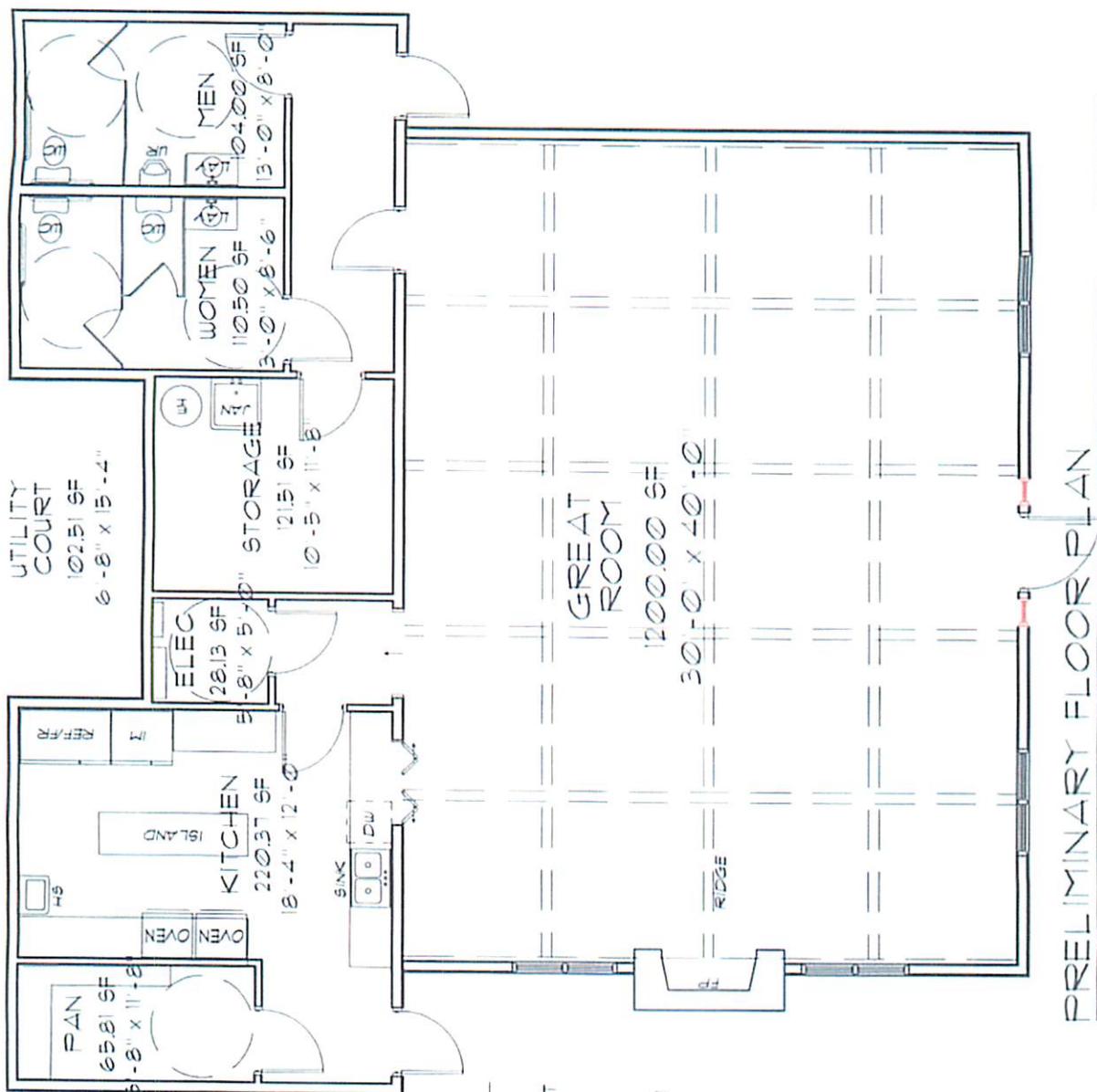
AMARILLO BOTANICAL GARDENS
(Lessee)

By: *Dana Bagot*
Dana Bagot, President

Date: 01-19-2017



Children's Garden for Botanical Gardens HRMC ARCHITECTS LAVIN • Amarillo, Texas		SHEET	2 OF 1
		JOB NO. • 7777 DATE • 1-14-15 REVISIONS	



PRELIMINARY FLOOR PLAN
SCALE 1/8" = 1'-0"

CODE REVIEW

- 2185 SQUARE FEET
- GROUP A-3 OCCUPANCY
- 1 OCCUPANT FOR EVERY 7 SQUARE FEET
- 171 OCCUPANTS IN GREAT ROOM
- TWO EXITS REQUIRED
- NO FIRE SPRINKLER REQUIRED
- 88 MEN AND 88 WOMEN
- FIXTURES REQUIRED FROM TABLE 1902.1
- 1 TOILET MEN'S
- 2 TOILETS WOMEN'S
- 1 LAVATORY FOR EACH

INCOMPLETE DOCUMENTS STATEMENT

Thomas L. Lavin
Texas Architect Registration No. 6559
Date: 1-14-15

This document is incomplete and cannot be used for regulatory approval, permitting, or construction.

Barry's Drawing
for
Botanical Gardens

ARCHITECTS
LAVIN

SHEET

1

OF 1

JOB NO. 17777
DATE 1-14-15
REVISIONS

Amarillo City Council Agenda Transmittal Memo



Meeting Date	February 7, 2017	Council Priority	N/A
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Department	WIC Nutrition
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Agenda Caption

Approval - WIC Nutrition Program Contract for FY2017

Agenda Item Summary

FY2017 Award Not to Exceed: \$1,543,420.00

The FY2017 Women, Infant, and Children's (WIC) Nutrition Program is a pass-through contract from the Department of State Health Services to the City of Amarillo for the period of October 1, 2016 through September 30, 2017. WIC provides supplemental nutritious foods, health assessments, medical and social services referrals, nutrition education and breastfeeding support.

Requested Action

Request for Council to approve the FY 2017 contract for the provision of WIC Nutrition services. WIC is a Supplemental Nutrition Program for low income Pregnant, Post Partum, and Breastfeeding Women and Infants and Children up to age 5. WIC provides supplemental nutritious foods, health assessments, medical and social services referrals, nutrition education and breastfeeding support. The City of Amarillo WIC Nutrition Program provides services in Potter, Randall, Armstrong, Carson, and Oldham counties and currently serves an average of 6,909 participants per month.

Funding Summary

Contract is for an amount not to exceed \$1,543,420.00 for reimbursement of allowed expenditures for the provision of WIC Nutrition services.

Community Engagement Summary

N/A

Staff Recommendation

Staff recommends Council approval of the contract for the provision of WIC Nutrition services.

**SIGNATURE DOCUMENT FOR
DEPARTMENT OF STATE HEALTH SERVICES
CONTRACT NO. 2017-049839-001**

**UNDER THE
WOMEN, INFANT AND CHILDREN'S NUTRITION PROGRAM GRANT PROGRAM**

I. PURPOSE

The Department of State Health Services ("System Agency"), a pass-through entity, and City of Amarillo ("Grantee") (each a "Party" and collectively the "Parties") enter into the following grant contract to provide funding for Women, Infant and Children's Nutrition Program (the "Contract").

II. LEGAL AUTHORITY

This Contract is authorized by and in compliance with the provisions of 42 U.S.C. § 1786, 7 CFR Part 246, and Chapter 32 of the Texas Health & Safety Code.

II. DURATION

This Contract is effective on October 1, 2016 and terminates on September 30, 2017, unless renewed or terminated pursuant to the terms and conditions of the Contract. The System Agency, at its own discretion, may extend this Contract subject to terms and conditions mutually agreeable to both Parties.

III. BUDGET

The total amount of this Contract will not exceed **ONE MILLION FIVE HUNDRED FORTY-THREE THOUSAND FOUR HUNDRED TWENTY DOLLARS (\$1,543,420.00)**. All expenditures under the Contract will be in accordance with **ATTACHMENT A, STATEMENT OF WORK**.

IV. CONTRACT REPRESENTATIVES

The following will act as the Representative authorized to administer activities under this Contract on behalf of their respective Party.

System Agency

Department of State Health Services
1100 W. 49th Street, Austin, TX 78756
Attention: Cynthia Wright, DSHS Contract Manager
cynthia.wright@dshs.state.tx.us

Grantee

City of Amarillo
509 SE 7th Street, Amarillo, TX 79105
Attention: Bob Cowell, Deputy City Manager
bob.cowell@amarillo.gov

V. LEGAL NOTICES

Any legal notice required under this Contract shall be deemed delivered when deposited by the System Agency either in the United States mail, postage paid, certified, return receipt requested; or with a common carrier, overnight, signature required, to the appropriate address below:

System Agency

Department of State Health Services
Attention: Lisa Hernandez
1100 W. 49th Street, MC 1911
Austin, TX 78756

Grantee

City of Amarillo
509 SE 7th Street, Amarillo, TX 79105
Attention: Bob Cowell, Deputy City Manager

Notice given by Grantee will be deemed effective when received by the System Agency. Either Party may change its address for notice by written notice to the other Party.

VI. ADDITIONAL GRANT INFORMATION

Federal Award Identification Number (FAIN): 16166TX506W1003

Federal Award Date: 10/01/16 thru 09/30/17

Name of Federal Awarding Agency: United States Department of Agriculture Food and Nutrition Service

CFDA Name and Number: 10.557

Awarding Official Contact Information:

FNS Southwest Regional Office
Food and Nutrition Service
1100 Commerce Street, Room 522
Dallas, TX 75242-9980
Telephone (214)290-9810

DUNS: 065032807

SIGNATURE PAGE FOLLOWS

SIGNATURE PAGE FOR SYSTEM AGENCY CONTRACT NO. 2017-049839-001

HEALTH AND HUMAN SERVICES COMMISSION GRANTEE

Charles Smith
Executive Commissioner

Name: _____
Title: _____

Date of execution: _____

Date of execution: _____

**THE FOLLOWING ATTACHMENTS TO SYSTEM AGENCY CONTRACT NO. 2017-049839-001 ARE
HEREBY INCORPORATED BY REFERENCE:**

- ATTACHMENT A - STATEMENT OF WORK**
- ATTACHMENT B - UNIFORM TERMS AND CONDITIONS**
- ATTACHMENT C - GENERAL AFFIRMATIONS**
- ATTACHMENT D - SUPPLEMENTAL & SPECIAL CONDITIONS**
- ATTACHMENT E - FEDERAL ASSURANCES AND CERTIFICATIONS**
- ATTACHMENT F - FFATA**
- ATTACHMENT G - DATA USE AGREEMENT**
- ATTACHMENT H - NON-EXCLUSIVE LIST OF APPLICABLE LAWS**

ATTACHMENTS FOLLOW

**DATA USE AGREEMENT
BETWEEN THE
TEXAS HEALTH AND HUMAN SERVICES ENTERPRISE
AND
CITY OF AMARILLO (“CONTRACTOR”)**

This Data Use Agreement (“DUA”), effective as of the date signed below (“Effective Date”), is entered into by and between the Texas Health and Human Services Enterprise agency (“HHS”), and City of Amarillo, a political subdivision of the State of Texas (“CONTRACTOR”), and incorporated into the terms of HHS Contract No. 2017-049839-001, in Travis County, Texas (the “Base Contract”).

