

City Council Regular Meeting Agenda

Monday, May 01, 2023 5:30 PM

Live Stream at https://www.burlesontx.com/watchlive

City Hall Council Chambers, 141 W. Renfro, Burleson, TX 76028

1. CALL TO ORDER

Invocation

Pledge of Allegiance to the US Flag

Texas Pledge:

Honor the Texas Flag, I pledge allegiance to thee, Texas, one state under God; one and indivisible

2. PUBLIC PRESENTATIONS

A. Proclamations

- A Proclamation recognizing May 7-May13 as "Public Service Week" in the City of Burleson. (Recipient: Rick DeOrdio, Director of Human Resources)
- A Proclamation recognizing "Cinco de Mayo" in the City of Burleson. (Victoria Johnson, Councilmember, Place 1; Recipient: Parks and Recreation Department)

B. Presentations

- Receive a report to recognize the selected Employee of the Quarter for the 1st quarter of 2023. (Staff Presenter: Rick DeOrdio, Director of Human Resources)

C. Community Interest Items

This is a standing item on the agenda of every regular meeting of the City Council. An "item of community interest" includes the following:

- -Expression of thanks, congratulations, or condolence;
- -Information regarding holiday schedules;
- -Honorary recognitions of city officials, employees, or other citizens;
- -Reminders about upcoming events sponsored by the city or other entity that is scheduled to be attended by city official or city employee; and
- -Announcements involving imminent public health and safety threats to the city.

3. CHANGES TO POSTED AGENDA

A. Items to be continued or withdrawn.

B. Items to be withdrawn from the Consent Agenda for separate discussion by the City Council, staff, or members of the public in attendance. Items to be added to the Consent Agenda require an official vote by the City Council.

4. REPORTS AND PRESENTATIONS

A. Receive a report, hold a discuss and possible request for future agenda item concerning the Burleson Better Together Committee. (Presenter: Tamara Payne, Council Place 4)

5. CITIZENS APPEARANCES

Each person in attendance who desires to speak to the City Council on an item NOT posted on the agenda, shall speak during this section.

A speaker card must be filled out and turned in to the City Secretary prior to addressing the City Council. Each speaker will be allowed three (3) minutes.

Please note that City Council may only take action on items posted on the agenda. The Texas Open Meetings Act prohibits the City Council from deliberating or taking action on an item not listed on the agenda. City Council may, however, receive your comments on the unlisted item, ask clarifying questions, respond with facts, and explain policy.

Each person in attendance who desires to speak to the City Council on an item posted on the agenda, shall speak when the item is called forward for consideration.

6. CONSENT AGENDA

All items listed below are considered to be routine by the City Council and will be enacted with one motion. There will be no separate discussion of the items. Approval of the consent agenda authorizes the City Manager to implement each item in accordance with staff recommendations.

- A. Consider approval of the minutes from the April 17, 2023 regular council meeting. (Staff contact: Amanda Campos, City Secretary).
- B. Consider approval of a contract with MHSC Energy Management for the purchase of LED lighting and fixtures for the interior of the Burleson Recreation Center in the amount of \$64,105.99. (Staff Presenter: Jen Basham, Director of Parks and Recreation)
- Consider approval of a change order with The Brandt Companies LLC through a cooperative purchasing agreement with Buyboard in the amount of \$10,015 for additional repairs to the Burleson Recreation Center HVAC system. (Staff Presenter: Jen Basham, Director of Parks and Recreation)
- D. Consider approval of a minute order for repair services and replacement parts for a fire apparatus from Metro Fire, using the H-GAC Cooperative Contract, in the amount of \$100,000. (Staff Presenter: Eric Oscarson, Director of Public Works)
- E. Consider approval of a minute order for repair services and replacement parts for a fire apparatus from Siddons-Martin, using the H-GAC Cooperative Contract, in the amount of \$100,000. (Staff Presenter: Eric Oscarson, Director of Public Works)

- E. Consider approval of a resolution authorizing payment of five years of subscription fees to Upland Software for document imaging and electronic file storage services in the amount not to exceed \$144,375. (Staff Contract: Hugo Rodriguez, Deputy Director, IT)
- G. Consider approval of a community facilities contract with 225 W. Ellison, LLC, for City cash participation for the construction of 18 parking stalls along Bransom Street for \$56,217.75. (Staff Contact: Errick Thompson, Deputy Director of Public Works)
- H. Consider approval of an interlocal agreement with the City of North Richland Hills for cooperative purchasing between the cities that will allow among other cooperative purchases, utilization of an existing City of North Richland Hills agreement with Intermountain Slurry Seal, Inc. (Staff Contact: Justin Scharnhorst, Assistant to the City Manager)
- Consider approval of an ordinance amending Chapter 14, "Businesses" of the Code of Ordinances of the City of Burleson, Texas (2005), as amended, by adding article XII, entitled "Registration of Short Term Rentals" and establishing general standards and a registration process for short-term rentals, establishing fees, and providing definitions. (Final Reading) (Staff Contact: Tony McIlwain, Development Services Director)
- J. Consider approval of an ordinance amending the City's fee schedule in Ordinance CSO# 3069-09-2022 by adding fees associated with the registration of short term rental properties; finding that the meeting at which this ordinance is passed was open to the public and that the recitals are true; containing a severability clause, cumulative clause, and effective date. (Final Reading)(Staff Contact: Tony McIlwain, Development Services Director)
- K. Consider approval of a two-year contract extension for CSO#1229-01-2020 with Bentek for online benefit enrollment software services in the amount not to exceed \$46,000. (Staff Presenter: Rick DeOrdio, Director of Human Resources)
- L. Consider approval of an ordinance appointing Cass Callaway for a two-year term ending May 15, 2025 to serve as Associate Judge for the City of Burleson. (First Reading). (Staff contact: Amanda Campos, City Secretary).

7. GENERAL

- A. Consider approval of an amendment to the Engineering Services Contract (CSO#1408-06-2020) with Kimley-Horn and Associates for design of the SH174 Widening project in the amount of \$449,985.00 for a total contract amount of \$1,335,485.00. (Staff Presenter: Errick Thompson, Deputy Director of Public Works Engineering)
- B. Consider approval of a resolution authorizing an application for TxDOT's 2023 Transportation Alternatives (TA) Call for Projects for a Citywide project to complete the 10-mile pedestrian and bicycle loop with City of Burleson matching contributions not to exceed \$3,200,000. (Staff Presenter: Errick Thompson, Deputy Director of Public Works Engineering)
- Consider approval of an ordinance granting a franchise to Waste Connections Lone Star, Inc. for residential solid waste and recycling collection services in the City, authorizing an amendment to an existing solid waste franchise agreement with Waste Connections Lone Star, Inc. by amending the renewal date and extending the term five years pursuant to renewal terms under the current contract in the amount of \$23,731,155.34, and finding that this ordinance may be considered and approved at only one meeting of the City Council. (First and Final Reading) (Staff Presenter Eric Oscarson, Director of Public Works)

- D. Consider approval of a contract with Siddons Martin Emergency Group to purchase two Pierce-Custom Velocity PUC engines, and communication components through a cooperative purchasing agreement with Houston Galveston Area Council in the amount not to exceed \$2,600,000. (Staff Presenter: Josh Jacobs, Assistant Chief)
- E. Consider approval of a professional services contract with Komatsu/Rangel, Inc. dba Komatsu Architecture for design of the Burleson Fire Station 1 Renovation project in the amount of \$219,831. (Staff Presenters: Errick Thompson, Deputy Director of Public Works, K.T. Freeman, Fire Chief)

8. CITY COUNCIL REQUESTS AND FUTURE AGENDA ITEMS AND REPORTS

9. RECESS INTO EXECUTIVE SESSION

In accordance with Chapter 551 of the Texas Government Code, the City Council may convene in Executive Session in the City Council Workroom in City Hall to conduct a closed meeting to discuss any item listed on this Agenda.

Pending or contemplated litigation or to seek the advice of the City Attorney pursuant to Section 551.071, Texas Government Code

- -Hold a discussion regarding the appointment and duties of an interim city manager and permanent city manager.
- -Hold a discussion regarding Section 2-31 "Appointments; terms; removal; exceptions" of Article II "Board, Commissions and Committees," Chapter 2 "Administration" of the City of Burleson Code of Ordinances (2005).

Discussion regarding possible purchase, exchange, lease, or value of real property pursuant to Section 551.072, Texas Government Code

Personnel matters pursuant to Section 551.074, Texas Government Code

- -Hold a discussion and give direction regarding the process and procedure to select and appoint an interim city manager.
- -Hold a discussion and give direction regarding the goals and duties of the interim city manager.
- -Hold a discussion and give direction regarding the process and procedure to select and appoint a permanent city manager.
- -Hold a discussion and give direction regarding Planning and Zoning Commissioner Place 5.

Deliberation regarding commercial or financial information received from or the offer of a financial or other incentive made to a business prospect seeking to locate, stay or expand in or near the territory of the City and with which the City is conducting economic development negotiations pursuant to Section 551.087, Texas Government Code

-Project Workforce

CERTIFICATE

I hereby certify that the above agenda was posted on the 26th of April 2023, by 5:00 p.m., on the official bulletin board at the Burleson City Hall, 141 W. Renfro, Burleson, Texas.

Amanda Campos
City Secretary

ACCESSIBILITY STATEMENT

The Burleson City Hall is wheelchair accessible. The entry ramp is located in the front of the building, accessible from Warren St. Accessible parking spaces are also available in <u>the</u> Warren St. parking lot. Sign interpretative services for meetings must be made 48 hours in advance of the meeting. Call the A.D.A. Coordinator at 817-426-9600, or TDD 1-800-735-2989.



City Council Regular Meeting

DEPARTMENT: City Council

FROM: Tamara Payne, Council Place 4

MEETING: May 1, 2023

SUBJECT:

Receive a report, hold a discuss and possible request for future agenda item concerning the Burleson Better Together Committee. (Presenter: Tamara Payne, Council Place 4)

SUMMARY:

This item was placed on the agenda at the request of Councilmember Payne.

OPTIONS:

1) Example: Approve as presented

Example: Approve with changes

3) Example: Deny

RECOMMENDATION:

N/A

PRIOR ACTION/INPUT (Council, Boards, Citizens):

N/A

FISCAL IMPACT:

N/A

STAFF CONTACT:

Name: Tamara Payne

councilplace4@burlesontx.com



BACKGROUND INFORMATION

- Council members Payne and V. Johnson separately requested city staff to explore options for involving all community members in City processes and events.
- July 12, 2021 A work session item was presented about Diversity & Inclusion within the City of Burleson.
- Council members Payne and V. Johnson worked with city staff to create a mission and charge outline to present to the rest of the council, along with the name of a new Committee.
- November 8, 2021 A presentation was given to the full council on the name of the new committee along with the Mission and Charge. Council agreed to move forward with the committee structure.

WHAT'S IN A NAME?

When discussing a new style of committee that would encompass all people in our community with a mission to celebrate each other and a charge to involve the greater community a name was challenging.

The word that was continually used was "together" this is a committee to bring us together as a city where everyone benefits from each other.

In Burleson, our citizens, business owners, city staff, and local officials are truly

"Better Together"

PROPOSED MISSION & CHARGE

Mission Statement

To grow, nurture & sustain the community by celebrating and embracing the mosaic of lived experiences and varied perspectives of all Burleson citizens.

Charge

To actively look for avenues to create opportunities to engage with our community and promote varied perspectives and lived experiences with measurable outcomes to fulfil our mission.





CELEBRATING BURLESON

• Employ a wide variety of engagement opportunities through visual art, food, theater, music and conversation throughout each year.

PILLARS OF SUCCESS

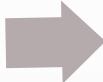






MOVING FORWARD

Council Develops
Committee
Structure



Committee creates pillars of success to support the charge



Committee to begin working in community and reporting to council

- Resolution establishing a new Committee
- Appoint members



• Sub committees to promote and support each pillar



• Establish council meeting report dates







City Council Regular Meeting

DEPARTMENT: City Secretary's Office

FROM: Amanda Campos, City Secretary

MEETING: May 1, 2023

SUBJECT:

Consider approval of the minutes from the April 17, 2023 regular council meeting. (Staff contact: Amanda Campos, City Secretary).