**ARTICLE 1.
PURPOSE; APPLICABILITY; ORDER OF PRECEDENCE**

The purpose of this DUA is to facilitate creation, receipt, maintenance, use, disclosure or access to Confidential Information with CONTRACTOR, and describe CONTRACTOR’s rights and obligations with respect to the Confidential Information. *45 CFR 164.504(e)(1)-(3)*. This DUA also describes HHS’s remedies in the event of CONTRACTOR’s noncompliance with its obligations under this DUA. This DUA applies to both Business Associates and contractors who are not Business Associates who create, receive, maintain, use, disclose or have access to Confidential Information on behalf of HHS, its programs or clients as described in the Base Contract.

As of the Effective Date of this DUA, if any provision of the Base Contract, including any General Provisions or Uniform Terms and Conditions, conflicts with this DUA, this DUA controls.

**ARTICLE 2.
DEFINITIONS**

For the purposes of this DUA, capitalized, underlined terms have the meanings set forth in the following: Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (42 U.S.C. §1320d, *et seq.*) and regulations thereunder in 45 CFR Parts 160 and 164, including all amendments, regulations and guidance issued thereafter; The Social Security Act, including Section 1137 (42 U.S.C. §§ 1320b-7), Title XVI of the Act; The Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988, 5 U.S.C. § 552a and regulations and guidance thereunder; Internal Revenue Code, Title 26 of the United States Code and regulations and publications adopted under that code, including IRS Publication 1075; OMB Memorandum 07-18; Texas Business and Commerce Code Ch. 521; Texas Government Code, Ch. 552, and Texas Government Code §2054.1125. In addition, the following terms in this DUA are defined as follows:

“**Authorized Purpose**” means the specific purpose or purposes described in the Statement of Work of the Base Contract for CONTRACTOR to fulfill its obligations under the Base Contract, or any other purpose expressly authorized by HHS in writing in advance.

“**Authorized User**” means a Person:

(1) Who is authorized to create, receive, maintain, have access to, process, view, handle, examine, interpret, or analyze Confidential Information pursuant to this DUA;

(2) For whom CONTRACTOR warrants and represents has a demonstrable need to create, receive, maintain, use, disclose or have access to the Confidential Information; and

(3) Who has agreed in writing to be bound by the disclosure and use limitations pertaining to the Confidential Information as required by this DUA.

“Confidential Information” means any communication or record (whether oral, written, electronically stored or transmitted, or in any other form) provided to or made available to CONTRACTOR, or that CONTRACTOR may, for an Authorized Purpose, create, receive, maintain, use, disclose or have access to, that consists of or includes any or all of the following:

(1) Client Information;

(2) Protected Health Information in any form including without limitation, Electronic Protected Health Information or Unsecured Protected Health Information (herein “PHI”);

(3) Sensitive Personal Information defined by Texas Business and Commerce Code Ch. 521;

(4) Federal Tax Information;

(5) Individually Identifiable Health Information as related to HIPAA, Texas HIPAA and Personal Identifying Information under the Texas Identity Theft Enforcement and Protection Act;

(6) Social Security Administration Data, including, without limitation, Medicaid information;

(7) All privileged work product;

(8) All information designated as confidential under the constitution and laws of the State of Texas and of the United States, including the Texas Health & Safety Code and the Texas Public Information Act, Texas Government Code, Chapter 552.

“Legally Authorized Representative” of the Individual, as defined by Texas law, including as provided in 45 CFR 435.923 (Medicaid); 45 CFR 164.502(g)(1) (HIPAA); Tex. Occ. Code § 151.002(6); Tex. H. & S. Code §166.164; and Estates Code Ch. 752.

ARTICLE 3.

CONTRACTOR'S DUTIES REGARDING CONFIDENTIAL INFORMATION

3.01 Obligations of CONTRACTOR

CONTRACTOR agrees that:

(A) CONTRACTOR will exercise reasonable care and no less than the same degree of care CONTRACTOR uses to protect its own confidential, proprietary and trade secret information to prevent any portion of the Confidential Information from being used in a manner that is not expressly an Authorized Purpose under this DUA or as Required by Law. *45 CFR 164.502(b)(1); 45 CFR 164.514(d)*

(B) Except as Required by Law, CONTRACTOR will not disclose or allow access to any portion of the Confidential Information to any Person or other entity, other than Authorized User's Workforce or Subcontractors (as defined in *45 C.F.R. 160.103*) of CONTRACTOR who have completed training in confidentiality, privacy, security and the importance of promptly reporting any Event or Breach to CONTRACTOR's management, to carry out CONTRACTOR's obligations in connection with the Authorized Purpose.

HHS, at its election, may assist CONTRACTOR in training and education on specific or unique HHS processes, systems and/or requirements. CONTRACTOR will produce evidence of completed training to HHS upon request. *45 C.F.R. 164.308(a)(5)(i); Texas Health & Safety Code §181.101*

(C) CONTRACTOR will establish, implement and maintain appropriate sanctions against any member of its Workforce or Subcontractor who fails to comply with this DUA, the Base Contract or applicable law. CONTRACTOR will maintain evidence of sanctions and produce it to HHS upon request. *45 C.F.R. 164.308(a)(1)(ii)(C); 164.530(e); 164.410(b); 164.530(b)(1)*

(D) CONTRACTOR will not, except as otherwise permitted by this DUA, disclose or provide access to any Confidential Information on the basis that such act is Required by Law without notifying either HHS or CONTRACTOR's own legal counsel to determine whether CONTRACTOR should object to the disclosure or access and seek appropriate relief. CONTRACTOR will maintain an accounting of all such requests for disclosure and responses and provide such accounting to HHS within 48 hours of HHS' request. *45 CFR 164.504(e)(2)(ii)(A)*

(E) CONTRACTOR will not attempt to re-identify or further identify Confidential Information or De-identified Information, or attempt to contact any Individuals whose records are contained in the Confidential Information, except for an Authorized Purpose, without express written authorization from HHS or as expressly permitted by the Base Contract. *45 CFR 164.502(d)(2)(i) and (ii)* CONTRACTOR will not engage in prohibited marketing or sale of Confidential Information. *45 CFR 164.501, 164.508(a)(3) and (4); Texas Health & Safety Code Ch. 181.002*

(F) CONTRACTOR will not permit, or enter into any agreement with a Subcontractor to, create, receive, maintain, use, disclose, have access to or transmit Confidential Information to carry out CONTRACTOR's obligations in connection with the Authorized Purpose on behalf of CONTRACTOR, unless Subcontractor agrees to comply with all applicable laws, rules and regulations. *45 CFR 164.502(e)(1)(ii); 164.504(e)(1)(i) and (2).*

(G) CONTRACTOR is directly responsible for compliance with, and enforcement of, all conditions for creation, maintenance, use, disclosure, transmission and Destruction of Confidential Information and the acts or omissions of Subcontractors as may be reasonably necessary to prevent unauthorized use. *45 CFR 164.504(e)(5); 42 CFR 431.300, et seq.*

(H) If CONTRACTOR maintains PHI in a Designated Record Set which is Confidential Information and subject to this Agreement, CONTRACTOR will make PHI available to HHS in a Designated Record Set upon request. CONTRACTOR will provide PHI to an Individual, or Legally Authorized Representative of the Individual who is requesting PHI in compliance with the requirements of the HIPAA Privacy Regulations. CONTRACTOR will release PHI in accordance with the HIPAA Privacy Regulations upon receipt of a valid written authorization. CONTRACTOR will make other Confidential Information in CONTRACTOR's possession available pursuant to the requirements of HIPAA or other applicable law upon a determination of a Breach of Unsecured PHI as defined in HIPAA. CONTRACTOR will maintain an accounting of all such disclosures and provide it to HHS within 48 hours of HHS' request. *45 CFR 164.524 and 164.504(e)(2)(ii)(E).*

(I) If PHI is subject to this Agreement, CONTRACTOR will make PHI as required by HIPAA available to HHS for review subsequent to CONTRACTOR's incorporation of any amendments requested pursuant to HIPAA. *45 CFR 164.504(e)(2)(ii)(E) and (F).*

(J) If PHI is subject to this Agreement, CONTRACTOR will document and make available to HHS the PHI required to provide access, an accounting of disclosures or amendment in compliance with the requirements of the HIPAA Privacy Regulations. *45 CFR 164.504(e)(2)(ii)(G) and 164.528.*

(K) If CONTRACTOR receives a request for access, amendment or accounting of PHI from an individual with a right of access to information subject to this DUA, it will respond to such request in compliance with the HIPAA Privacy Regulations. CONTRACTOR will maintain an accounting of all responses to requests for access to or amendment of PHI and provide it to HHS within 48 hours of HHS' request. *45 CFR 164.504(e)(2).*

(L) CONTRACTOR will provide, and will cause its Subcontractors and agents to provide, to HHS periodic written certifications of compliance with controls and provisions relating to information privacy, security and breach notification, including without limitation information related to data transfers and the handling and disposal of Confidential Information. *45 CFR 164.308; 164.530(c); 1 TAC 202.*

(M) Except as otherwise limited by this DUA, the Base Contract, or law applicable to the Confidential Information, CONTRACTOR may use PHI for the proper management and administration of CONTRACTOR or to carry out CONTRACTOR's legal responsibilities. Except as otherwise limited by this DUA, the Base Contract, or law applicable to the Confidential Information, CONTRACTOR may disclose PHI for

the proper management and administration of CONTRACTOR, or to carry out CONTRACTOR's legal responsibilities, if: **45 CFR 164.504(e)(4)(A)**.

(1) Disclosure is Required by Law, provided that CONTRACTOR complies with Section 3.01(D); or

(2) CONTRACTOR obtains reasonable assurances from the person or entity to which the information is disclosed that the person or entity will:

(a) Maintain the confidentiality of the Confidential Information in accordance with this DUA;

(b) Use or further disclose the information only as Required by Law or for the Authorized Purpose for which it was disclosed to the Person; and

(c) Notify CONTRACTOR in accordance with Section 4.01 of any Event or Breach of Confidential Information of which the Person discovers or should have discovered with the exercise of reasonable diligence. **45 CFR 164.504(e)(4)(ii)(B)**.

(N) Except as otherwise limited by this DUA, CONTRACTOR will, if required by law and requested by HHS, use commercially reasonable efforts to use PHI to provide data aggregation services to HHS, as that term is defined in the HIPAA, 45 C.F.R. §164.501 and permitted by HIPAA. **45 CFR 164.504(e)(2)(i)(B)**

(O) CONTRACTOR will, on the termination or expiration of this DUA or the Base Contract, at its expense, send to HHS or Destroy, at HHS's election and to the extent reasonably feasible and permissible by law, all Confidential Information received from HHS or created or maintained by CONTRACTOR or any of CONTRACTOR's agents or Subcontractors on HHS's behalf if that data contains Confidential Information. CONTRACTOR will certify in writing to HHS that all the Confidential Information that has been created, received, maintained, used by or disclosed to CONTRACTOR, has been Destroyed or sent to HHS, and that CONTRACTOR and its agents and Subcontractors have retained no copies thereof. Notwithstanding the foregoing, HHS acknowledges and agrees that CONTRACTOR is not obligated to send to HHS and/or Destroy any Confidential Information if federal law, state law, the Texas State Library and Archives Commission records retention schedule, and/or a litigation hold notice prohibit such delivery or Destruction. If such delivery or Destruction is not reasonably feasible, or is impermissible by law, CONTRACTOR will immediately notify HHS of the reasons such delivery or Destruction is not feasible, and agree to extend indefinitely the protections of this DUA to the Confidential Information and limit its further uses and disclosures to the purposes that make the return delivery or Destruction of the Confidential Information not feasible for as long as CONTRACTOR maintains such Confidential Information. **45 CFR 164.504(e)(2)(ii)(J)**

(P) CONTRACTOR will create, maintain, use, disclose, transmit or Destroy Confidential Information in a secure fashion that protects against any reasonably

anticipated threats or hazards to the security or integrity of such information or unauthorized uses. **45 CFR 164.306; 164.530(c)**

(Q) If CONTRACTOR accesses, transmits, stores, and/or maintains Confidential Information, CONTRACTOR will complete and return to HHS at infosecurity@hhsc.state.tx.us the HHS information security and privacy initial inquiry (SPI) at Attachment 1. The SPI identifies basic privacy and security controls with which CONTRACTOR must comply to protect HHS Confidential Information. CONTRACTOR will comply with periodic security controls compliance assessment and monitoring by HHS as required by state and federal law, based on the type of Confidential Information CONTRACTOR creates, receives, maintains, uses, discloses or has access to and the Authorized Purpose and level of risk. CONTRACTOR's security controls will be based on the National Institute of Standards and Technology (NIST) Special Publication 800-53. CONTRACTOR will update its security controls assessment whenever there are significant changes in security controls for HHS Confidential Information and will provide the updated document to HHS. HHS also reserves the right to request updates as needed to satisfy state and federal monitoring requirements. **45 CFR 164.306.**

(R) CONTRACTOR will establish, implement and maintain reasonable procedural, administrative, physical and technical safeguards to preserve and maintain the confidentiality, integrity, and availability of the Confidential Information, and with respect to PHI, as described in the HIPAA Privacy and Security Regulations, or other applicable laws or regulations relating to Confidential Information, to prevent any unauthorized use or disclosure of Confidential Information as long as CONTRACTOR has such Confidential Information in its actual or constructive possession. **45 CFR 164.308 (administrative safeguards); 164.310 (physical safeguards); 164.312 (technical safeguards); 164.530(c)(privacy safeguards).**

(S) CONTRACTOR will designate and identify, a Person or Persons, as Privacy Official **45 CFR 164.530(a)(1)** and Information Security Official, each of whom is authorized to act on behalf of CONTRACTOR and is responsible for the development and implementation of the privacy and security requirements in this DUA. CONTRACTOR will provide name and current address, phone number and e-mail address for such designated officials to HHS upon execution of this DUA and prior to any change. If such persons fail to develop and implement the requirements of the DUA, CONTRACTOR will replace them upon HHS request. **45 CFR 164.308(a)(2).**

(T) CONTRACTOR represents and warrants that its Authorized Users each have a demonstrated need to know and have access to Confidential Information solely to the minimum extent necessary to accomplish the Authorized Purpose pursuant to this DUA and the Base Contract, and further, that each has agreed in writing to be bound by the disclosure and use limitations pertaining to the Confidential Information contained in this DUA. **45 CFR 164.502; 164.514(d).**

(U) CONTRACTOR and its Subcontractors will maintain an updated, complete, accurate and numbered list of Authorized Users, their signatures, titles and the date they

agreed to be bound by the terms of this DUA, at all times and supply it to HHS, as directed, upon request.

(V) CONTRACTOR will implement, update as necessary, and document reasonable and appropriate policies and procedures for privacy, security and Breach of Confidential Information and an incident response plan for an Event or Breach, to comply with the privacy, security and breach notice requirements of this DUA prior to conducting work under the Statement of Work. *45 CFR 164.308; 164.316; 164.514(d); 164.530(i)(1)*.

(W) CONTRACTOR will produce copies of its information security and privacy policies and procedures and records relating to the use or disclosure of Confidential Information received from, created by, or received, used or disclosed by CONTRACTOR for an Authorized Purpose for HHS's review and approval within 30 days of execution of this DUA and upon request by HHS the following business day or other agreed upon time frame. *45 CFR 164.308; 164.514(d)*.

(X) CONTRACTOR will make available to HHS any information HHS requires to fulfill HHS's obligations to provide access to, or copies of, PHI in accordance with HIPAA and other applicable laws and regulations relating to Confidential Information. CONTRACTOR will provide such information in a time and manner reasonably agreed upon or as designated by the Secretary of the U.S. Department of Health and Human Services, or other federal or state law. *45 CFR 164.504(e)(2)(i)(I)*.

(Y) CONTRACTOR will only conduct secure transmissions of Confidential Information whether in paper, oral or electronic form, in accordance with applicable rules, regulations and laws. A secure transmission of electronic Confidential Information in motion includes, but is not limited to, Secure File Transfer Protocol (SFTP) or Encryption at an appropriate level. If required by rule, regulation or law, HHS Confidential Information at rest requires Encryption unless there is other adequate administrative, technical, and physical security. All electronic data transfer and communications of Confidential Information will be through secure systems. Proof of system, media or device security and/or Encryption must be produced to HHS no later than 48 hours after HHS's written request in response to a compliance investigation, audit or the Discovery of an Event or Breach. Otherwise, requested production of such proof will be made as agreed upon by the parties. De-identification of HHS Confidential Information is a means of security. With respect to de-identification of PHI, "secure" means de-identified according to HIPAA Privacy standards and regulatory guidance. *45 CFR 164.312; 164.530(d)*.

(Z) For each type of Confidential Information CONTRACTOR creates, receives, maintains, uses, discloses, has access to or transmits in the performance of the Statement of Work, CONTRACTOR will comply with the following laws rules and regulations, only to the extent applicable and required by law:

- Title 1, Part 10, Chapter 202, Subchapter B, Texas Administrative Code;
- The Privacy Act of 1974;

- OMB Memorandum 07-16;
- The Federal Information Security Management Act of 2002 (FISMA);
- The Health Insurance Portability and Accountability Act of 1996 (HIPAA) as defined in the DUA;
- Internal Revenue Publication 1075 – Tax Information Security Guidelines for Federal, State and Local Agencies;
- National Institute of Standards and Technology (NIST) Special Publication 800-66 Revision 1 – An Introductory Resource Guide for Implementing the Health Insurance Portability and Accountability Act (HIPAA) Security Rule;
- NIST Special Publications 800-53 and 800-53A – Recommended Security Controls for Federal Information Systems and Organizations, as currently revised;
- NIST Special Publication 800-47 – Security Guide for Interconnecting Information Technology Systems;
- NIST Special Publication 800-88, Guidelines for Media Sanitization;
- NIST Special Publication 800-111, Guide to Storage of Encryption Technologies for End User Devices containing PHI; and

Any other State or Federal law, regulation, or administrative rule relating to the specific HHS program area that CONTRACTOR supports on behalf of HHS.

(AA) Notwithstanding anything to the contrary herein, CONTRACTOR will treat any Personal Identifying Information it creates, receives, maintains, uses, transmits, destroys and/or discloses in accordance with Texas Business and Commerce Code, Chapter 521 and other applicable regulatory standards identified in Section 3.01(Z), and Individually Identifiable Health Information CONTRACTOR creates, receives, maintains, uses, transmits, destroys and/or discloses in accordance with HIPAA and other applicable regulatory standards identified in Section 3.01(Z).

ARTICLE 4.

BREACH NOTICE, REPORTING AND CORRECTION REQUIREMENTS

4.01 Breach or Event Notification to HHS. 45 CFR 164.400-414.

(A) CONTRACTOR will cooperate fully with HHS in investigating, mitigating to the extent practicable and issuing notifications directed by HHS, for any Event or Breach of Confidential Information to the extent and in the manner determined by HHS.

(B) CONTRACTOR'S obligation begins at the Discovery of an Event or Breach and continues as long as related activity continues, until all effects of the Event are mitigated to HHS's reasonable satisfaction (the "incident response period"). **45 CFR 164.404.**

(C) Breach Notice:

(1) Initial Notice.

(a) For federal information, including without limitation, Federal Tax Information, Social Security Administration Data, and Medicaid Client Information, within the first, consecutive clock hour of Discovery, and for all other types of Confidential Information not more than 24 hours after Discovery, or in a timeframe otherwise approved by HHS in writing, initially report to HHS's Privacy and Security Officers via email at: privacy@HHSC.state.tx.us and to the HHS division responsible for this DUA; and IRS Publication 1075; Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988, 5 U.S.C. § 552a; OMB Memorandum 07-16 as cited in HHSC-CMS Contracts for information exchange.

(b) Report all information reasonably available to CONTRACTOR about the Event or Breach of the privacy or security of Confidential Information. **45 CFR 164.410.**

(c) Name, and provide contact information to HHS for, CONTRACTOR's single point of contact who will communicate with HHS both on and off business hours during the incident response period.

(2) Formal Notice. No later than two business days after the Initial Notice above, provide formal notification to privacy@HHSC.state.tx.us and to the HHS division responsible for this DUA, including all reasonably available information about the Event or Breach, and CONTRACTOR's investigation, including without limitation and to the extent available: **For (a) - (m) below: 45 CFR 164.400-414.**

(a) The date the Event or Breach occurred;

(b) The date of CONTRACTOR's and, if applicable, Subcontractor's Discovery;

(c) A brief description of the Event or Breach; including how it occurred and who is responsible (or hypotheses, if not yet determined);

(d) A brief description of CONTRACTOR's investigation and the status of the investigation;

(e) A description of the types and amount of Confidential Information involved;

(f) Identification of and number of all Individuals reasonably believed to be affected, including first and last name of the Individual and if applicable the, Legally Authorized Representative, last known address, age, telephone number, and email address if it is a preferred contact method, to the extent known or can be reasonably determined by CONTRACTOR at that time;

(g) CONTRACTOR's initial risk assessment of the Event or Breach demonstrating whether individual or other notices are required by applicable law or this DUA for HHS approval, including an analysis of whether there is a low probability of compromise of the Confidential Information or whether any legal exceptions to notification apply;

(h) CONTRACTOR's recommendation for HHS's approval as to the steps Individuals and/or CONTRACTOR on behalf of Individuals, should take to protect the Individuals from potential harm, including without limitation CONTRACTOR's provision of notifications, credit protection, claims monitoring, and any specific protections for a Legally Authorized Representative to take on behalf of an Individual with special capacity or circumstances;

(i) The steps CONTRACTOR has taken to mitigate the harm or potential harm caused (including without limitation the provision of sufficient resources to mitigate);

(j) The steps CONTRACTOR has taken, or will take, to prevent or reduce the likelihood of recurrence of a similar Event or Breach;

(k) Identify, describe or estimate the Persons, Workforce, Subcontractor, or Individuals and any law enforcement that may be involved in the Event or Breach;

(l) A reasonable schedule for CONTRACTOR to provide regular updates during normal business hours to the foregoing in the future for response to the Event or Breach, but no less than every three (3) business days or as otherwise directed by HHS, including information about risk estimations, reporting, notification, if any, mitigation, corrective action, root cause analysis and when such activities are expected to be completed; and

(m) Any reasonably available, pertinent information, documents or reports related to an Event or Breach that HHS requests following Discovery.