SUMMARY:

The City Council duly and legally met on April 17, 2023 for a regular council meeting.

OPTIONS:

1) Council may approve the minutes as presented or approve with amendments.

RECOMMENDATION:

Approve.

PRIOR ACTION/INPUT (Council, Boards, Citizens):

N/A.

FISCAL IMPACT:

N/A.

STAFF CONTACT:

Name Amanda Campos, TRMC

Title: City Secretary

Email: acampos@burlesontx.com

Phone: 817-426-9665

BURLESON CITY COUNCIL REGULAR MEETING April 17, 2023 DRAFT MINUTES

ROLL CALL

COUNCIL PRESENT:

COUNCIL ABSENT:

Victoria Johnson Rick Green Jimmy Stanford Chris Fletcher Tamara Payne Dan McClendon Ronnie Johnson

Staff present

Bryan Langley, City Manager Tommy Ludwig, Deputy City Manager Amanda Campos, City Secretary Monica Solko, Deputy City Secretary Allen Taylor, Jr., City Attorney Matt Ribitzki, Deputy City Attorney

1. <u>CALL TO ORDER – 5:33 p.m.</u>

Invocation – Mayor Chris Fletcher gave the invocation.

Pledge of Allegiance to the US Flag

Texas Pledge: Honor the Texas Flag, I pledge allegiance to thee, Texas, one state under God; one and indivisible

2. PUBLIC PRESENTATIONS

A. Proclamations

- A Proclamation recognizing April 16-April 22, 2023 as "National Volunteer Week" in the City of Burleson. (Recipient: Parks and Recreation Department and Volunteers)
- A Proclamation recognizing April 28, 2023 as "National Arbor Day" in the City of Burleson. (Recipient: Parks and Recreation Department)

B. Presentations

None.

C. Community Interest Items

- Waymaker breakfast, last Thursday, at Pathway Church supporting Center for ASD. Encourage the community to visit.
- Reminder April is peek month for tornadoes.
- Join us for Earth Day, Saturday, April 22, 10 a.m., at Russell Farm Art Center.

- Join us at the Drug Take Back event, April 22, 10 a.m. to 2 p.m., Walmart Supercenter parking lot, 951 SW Wilshire Blvd.
- Join us at the Household Hazardous Waste, Electronic Recycling, Tire Collection and paper shredding event, May 6, 9 a.m. – 11 a.m., Municipal Service Center, 725 S.E. John Jones Dr.
- Applause to CT100, during their event acknowledged a moment of silence for all first responders who gave their life to protect their community.

8. RECESS INTO EXECUTIVE SESSION - MOVED

Pursuant to Section 551.071, Texas Government Code, the Council reserves the right to convene in Executive Session(s), from time to time as deemed necessary during this meeting for any posted agenda item, to receive advice from its attorney as permitted by law.

Pending or contemplated litigation or to seek the advice of the City Attorney pursuant to Section 551.071, Texas Government Code

- Negotiations and potential eminent domain action for the acquisition of real property for the construction and maintenance of roadway and public utility improvements along Lakewood Drive to serve existing and new development in the City and for other public purposes permitted by law.
- Exclusive franchise agreement for the collection, hauling, and disposal of municipal solid waste in the City of Burleson with Waste Connections Lone Star, Inc. dated June 1, 2019
- Article III "Solid Waste Collection" of Chapter 82 "Utilities" of the City of Burleson Code of Ordinances (2005)

Discussion regarding possible purchase, exchange, lease, or value of real property pursuant to Section 551.072, Texas Government Code

 Deliberation regarding the purchase, exchange, lease, or value of real property to be acquired for the construction and maintenance of roadway and public utility improvements along Lakewood Drive to serve existing and new development in the City.

Deliberation regarding commercial or financial information received from or the offer of a financial or other incentive made to a business prospect seeking to locate, stay or expand in or near the territory of the City and with which the City is conducting economic development negotiations pursuant to Section 551.087, Texas Government Code

• Project Workforce

Motion was made by Dan McClendon and seconded by Jimmy Stanford to convene into executive session. **Time: 5:46 p.m.**

Motion passed 7-0.

Motion was made by Dan McClendon and seconded by Victoria Johnson to reconvene into open session. **Time: 6:30 p.m**.

Motion passed 7-0.

4. CITIZEN APPEARANCES - MOVED

No speakers.

3. CHANGES TO POSTED AGENDA

- A. Items to be continued or withdrawn
 - None.
- B. Items to be withdrawn from Consent Agenda for separate discussion or items to be added to the Consent Agenda.

Mayor Pro Tem Dan McClendon requested that item 6F be discussed before considering other items to be added to the consent agenda.

6. GENERAL - MOVED

F. CSO#5078-04-2023, five-year contract with CentralSquare Technologies for the purchase of a public safety software suite (Computer-Aided Dispatch, Mobile Data System, Law Enforcement Records Management System) in the amount of \$2,612,275.73, including a five-percent contingency. (Staff Presenter: Paul Bradley, Director of Public Safety Communications)

Paul Bradley, Director of Public Safety Communications, presented a contract to the city council.

Motion made by Dan McClendon and seconded by Ronnie Johnson to approve.

Motion passed 7-0.

CHANGES TO POSTED AGENDA - cont'd

- B. Items to be withdrawn from Consent Agenda for separate discussion or items to be added to the Consent Agenda.
 - Add items 6G-6K to consent agenda.

Motion made by Dan McClendon and seconded by Tamara Payne to approve.

Motion passed 7-0.

5. CONSENT AGENDA

A. Minutes from the April 3, 2023 regular council meeting. (Staff Contact: Amanda Campos, City Secretary)

Motion made by Rick Green and seconded by Jimmy Stanford to approve.

Motion passed 7-0.

B. CSO#5067-04-2023, professional services agreement with Plummer Associates, Inc. for the design of the 12-inch Willow Creek Water Line project in the amount

of \$110,675.00. (Staff Presenter: Errick Thompson, Deputy Director of Public Works - Engineering)

Motion made by Rick Green and seconded by Jimmy Stanford to approve.

Motion passed 7-0.

C. CSO#5068-04-2023, resolution authorizing the reimbursement of R.A. Development, Ltd., for sewer design costs pursuant to CSO#1878-09-2021, an existing Chapter 380 and Economic Development and Performance Agreement in the amount of \$162,000. (Staff Presenter: Errick Thompson, Deputy Director of Public Works)

Motion made by Rick Green and seconded by Jimmy Stanford to approve.

Motion passed 7-0.

D. CSO#5069-04-2023, interlocal agreement with the City of Waxahachie for cooperative purchasing between the cities that will allow among other cooperative purchases, utilization of an existing City of Burleson agreement with Hoots Lawn Care. (Staff Contact: Justin Scharnhorst, Assistant to the City Manager)

Motion made by Rick Green and seconded by Jimmy Stanford to approve.

Motion passed 7-0.

E. CSO#5070-04-2023, contract for the purchase of four outdoor warning sirens from Joe Goddard, LLC. through a cooperative purchasing agreement with the City of Denton in the amount not to exceed \$150,000. (Staff Contact: Joe Laster, Emergency Operations Manager)

Motion made by Rick Green and seconded by Jimmy Stanford to approve.

Motion passed 7-0.

F. CSO#5071-04-2023, resolution authorizing a change to the color of the flooring at Ellison on the Plaza. (Staff Presenter: Eric Oscarson, Director of Public Works)

Motion made by Rick Green and seconded by Jimmy Stanford to approve.

Motion passed 7-0.

G. CSO#5072-04-2023, professional services agreement with Mycoskie & Associates, Inc. dba MMA, Inc. for storm sewer design services in the amount of \$50,000. (Staff Presenter - Eric Oscarson, Director of Public Works)

Motion made by Rick Green and seconded by Jimmy Stanford to approve.

Motion passed 7-0.

H. CSO#5073-04-2023, resolution authorizing a \$5,000 sponsorship expense for the Hill College Boots & Suits Annual Student Scholarship Fundraiser. (Staff Contact: DeAnna Phillips, Director of Community Services)

Motion made by Rick Green and seconded by Jimmy Stanford to approve.

Motion passed 7-0.

I. CSO#5074-04-2023, contract with Metro Fire Apparatus Specialist, Inc. for the purchase of eighteen self-contained breathing apparatuses (SCBA) and applicable accessories through a cooperative purchasing agreement with BuyBoard in the amount not to exceed \$57,597. (Staff Contact: K.T. Freeman, Fire Chief)

Motion made by Rick Green and seconded by Jimmy Stanford to approve.

Motion passed 7-0.

J. CSO#5075-04-2023, amendment to CSO#002-04-2014, the communication's system agreement with Johnson County, setting the annual subscriber fee at \$18.52 per radio, per month, not to exceed an annual cost of \$69,783.36 effective October 1, 2022. (Staff Contact: Joe Laster, Emergency Operations Manager)

Motion made by Rick Green and seconded by Jimmy Stanford to approve.

Motion passed 7-0.

6. GENERAL – ADDED TO CONSENT AGENDA

G. CSO#5079-04-2023, five-year contract with AT&T for two Dedicated Ethernet Private Line (EPL) through a cooperative purchasing agreement with the Texas Department of Information Resources (DIR) in the amount not to exceed \$163,102.87 and authorize the City Manager upon acceptance and approval of the City Attorney to execute both subsequent agreements. (Staff Contact: James Grommersch, Chief Technology Officer, IT)

Motion made by Rick Green and seconded by Jimmy Stanford to approve.

Motion passed 7-0.

H. CSO#5080-04-2023, five year contract with Solid Border for the purchase of Firewall Licensing through a cooperative purchasing agreement with the Texas Department of Information Resources (DIR) in the amount not to exceed \$162,979.63 (Staff Contact: James Grommersch, Chief Technology Officer, IT)

20

Motion made by Rick Green and seconded by Jimmy Stanford to approve.

Motion passed 7-0.

I. CSO#5081-04-2023, five-year contract with SHI International Corp for Cohesity Backup, and additional Artic Wolf Sensor through a cooperative purchasing agreement with the Texas Department of Information Resources (DIR) in the amount not to exceed \$166,561.13 (Staff Contact: James Grommersch, Chief Technology Officer, IT)

Motion made by Rick Green and seconded by Jimmy Stanford to approve.

Motion passed 7-0.

J. CSO#5082-04-2023, five-year contract with CDW-G, LLC for the purchase of an Aruba Switch, Rack Environmental Sensor and support through a cooperative purchasing agreement with the Texas Department of Information Resources (DIR) in the amount not exceed \$50,272.24 (Staff Contact: James Grommersch, Chief Technology Officer, IT)

Motion made by Rick Green and seconded by Jimmy Stanford to approve.

Motion passed 7-0.

K. CSO#5083-04-2023, five year contract with GTS Technology Solutions for Dell Servers, networking equipment, Microsoft licensing and support through a cooperative purchasing agreement with the Texas Department of Information Resources (DIR) in the amount not to exceed \$897,049.57. (Staff Contact: James Grommersch, Chief Technology Officer, IT)

Motion made by Rick Green and seconded by Jimmy Stanford to approve.

Motion passed 7-0.

6. GENERAL

A. CSO#5066-04-2023, resolution to authorize the use of power of eminent domain to condemn property and authorizing the filing of eminent domain proceedings for the purpose of obtaining the necessary real property for construction and maintenance of roadway and public utility improvements along Lakewood Drive to serve existing and new development in the City. (Staff Presenter: Matt Ribitzki, Deputy City Attorney/Compliance Manager)

Matt Ribitzki, Deputy City Attorney/Compliance Manager, presented a resolution to the city council.