4.02 Investigation, Response and Mitigation. 45 CFR 164.308, 310 and 312; 164.530

(A) CONTRACTOR will immediately conduct a full and complete investigation, respond to the Event or Breach, commit necessary and appropriate staff and resources to expeditiously respond, and report as required to and by HHS for incident response purposes and for purposes of HHS's compliance with report and notification requirements, to the reasonable satisfaction of HHS.

(B) CONTRACTOR will complete or participate in a risk assessment as directed by HHS following an Event or Breach, and provide the final assessment, corrective actions and mitigations to HHS for review and approval.

(C) CONTRACTOR will fully cooperate with HHS to respond to inquiries and/or proceedings by state and federal authorities, Persons and/or Individuals about the Event or Breach.

(D) CONTRACTOR will fully cooperate with HHS's efforts to seek appropriate injunctive relief or otherwise prevent or curtail such Event or Breach, or to recover or protect any Confidential Information, including complying with reasonable corrective action or measures, as specified by HHS in a Corrective Action Plan if directed by HHS under the Base Contract.

4.03 Breach Notification to Individuals and Reporting to Authorities. Tex. Bus. & Comm. Code §521.053; 45 CFR 164.404 (Individuals), 164.406 (Media); 164.408 (Authorities)

(A) HHS may direct CONTRACTOR to provide Breach notification to Individuals, regulators or third-parties, as specified by HHS following a Breach.

(B) CONTRACTOR shall give HHS an opportunity to review and provide feedback to CONTRACTOR and to confirm that CONTRACTOR's notice meets all regulatory requirements regarding the time, manner and content of any notification to Individuals, regulators or third-parties, or any notice required by other state or federal authorities. HHS shall have ten (10) business days to provide said feedback to CONTRACTOR. Notice letters will be in CONTRACTOR's name and on CONTRACTOR's letterhead, unless otherwise directed by HHS, and will contain contact information, including the name and title of CONTRACTOR's representative, an email address and a toll-free telephone number, if required by applicable law, rule, or regulation, for the Individual to obtain additional information.

(C) CONTRACTOR will provide HHS with copies of distributed and approved communications.

(D) CONTRACTOR will have the burden of demonstrating to the reasonable satisfaction of HHS that any notification required by HHS was timely made. If there are delays outside of CONTRACTOR's control, CONTRACTOR will provide written documentation of the reasons for the delay.

(E) If HHS delegates notice requirements to CONTRACTOR, HHS shall, in the time and manner reasonably requested by CONTRACTOR, cooperate and assist with CONTRACTOR's information requests in order to make such notifications and reports.

ARTICLE 5. STATEMENT OF WORK

"Statement of Work" means the services and deliverables to be performed or provided by CONTRACTOR, or on behalf of CONTRACTOR by its Subcontractors or agents for HHS that are described in detail in the Base Contract. The Statement of Work, including any future amendments thereto, is incorporated by reference in this DUA as if set out word-for-word herein.

ARTICLE 6. GENERAL PROVISIONS

6.01 Oversight of Confidential Information

CONTRACTOR acknowledges and agrees that HHS is entitled to oversee and monitor CONTRACTOR's access to and creation, receipt, maintenance, use, disclosure of the Confidential Information to confirm that CONTRACTOR is in compliance with this DUA.

6.02 HHS Commitment and Obligations

HHS will not request CONTRACTOR to create, maintain, transmit, use or disclose PHI in any manner that would not be permissible under applicable law if done by HHS.

6.03 HHS Right to Inspection

At any time upon reasonable notice to CONTRACTOR, or if HHS determines that CONTRACTOR has violated this DUA, HHS, directly or through its agent, will have the right to inspect the facilities, systems, books and records of CONTRACTOR to monitor compliance with this DUA. For purposes of this subsection, HHS's agent(s) include, without limitation, the HHS Office of the Inspector General or the Office of the Attorney General of Texas, outside consultants or legal counsel or other designee.

6.04 Term; Termination of DUA; Survival

This DUA will be effective on the date on which CONTRACTOR executes the DUA, and will terminate upon termination of the Base Contract and as set forth herein. If the Base Contract is extended or amended, this DUA shall be extended or amended concurrent with such extension or amendment.

(A) HHS may immediately terminate this DUA and Base Contract upon a material violation of this DUA.

(B) Termination or Expiration of this DUA will not relieve CONTRACTOR of its obligation to return or Destroy the Confidential Information as set forth in this DUA and

to continue to safeguard the Confidential Information until such time as determined by HHS.

(C) If HHS determines that CONTRACTOR has violated a material term of this DUA; HHS may in its sole discretion:

- (1) Exercise any of its rights including but not limited to reports, access and inspection under this DUA and/or the Base Contract; or
- (2) Require CONTRACTOR to submit to a Corrective Action Plan, including a plan for monitoring and plan for reporting, as HHS may determine necessary to maintain compliance with this DUA; or
- (3) Provide CONTRACTOR with a reasonable period to cure the violation as determined by HHS; or
- (4) Terminate the DUA and Base Contract immediately, and seek relief in a court of competent jurisdiction in Texas.

Before exercising any of these options, HHS will provide written notice to CONTRACTOR describing the violation, the requested corrective action CONTRACTOR may take to cure the alleged violation, and the action HHS intends to take if the alleged violation is not timely cured by CONTRACTOR.

(D) If neither termination nor cure is feasible, HHS shall report the violation to the Secretary of the U.S. Department of Health and Human Services.

(E) The duties of CONTRACTOR or its Subcontractor under this DUA survive the expiration or termination of this DUA until all the Confidential Information is Destroyed or returned to HHS, as required by this DUA.

6.05 Governing Law, Venue and Litigation

(A) The validity, construction and performance of this DUA and the legal relations among the Parties to this DUA will be governed by and construed in accordance with the laws of the State of Texas.

(B) The Parties agree that the courts of Texas, will be the exclusive venue for any litigation, special proceeding or other proceeding as between the parties that may be brought, or arise out of, or in connection with, or by reason of this DUA.

6.06 Injunctive Relief

(A) CONTRACTOR acknowledges and agrees that HHS may suffer irreparable injury if CONTRACTOR or its Subcontractor fails to comply with any of the terms of this DUA with respect to the Confidential Information or a provision of HIPAA or other laws or regulations applicable to Confidential Information.

(B) CONTRACTOR further agrees that monetary damages may be inadequate to compensate HHS for CONTRACTOR's or its Subcontractor's failure to comply. Accordingly, CONTRACTOR agrees that HHS will, in addition to any other remedies available to it at law or in equity, be entitled to seek injunctive relief without posting a bond and without the necessity of demonstrating actual damages, to enforce the terms of this DUA.

6.07 Responsibility.

To the extent permitted by the Texas Constitution, laws and rules, and without waiving any immunities or defenses available to CONTRACTOR as a governmental entity, CONTRACTOR shall be solely responsible for its own acts and omissions and the acts and omissions of its employees, directors, officers, Subcontractors and agents. HHS shall be solely responsible for its own acts and omissions.

6.08 Insurance

(A) As a governmental entity, and in accordance with the limits of the Texas Tort Claims Act, Chapter 101 of the Texas Civil Practice and Remedies Code, CONTRACTOR either maintains commercial insurance or self-insures with policy limits in an amount sufficient to cover CONTRACTOR's liability arising under this DUA. CONTRACTOR will request that HHS be named as an additional insured. HHS reserves the right to consider alternative means for CONTRACTOR to satisfy CONTRACTOR's financial responsibility under this DUA. Nothing herein shall relieve CONTRACTOR of its financial obligations set forth in this DUA if CONTRACTOR fails to maintain insurance.

(B) CONTRACTOR will provide HHS with written proof that required insurance coverage is in effect, at the request of HHS.

6.08 Fees and Costs

Except as otherwise specified in this DUA or the Base Contract, if any legal action or other proceeding is brought for the enforcement of this DUA, or because of an alleged dispute, contract violation, Event, Breach, default, misrepresentation, or injunctive action, in connection with any of the provisions of this DUA, each party will bear their own legal expenses and the other cost incurred in that action or proceeding.

6.09 Entirety of the Contract

This DUA is incorporated by reference into the Base Contract as an amendment thereto and, together with the Base Contract, constitutes the entire agreement between the parties. No change, waiver, or discharge of obligations arising under those documents will be valid unless in writing and executed by the party against whom such change, waiver, or discharge is sought to be enforced. If any provision of the Base Contract, including any General Provisions or Uniform Terms and Conditions, conflicts with this DUA, this DUA controls.

6.10 Automatic Amendment and Interpretation

If there is (i) a change in any law, regulation or rule, state or federal, applicable to HIPPA and/or Confidential Information, or (ii) any change in the judicial or administrative interpretation of any such law, regulation or rule,, upon the effective date of such change, this DUA shall be deemed to have been automatically amended, interpreted and read so that the obligations imposed on HHS and/or CONTRACTOR remain in compliance with such changes. Any ambiguity in this DUA will be resolved in favor of a meaning that permits HHS and CONTRACTOR to comply with HIPAA or any other law applicable to Confidential Information.

**ARTICLE 7.
AUTHORITY TO EXECUTE**

The Parties have executed this DUA in their capacities as stated below with authority to bind their organizations on the dates set forth by their signatures.

IN WITNESS HEREOF, HHS and CONTRACTOR have each caused this DUA to be signed and delivered by its duly authorized representative:

TEXAS HEALTH AND HUMAN SERVICES

CONTRACTOR

BY: _____
NAME:

BY: _____
NAME:

TITLE: _____

TITLE: _____

DATE: _____, **201** .

DATE: _____, **201** .

HHSC Uniform Terms and Conditions Version 2.12
Published and Effective: November 30, 2015
Responsible Office: Chief Counsel



Health and Human Services Commission
HHSC Uniform Terms and Conditions - Grant
Version 2.12

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ARTICLE I. DEFINITIONS AND INTERPRETIVE PROVISIONS

1.01 Definitions

As used in this Contract, unless the context clearly indicates otherwise, the following terms and conditions have the meanings assigned below:

“Amendment” means a written agreement, signed by the parties hereto, which documents changes to the Contract other than those permitted by Work Orders or Technical Guidance Letters, as herein defined.

“Attachment” means documents, terms, conditions, or additional information physically added to this Contract following the Signature Document or included by reference, as if physically, within the body of this Contract.

“Contract” means the Signature Document, these Uniform Terms and Conditions, along with any Attachments, and any Amendments, or Technical Guidance Letters that may be issued by the System Agency, to be incorporated by reference herein for all purposes if issued.

“Deliverable” means a work product prepared, developed, or procured by Grantee as part of the Services under the Contract for the use or benefit of the System Agency or the State of Texas.

“Effective Date” means the date agreed to by the Parties as the date on which the Contract takes effect.

“System Agency” means HHSC or any of the agencies of the State of Texas that are overseen by HHSC under authority granted under State law and the officers, employees, and designees of those agencies. These agencies include: the Department of Aging and Disability Services, the Department of Assistive and Rehabilitative Services, the Department of Family and Protective Services, and the Department of State Health Services.

“Federal Fiscal Year” means the period beginning October 1 and ending September 30 each year, which is the annual accounting period for the United States government.