Motion made by Tamara Payne and seconded by Rick Green to authorize the use of the power of eminent domain to acquire the real property described as a 0.177 acre (7,726 square foot) tract of land situated in the H.G. Catlett Survey, Abstract No. 185, Johnson County, Texas, being a portion of a tract of land conveyed to Marion O. Bush, and Wife Marilyn F. Bush in that deed recorded in Volume 515, Page 29, Deed Records, Johnson County, Texas (D.R.J.C.T), as more fully described in Resolution Number CSO#5066-04-2023, for the purpose of the construction and maintenance of roadway and public utility improvements along Lakewood Drive to serve existing and

new development in the City, and I further move to adopted Resolution Number CSO#5066-04-2023, as presented.

Motion passed 7-0.

B. CSO#5076-04-2023, construction contract with Northstar Construction LLC for the construction of additional parking areas for Bailey Lake and Chisenhall Fields in the amount not to exceed \$1,792,594.23. (Staff Presenter: Jen Basham, Parks and Recreation Director)

Jen Basham, Parks and Recreation Director, presented a contract to the city council.

Motion made by Rick Green and seconded by Victoria Johnson to approve.

Motion passed 7-0.

C. CSO#5077-04-2023, resolution adopting an emergency medical and ambulance services billing policy. (Staff Presenter: K.T. Freeman, Fire Chief)

K.T. Freeman, Fire Chief, presented a resolution to the city council.

Motion made by Ronnie Johnson and seconded by Dan McClendon to approve.

Motion passed 7-0.

D. Ordinance amending Chapter 14, "Businesses" of the Code of Ordinances of the City of Burleson, Texas (2005), as amended, by adding article XII, entitled "Registration of Short Term Rentals" and establishing general standards and a registration process for short-term rentals, establishing fees, and providing definitions. (First Reading)(Staff Presenter: Tony McIlwain, Development Services Director)

Tony McIlwain, Development Services Director, presented an ordinance to the city council.

Motion made by Dan McClendon and seconded by Tamara Payne to approve.

Motion passed 7-0.

E. Ordinance amending Ordinance CSO#3069-09-2022 the City's fee schedule by adding fees associated with the registration of short term rental properties; finding that the meeting at which this ordinance is passed was open to the public and that the recitals are true; containing a severability clause, cumulative clause, and effective date. (First Reading) (Staff Presenter: Tony McIlwain, Development Services Director)

Tony McIlwain, Development Services Director, presented an ordinance to the city council.

Motion made by Dan McClendon and seconded by Tamara Payne to approve.

Motion passed 7-0.

F. CSO#5078-04-2023, five-year contract with CentralSquare Technologies for the purchase of a public safety software suite (Computer-Aided Dispatch, Mobile Data System, Law Enforcement Records Management System) in the amount of \$2,612,275.73, including a five-percent contingency. (Staff Presenter: Paul Bradley, Director of Public Safety Communications) - MOVED

Item 6F was presented, discussed and voted on before the consent agenda above.

G. CSO#5079-04-2023, five-year contract with AT&T for two Dedicated Ethernet Private Line (EPL) through a cooperative purchasing agreement with the Texas Department of Information Resources (DIR) in the amount not to exceed \$163,102.87 and authorize the City Manager upon acceptance and approval of the City Attorney to execute both subsequent agreements. (Staff Contact: James Grommersch, Chief Technology Officer, IT) - MOVED

Item 6G was added and voted on with the consent agenda above.

H. CSO#5080-04-2023, five year contract with Solid Border for the purchase of Firewall Licensing through a cooperative purchasing agreement with the Texas Department of Information Resources (DIR) in the amount not to exceed \$162,979.63 (Staff Contact: James Grommersch, Chief Technology Officer, IT) - MOVED

Item 6H was added and voted on with the consent agenda above.

I. CSO#5081-04-2023, five-year contract with SHI International Corp for Cohesity Backup, and additional Artic Wolf Sensor through a cooperative purchasing agreement with the Texas Department of Information Resources (DIR) in the amount not to exceed \$166,561.13 (Staff Contact: James Grommersch, Chief Technology Officer, IT) - MOVED

Item 6I was added and voted on with the consent agenda above.

J. CSO#5082-04-2023, five-year contract with CDW-G, LLC for the purchase of an Aruba Switch, Rack Environmental Sensor and support through a cooperative purchasing agreement with the Texas Department of Information Resources (DIR) in the amount not exceed \$50,272.24 (Staff Contact: James Grommersch, Chief Technology Officer, IT) - MOVED

Item 6J was added and voted on with the consent agenda above.

K. CSO#5083-04-2023, five year contract with GTS Technology Solutions for Dell Servers, networking equipment, Microsoft licensing and support through a cooperative purchasing agreement with the Texas Department of Information Resources (DIR) in the amount not to exceed \$897,049.57. (Staff Contact: James Grommersch, Chief Technology Officer, IT) - MOVED

Item 6K was added and voted on with the consent agenda above.

7. CITY COUNCIL REQUESTS FOR FUTURE AGENDA ITEMS OR REPORTS

- Requested an item be added to the next meeting to discuss behavior due to online comments from Planning and Zoning Commission member, Place 5.
- Discuss a process for code of conduct for Boards, Commissions, and Committees.

8. RECESS INTO EXECUTIVE SESSION

Pursuant to Section 551.071, Texas Government Code, the Council reserves the right to convene in Executive Session(s), from time to time as deemed necessary during this meeting for any posted agenda item, to receive advice from its attorney as permitted by law.

Pending or contemplated litigation or to seek the advice of the City Attorney pursuant to Section 551.071, Texas Government Code

- Negotiations and potential eminent domain action for the acquisition of real property for the construction and maintenance of roadway and public utility improvements along Lakewood Drive to serve existing and new development in the City and for other public purposes permitted by law.
- Exclusive franchise agreement for the collection, hauling, and disposal of municipal solid waste in the City of Burleson with Waste Connections Lone Star, Inc. dated June 1, 2019
- Article III "Solid Waste Collection" of Chapter 82 "Utilities" of the City of Burleson Code of Ordinances (2005)

Discussion regarding possible purchase, exchange, lease, or value of real property pursuant to Section 551.072, Texas Government Code

 Deliberation regarding the purchase, exchange, lease, or value of real property to be acquired for the construction and maintenance of roadway and public utility improvements along Lakewood Drive to serve existing and new development in the City.

Deliberation regarding commercial or financial information received from or the offer of a financial or other incentive made to a business prospect seeking to locate, stay or expand in or near the territory of the City and with which the City is conducting economic development negotiations pursuant to Section 551.087, Texas Government Code

Project Workforce

No need for a second Executive Session.

ADJOURNMENT

Motion made by Dan McClendon and Victoria Johnson to adjourn.

Mayor Fletcher adjourned the meeting. Time: 7:44 p.m.

Monica Solko Deputy City Secretary



City Council Regular Meeting

DEPARTMENT: Parks and Recreation

FROM: Jen Basham, Director of Parks and Recreation

MEETING: May 1, 2023

SUBJECT:

Consider approval of a contract with MHSC Energy Management for the purchase of LED lighting and fixtures for the interior of the Burleson Recreation Center in the amount of \$64,105.99. (Staff Presenter: Jen Basham, Director of Parks and Recreation)

SUMMARY:

Installing LED Lighting inside the Burleson Recreation Center will provide consistent lighting throughout the facility, less frequent light bulb outages, and a more energy-efficient lighting option. We are making this request in replace of the money allocated for transitioning the exterior lights at the BRiCk to LEDs. Our proposal is to move forward with the interior lighting this year and request the exterior LED lighting in FY 23-24.

OPTIONS:

- Approve as presented
- 2) Approve with changes
- 3) Deny

RECOMMENDATION:

Staff recommends approving the purchase as presented

FISCAL IMPACT:

Budgeted Y/N: Y Fund Name: 4B

Full Account #s: 20363001

Amount: \$64,105.99

STAFF CONTACT:

Jen Basham

Director of Parks and Recreation jbasham@burlesontx.com 817-426-9201

Brick Interior LED Lighting

City Council - May 1, 2023

Staff Presenter: Jen Basham, Director of Park and Recreation



BRiCk Interior LED Lighting

- 1 Background
- Quote Comparison
- 3 Proposal & Funding
- (4) Options





Background

- The current lighting at the BRiCk is inconsistent in color and brightness.
- LED bulbs utilize 90% LESS energy than traditional bulbs







Quote Comparison



Compare Co-ops is a third party cooperative that solicits quotes for projects on behalf of organizations. There were 38 qualified suppliers notified of the details and given an opportunity to submit quotes for the project. 3 quotes were received.

- 1. MHSC Energy Management \$58,278.99
- 2. SuperGreen Solutions of Charleston \$84,215.40
- 3. Rexel \$93,994.93



Proposal & Funding



We propose to approve a contract with MHSC Energy Management for the completion of the LED Lighting Project.

Funding: Originally exterior lighting was budgeted at \$62,941 for this year, and indoor was budgeted as a future year project

- Staff recommends prioritizing the indoor lighting to be completed in conjunction with the remodel of the lobby at the BRiCk.
- The exterior lighting will replace all of the existing lighting around the perimeter of the facility
- An additional project will be recommended in the future to retrofit the parking lot lights
- These future projects will be submitted as supplemental requests

Project Scope

- Convert all lighting in main areas (lobby, fitness floor, meeting rooms)
- Includes installation of all lights and fixtures

Project Cost: \$58,278.99

- Contingency (10%): \$5,827
- Total award: \$64,105.99

Project is estimated to take 30 days



Options

Park Board Recommendation

Staff Recommendation

- Approve as presented
- Deny





SERVICE CONTRACT

This **SERVICE AGREEMENT** ("Agreement") is made and entered into by and between the **CITY OF BURLESON** (the "City"), a home rule municipal corporation situated in portions of Tarrant and Johnson Counties, Texas and MHSC Energy Management ("Contractor").

WITNESETH:

WHEREAS, City and Contractor desire to enter into a contract by which Contractor will provide and install new fixtures and LED Lighting for the interior of the Burleson Recreation Center.

WHEREAS, City desires to compensate Contractor for Contractor's services as provided herein.

NOW, THEREFORE, City hereby engages the services of Contractor, and in consideration of the mutual promises herein contained, the parties agree as follows:

1. SCOPE OF SERVICES.

| See | $C \sim 1$ | $h \sim c$ | | ~ 1 | ۸ |
|-----|------------|------------|----|----------|---|
| See | SU | IIEU | ıu | IC / | ٦ |

2. TERM.

The term of this Contract upon execution shall be active until 09/30/2023

3. COMPENSATION.

Payment for services rendered shall be due within thirty (30) days of the uncontested performance of the particular services so ordered and receipt by City of Contractor's invoice for payment of same. The City shall pay Contractor an amount not to exceed fifty-eight thousand two hundred seventy-eight dollars and 99 /100

dollars in accordance with the proposal incorporated herein as **Schedule A**, and subject to the other terms and conditions of this Agreement, in exchange for completion of all tasks and delivery of all services listed in Exhibit A Scope of Services. In the event of partial performance the City shall pay Contractor for only the itemized tasks completed and delivered. In the event of a disputed or contested billing, only that portion so contested may be withheld from payment, and the undisputed portion will be paid. No interest will accrue on any contested portion of the billing until mutually resolved. City will exercise reasonableness in contesting any billing or portion thereof.

4. TERMINATION.

4.1. Written Notice.

The City or Contractor may terminate this Agreement at any time and for any reason by providing the other party with 30 days written notice of termination.

4.2. Non-appropriation of Funds.

In the event no funds or insufficient funds are appropriated by the City in any fiscal period for any payments due hereunder, City will notify Contractor of such occurrence and this Agreement shall terminate on the last day of the fiscal period for which appropriations were received without penalty or expense to the City of any kind whatsoever, except as to the portions of the payments herein agreed upon for which funds shall have been appropriated.

4.3. <u>Duties and Obligations of the Parties.</u>

In the event that this Agreement is terminated prior to the termination date, the City shall pay Contractor for services actually rendered or Contractor shall reimburse the City for services paid for but not actually rendered, up to the date of notice of termination.