“GAAP” means Generally Accepted Accounting Principles.

“GASB” means the Governmental Accounting Standards Board.

“Grantee” means the Party receiving funds under this Contract, if any.

“Health and Human Services Commission” or “HHSC” means the administrative agency established under Chapter 531, Texas Government Code or its designee.

“HUB” means Historically Underutilized Business, as defined by Chapter 2161 of the Texas Government Code.

“Intellectual Property” means patents, rights to apply for patents, trademarks, trade names, service marks, domain names, copyrights and all applications and worldwide registration of

such, schematics, industrial models, inventions, know-how, trade secrets, computer software programs, and other intangible proprietary information.

“Mentor Protégé” means the Comptroller of Public Accounts’ leadership program found at: <http://www.window.state.tx.us/procurement/prog/hub/mentorprotege/>.

“Parties” means the System Agency and Grantee, collectively.

“Party” means either the System Agency or Grantee, individually.

“Program” means the statutorily authorized activities of the System Agency under which this Contract has been awarded.

“Project” means specific activities of the Grantee that are supported by funds provided under this Contract.

“Public Information Act” or “PIA” means Chapter 552 of the Texas Government Code.

“Statement of Work” means the description of activities performed in completing the Project, as specified in the Contract and as may be amended.

“Signature Document” means the document executed by both Parties that specifically sets forth all of the documents that constitute the Contract.

“Solicitation” means the document issued by the System Agency under which applications for Program funds were requested, which is incorporated herein by reference for all purposes in its entirety, including all Amendments and Attachments.

“Solicitation Response” means Grantee’s full and complete response to the Solicitation, which is incorporated herein by reference for all purposes in its entirety, including any Attachments and addenda.

“State Fiscal Year” means the period beginning September 1 and ending August 31 each year, which is the annual accounting period for the State of Texas.

“State of Texas Textravel” means Texas Administrative Code, Title 34, Part 1, Chapter 5, Subchapter C, Section 5.22, relative to travel reimbursements under this Contract, if any.

“Technical Guidance Letter” or “TGL” means an instruction, clarification, or interpretation of the requirements of the Contract, issued by the System Agency to the Grantee.

1.02 Interpretive Provisions

- a. The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.
- b. The words “hereof,” “herein,” “hereunder,” and similar words refer to this Contract as a whole and not to any particular provision, section, Attachment, or schedule of this Contract unless otherwise specified.
- c. The term “including” is not limiting and means “including without limitation” and, unless otherwise expressly provided in this Contract, (i) references to contracts (including this Contract) and other contractual instruments shall be deemed to include all subsequent

Amendments and other modifications thereto, but only to the extent that such Amendments and other modifications are not prohibited by the terms of this Contract, and (ii) references to any statute or regulation are to be construed as including all statutory and regulatory provisions consolidating, amending, replacing, supplementing, or interpreting the statute or regulation.

- d. Any references to “sections,” “appendices,” or “attachments” are references to sections, appendices, or attachments of the Contract.
- e. Any references to agreements, contracts, statutes, or administrative rules or regulations in the Contract are references to these documents as amended, modified, or supplemented from time to time during the term of the Contract.
- f. The captions and headings of this Contract are for convenience of reference only and do not affect the interpretation of this Contract.
- g. All Attachments within this Contract, including those incorporated by reference, and any Amendments are considered part of the terms of this Contract.
- h. This Contract may use several different limitations, regulations, or policies to regulate the same or similar matters. All such limitations, regulations, and policies are cumulative and each will be performed in accordance with its terms.
- i. Unless otherwise expressly provided, reference to any action of the System Agency or by the System Agency by way of consent, approval, or waiver will be deemed modified by the phrase “in its sole discretion.”
- j. Time is of the essence in this Contract.

ARTICLE II PAYMENT METHODS AND RESTRICTIONS

2.01 Payment Methods

Except as otherwise provided by the provisions of the Contract, the payment method will be one or more of the following:

- a. cost reimbursement. This payment method is based on an approved budget and submission of a request for reimbursement of expenses Grantee has incurred at the time of the request;
- b. unit rate/fee-for-service. This payment method is based on a fixed price or a specified rate(s) or fee(s) for delivery of a specified unit(s) of service and acceptable submission of all required documentation, forms and/or reports; or
- c. advance payment. This payment method is based on disbursement of the minimum necessary funds to carry out the Program or Project where the Grantee has implemented appropriate safeguards. This payment method will only be utilized in accordance with governing law and at the sole discretion of the System Agency.

Grantees shall bill the System Agency in accordance with the Contract. Unless otherwise specified in the Contract, Grantee shall submit requests for reimbursement or payment monthly by the last business day of the month following the month in which expenses were incurred or services provided. Grantee shall maintain all documentation that substantiates invoices and make the documentation available to the System Agency upon request.

2.02 Final Billing Submission

Unless otherwise provided by the System Agency, Grantee shall submit a reimbursement or payment request as a final close-out invoice not later than forty-five (45) calendar days following

the end of the term of the Contract. Reimbursement or payment requests received in the System Agency's offices more than forty-five (45) calendar days following the termination of the Contract may not be paid.

2.03 Financial Status Reports (FSRs)

Except as otherwise provided in these General Provisions or in the terms of any Program Attachment(s) that is incorporated into the Contract, for contracts with categorical budgets, Grantee shall submit quarterly FSRs to Accounts Payable by the last business day of the month following the end of each quarter of the Program Attachment term for System Agency review and financial assessment. Grantee shall submit the final FSR no later than forty-five (45) calendar days following the end of the applicable term.

2.04 Debt to State and Corporate Status

Pursuant to Tex. Gov. Code § 403.055, the Department will not approve and the State Comptroller will not issue payment to Grantee if Grantee is indebted to the State for any reason, including a tax delinquency. Grantee, if a corporation, certifies by execution of this Contract that it is current and will remain current in its payment of franchise taxes to the State of Texas or that it is exempt from payment of franchise taxes under Texas law (Tex. Tax Code §§ 171.001 et seq.). If tax payments become delinquent during the Contract term, all or part of the payments under this Contract may be withheld until Grantee's delinquent tax is paid in full.

2.05 Application of Payment Due

Grantee agrees that any payments due under this Contract will be applied towards any debt of Grantee, including but not limited to delinquent taxes and child support that is owed to the State of Texas.

2.06 Use of Funds

Grantee shall expend funds provided under this Contract only for the provision of approved services and for reasonable and allowable expenses directly related to those services.

2.07 Use for Match Prohibited

Grantee shall not use funds provided under this Contract for matching purposes in securing other funding without the written approval of the System Agency.

2.08 Program Income

Income directly generated from funds provided under this Contract or earned only as a result of such funds is Program Income. Unless otherwise required under the Program, Grantee shall use the addition alternative, as provided in UGMS § __.25(g)(2), for the use of Project income to further the Program, and Grantee shall spend the Program Income on the Project. Grantee shall identify and report this income in accordance with the Contract, applicable law, and the Contractor's Financial Procedures Manual located at <http://www.dshs.state.tx.us/contracts/cfpm.shtm>. Grantee shall expend Program Income during the Program Attachment term and may not carry forward to any succeeding term. Grantee shall refund program income not expended in the term in which it is earned to the System Agency. The System Agency may base future funding levels, in part, upon Grantee's proficiency in identifying, billing, collecting, and reporting Program Income, and in using it for the purposes and under the conditions specified in this Contract.

2.09 Nonsupplanting

Grantee shall not use funds from this Contract to replace or substitute for existing funding from other but shall use funds from this Contract to supplement existing state or local funds currently available. Grantee shall make a good faith effort to maintain its current level of support. Grantee may be required to submit documentation substantiating that a reduction in state or local funding, if any, resulted for reasons other than receipt or expected receipt of funding under this Contract.

ARTICLE III. STATE AND FEDERAL FUNDING

3.01 Funding

This Contract is contingent upon the availability of sufficient and adequate funds. If funds become unavailable through lack of appropriations, budget cuts, transfer of funds between programs or agencies, amendment of the Texas General Appropriations Act, agency consolidation, or any other disruptions of current funding for this Contract, the System Agency may restrict, reduce, or terminate funding under this Contract. This Contract is also subject to immediate cancellation or termination, without penalty to the System Agency, if sufficient and adequate funds are not available. Grantee will have no right of action against the System Agency if the System Agency cannot perform its obligations under this Contract as a result of lack of funding for any activities or functions contained within the scope of this Contract. In the event of cancellation or termination under this Section, the System Agency will not be required to give notice and will not be liable for any damages or losses caused or associated with such termination or cancellation.

3.02 No debt Against the State

The Contract will not be construed as creating any debt by or on behalf of the State of Texas.

3.03 Debt to State

If a payment law prohibits the Texas Comptroller of Public Accounts from making a payment, the Grantee acknowledges the System Agency's payments under the Contract will be applied toward eliminating the debt or delinquency. This requirement specifically applies to any debt or delinquency, regardless of when it arises.

3.04 Recapture of Funds

The System Agency may withhold all or part of any payments to Grantee to offset overpayments made to the Grantee. Overpayments as used in this Section include payments (i) made by the System Agency that exceed the maximum allowable rates; (ii) that are not allowed under applicable laws, rules, or regulations; or (iii) that are otherwise inconsistent with this Contract, including any unapproved expenditures. Grantee understands and agrees that it will be liable to the System Agency for any costs disallowed pursuant to financial and compliance audit(s) of funds received under this Contract. Grantee further understands and agrees that reimbursement of such disallowed costs will be paid by Grantee from funds which were not provided or otherwise made available to Grantee under this Contract.

ARTICLE IV ALLOWABLE COSTS AND AUDIT REQUIREMENTS

4.01 Allowable Costs.

System Agency will reimburse the allowable costs incurred in performing the Project that are sufficiently documented. Grantee must have incurred a cost prior to claiming reimbursement and within the applicable term to be eligible for reimbursement under this Contract. The System Agency will determine whether costs submitted by Grantee are allowable and eligible for reimbursement. If the System Agency has paid funds to Grantee for unallowable or ineligible costs, the System Agency will notify Grantee in writing, and Grantee shall return the funds to the System Agency within thirty (30) calendar days of the date of this written notice. The System Agency may withhold all or part of any payments to Grantee to offset reimbursement for any unallowable or ineligible expenditure that Grantee has not refunded to the System Agency, or if financial status report(s) required under the Financial Status Reports section are not submitted by the due date(s). The System Agency may take repayment (recoup) from funds available under this Contract in amounts necessary to fulfill Grantee’s repayment obligations. Applicable cost principles, audit requirements, and administrative requirements include-

Applicable Entity	Applicable Cost Principles	Audit Requirements	Administrative Requirements
State, Local and Tribal Governments	2 CFR, Part 225	2 CFR Part 200, Subpart F and UGMS	2 CFR Part 200 and UGMS
Educational Institutions	2 CFR, Part 220	2 CFR Part 200, Subpart F and UGMS	2 CFR Part 200 and UGMS
Non-Profit Organizations	2 CFR, Part 230	2 CFR Part 200, Subpart F and UGMS	2 CFR Part 200 and UGMS
For-profit Organization other than a hospital and an organization named in OMB Circular A-122 (2 CFR Part, 230) as not subject to that circular.	48 CFR Part 31, Contract Cost Principles Procedures, or uniform cost accounting standards that comply with cost principles acceptable to the federal or state awarding agency	2 CFR Part 200, Subpart F and UGMS	2 CFR Part 200 and UGMS

A chart of applicable Federal awarding agency common rules is located through a web link on the System Agency website at <http://www.dshs.state.tx.us/contracts/links.shtm>. OMB Circulars will be applied with the modifications prescribed by UGMS with effect given to whichever provision imposes the more stringent requirement in the event of a conflict.

4.02 Independent Single or Program-Specific Audit

If Grantee, within Grantee's fiscal year, expends a total amount of at least **SEVEN HUNDRED FIFTY THOUSAND DOLLARS (\$750,000)** in federal funds awarded, Grantee shall have a single audit or program-specific audit in accordance with the 2 CFR 200. The \$750,000 federal threshold amount includes federal funds passed through by way of state agency awards. If Grantee, within Grantee's fiscal year, expends a total amount of at least \$500,000 in state funds awarded, Grantee must have a single audit or program-specific audit in accordance with UGMS, State of Texas Single Audit Circular. For-profit Grantees whose expenditures meet or exceed the federal or state expenditure thresholds stated above shall follow the guidelines in 2 CFR 200 or UGMS, as applicable, for their program-specific audits. The HHSC Office of Inspector General (OIG) will notify Grantee to complete the Single Audit Status Registration Form. If Grantee fails to complete the Single Audit Status Form within thirty (30) calendar days after notification by OIG to do so, Grantee shall be subject to the System Agency sanctions and remedies for non-compliance with this Contract. The audit must be conducted by an independent certified public accountant and in accordance with applicable OMB Circulars, Government Auditing Standards, and UGMS, which is accessible through a web link on the System Agency website at <http://www.dshs.state.tx.us/contracts/links.shtm>. Grantee shall procure audit services in compliance with this section, state procurement procedures, as well as with the provisions of UGMS

4.03 Submission of Audit

Within thirty (30) calendar days of receipt of the audit reports required by the Independent Single or Program-Specific Audit section, Grantee shall submit one copy to the Department's Contract Oversight and Support Section, and one copy to the OIG, at the following addresses:

Department of State Health Services
Contract Oversight and Support, Mail Code 1326
P.O. Box 149347
Austin, Texas 78714-9347
Health and Human Services Commission
Office of Inspector General
Compliance/Audit, Mail Code 1326
P.O. Box 85200
Austin, Texas 78708-5200

Electronic submission to the System Agency should be addressed as follows:
COContractAdministration@dshs.state.tx.us

Electronic submission to HHSC should be addressed as follows:
Dani.fielding@hhsc.state.tx.us

If Grantee fails to submit the audit report as required by the Independent Single or Program-Specific Audit section within thirty (30) calendar days of receipt by Grantee of an audit report, Grantee shall be subject to the System Agency sanctions and remedies for non-compliance with this Contract.

ARTICLE V AFFIRMATIONS, ASSURANCES AND CERTIFICATIONS

5.01 General Affirmations

Grantee certifies that, to the extent General Affirmations are incorporated into the Contract under the Signature Document, the General Affirmations have been reviewed and that Grantee is in compliance with each of the requirements reflected therein.

5.02 Federal Assurances

Grantee further certifies that, to the extent Federal Assurances are incorporated into the Contract under the Signature Document, the Federal Assurances have been reviewed and that Grantee is in compliance with each of the requirements reflected therein.

5.03 Federal Certifications

Grantee further certifies, to the extent Federal Certifications are incorporated into the Contract under the Signature Document, that the Federal Certifications have been reviewed, and that Grantee is in compliance with each of the requirements reflected therein. **In addition, Grantee certifies that it is in compliance with all applicable federal laws, rules, or regulations, as they may pertain to this Contract.**

ARTICLE VI OWNERSHIP AND INTELLECTUAL PROPERTY

6.01 Ownership

The System Agency will own, and Grantee hereby assigns to the System Agency, all right, title, and interest in all Deliverables.

6.02 Intellectual Property

- a. The System Agency and Grantee will retain ownership, all rights, title, and interest in and to, their respective pre-existing Intellectual Property. A license to either Party's pre-existing Intellectual Property must be agreed to under this or another contract.
- b. Grantee grants to the System Agency and the State of Texas a royalty-free, paid up, worldwide, perpetual, non-exclusive, non-transferable license to use any Intellectual Property invented or created by Grantee, Grantee's contractor, or a subcontractor in the performance of the Project. Grantee will require its contractors to grant such a license under its contracts.
- c. As used herein, "Intellectual Property" shall mean: inventions and business processes, whether or not patentable; works of authorship; trade secrets; trademarks; service marks; industrial designs; and other intellectual property incorporated in any Deliverable and first created or developed by Grantee, Grantee's contractor or a subcontractor in performing the Project.

ARTICLE VII RECORDS, AUDIT, AND DISCLOSURE

7.01 Books and Records

Grantee will keep and maintain under GAAP or GASB, as applicable, full, true, and complete records necessary to fully disclose to the System Agency, the Texas State Auditor's Office, the United States Government, and their authorized representatives sufficient information to determine compliance with the terms and conditions of this Contract and all state and federal rules, regulations, and statutes. Unless otherwise specified in this Contract, Grantee will maintain legible copies of this Contract and all related documents for a minimum of seven (7) years after the termination of the contract period or seven (7) years after the completion of any litigation or dispute involving the Contract, whichever is later.

7.02 Access to records, books, and documents

In addition to any right of access arising by operation of law, Grantee and any of Grantee's affiliate or subsidiary organizations, or Subcontractors will permit the System Agency or any of its duly authorized representatives, as well as duly authorized federal, state or local authorities, unrestricted access to and the right to examine any site where business is conducted or Services are performed, and all records, which includes but is not limited to financial, client and patient records, books, papers or documents related to this Contract. If the Contract includes federal funds, federal agencies that will have a right of access to records as described in this section include: the federal agency providing the funds, the Comptroller General of the United States, the General Accounting Office, the Office of the Inspector General, and any of their authorized representatives. In addition, agencies of the State of Texas that will have a right of access to records as described in this section include: the System Agency, HHSC, HHSC's contracted examiners, the State Auditor's Office, the Texas Attorney General's Office, and any successor agencies. Each of these entities may be a duly authorized authority. If deemed necessary by the System Agency or any duly authorized authority, for the purpose of investigation or hearing, Grantee will produce original documents related to this Contract. The System Agency and any duly authorized authority will have the right to audit billings both before and after payment, and all documentation that substantiates the billings. Grantee will include this provision concerning the right of access to, and examination of, sites and information related to this Contract in any Subcontract it awards.

7.03 Response/compliance with audit or inspection findings

- a. Grantee must act to ensure its and its Subcontractor's compliance with all corrections necessary to address any finding of noncompliance with any law, regulation, audit requirement, or generally accepted accounting principle, or any other deficiency identified in any audit, review, or inspection of the Contract and the goods or services provided hereunder. Any such correction will be at Grantee or its Subcontractor's sole expense. Whether Grantee's action corrects the noncompliance will be solely the decision of the System Agency.
- b. As part of the Services, Grantee must provide to HHSC upon request a copy of those portions of Grantee's and its Subcontractors' internal audit reports relating to the Services and Deliverables provided to the State under the Contract.

7.04 SAO Audit

Grantee understands that acceptance of funds directly under the Contract or indirectly through a Subcontract under the Contract acts as acceptance of the authority of the State Auditor's Office (SAO), or any successor agency, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the SAO must provide the SAO with access to any information the SAO considers relevant to the investigation or audit. Grantee agrees to cooperate fully with the SAO or its successor in the conduct of the audit or investigation, including providing all records requested. Grantee will ensure that this clause concerning the authority to audit funds received indirectly by Subcontractors through Grantee and the requirement to cooperate is included in any Subcontract it awards.

7.05 Confidentiality

Any specific confidentiality agreement between the Parties takes precedent over the terms of this section. To the extent permitted by law, Grantee agrees to keep all information confidential, in whatever form produced, prepared, observed, or received by Grantee. The provisions of this section remain in full force and effect following termination or cessation of the services performed under this Contract.

7.06 Public Information Act

Information related to the performance of this Contract may be subject to the PIA and will be withheld from public disclosure or released only in accordance therewith. Grantee must make all information not otherwise excepted from disclosure under the PIA available in portable document file (".pdf") format or any other format agreed between the Parties.

ARTICLE VIII CONTRACT MANAGEMENT AND EARLY TERMINATION

8.01 Contract Management

To ensure full performance of the Contract and compliance with applicable law, the System Agency may take actions including:

- a. Suspending all or part of the Contract;
- b. Requiring the Grantee to take specific corrective actions in order to remain in compliance with term of the Contract;
- c. Recouping payments made to the Grantee found to be in error;
- d. Suspending, limiting, or placing conditions on the continued performance of the Project;
- e. Imposing any other remedies authorized under this Contract; and
- f. Imposing any other remedies, sanctions or penalties permitted by federal or state statute, law, regulation, or rule.

8.02 Termination for Convenience

The System Agency may terminate the Contract at any time when, in its sole discretion, the System Agency determines that termination is in the best interests of the State of Texas. The termination will be effective on the date specified in HHSC's notice of termination.

8.03 Termination for Cause

Except as otherwise provided by the U.S. Bankruptcy Code, or any successor law, the System Agency may terminate the Contract, in whole or in part, upon either of the following conditions:

a. Material Breach

The System Agency will have the right to terminate the Contract in whole or in part if the System Agency determines, at its sole discretion, that Grantee has materially breached the Contract or has failed to adhere to any laws, ordinances, rules, regulations or orders of any public authority having jurisdiction and such violation prevents or substantially impairs performance of Grantee's duties under the Contract. Grantee's misrepresentation in any aspect of Grantee's Solicitation Response, if any or Grantee's addition to the Excluded Parties List System (EPLS) will also constitute a material breach of the Contract.

b. Failure to Maintain Financial Viability

The System Agency may terminate the Contract if, in its sole discretion, the System Agency has a good faith belief that Grantee no longer maintains the financial viability required to complete the Services and Deliverables, or otherwise fully perform its responsibilities under the Contract.

8.04 Equitable Settlement

Any early termination under this Article will be subject to the equitable settlement of the respective interests of the Parties up to the date of termination.

ARTICLE IX MISCELLANEOUS PROVISIONS

9.01 Amendment

The Contract may only be amended by an Amendment executed by both Parties.

9.02 Insurance

Unless otherwise specified in this Contract, Grantee will acquire and maintain, for the duration of this Contract, insurance coverage necessary to ensure proper fulfillment of this Contract and potential liabilities thereunder with financially sound and reputable insurers licensed by the Texas Department of Insurance, in the type and amount customarily carried within the industry as determined by the System Agency. Grantee will provide evidence of insurance as required under this Contract, including a schedule of coverage or underwriter's schedules establishing to the satisfaction of the System Agency the nature and extent of coverage granted by each such policy, upon request by the System Agency. In the event that any policy is determined by the System Agency to be deficient to comply with the terms of this Contract, Grantee will secure such additional policies or coverage as the System Agency may reasonably request or that are required by law or regulation. If coverage expires during the term of this Contract, Grantee must produce renewal certificates for each type of coverage.