5. INDEMNIFICATION.

CONTRACTOR AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY AND ITS RESPECTIVE OFFICERS. AGENTS AND EMPLOYEES. HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, FINES, PENALTIES, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM OR VIOLATIONS FOR WHICH RECOVERY OF DAMAGES, FINES, OR PENALTIES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY CONTRACTOR'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS CONTRACT, VIOLATIONS OF LAW, OR BY ANY NEGLIGENT, GROSSLY NEGLIGENT, INTENTIONAL, OR STRICTLY LIABLE ACT OR OMISSION OF THE CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, INVITEES, SUBCONTRACTORS, OR SUB-SUBCONTRACTORS AND THEIR RESPECTIVE OFFICERS, AGENTS, OR REPRESENTATIVES, OR ANY OTHER PERSONS OR ENTITIES FOR WHICH THE CONTRACTOR IS LEGALLY RESPONSIBLE IN THE PERFORMANCE OF THIS CONTRACT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF THE CITY, AND ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS. THE CITY DOES NOT WAIVE ANY GOVERNMENTAL IMMUNITY OR OTHER DEFENSES AVAILABLE TO IT UNDER TEXAS OR FEDERAL LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

CONTRACTOR AT ITS OWN EXPENSE IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS. CITY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, CITY IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY CITY IS NOT TO BE CONSTRUED AS A WAIVER OF

CONTRACTOR'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF CONTRACTOR'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. CONTRACTOR SHALL RETAIN DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF CONTRACTOR FAILS TO RETAIN COUNSEL WITHIN THE REQUIRED TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF AND SHALL BE LIABLE FOR ALL COSTS INCURRED BY THE CITY.

6. MISCELLANEOUS PROVISIONS.

- 6.1. **Right to Audit.** Contractor agrees that the City shall, until the expiration of three (3) years after final payment under this Agreement, have access to and the right to examine at reasonable times any directly pertinent books, documents, papers and records of the Contractor involving transactions relating to this Agreement at no additional cost to the City. Contractor agrees that the City shall have access during normal working hours to all necessary Contractor facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. The City shall give Contractor reasonable advance notice of intended audits.
- 6.2. **Independent Contractor.** It is expressly understood and agreed that Contractor shall operate as an independent contractor as to all rights and privileges granted herein, and not as agent, representative or employee of the City. Subject to and in accordance with the conditions and provisions of this Agreement, Contractor shall have the exclusive right to control the details of its operations and activities and be solely responsible for the acts and omissions of its officers, agents, servants, employees, contractors and subcontractors. Contractor acknowledges that the doctrine of *respondeat superior* shall not apply as between the City, its officers, agents, servants and employees, and Contractor, its officers, agents, employees, servants, contractors and subcontractors. Contractor further agrees that nothing herein shall be construed as the creation of a partnership or joint enterprise between City and Contractor.
- 6.3. **Government Function Clause.** All parties agree that this contract is one wherein the City is solely performing a governmental function.
- 6.4. **Compliance with Laws.** Contractor agrees to comply with all applicable federal, state and local laws, ordinances, rules and regulations. If the City notifies Contractor of any violation of such laws, ordinances, rules or regulations, Contractor shall immediately desist from and correct the violation.
- 6.5. **Records Retention.** To the extent Section 552.371 of the Texas Government Code applies to Contractor and the Agreement, in accordance with Section 552.372 of the Texas Government Code, Contractor must (a) preserve all contracting information related to the Agreement in accordance with the records retention requirements applicable to the City for the duration of the Agreement, (b) no later than the tenth business day after the date of the City's request,

provide to the City any contracting information related to the Agreement that is in Contractor's custody or possession, and (c) on termination or expiration of the Agreement, either (i) provide to the City at no cost all contracting information related to the Agreement that is in Contractor's custody or possession or (ii) preserve the contracting information related to the Agreement in accordance with the records retention requirements applicable to the Contractor. Except as provided by Section 552.374(c) of the Texas Government Code, the requirements of Subchapter J, Chapter 552, Government Code, may apply to the Agreement and Contractor agrees that the Agreement may be terminated if Vendor knowingly or intentionally fails to comply with a requirement of that subchapter.

- 6.6. Non-Discrimination Covenant. Contractor, for itself, its personal representatives, assigns, subcontractors and successors in interest, as part of the consideration herein, agrees that in the performance of Contractor's duties and obligations hereunder, it shall not discriminate in the treatment or employment of any individual or group of individuals on any basis prohibited by law. If any claim arises from an alleged violation of this non-discrimination covenant by Contractor, its personal representatives, assigns, subcontractors or successors in interest, Contractor agrees to assume such liability and to indemnify and defend the City and hold the City harmless from such claim.
- 6.7. **Assignment and Subcontracting.** Neither party may assign or subcontract any of its duties, obligations or rights under this Agreement.
- 6.8. **Notice.** Notices required pursuant to the provisions of this Agreement shall be conclusively determined to have been delivered when (1) hand-delivered to the other party, its agents, employees, servants or representatives, or (2) received by the other party by United States Mail, registered, return receipt requested, addressed as follows:

To CITY:

City of Burleson Attn: City Manager 141 W. Renfro St. Burleson, TX 76028 MHSC Energy Management

PO Box 10048

College Station TX 77842

- 6.9. **Governmental Powers.** It is understood and agreed that by execution of this Agreement, the City does not waive or surrender any of its governmental powers.
- 6.10. **No Waiver.** The failure of the City or Contractor to insist upon the performance of any term or provision of this Agreement or to exercise any right granted herein shall not constitute a

- waiver of the City's or Contractor's respective right to insist upon appropriate performance or to assert any such right on any future occasion.
- 6.11. **Governing Law and Venue.** This Agreement shall be construed in accordance with the internal laws of the State of Texas. If any action, whether real or asserted, at law or in equity, is brought on the basis of this Agreement, venue for such action shall lie in state courts located in Johnson County, Texas or the United States District Court for the Northern District of Texas.
- 6.12. **Severability.** If any provision of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.
- 6.13. Force Majeure. The City and Contractor shall exercise their best efforts to meet their respective duties and obligations as set forth in this Agreement, but shall not be held liable for any delay or omission in performance due to force majeure or other causes beyond their reasonable control (force majeure), including, but not limited to, compliance with any government law, ordinance or regulation, acts of God, acts of the public enemy, fires, strikes, lockouts, natural disasters, wars, riots, pandemics, epidemics, material or labor restrictions by any governmental authority, transportation problems and/or any other similar causes.
- 6.14. **Heading Not Controlling.** Headings and titles used in this Agreement are for reference purposes only and shall not be deemed a part of this Agreement.
- 6.15. **Review of Counsel.** The parties acknowledge that each party and its counsel have reviewed and revised this Agreement and that the normal rules of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or exhibits hereto.
- 6.16. **Amendment and Modification.** No extension, modification or amendment of this Agreement shall be binding upon a party hereto unless such extension, modification, or amendment is set forth in a written instrument, which is executed by an authorized representative and delivered on behalf of such party.
- 6.17. **Entirety of Agreement.** This Agreement, including the schedule of exhibits attached hereto and any documents incorporated herein by reference, contains the entire understanding and agreement between the City and Contractor, their assigns and successors in interest, as to the matters contained herein. Any prior or contemporaneous oral or written agreement is hereby declared null and void to the extent in conflict with any provision of this Agreement.
- 6.18. **Signature Authority.** The person signing this agreement hereby warrants that he/she has the legal authority to execute this agreement on behalf of the respective party, and that such

binding authority has been granted by proper order, resolution, ordinance or other authorization of the entity. The other party is fully entitled to rely on this warranty and representation in entering into this Agreement.

- 6.19. **No Waiver of Governmental Immunity.** Nothing contained in this Agreement shall be construed as a waiver of City's governmental immunity, or of any damage caps or limitations imposed by law, or any other legal protections granted to City by law, except to the extent expressly provided or necessarily implied herein.
- 6.20. **Mandatory Ownership Disclosure Provision.** If required by law, Contractor shall submit completed Texas Ethics Commission Form 1295 Ownership Disclosure form to City at time of execution of Agreement pursuant to Texas Government Code Section 2252.908.
- 6.21. **Non-Exclusivity.** Agreement is non-exclusive and City may enter into a separate Agreement with any other person or entity for some or all of the work to be performed under Agreement.
- 6.22. No Third-Party Beneficiaries. Except as expressly provided herein, nothing herein is intended to confer upon any person other than the parties hereto any rights, benefits or remedies under or because of this Agreement, provided, however, that the described beneficiaries of the indemnity provisions of this Agreement are expressly intended third-party beneficiaries of this Agreement.
- 6.23. Basic Safeguarding of Contractor Information Systems. Contractor shall apply basic safeguarding requirements and procedures to protect the Contractor's information systems whenever the informationsystems store, process, or transmit any information, not intended for public release, which is provided by or generated for the City. This requirement does not include information provided by the City to the public or simple transactional information, such as that is necessary to process payments. These requirements and procedures shall include, at a minimum, the security control requirements "reflective of actions a prudent business person would employ" which are outlined in the Federal Acquisition Regulations FAR 52.204-21(b) and codified in the Code of Federal Regulations at 48 C.F.R. § 52.204-21(b) (2016).
- 6.24. **Survivability.** The terms of this Agreement, which by their nature one would reasonably intend to survive this Agreement shall survive it, including terms addressing fees and payment, confidentiality, immunity, representations and warranties, limitation of liability, and the applicable miscellaneous sections.
- 6.25. **Insurance: A.** The vendor, consistent with its status as an independent contractor, shall carry, and shall require any of its subcontractors to carry, at least the following insurance in such form, with such companies, and in such amounts (unless otherwise specified) as City will require:

- Worker's Compensation and Employer's Liability insurance, including All States Endorsement, to the extent required by federal law and complying with the laws of the State of Texas;
- b. Commercial General Liability insurance, including Blanket Contractual Liability, Broad Form Property Damage, Personal Injury, Completed Operations/Products Liability, Premises Liability, Medical Payments, Interest of Employees as additional insureds, and Broad Form General Liability Endorsements, for at least One Million Dollars (\$1,000,000) Combined Single Limit Bodily Injury and Property Damage on an occurrence basis;
 - Comprehensive Automobile Liability insurance covering all owned, non owned or hired automobiles to be used by the Contractor, with coverage for at least One Million Dollars (\$1,000,000) Combined Single Limit Bodily Injury and Property Damage.
- 6.26. **Counterparts; PDF Signatures.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Any pdf-format or other electronic transmission of any signature of a signatory shall be deemed an original and shall bind such signatory.
- 6.27. **Mandatory Anti-Israel Boycott Provision.** Consultant acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate:
 - a. Pursuant to Section 2271.002 of the Texas Government Code, Consultant certifies that either (i) it meets an exemption criterion under Section 2271.002; or (ii) it does not boycott Israel and will not boycott Israel during the term of the Agreement. Consultant acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
 - b. Pursuant to SB 13, 87th Texas Legislature, Consultant certifies that either (i) it meets an exemption criterion under SB 13, 87th Texas Legislature; or (ii) it does not boycott energy companies, as defined in Section 1 of SB 13, 87th Texas Legislature, and will not boycott energy companies during the term of the Agreement. Consultant acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
 - c. Pursuant to SB 19, 87th Texas Legislature, Consultant certifies that either (i) it meets an exemption criterion under SB 19, 87th Texas Legislature; or (ii) it does not discriminate against a firearm entity or firearm trade association, as defined in Section 1 of SB 19, 87th Texas Legislature, and will not discriminate against a firearm entity or firearm trade association during the term of the Agreement. Consultant acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
 - d. Pursuant to Subchapter F, Chapter 2252, Texas Government Code, Consultant certifies it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, and

otherwise in conformance with said statute. Consultant acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

The remainder of this page is left intentionally blank

SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Agreement:

| CITY OF BURLESON: | MHSC Energy Management |
|---|------------------------|
| By: Date: | By: 04/12/2023 |
| APPROVED AS TO FORM: | |
| By: | |
| City Attorney, Assistant City Attorney, or Deputy City Attorney | |

HSC Purchase Agreement



Customer desires to convert certain lights and/or light fixtures to LED and desires to acquire and install such LED lights and/or fixtures from MHSC per Schedule A.