These and all other insurance requirements under the Contract apply to both Grantee and its Subcontractors, if any. Grantee is responsible for ensuring its Subcontractors' compliance with all requirements.

9.03 Legal Obligations

Grantee will comply with all applicable federal, state, and local laws, ordinances, and regulations, including all federal and state accessibility laws relating to direct and indirect use of information and communication technology. Grantee will be deemed to have knowledge of all applicable laws and regulations and be deemed to understand them. In addition to any other act or omission that may constitute a material breach of the Contract, failure to comply with this Section may also be a material breach of the Contract.

9.04 Permitting and Licensure

At Grantee's sole expense, Grantee will procure and maintain for the duration of this Contract any state, county, city, or federal license, authorization, insurance, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Grantee to provide the goods or Services required by this Contract. Grantee will be responsible for payment of all taxes, assessments, fees, premiums, permits, and licenses required by law. Grantee agrees to be responsible for payment of any such government obligations not paid by its contactors or subcontractors during performance of this Contract.

9.05 Indemnity

TO THE EXTENT ALLOWED BY LAW, GRANTEE WILL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE STATE OF TEXAS AND ITS OFFICERS AND EMPLOYEES, AND THE SYSTEM AGENCY AND ITS OFFICERS AND EMPLOYEES, FROM AND AGAINST ALL CLAIMS, ACTIONS, SUITS, DEMANDS, PROCEEDINGS, COSTS, DAMAGES, AND LIABILITIES, INCLUDING ATTORNEYS' FEES AND COURT COSTS ARISING OUT OF, OR CONNECTED WITH, OR RESULTING FROM:

- a. GRANTEE'S PERFORMANCE OF THE CONTRACT, INCLUDING ANY NEGLIGENT ACTS OR OMISSIONS OF GRANTEE, OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF GRANTEE, OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF GRANTEE, IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT; OR**
- b. ANY BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD, RULE, OR BREACH OF CONTRACT BY GRANTEE, ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF GRANTEE, OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF GRANTEE, IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT; OR**
- c. EMPLOYMENT OR ALLEGED EMPLOYMENT, INCLUDING CLAIMS OF DISCRIMINATION AGAINST GRANTEE, ITS OFFICERS, OR ITS AGENTS; OR**
- d. WORK UNDER THIS CONTRACT THAT INFRINGES OR MISAPPROPRIATES ANY RIGHT OF ANY THIRD PERSON OR ENTITY BASED ON COPYRIGHT, PATENT, TRADE SECRET, OR OTHER INTELLECTUAL PROPERTY RIGHTS.**

GRANTEE WILL COORDINATE ITS DEFENSE WITH THE SYSTEM AGENCY AND ITS COUNSEL. THIS PARAGRAPH IS NOT INTENDED TO AND WILL NOT BE CONSTRUED TO REQUIRE GRANTEE TO INDEMNIFY OR HOLD HARMLESS THE STATE OR THE SYSTEM AGENCY FOR ANY CLAIMS OR LIABILITIES RESULTING SOLELY FROM THE GROSS NEGLIGENCE OF THE SYSTEM AGENCY OR ITS EMPLOYEES. THE PROVISIONS OF THIS SECTION WILL SURVIVE TERMINATION OF THIS CONTRACT.

9.06 Assignments

Grantee may not assign all or any portion of its rights under, interests in, or duties required under this Contract without prior written consent of the System Agency, which may be withheld or granted at the sole discretion of the System Agency. Except where otherwise agreed in writing by the System Agency, assignment will not release Grantee from its obligations under the Contract.

Grantee understands and agrees the System Agency may in one or more transactions assign, pledge, or transfer the Contract. This assignment will only be made to another State agency or a non-state agency that is contracted to perform agency support.

9.07 Relationship of the Parties

Grantee is, and will be, an independent contractor and, subject only to the terms of this Contract, will have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Contract. Nothing contained in this Contract will be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create for the System Agency any liability whatsoever with respect to the indebtedness, liabilities, and obligations of Grantee or any other Party.

Grantee will be solely responsible for, and the System Agency will have no obligation with respect to:

- a. Payment of Grantee's employees for all Services performed;
- b. Wnsuring each of its employees, agents, or Subcontractors who provide Services or Deliverables under the Contract are properly licensed, certified, or have proper permits to perform any activity related to the Work;
- c. Withholding of income taxes, FICA, or any other taxes or fees;
- d. Industrial or workers' compensation insurance coverage;
- e. Participation in any group insurance plans available to employees of the State of Texas;
- f. Participation or contributions by the State to the State Employees Retirement System;
- g. Accumulation of vacation leave or sick leave; or
- h. Unemployment compensation coverage provided by the State.

9.08 Technical Guidance Letters

In the sole discretion of the System Agency, and in conformance with federal and state law, the System Agency may issue instructions, clarifications, or interpretations as may be required during Work performance in the form of a Technical Guidance Letter. A TGL must be in writing, and may be delivered by regular mail, electronic mail, or facsimile transmission. Any TGL issued by the System Agency will be incorporated into the Contract by reference herein for all purposes when it is issued.

9.09 Governing Law and Venue

This Contract and the rights and obligations of the Parties hereto will be governed by, and construed according to, the laws of the State of Texas, exclusive of conflicts of law provisions. Venue of any suit brought under this Contract will be in a court of competent jurisdiction in Travis County, Texas unless otherwise elected by the System Agency. Grantee irrevocably waives any objection, including any objection to personal jurisdiction or the laying of venue or

based on the grounds of forum non conveniens, which it may now or hereafter have to the bringing of any action or proceeding in such jurisdiction in respect of this Contract or any document related hereto. Severability

If any provision contained in this Contract is held to be unenforceable by a court of law or equity, this Contract will be construed as if such provision did not exist and the non-enforceability of such provision will not be held to render any other provision or provisions of this Contract unenforceable.

9.10 Survivability

Termination or expiration of this Contract or a Contract for any reason will not release either party from any liabilities or obligations in this Contract that the parties have expressly agreed will survive any such termination or expiration, remain to be performed, or by their nature would be intended to be applicable following any such termination or expiration, including maintaining confidentiality of information and records retention.

9.11 Force Majeure

Except with respect to the obligation of payments under this Contract, if either of the Parties, after a good faith effort, is prevented from complying with any express or implied covenant of this Contract by reason of war; terrorism; rebellion; riots; strikes; acts of God; any valid order, rule, or regulation of governmental authority; or similar events that are beyond the control of the affected Party (collectively referred to as a "Force Majeure"), then, while so prevented, the affected Party's obligation to comply with such covenant will be suspended, and the affected Party will not be liable for damages for failure to comply with such covenant. In any such event, the Party claiming Force Majeure will promptly notify the other Party of the Force Majeure event in writing and, if possible, such notice will set forth the extent and duration thereof.

9.12 No Waiver of Provisions

Neither failure to enforce any provision of this Contract nor payment for services provided under it constitute waiver of any provision of the Contract.

9.13 Publicity

Except as provided in the paragraph below, Grantee must not use the name of, or directly or indirectly refer to, the System Agency, the State of Texas, or any other State agency in any media release, public announcement, or public disclosure relating to the Contract or its subject matter, including in any promotional or marketing materials, customer lists, or business presentations.

Grantee may publish, at its sole expense, results of Grantee performance under the Contract with the System Agency's prior review and approval, which the System Agency may exercise at its sole discretion. Any publication (written, visual, or sound) will acknowledge the support received from the System Agency and any Federal agency, as appropriate.

9.14 Prohibition on Non-compete Restrictions

Grantee will not require any employees or Subcontractors to agree to any conditions, such as non-compete clauses or other contractual arrangements that would limit or restrict such persons or entities from employment or contracting with the State of Texas.

9.15 No Waiver of Sovereign Immunity

Nothing in the Contract will be construed as a waiver of sovereign immunity by the System Agency.

9.16 Entire Contract and Modification

The Contract constitutes the entire agreement of the Parties and is intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Any additional or conflicting terms in any future document incorporated into the Contract will be harmonized with this Contract to the extent possible by the System Agency.

9.17 Counterparts

This Contract may be executed in any number of counterparts, each of which will be an original, and all such counterparts will together constitute but one and the same Contract.

9.18 Proper Authority

Each Party hereto represents and warrants that the person executing this Contract on its behalf has full power and authority to enter into this Contract. Any Services or Work performed by Grantee before this Contract is effective or after it ceases to be effective are performed at the sole risk of Grantee with respect to compensation.

9.19 Employment Verification

Grantee will confirm the eligibility of all persons employed during the contract term to perform duties within Texas and all persons, including subcontractors, assigned by the contractor to perform work pursuant to the Contract.

9.20 Civil Rights

- a. Grantee agrees to comply with state and federal anti-discrimination laws, including:
 1. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d *et seq.*);
 2. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794);
 3. Americans with Disabilities Act of 1990 (42 U.S.C. §12101 *et seq.*);
 4. Age Discrimination Act of 1975 (42 U.S.C. §§6101-6107);
 5. Title IX of the Education Amendments of 1972 (20 U.S.C. §§1681-1688);
 6. Food and Nutrition Act of 2008 (7 U.S.C. §2011 *et seq.*); and
 7. The System Agency's administrative rules, as set forth in the Texas Administrative Code, to the extent applicable to this Agreement.

Grantee agrees to comply with all amendments to the above-referenced laws, and all requirements imposed by the regulations issued pursuant to these laws. These laws provide in part that no persons in the United States may, on the grounds of race, color, national origin, sex, age, disability, political beliefs, or religion, be excluded from participation in or denied any aid, care, service or other benefits provided by Federal or State funding, or otherwise be subjected to discrimination.

- b. Grantee agrees to comply with Title VI of the Civil Rights Act of 1964, and its implementing regulations at 45 C.F.R. Part 80 or 7 C.F.R. Part 15, prohibiting a contractor from adopting and implementing policies and procedures that exclude or have the effect of excluding or

limiting the participation of clients in its programs, benefits, or activities on the basis of national origin. State and federal civil rights laws require contractors to provide alternative methods for ensuring access to services for applicants and recipients who cannot express themselves fluently in English. Grantee agrees to take reasonable steps to provide services and information, both orally and in writing, in appropriate languages other than English, in order to ensure that persons with limited English proficiency are effectively informed and can have meaningful access to programs, benefits, and activities.

- c. Grantee agrees to post applicable civil rights posters in areas open to the public informing clients of their civil rights and including contact information for the HHS Civil Rights Office. The posters are available on the HHS website at: http://www.hhsc.state.tx.us/about_hhsc/civil-rights/brochures-posters.shtml
- d. Grantee agrees to comply with Executive Order 13279, and its implementing regulations at 45 C.F.R. Part 87 or 7 C.F.R. Part 16. These provide in part that any organization that participates in programs funded by direct financial assistance from the United States Department of Agriculture or the United States Department of Health and Human Services shall not discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.
- e. Upon request, Grantee will provide HHSC Civil Rights Office with copies of all of the Grantee's civil rights policies and procedures.
- f. Grantee must notify HHSC's Civil Rights Office of any civil rights complaints received relating to its performance under this Agreement. This notice must be delivered no more than ten (10) calendar days after receipt of a complaint. Notice provided pursuant to this section must be directed to:

HHSC Civil Rights Office
701 W. 51st Street, Mail Code W206
Austin, Texas 78751
Phone Toll Free: (888) 388-6332
Phone: (512) 438-4313
TTY Toll Free: (877) 432-7232
Fax: (512) 438-5885.