It is therefore agreed:

Lighting Project Cost:

Cost of Lights/Fixtures \$25,229.00

Shipping \$ 2,018.32

Installation \$31,031.67

Tax (if applicable) \$ 0.00

TOTAL PROJECT \$58,278.99

Installation:

Installation of the lighting project will be coordinated by MHSC. MHSC reserves the right to utilize MHSC installation staff or subcontract to an external electrical contractor to perform the installation. Customer will be consulted at all stages of the installation. MHSC and/or its subcontractor will be responsible for any damage or destruction of bulbs and/or fixtures during installation. Any replacement necessary as a result of damage or destruction during installation will be the responsibility of MHSC.

It is understood that installation includes only the replacing of existing fixtures and/or LED bulbs with those found in Schedule A. It is agreed and understood that this Agreement is predicated upon all existing wiring and/or circuits to be in good working condition and compliant to any required electrical codes. It is not the intent of this Agreement to provide any electrical services outside of the scope of removing the existing lighting fixture and connecting the new LED Fixture and/or bulb. Replacement of junction boxes, conduit, deteriorated/damaged wiring and conductors is outside the scope of this Agreement. It is agreed that MHSC will inspect all conduit,

conductors, existing wiring at the junction boxes that are associated with the current light fixtures for any deterioration and/or damage and report such issues to the Customer. MHSC will provide Customer with potential remedies and associated cost, which can be added to the final payment through a Change Order authorized by the Customer.

Specific wiring may be included within this Agreement for specific items (ie. adding of additional lighting where no lighting currently exists) if so itemized within the Agreement and/or SCHEDULE A.

Removal of Replaced Light Fixtures/Bulbs:

It is agreed and understood that MHSC will be responsible for disposing of any replaced fixtures/bulbs. Customer agrees to allow MHSC to temporarily store such fixtures/bulbs on Customer's premises. MHSC will dispose of any replaced fixtures/bulbs in a timely manner before the project is completed.

Lighting Controls:

Unless specifically stated within this Agreement, it is not the intent of MHSC to repair, rewire, reprogram or replace the lighting control systems currently in use by Customer. MHSC will install all new LED light fixtures and/or LED bulbs that may be connected to existing lighting control system and will test those new fixtures and/or bulbs to make sure they will work with the existing lighting control system.

Payment Terms:

Customer will pay a deposit of 60% of the Total Project Cost or \$34,967.39 to initiate the LED Program and the remaining 40% or \$23,311.60 upon completion of installation.

Product Warranty:

Each LED light and/or fixture comes with a manufacturer's warranty as provided to the Customer in Schedule A. Any warranty claim should be made through MHSC by emailing MHSC (warranty@mhscenergy.com) and MHSC will supply necessary information to the manufacturer for replacement light and/or fixture. Manufacturer warranties cover fixtures/bulbs only and exclude any labor to replace or repair the fixture/bulb.

Product Delivery:

MHSC may utilize a common carrier to ship light bulbs and/or fixtures to Customer's location. Should this be needed, MHSC will communicate this need with Customer. MHSC will insure product shipments against damage. Customer will NOT ACCEPT any shipment that may appear damaged and immediately notify MHSC of the damaged shipment. If possible, Customer should take digital images of the damaged shipment and email them to MHSC (shipping@mhscenergy.com). Additionally, once the lights/fixtures are delivered they are considered in the "Care, Custody and Control" of the Customer. It is the Customer's responsibility

to store/keep LED Lights/Fixtures in a safe place to protect against any damage, destruction or theft. This will also be discussed with Customer before any shipments are made to Customer's location.

Complete Product Listing:

It is agreed and understood that the Customer will receive only those lights and/or fixtures (in number and type) listed in Schedule A. It is agreed and understood that every light and/or fixture within the Customer's premises may not be included within this lighting project (i.e. bathrooms, closets, display cases, etc.) or that some lights may have not been included during the survey process. Should Customer elect to add additional lights not currently listed in Schedule A, MHSC will provide a "Change Order" for Customer to authorize. Any additional costs will be added to the final payment of the project.

Change Orders:

MHSC has proposed recommended LED lights and/or fixtures based on current lighting types and levels desired by Customer and those bulbs/fixtures found in Schedule A. Should Customer decide that further increases in light levels are desired which could increase the wattage of any particular bulb and/or fixture or increase the number of fixtures included in the program and not found on Schedule A, Customer acknowledges that this could impact both the savings and utility incentives received. Additionally, these higher wattage lights and/or fixtures or an increase in the number of fixtures could increase the cost of the lighting program to Customer. In the event of an increase in cost, Customer will be consulted and received written approval before any "change order" is made to the existing Schedule A.

Certain Exclusions: This Agreement excludes certain costs that may occur such as lost revenue from business interruption during installation, State or local taxes, incidental or administrative expenses, delays in installation or shipment, any increase in Customer personnel costs as a result of installation or shipment delays, Acts of God and the right of set off.

Project Scope: It is agreed and understood that MHSC will provide the lights and/or fixtures to the location stated above in proper working order. In the event that MHSC is responsible for installation, MHSC will provide the necessary licensed personnel and project management to complete the project in a timely manner in agreement with the Customer. If the Customer is contracting with an outside electrical firm to provide installation, Customer shall coordinate timing and oversight of project during installation. MHSC will provide any needed technical support for electrical contractor during installation. Customer should inform electrical contractor that should they have any question about instillation, they should immediately contact MHSC for guidance.

| AGREED AND ACCEPTED: | |
|------------------------------|----------------------|
| MHSC Energy Management LLC | City of Burleson |
| | _ |
| Authorized Signature | Authorized Signature |
| Agreement Number: MHBR230314 | |
| Date: | Date: |

IN WITNESS WHEREOF the undersigned have executed this Agreement as of the Effective Date

written above.

SCHEDULE A Attached



Burleson Recreation Center

| | | | | | | | | | | | | | | Duile | esuli K | ecrea | ation | Center | | |
|-------------------------|--------------------------|-----------------|-------------------|---------------------|----------------|---------------------|--------------------------|-------------|---|-------------------|---------------------|----------------|---------------------|-------------|---------------|---------------|---------------------|-----------------------|-------------------|------------------------------|
| Location | Current Fixture Type | Bulb Type | No. of Fixture | Bulb Per Fixture | No. of Bulb | Watt Per Bulb | Ballast Factor (w) | Total kW | LED Replacement | No. of Fixture | Bulb Per Fixture | No. of Bulb | Watt Per Bulb | Total kW | kW Reduced | Hours/ Day | Days Per Week | kWh Usage/ Year | Current \$/kWh | Electric Cost/ Year \$ |
| Main Entrance | Rec Can 8in | CFL 4Pin | 3 | 2 | 6 | 32 | - | 0.19 | HA-81146 PL10H/850/BYP/LED | 3 | 3 2 | 6 | 10 | 0.06 | 0.13 | 18 | 7 | 393 | 0.1000 | \$ 39 |
| Main Entrance | Rec Can 8in BB | CFL 4Pin | 2 | . 2 | 4 | 32 | - | 0.13 | HA-82119 PL12H/850/DIR/LED2 | 1 | 2 2 | 2 4 | 12 | 0.048 | 0.08 | 18 | 7 | 314 | 0.1000 | \$ 31 |
| | Rec Can 8in | CFL 4Pin | 1 | 2 | 2 | 32 | - | 0.0 | HA-81146 PL10H/850/BYP/LED | - | 1 2 | 2 2 | 10 | 0.02 | 0.04 | 18 | 7 | 131 | 0.1000 | \$ 13 |
| | 2X2 Rec Utube Para BB | T-8 | 2 | 2 | 4 | 32 | - | 0.13 | EI-10928 LED13WT8/U6/850-G9DM-ERG- EBKIT12WUV1000 | 1 | 2 2 | 4 | 13 | 0.052 | 0.08 | 18 | 7 | 341 | 0.1000 | \$ 34 |
| Offices Left | 2X2 Rec Utube Para | T-8 | 5 | 2 | 10 | 32 | - | 0.3 | EI-10928 LED13WT8/U6/850-G9DM | į | 5 2 | 10 | 13 | 0.13 | 0.19 | 18 | 7 | 852 | 0.1000 | \$ 85 |
| Allison's Office | 2X4 Rec Para | T-8 | 2 | 3 | 6 | 32 | - | 0.19 | EI-10878 LED10.5WT8/48/850-DBL-G8D | 2 | 2 3 | 6 | 10.5 | 0.063 | 0.13 | 18 | 7 | 413 | 0.1000 | \$ 41 |
| • | 2X4 Rec Para | T-8 | 2 | 3 | 6 | 32 | - | 0.19 | EI-10878 LED10.5WT8/48/850-DBL-G8D | 2 | 2 3 | 6 | 10.5 | 0.063 | 0.13 | 18 | 7 | 413 | 0.1000 | \$ 41 |
| Recreation Manager | 2X4 Rec Para | T-8 | 2 | 3 | 6 | 32 | - | 0.19 | EI-10878 LED10.5WT8/48/850-DBL-G8D | 7 | 2 3 | 6 | 10.5 | 0.063 | 0.13 | 18 | 7 | 413 | 0.1000 | \$ 41 |
| Break Room | 2X4 Rec Para BB | T-8 | 1 | 3 | 3 | 32 | - | 0.10 | EI-10878 LED10.5WT8/48/850-DBL-G8D - EBKIT12WUV1000- | - | 1 3 | 3 | 10.5 | 0.032 | 0.06 | 18 | 7 | 206 | 0.1000 | \$ 21 |
| Break Room | 2X4 Rec Para | T-8 | 2 | 3 | 6 | 32 | - | 0.19 | EI-10878 LED10.5WT8/48/850-DBL-G8D | 2 | 2 3 | 6 | 10.5 | 0.063 | 0.13 | 18 | 7 | 413 | 0.1000 | \$ 41 |
| Director of Parks | Rec Can 6in | CFL Screw In | 6 | 1 | 6 | 28 | - | 0.1 | SA-S9623 BR30 | (| 5 1 | 6 | 9.5 | 0.057 | 0.11 | 18 | 7 | 373 | 0.1000 | \$ 37 |
| Director of Parks | Hanging Fixture | T-8 | 1 | 6 | 6 | 32 | - | 0.19 | EI-10878 LED10.5WT8/48/850-DBL-G8D | - | 1 6 | 6 | 10.5 | 0.063 | 0.13 | 18 | 7 | 413 | 0.1000 | \$ 41 |
| Senior Administrator | 2X4 Rec Para | T-8 | 2 | 3 | 6 | 32 | - | 0.19 | EI-10878 LED10.5WT8/48/850-DBL-G8D | 2 | 2 3 | 6 | 10.5 | 0.063 | 0.13 | 18 | 7 | 413 | 0.1000 | \$ 41 |
| Accounting Office | 2X4 Rec Para | T-8 | 2 | 3 | 6 | 32 | - | 0.19 | EI-10878 LED10.5WT8/48/850-DBL-G8D | 2 | 2 3 | 6 | 10.5 | 0.063 | 0.13 | 18 | 7 | 413 | 0.1000 | \$ 41 |
| Stairwell | 1X4 Strip BB | T-8 | 2 | 2 | 4 | 32 | - | 0.13 | EI-10878 LED10.5WT8/48/850-DBL-G8- EBKIT12WUV1000 | 2 | 2 2 | 4 | 10.5 | 0.042 | 0.09 | 18 | 7 | 275 | 0.1000 | \$ 28 |
| Stairwell | 1X4 Strip | T-8 | 2 | 2 | 4 | 32 | - | 0.13 | EI-10878 LED10.5WT8/48/850-DBL-G8D | 1 | 2 2 | 2 4 | 10.5 | 0.042 | 0.09 | 18 | 7 | 275 | 0.1000 | \$ 28 |
| Reception Desk | Rec Can 8in | CFL 4Pin | 2 | 1 | 2 | 32 | - | 0.0 | HA-81143 PL10V/850/BYP/LED - | 1 | 2 1 | 1 2 | 10 | 0.02 | 0.04 | 18 | 7 | 131 | 0.1000 | \$ 13 |
| Reception Desk | 2X2 Rec Utube Para | T-8 | 2 | 2 | 4 | 32 | - | 0.13 | EI-10928 LED13WT8/U6/850-G9DM | 2 | 2 2 | 4 | 13 | 0.052 | 0.08 | 18 | 7 | 341 | 0.1000 | \$ 34 |
| · · · | Rec Can 8in | CFL 4Pin | 11 | . 2 | 22 | 32 | - | 0.70 | HA-81146 PL10H/850/BYP/LED-1 | 13 | 1 2 | 22 | 10 | 0.22 | 0.48 | 18 | 7 | 1,441 | 0.1000 | \$ 144 |
| | 2X2 Rec Utube Para BB | T-8 | 8 | 2 | 16 | 32 | - | 0.5 | EI-10928 LED13WT8/U6/850-G9DM-ERG- EBKIT12WUV1000 | 8 | 2 | 16 | 13 | 0.208 | 0.30 | 18 | 7 | 1,363 | 0.1000 | \$ 136 |
| ,. | 2X2 Rec Utube Para | T-8 | 31 | . 2 | 62 | 32 | - | | EI-10928 LED13WT8/U6/850-G9DM | 3: | | 62 | 13 | 0.806 | 1.18 | 18 | | 5,281 | 0.1000 | • |
| Main Foyer | Flood | Halogen | 12 | 1 | 12 | 100 | - | 1.20 | MO-WLL10L 29W 2100L 57K-WH | 17 | 2 1 | 12 | 29 | 0.348 | 0.85 | 18 | 7 | 2,280 | 0.1000 | \$ 228 |
| Meeting Room | Rec Can 8in BB | CFL 4Pin | 2 | 2 | 4 | 32 | - | 0.13 | HA-82114 PL12V/850/DIR/LED2 | | 2 2 | 4 | 12 | 0.048 | 0.08 | 18 | 7 | 314 | 0.1000 | \$ 31 |

| | | 1 | | 1 | | - | | | | 1 | | | | | | | | | |
|----------------------|--------------------|----------|----|-----|------|----|-----|--|---|-----|----|------|-------|------|----|---|-------|--------|--------|
| Meeting Room | Rec Can 8in | CFL 4Pin | 20 |) 2 | 40 | 32 | - 1 | 28 HA-81143 PL10V/850/BYP/LED | 2 | 2 | 40 | 10 | 0.4 | 0.88 | 18 | 7 | 2,621 | 0.1000 | \$ 262 |
| Meeting Room | Rec Can 6in | CFL 4Pin | 3 | 3 2 | 2 6 | 32 | - 0 | 19 HA-81143 PL10V/850/BYP/LED | : | 3 2 | 6 | 10 | 0.06 | 0.13 | 18 | 7 | 393 | 0.1000 | \$ 39 |
| Meeting Room | 1X4 Hanging Strip | T-8 | 6 | 5 4 | 1 24 | 32 | - 0 | .77 EI-10878 LED10.5WT8/48/850-DBL-G8D | | 6 4 | 24 | 10.5 | 0.252 | 0.52 | 18 | 7 | 1,651 | 0.1000 | \$ 165 |
| Meeting Room | 1X4 Hanging Strip | T-8 | 4 | 1 8 | 32 | 32 | - 1 | 02 EI-10878 LED10.5WT8/48/850-DBL-G8D | | 4 8 | 32 | 10.5 | 0.336 | 0.69 | 18 | 7 | 2,201 | 0.1000 | \$ 220 |
| Meeting Room | | | | | | | | | | | | | | | | | | | |
| Under Cabinet | Undercabinet | T-8 | 4 | 2 | 2 8 | 32 | - 0 | 26 EI-10878 LED10.5WT8/48/850-DBL-G8D | | 4 2 | 8 | 10.5 | 0.084 | 0.17 | 18 | 7 | 550 | 0.1000 | \$ 55 |
| Closet | 2X4 Rec Para | T-8 | 2 | 2 3 | 6 | 32 | - 0 | 19 EI-10878 LED10.5WT8/48/850-DBL-G8D | | 2 3 | 6 | 10.5 | 0.063 | 0.13 | 18 | 7 | 413 | 0.1000 | \$ 41 |
| Closet | 2X4 Rec Para | T-8 | 2 | 2 3 | 6 | 32 | - 0 | 19 EI-10878 LED10.5WT8/48/850-DBL-G8D | | 2 3 | 6 | 10.5 | 0.063 | 0.13 | 18 | 7 | 413 | 0.1000 | \$ 41 |
| Men's Room | Rec Can 8in BB | CFL 4Pin | 2 | 2 | 4 | 32 | - 0 | 13 HA-82119 PL12H/850/DIR/LED2 | | 2 2 | 4 | 12 | 0.048 | 0.08 | 18 | 7 | 314 | 0.1000 | \$ 31 |
| Men's Room | Rec Can 8in | CFL 4Pin | 1 | . 2 | 2 2 | 32 | - 0 | 06 HA-81146 PL10H/850/BYP/LED | | 1 2 | 2 | 10 | 0.02 | 0.04 | 18 | 7 | 131 | 0.1000 | \$ 13 |
| Men's Room | 1X4 Strip | T-8 | 2 | 2 2 | 2 4 | 32 | - 0 | 13 EI-10878 LED10.5WT8/48/850-DBL-G8D | | 2 2 | 4 | 10.5 | 0.042 | 0.09 | 18 | 7 | 275 | 0.1000 | \$ 28 |
| Men's Room | 1X2 Strip | T-8 | 1 | . 2 | 2 2 | 32 | - 0 | 06 EI-09599 LED9WT8/24/850-DBL-G7D | | 1 2 | 2 | 9 | 0.018 | 0.05 | 18 | 7 | 118 | 0.1000 | \$ 12 |
| Men's Room | 1X2 Strip | T-8 | 2 | 2 2 | 2 4 | 32 | - 0 | 13 El-09599 LED9WT8/24/850-DBL-G7D | | 2 2 | 4 | 9 | 0.036 | 0.09 | 18 | 7 | 236 | 0.1000 | \$ 24 |
| Ladies's Room | Rec Can 8in BB | T-8 | 2 | 2 2 | 2 4 | 32 | - 0 | 13 HA-82119 PL12H/850/DIR/LED2 | | 2 2 | 4 | 12 | 0.048 | 0.08 | 18 | 7 | 314 | 0.1000 | \$ 31 |
| Ladies's Room | Rec Can 8in | T-8 | 1 | . 2 | 2 2 | 32 | - 0 | 06 HA-81146 PL10H/850/BYP/LED | | 1 2 | 2 | 10 | 0.02 | 0.04 | 18 | 7 | 131 | 0.1000 | \$ 13 |
| Ladies's Room | 1X4 Strip | T-8 | 2 | 2 2 | 2 4 | 32 | - 0 | 13 EI-10878 LED10.5WT8/48/850-DBL-G8D | | 2 2 | 4 | 10.5 | 0.042 | 0.09 | 18 | 7 | 275 | 0.1000 | \$ 28 |
| Ladies's Room | 1X2 Strip | T-8 | 3 | 3 2 | 2 6 | 32 | - 0 | 19 EI-09599 LED9WT8/24/850-DBL-G7D | | 3 2 | 6 | 9 | 0.054 | 0.14 | 18 | 7 | 354 | 0.1000 | \$ 35 |
| Ladies's Room | 1X2 Strip | T-8 | 2 | 2 2 | 2 4 | 32 | - 0 | 13 EI-09599 LED9WT8/24/850-DBL-G7D | | 2 2 | 4 | 9 | 0.036 | 0.09 | 18 | 7 | 236 | 0.1000 | \$ 24 |
| Day Care | 2X4 Rec Para BB | T-8 | 1 | 4 | 4 4 | 32 | - 0 | EI-10878 LED10.5WT8/48/850-DBL-G8D-E- 13 EBKIT12WUV1000 | | 1 4 | 4 | 10.5 | 0.042 | 0.09 | 18 | 7 | 275 | 0.1000 | \$ 28 |
| | 2X4 Rec Para | T-8 | 4 | 1 4 | 1 16 | 32 | - 0 | 51 EI-10878 LED10.5WT8/48/850-DBL-G8D | | 4 4 | 16 | 10.5 | 0.168 | 0.34 | 18 | 7 | 1,101 | 0.1000 | \$ 110 |
| Day Care Restroom | 2X2 Rec Utube Para | T-8 | 2 | 2 2 | 2 4 | 32 | - 0 | 13 EI-10928 LED13WT8/U6/850-G9DM | : | 2 2 | 4 | 13 | 0.052 | 0.08 | 18 | 7 | 341 | 0.1000 | \$ 34 |
| Kid's Play Room | Rec Can 8in | CFL 4Pin | 1 | . 2 | 2 2 | 32 | - 0 | 06 HA-81146 PL10H/850/BYP/LED - | | 1 2 | 2 | 10 | 0.02 | 0.04 | 18 | 7 | 131 | 0.1000 | \$ 13 |
| Kid's Play Room | 2X4 Rec Para BB | T-8 | 1 | | 1 4 | 32 | - 0 | EI-10878 LED10.5WT8/48/850-DBL-G8D-E- 13 EBKIT12WUV1000 | | 1 4 | 4 | 10.5 | 0.042 | 0.09 | 18 | 7 | 275 | 0.1000 | \$ 28 |
| Kid's Play Room | 2X4 Rec Para | T-8 | 5 | 5 4 | 20 | 32 | - 0 | 64 EI-10878 LED10.5WT8/48/850-DBL-G8D | | 5 4 | 20 | 10.5 | 0.21 | 0.43 | 18 | 7 | 1,376 | 0.1000 | \$ 138 |
| Closet | 2X2 Rec Para BB | T-8 | 1 | . 2 | 2 2 | 32 | - 0 | 06 EI-09599 LED9WT8/24/850-DBL-G7D | | 1 3 | 3 | 9 | 0.027 | 0.04 | 18 | 7 | 177 | 0.1000 | \$ 18 |
| Party Room B | 2X4 Rec Para BB | T-8 | 2 | 2 3 | 3 6 | 32 | - 0 | EI-10878 LED10.5WT8/48/850-DBL-G8D-E- 19 EBKIT12WUV1000 | | 2 3 | 6 | 10.5 | 0.063 | 0.13 | 18 | 7 | 413 | 0.1000 | \$ 41 |
| Party Room B | 2X4 Rec Para | T-8 | 2 | 3 | 3 6 | 32 | - 0 | 19 EI-10878 LED10.5WT8/48/850-DBL-G8D | | 2 3 | 6 | 10.5 | 0.063 | 0.13 | 18 | 7 | 413 | 0.1000 | \$ 41 |
| Party Rooom A | 2X4 Rec Para BB | T-8 | 1 | 3 | 3 3 | 32 | - 0 | EI-10878 LED10.5WT8/48/850-DBL-G8D-E- 10 EBKIT12WUV1000 | | 1 3 | 3 | 10.5 | 0.032 | 0.06 | 18 | 7 | 206 | 0.1000 | \$ 21 |
| | 2X4 Rec Para | T-8 | 3 | 3 | 9 | 32 | - 0 | 29 EI-10878 LED10.5WT8/48/850-DBL-G8D | | 3 3 | 9 | 10.5 | 0.095 | 0.19 | 18 | 7 | 619 | 0.1000 | \$ 62 |
| Men's Locker Room | Rec Can 8in BB | CFL 4Pin | 7 | 7 2 | 14 | 32 | - 0 | 45 HA-82119 PL12H/850/DIR/LED2 | | 7 2 | 14 | 12 | 0.168 | 0.28 | 18 | 7 | 1,101 | 0.1000 | \$ 110 |