Attachment C: GENERAL AFFIRMATIONS

By entering into this Contract, Contractor affirms, without exception, as follows:

1. Contractor represents and warrants that these General Affirmations apply to Contractor and all of Contractor's principals, officers, directors, shareholders, partners, owners, agents, employees, Subcontractors, independent contractors, and any other representatives who may provide services under, who have a financial interest in, or otherwise are interested in this Contract.
2. Contractor represents and warrants that all statements and information provided to the Enterprise Agency are current, complete, and accurate. This includes all statements and information relating in any manner to this Contract and any solicitation resulting in this Contract.
3. Contractor has not given, has not offered to give, and does not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Contract.
4. Under Section 2155.004, Texas Government Code (relating to financial participation in preparing solicitations), Contractor certifies that it is not ineligible to receive this Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.
5. Under Section 2155.006, Texas Government Code (relating to convictions and penalties regarding Hurricane Rita, Hurricane Katrina, and other disasters), Contractor certifies that it is not ineligible to receive this Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.
6. Under Section 2261.053, Texas Government Code (relating to convictions and penalties regarding Hurricane Rita, Hurricane Katrina, and other disasters), Contractor certifies that it is not ineligible to receive this Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.
7. Under Section 231.006, Texas Family Code (relating to delinquent child support), Contractor certifies that it is not ineligible to receive the specified grant, loan, or payment and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate.
8. Contractor certifies that: (a) the entity executing this Contract; (b) its principals; (c) its Subcontractors; and (d) any personnel designated to perform services related to this Contract are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal Department or Agency. This certification is made pursuant to the regulations implementing Executive Order 12549 and Executive Order 12689, Debarment and Suspension, 2 C.F.R. Part 376, and any relevant regulations promulgated by the Department or Agency funding this project. This provision shall be included in its entirety in Contractor's Subcontracts if payment in whole or in part is from federal funds.
9. Contractor certifies that it, its principals, its Subcontractors, and any personnel designated to perform services related to this Contract are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state, or local governmental entity.
10. Contractor certifies it is in compliance with all State of Texas statutes and rules relating to procurement; and that (a) the entity executing this Contract; (b) its principals; (c) its Subcontractors; and (d) any personnel designated to perform services related to this Contract are not listed on the federal government's terrorism watch list described in Executive Order 13224. Entities ineligible for federal procurement are listed at <https://www.sam.gov/portal/public/SAM/>, which Contractor may

review in making this certification. Contractor acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate. This provision shall be included in its entirety in Contractor's Subcontracts if payment in whole or in part is from federal funds.

11. In accordance with Texas Government Code Section 669.003 (relating to contracting with the executive head of a state agency), Contractor certifies that it (1) is not the executive head of the Enterprise Agency; (2) was not at any time during the past four years the executive head of the Enterprise Agency; and (3) does not employ a current or former executive head of the Enterprise Agency.
12. Contractor represents and warrants that it is not currently delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171 of the Texas Tax Code.
13. Contractor represents and warrants that payments to Contractor and Contractor's receipt of appropriated or other funds under this Contract are not prohibited by Sections 556.005, 556.0055, or 556.008 of the Texas Government Code (relating to use of appropriated money or state funds to employ or pay lobbyists, lobbying expenses, or influence legislation).
14. Contractor represents and warrants that it will comply with Texas Government Code Section 2155.4441, relating to the purchase of products produced in the State of Texas under service contracts.
15. Pursuant to Section 2252.901, Texas Government Code (relating to prohibitions regarding contracts with and involving former and retired state agency employees), Contractor will not allow any former employee of the Enterprise Agency to perform services under this Contract during the twelve (12) month period immediately following the employee's last date of employment at the Enterprise Agency.
16. Contractor acknowledges that, pursuant to Section 572.069 of the Texas Government Code, a former state officer or employee of the Enterprise Agency who during the period of state service or employment participated on behalf of the Enterprise Agency in a procurement or contract negotiation involving Contractor may not accept employment from Contractor before the second anniversary of the date the officer's or employee's service or employment with the Enterprise Agency ceased.
17. Contractor understands that the Enterprise Agency does not tolerate any type of fraud. The Enterprise Agency's policy is to promote consistent, legal, and ethical organizational behavior by assigning responsibilities and providing guidelines to enforce controls. Violations of law, agency policies, or standards of ethical conduct will be investigated, and appropriate actions will be taken. All employees or contractors who suspect fraud, waste or abuse (including employee misconduct that would constitute fraud, waste, or abuse) are required to immediately report the questionable activity to both the Health and Human Services Commission's Office of the Inspector General at 1-800-436-6184 and the State Auditor's Office. Contractor agrees to comply with all applicable laws, rules, regulations, and Enterprise Agency policies regarding fraud including, but not limited to, HHS Circular C-027.
18. Contractor represents and warrants that it has not violated state or federal antitrust laws and has not communicated its bid for this Contract directly or indirectly to any competitor or any other person engaged in such line of business. Contractor hereby assigns to Enterprise Agency any claims for overcharges associated with this Contract under 15 U.S.C. § 1, *et seq.*, and Texas Business and Commerce Code § 15.01, *et seq.*
19. Contractor represents and warrants that it is not aware of and has received no notice of any court or governmental agency proceeding, investigation, or other action pending or threatened against Contractor or any of the individuals or entities included numbered paragraph 1 of these General Affirmations within the five (5) calendar years immediately preceding the execution of this Contract that would or could impair Contractor's performance under this Contract, relate to the contracted or similar goods or services, or otherwise be relevant to the Enterprise Agency's consideration of entering

into this Contract. If Contractor is unable to make the preceding representation and warranty, then Contractor instead represents and warrants that it has provided to the Enterprise Agency a complete, detailed disclosure of any such court or governmental agency proceeding, investigation, or other action that would or could impair Contractor's performance under this Contract, relate to the contracted or similar goods or services, or otherwise be relevant to the Enterprise Agency's consideration of entering into this Contract. In addition, Contractor represents and warrants that it shall notify the Enterprise Agency in writing within five (5) business days of any changes to the representations or warranties in this clause and understands that failure to so timely update the Enterprise Agency shall constitute breach of contract and may result in immediate termination of this Contract.

20. Contractor understands, acknowledges, and agrees that any false representation or any failure to comply with a representation, warranty, or certification made by Contractor is subject to all civil and criminal consequences provided at law or in equity including, but not limited to, immediate termination of this Contract.
21. Contractor represents and warrants that it will comply with all applicable laws and maintain all permits and licenses required by applicable city, county, state, and federal rules, regulations, statutes, codes, and other laws that pertain to this Contract.
22. Contractor represents and warrants that the individual signing this Contract is authorized to sign on behalf of Contractor and to bind Contractor.

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**Fiscal Federal Funding Accountability and Transparency Act
(FFATA) CERTIFICATION**

The certifications enumerated below represent material facts upon which DSHS relies when reporting information to the federal government required under federal law. If the Department later determines that the Contractor knowingly rendered an erroneous certification, DSHS may pursue all available remedies in accordance with Texas and U.S. law. Signor further agrees that it will provide immediate written notice to DSHS if at any time Signor learns that any of the certifications provided for below were erroneous when submitted or have since become erroneous by reason of changed circumstances. **If the Signor cannot certify all of the statements contained in this section, Signor must provide written notice to DSHS detailing which of the below statements it cannot certify and why.**

Legal Name of Contractor:	FFATA Contact # 1 Name, Email and Phone Number:
Primary Address of Contractor:	FFATA Contact #2 Name, Email and Phone Number:
ZIP Code: 9-digits Required www.usps.com <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> - <input type="text"/> <input type="text"/> <input type="text"/>	DUNS Number: 9-digits Required www.sam.gov <input type="text"/> <input type="text"/>
State of Texas Comptroller Vendor Identification Number (VIN) 14 Digits <input type="text"/> <input type="text"/>	

Printed Name of Authorized Representative	Signature of Authorized Representative
Title of Authorized Representative	Date

**Fiscal Federal Funding Accountability and Transparency Act
(FFATA) CERTIFICATION**

As the duly authorized representative (Signor) of the Contractor, I hereby certify that the statements made by me in this certification form are true, complete and correct to the best of my knowledge.

Did your organization have a gross income, from all sources, of less than \$300,000 in your previous tax year? Yes No

If your answer is "Yes", skip questions "A", "B", and "C" and finish the certification.
If your answer is "No", answer questions "A" and "B".

A. Certification Regarding % of Annual Gross from Federal Awards.

Did your organization receive 80% or more of its annual gross revenue from federal awards during the preceding fiscal year? Yes No

B. Certification Regarding Amount of Annual Gross from Federal Awards.

Did your organization receive \$25 million or more in annual gross revenues from federal awards in the preceding fiscal year? Yes No

If your answer is "Yes" to both question "A" and "B", you must answer question "C".
If your answer is "No" to either question "A" or "B", skip question "C" and finish the certification.

C. Certification Regarding Public Access to Compensation Information.

Does the public have access to information about the compensation of the senior executives in your business or organization (including parent organization, all branches, and all affiliates worldwide) through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986? Yes No

If your answer is "Yes" to this question, where can this information be accessed?

If your answer is "No" to this question, you must provide the names and total compensation of the top five highly compensated officers below.

For example:

*John Blum:500000;Mary Redd:50000;Eric Gant:400000;Todd Platt:300000;
Sally Tom:300000*

Provide compensation information here:

ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee- 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.
10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.
19. Will comply with the requirements of Section 106(g) of the Trafficking Victims Protection Act (TVPA) of 2000, as amended (22 U.S.C. 7104) which prohibits grant award recipients or a sub-recipient from (1) Engaging in severe forms of trafficking in persons during the period of time that the award is in effect (2) Procuring a commercial sex act during the period of time that the award is in effect or (3) Using forced labor in the performance of the award or subawards under the award.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL 	TITLE
APPLICANT ORGANIZATION 	DATE SUBMITTED



BOARDS AND COMMISSIONS – VACANCIES

Amarillo Economic Development Corporation (3-year terms)

12/21/2010 Ginger Nelson 03/31/2018 (resigned)

Amarillo-Potter Events Venue District (2-year terms)

10/01/2001 Tom Bivins 10/01/2016

10/01/2004 Dean Roper 10/01/2016

Animal Management & Welfare (3-year terms)

01/05/2016 Andrea Slater Gulley 01/06/2019 (resigned)

Community Development Advisory Committee (2-year terms)

02/01/2005 Glenda Grisham 12/31/2016 (NW)

02/13/2007 Rita Saldierna 12/31/2016 (NE)

12/20/2011 Sabrina Sisneros 12/31/2016 (SE)

Construction Advisory and Appeals Board (3-year terms)

11/01/2011 Frank Wilburn 12/31/2016 (Plumbing)

Quail Creek Public Improvement District Advisory Board (3-year terms)

07/31/2010 Kris Culp 09/01/2016

Traffic Advisory Board (3-year terms)

11/27/2012 Walt Kelley 11/26/2018 (resigned)

02/02/2017