| Men's Locker | | | | | | | | | | | | | | | | | | |
|------------------|--------------------------|----------|-----|-------|----|-------|---|-----|-----|-----|------|-------|------|----|---|--------|-----------|-------|
| Room | Rec Can 8in | CFL 4Pin | 25 | 2 50 | 32 | - 1.0 | 0 HA-81146 PL10H/850/BYP/LED | 25 | 2 | 50 | 10 | 0.5 | 1.10 | 18 | 7 | 3,276 | 0.1000 \$ | 328 |
| Men's Locker | | | | | | | | | | | | | | | | | | |
| Room | 1X4 Strip | T-8 | 4 | 2 8 | 32 | - 0.2 | 6 EI-10878 LED10.5WT8/48/850-DBL-G8D | 4 | 2 | 8 | 10.5 | 0.084 | 0.17 | 18 | 7 | 550 | 0.1000 \$ | 55 |
| Ladies's Room | | | | | | | | | | | | | | | | | | |
| Locker Room | Rec Can 8in BB | CFL 4Pin | 7 | 2 14 | 32 | - 0.4 | 5 HA-82114 PL12V/850/DIR/LED2 | 7 | 2 | 14 | 12 | 0.168 | 0.28 | 18 | 7 | 1,101 | 0.1000 \$ | 110 |
| | | | | | | | | | | | | | | | | | | |
| Ladies's Room | | | | | | | | | | | | | | | | | | |
| Locker Room | Rec Can 8in | CFL 4Pin | 21 | 2 42 | 32 | - 1.3 | 4 HA-81143 PL10V/850/BYP/LED | 21 | . 2 | 42 | 10 | 0.42 | 0.92 | 18 | 7 | 2,752 | 0.1000 \$ | 275 |
| Ladies's Room | | | | | | | | | | | | | | | | | | |
| Locker Room | 1X4 Strip | T-8 | 2 | 2 4 | 32 | - 0.: | 3 EI-10878 LED10.5WT8/48/850-DBL-G8D | 2 | 2 | 4 | 10.5 | 0.042 | 0.09 | 18 | 7 | 275 | 0.1000 \$ | 28 |
| | | | | | | | , , , , , , , | | | | | | | | | | | |
| Ladies's Room | | | | | | | | | | | | | | | | | | |
| Locker Room | 1X2 Strip | T-8 | 1 | 2 2 | 32 | - 0.0 | 6 EI-09599 LED9WT8/24/850-DBL-G7D | 1 | . 2 | 2 | 9 | 0.018 | 0.05 | 18 | 7 | 118 | 0.1000 \$ | 12 |
| | | | | | | | EI-10928 LED13WT8/U6/850-G9DM-ERG- | | | | | | | | | | | |
| Exit | 2X2 Rec Utube BB | T-8 | 2 | 2 4 | 32 | | 3 EBKIT12WUV1000 | 2 | 2 | 4 | 13 | 0.052 | 0.08 | 18 | | 341 | 0.1000 \$ | 34 |
| Exit | 2X2 Rec Utube | T-8 | 1 | 2 2 | 32 | - 0.0 | 6 EI-10928 LED13WT8/U6/850-G9DM | 1 | . 2 | 2 | 13 | 0.026 | 0.04 | 18 | 7 | 170 | 0.1000 \$ | 17 |
| 511 51 5 | | | | | | | | l . | | | 40.5 | | 0.47 | | _ | | | |
| File Risser Room | 1X4 Strip | T-8 | 4 | 2 8 | 32 | - 0.2 | 6 EI-10878 LED10.5WT8/48/850-DBL-G8D | 4 | 2 | 8 | 10.5 | 0.084 | 0.17 | 18 | 7 | 550 | 0.1000 \$ | 55 |
| Janitor | 2X4 Rec Para BB | T-8 | 1 | 3 3 | 32 | - 0. | EI-10878 LED10.5WT8/48/850-DBL-G8D-E- G EBKIT12WUV1000 | ١ , | 2 | 3 | 10.5 | 0.032 | 0.06 | 18 | 7 | 206 | 0.1000 \$ | 21 |
| Janicoi | ZA4 Nec I ala BB | 1-0 | 1 | , , | 32 | - 0 | G EBRIT 12 W O V 1000 | | , | 3 | 10.5 | 0.032 | 0.00 | 10 | , | 200 | 0.1000 \$ | 21 |
| Janitor | 2X4 Rec Para | T-8 | 2 | 3 6 | 32 | - 0.: | 9 EI-10878 LED10.5WT8/48/850-DBL-G8D | 2 | 3 | 6 | 10.5 | 0.063 | 0.13 | 18 | 7 | 413 | 0.1000 \$ | 41 |
| | | | | | | | | | | | | | | | | | | |
| Storage | 1X4 Strip | T-8 | 4 | 2 8 | 32 | - 0.2 | 6 EI-10878 LED10.5WT8/48/850-DBL-G8D | 4 | 2 | 8 | 10.5 | 0.084 | 0.17 | 18 | 7 | 550 | 0.1000 \$ | 55 |
| Maish Dans | 2X2 Rec Utube Para | T 0 | | | 22 | | EI-10928 LED13WT8/U6/850-G9DM-ERG- | | | | 42 | 0.053 | 0.00 | 40 | _ | 244 | 0.4000 Å | 24 |
| Weight Room | BB | T-8 | 2 | 2 4 | 32 | - 0.: | 3 EBKIT12WUV1000 | | 4 | 4 | 13 | 0.052 | 0.08 | 18 | 7 | 341 | 0.1000 \$ | 34 |
| Weight Room | 2X2 Rec Utube Para | T-8 | 4 | 2 8 | 32 | - 0: | 6 EI-10928 LED13WT8/U6/850-G9DM | 4 | 2 | 8 | 13 | 0.104 | 0.15 | 18 | 7 | 681 | 0.1000 \$ | 68 |
| Under Gym | EXE NO OTABET ATA | | | | | 0 | 2. 10320 22213 11 (4) 00/ 030 032 11. | 1 | | | | 0.10 | 0.13 | 10 | | 001 | 0.1000 \$ | |
| Walk Way | 1X4 Wrap | T-8 | 24 | 2 48 | 32 | - 1.5 | 4 EI-10878 LED10.5WT8/48/850-DBL-G8D | 24 | 2 | 48 | 10.5 | 0.504 | 1.03 | 18 | 7 | 3,302 | 0.1000 \$ | 330 |
| | · | | | | | | EI-10878 LED10.5WT8/48/850-DBL-G8D-E- | | | | | | | | | | | |
| Stairwell | 1X4 Strip BB | T-8 | 2 | 2 4 | 32 | - 0.: | 3 EBKIT12WUV1000 | 2 | 2 | 4 | 10.5 | 0.042 | 0.09 | 18 | 7 | 275 | 0.1000 \$ | 28 |
| | | | _ | | | _ | | | | | | | | | | | | |
| Stairwell | 1X4 Strip | T-8 | 2 | 2 4 | 32 | - 0.: | 3 EI-10878 LED10.5WT8/48/850-DBL-G8D | 2 | 2 | 4 | 10.5 | 0.042 | 0.09 | 18 | 7 | 275 | 0.1000 \$ | 28 |
| Activity Room | 1X8 Hanging Fix BB | T-8 | ١ , | 4 0 | 32 | 0.5 | EI-10878 LED10.5WT8/48/850-DBL-G8D- 6 EBKIT12WUV1000 | | , | 8 | 10.5 | 0.084 | 0.17 | 18 | 7 | 550 | 0.1000 \$ | 55 |
| Activity Room | TVO LIGHTISH LIX PP | 1-0 | | 4 0 | 32 | - 0., | 8 LBKI112W0V1000 | | 4 | ٥ | 10.5 | 0.064 | 0.17 | 10 | | 550 | 0.1000 \$ | 33 |
| Activity Room | 1X8 Hanging Strip | T-8 | 3 | 4 12 | 32 | - 0.3 | 8 EI-10878 LED10.5WT8/48/850-DBL-G8D | 3 | 4 | 12 | 10.5 | 0.126 | 0.26 | 18 | 7 | 826 | 0.1000 \$ | 83 |
| | 2X2 Rec Utube Para | | | | | | EI-10928 LED13WT8/U6/850-G9DM-ERG- | | | | | | | | | | | |
| Main Top | ВВ | T-8 | 12 | 2 24 | 32 | - 0.7 | 7 EBKIT12WUV1000 | 12 | 2 | 24 | 13 | 0.312 | 0.46 | 18 | 7 | 2,044 | 0.1000 \$ | 204 |
| | | | | | | | | | | | | | | | | | | |
| Main Top | 2X2 Rec Utube Para | T-8 | 33 | 2 66 | 32 | - 2.: | 1 EI-10928 LED13WT8/U6/850-G9DM | 33 | 2 | 66 | 13 | 0.858 | 1.25 | 18 | 7 | 5,622 | 0.1000 \$ | 562 |
| Work out Deck | 1X4 Strip | T-8 | 81 | 2 162 | 32 | E - | 8 EI-10878 LED10.5WT8/48/850-DBL | 81 | , | 162 | 10.5 | 1.701 | 3.48 | 18 | 7 | 11,145 | 0.1000 \$ | 1,114 |
| Work out Deck | 1A4 301p | 1-0 | 01 | 2 102 | 32 | - 3 | EI-10878 LED10.5WT8/48/850-DBL-G8D-E- | | 4 | 102 | 10.3 | 1.701 | 3.40 | 10 | | 11,143 | 0.1000 3 | 1,114 |
| Stairwell | 1X4 Strip BB | T-8 | 2 | 2 4 | 32 | - 0.: | 3 EBKIT12WUV1000 | 2 | 2 | 4 | 10.5 | 0.042 | 0.09 | 18 | 7 | 275 | 0.1000 \$ | 28 |
| | | | | | | | | | | | | | | | | | | |
| Stairwell | 1X4 Strip | T-8 | 2 | 2 4 | 32 | - 0.: | 3 EI-10878 LED10.5WT8/48/850-DBL-G8D | 2 | 2 | 4 | 10.5 | 0.042 | 0.09 | 18 | 7 | 275 | 0.1000 \$ | 28 |
| | | | | | | | | | | | | | | | | | | |
| High Wall | 1X4 Strip | T-8 | 4 | 2 8 | 32 | - 0.2 | 6 EI-10878 LED10.5WT8/48/850-DBL-G8D | 4 | 2 | 8 | 10.5 | 0.084 | 0.17 | 18 | 7 | 550 | 0.1000 \$ | 55 |
| Bail Room | 2X2 Rec Utube Para BB | T-8 | 1 | 2 2 | 32 | 0.4 | EI-10928 LED13WT8/U6/850-G9DM-ERG- 6 EBKIT12WUV1000 | , | , | 2 | 13 | 0.026 | 0.04 | 18 | 7 | 170 | 0.1000 \$ | 17 |
| Dali NOUIII | טט | 1-0 | 1 | 4 4 | 52 | - 0.0 | 4 EBKI 12000 1000 | | 1 1 | 2 | 13 | 0.020 | 0.04 | 18 | | 1/0 | 0.1000 \$ | 1/ |

| | ı | | - | | , , | | | | 1 1 | | | | | | | | | 1 | - |
|-------------------------|--------------------------|----------|----|-----|------|----|-------|---|-----|---|----|------|-------|------|----|---|---------|--------|-----------|
| Bail Room | 2X2 Rec Utube Para | T-8 | 7 | : | 14 | 32 | - 0.4 | 5 EI-10928 LED13WT8/U6/850-G9DM | 7 | 2 | 14 | 13 | 0.182 | 0.27 | 18 | 7 | 1,192 | 0.1000 | \$ 119 |
| Dance Room | 2X2 Rec Para BB | T-8 | 6 | : | 12 | 32 | - 0.3 | EI-09598 LED9WT8/24/840-DBL-G7D- 1- 8 EBKIT12WUV1000 | 6 | 2 | 12 | 9 | 0.108 | 0.28 | 18 | 7 | 708 | 0.1000 | \$ 71 |
| Dance Room | 2X2 Rec Para | T-8 | 17 | 2 | 34 | 32 | - 1.0 | 9 EI-09598 LED9WT8/24/840-DBL-G7D- 1 | 17 | 2 | 34 | 9 | 0.306 | 0.78 | 18 | 7 | 2,005 | 0.1000 | \$ 200 |
| Utility Room | 2X2 Rec Para BB | T-8 | 1 | 1 | 2 2 | 32 | - 0.0 | EI-09598 LED9WT8/24/840-DBL-G7D- 1 EBKIT12WUV1000 | 1 | 2 | 2 | 9 | 0.018 | 0.05 | 18 | 7 | 118 | 0.1000 | \$ 12 |
| Utility Room | 2X2 Rec Troffer | T-8 | 5 | : | 10 | 32 | - 0.3 | 2 EI-09599 LED9WT8/24/850-DBL-G7D | 5 | 2 | 10 | 9 | 0.09 | 0.23 | 18 | 7 | 590 | 0.1000 | \$ 59 |
| Rec. | 2X2 Rec Utube Para | T-8 | 2 | | 6 | 32 | - 0.1 | 9 EI-10928 LED13WT8/U6/850-G9DM | 2 | 2 | 4 | 13 | 0.052 | 0.14 | 18 | 7 | 341 | 0.1000 | \$ 34 |
| Rec. | 2X2 Rec Utube Para | T-8 | 2 | 3 | 6 | 32 | - 0.1 | 9 EI-10928 LED13WT8/U6/850-G9DM | 2 | 2 | 4 | 13 | 0.052 | 0.14 | 18 | 7 | 341 | 0.1000 | \$ 34 |
| 2 Restrooms | 2X2 Rec Utube BB | T-8 | 2 | 2 | 2 4 | 32 | - 0.1 | EI-10928 LED13WT8/U6/850-G9DM-ERG- 3 EBKIT12WUV1000 | 2 | 2 | 4 | 13 | 0.052 | 0.08 | 18 | 7 | 341 | 0.1000 | \$ 34 |
| Weight Room | 1X8 Hanging Strip | T-8 | 3 | 4 | 1 12 | 32 | - 0.3 | 8 EI-10878 LED10.5WT8/48/850-DBL-G8D | 3 | 4 | 12 | 10.5 | 0.126 | 0.26 | 18 | 7 | 826 | 0.1000 | \$ 83 |
| Pool Hallway | 2X2 Rec Utube Para BB | T-8 | 2 | 1 | 2 4 | 32 | - 0.1 | EI-10928 LED13WT8/U6/850-G9DM-ERG- 3 EBKIT12WUV1000 | 2 | 2 | 4 | 13 | 0.052 | 0.08 | 18 | 7 | 341 | 0.1000 | \$ 34 |
| Pool Hallway | 2X2 Rec Utube Para | T-8 | 2 | : | 4 | 32 | - 0.1 | 3 EI-10928 LED13WT8/U6/850-G9DM | 2 | 2 | 4 | 13 | 0.052 | 0.08 | 18 | 7 | 341 | 0.1000 | \$ 34 |
| 4 Changing Rooms | Rec Can 6in | CFL 4Pin | 8 | 1 | 16 | 32 | - 0.5 | 1 HA-81146 PL10H/850/BYP/LED | 8 | 2 | 16 | 10 | 0.16 | 0.35 | 18 | 7 | 1,048 | 0.1000 | \$ 105 |
| 4 Changing Rooms | 2X2 Rec Utube Para BB | T-8 | 4 | 2 | 2 8 | 32 | - 0.2 | EI-10928 LED13WT8/U6/850-G9DM-ERG- 6 EBKIT12WUV1000 | 4 | 2 | 8 | 13 | 0.104 | 0.15 | 18 | 7 | 681 | 0.1000 | \$ 68 |
| Pool Entrance | 2X2 Rec Utube Para | T-8 | 2 | 2 | 2 4 | 32 | - 0.1 | 3 EI-10928 LED13WT8/U6/850-G9DM | 2 | 2 | 4 | 13 | 0.052 | 0.08 | 18 | 7 | 341 | 0.1000 | \$ 34 |
| Pool Entrance | 2X2 Rec Utube Para | T-8 | 2 | ; | 2 4 | 32 | - 0.1 | 3 EI-10928 LED13WT8/U6/850-G9DM | 2 | 2 | 4 | 13 | 0.052 | 0.08 | 18 | 7 | 341 | 0.1000 | \$ 34 |
| Pool Entrance | 2X2 Rec Utube Para | T-8 | 2 | : | 2 4 | 32 | - 0.1 | 3 EI-10928 LED13WT8/U6/850-G9DM | 2 | 2 | 4 | 13 | 0.052 | 0.08 | 18 | 7 | 341 | 0.1000 | \$ 34 |
| Life Guard Office | 2X4 Rec Troffer | T-8 | 2 | | 6 | 32 | - 0.1 | 9 EI-10878 LED10.5WT8/48/850-DBL-G8D | 2 | 3 | 6 | 10.5 | 0.063 | 0.13 | 18 | 7 | 413 | 0.1000 | \$ 41 |
| Aquatic Office | 2X4 Rec Troffer | T-8 | 2 | ** | 6 | 32 | - 0.1 | 9 EI-10878 LED10.5WT8/48/850-DBL-G8D- | 2 | 3 | 6 | 10.5 | 0.063 | 0.13 | 18 | 7 | 413 | 0.1000 | \$ 41 |
| Storage | 2X4 Rec Troffer | T-8 | 2 | *** | 6 | 32 | - 0.1 | 9 EI-10878 LED10.5WT8/48/850-DBL-G8D- | 2 | 3 | 6 | 10.5 | 0.063 | 0.13 | 18 | 7 | 413 | 0.1000 | \$ 41 |
| Add Surge Protection | 0 | 0 | 2 | : | 1 2 | - | - 0.0 | C Eaton Surge Protection | 2 | 1 | 2 | 0 | 0 | - | 24 | 7 | - | 0.1000 | \$ - |
| | | , | | | | | | | | | | | | | | | | | |
| Total For LED Lig | hts |] | | | | | | | | | | | | | | | 82,024 | | \$ 8,202 |
| Total For Curren | t Lights | | | | | | | | | | | | | | | | 241,271 | | \$ 24,127 |
| Savings Generate | ed | 1 | | | | | | | | | | | | | | | 159,246 | | \$ 15,925 |
| Percentage Redu | | 1 | | | | | | | | | | | | | | | 66.00% | | 66.00% |
| kW Reduction/Ye | | | | | | | | | | | | | | | | | | | 24.31 |
| kWh Reduction/ | Year | <u> </u> | | | | | | | | | | | | | | | | | 159,246 |
| | | | | | | | | | | | | | | | | | | | |



Proposal For



Burleson Recreation Center

550 Summercrest Blvd Burleson, TX 76028

INSIDE

Prepared 3/14/2023

| Location | Current Fixture Type | Bulb Type | No. of Fixture | Bulb Per Fixture | No. Bulb | Bulb | Ballast Factor (w) | Use/ Day | | kWh Usage/ Year | Current Electrical Rate (\$0.00/kWh) | Total Electric Cost/Year Dollars |
|----------------------|-----------------------|-----------------|-------------------|---------------------|-------------|------|--------------------------|----------|---|--------------------|--|--|
| Main Entrance | Rec Can 8in | CFL 4Pin | 3 | 2 | 6 | 32 | | 18 | | 1,258 | \$0.1000 | |
| Main Entrance | Rec Can 8in BB | CFL 4Pin | 2 | 2 | 4 | 32 | | 18 | | 839 | \$0.1000 | |
| Main Entrance | Rec Can 8in | CFL 4Pin | 1 | 2 | 2 | 32 | C | 18 | 7 | 419 | \$0.1000 | \$ 41.93 |
| Offices Left | 2X2 Rec Utube Para BB | T-8 | 2 | 2 | 4 | 32 | C | 18 | 7 | 839 | \$0.1000 | \$ 83.87 |
| Offices Left | 2X2 Rec Utube Para | T-8 | 5 | 2 | 10 | 32 | C | 18 | 7 | 2,097 | \$0.1000 | \$ 209.66 |
| Allison's Office | 2X4 Rec Para | T-8 | 2 | 3 | 6 | 32 | C | 18 | 7 | 1,258 | \$0.1000 | \$ 125.80 |
| Dept. Director | 2X4 Rec Para | T-8 | 2 | 3 | 6 | 32 | C | 18 | 7 | 1,258 | \$0.1000 | \$ 125.80 |
| Recreation Manager | 2X4 Rec Para | T-8 | 2 | 3 | 6 | 32 | C | 18 | 7 | 1,258 | \$0.1000 | \$ 125.80 |
| Break Room | 2X4 Rec Para BB | T-8 | 1 | 3 | 3 | 32 | C | 18 | 7 | 629 | \$0.1000 | \$ 62.90 |
| Break Room | 2X4 Rec Para | T-8 | 2 | 3 | 6 | 32 | C | 18 | 7 | 1,258 | \$0.1000 | \$ 125.80 |
| Director of Parks | Rec Can 6in | CFL Screw In | 6 | 1 | 6 | 28 | C | 18 | 7 | 1,101 | \$0.1000 | \$ 110.07 |
| Director of Parks | Hanging Fixture | T-8 | 1 | 6 | 6 | 32 | C | 18 | 7 | 1,258 | \$0.1000 | \$ 125.80 |
| Senior Administrator | 2X4 Rec Para | T-8 | 2 | 3 | 6 | 32 | C | 18 | 7 | 1,258 | \$0.1000 | \$ 125.80 |
| Accounting Office | 2X4 Rec Para | T-8 | 2 | 3 | 6 | 32 | C | 18 | 7 | 1,258 | \$0.1000 | \$ 125.80 |
| Stairwell | 1X4 Strip BB | T-8 | 2 | 2 | 4 | 32 | C | 18 | 7 | 839 | \$0.1000 | \$ 83.87 |
| Stairwell | 1X4 Strip | T-8 | 2 | 2 | 4 | 32 | C | 18 | 7 | 839 | \$0.1000 | \$ 83.87 |
| Reception Desk | Rec Can 8in | CFL 4Pin | 2 | 1 | 2 | 32 | C | 18 | 7 | 419 | \$0.1000 | \$ 41.93 |
| Reception Desk | 2X2 Rec Utube Para | T-8 | 2 | 2 | 4 | 32 | C | 18 | 7 | 839 | \$0.1000 | \$ 83.87 |
| Main Foyer | Rec Can 8in | CFL 4Pin | 11 | 2 | 22 | 32 | (| 18 | 7 | 4,613 | \$0.1000 | \$ 461.26 |
| Main Foyer | 2X2 Rec Utube Para BB | T-8 | 8 | 2 | 16 | 32 | (| 18 | 7 | 3,355 | \$0.1000 | \$ 335.46 |
| Main Foyer | 2X2 Rec Utube Para | T-8 | 31 | 2 | 62 | 32 | C | 18 | 7 | 12,999 | \$0.1000 | \$ 1,299.92 |
| Main Foyer | Flood | Halogen | 12 | 1 | 12 | 100 | C | 18 | 7 | 7,862 | \$0.1000 | \$ 786.24 |





| | | | | | | | | | | | • | 1 |
|----------------------------|--------------------|----------|----|---|----|----|---|----|---|--------|----------|-----------|
| Meeting Room | Rec Can 8in BB | CFL 4Pin | 2 | 2 | 4 | 32 | 0 | 18 | 7 | 839 | \$0.1000 | \$ 83.87 |
| Meeting Room | Rec Can 8in | CFL 4Pin | 20 | 2 | 40 | 32 | О | 18 | 7 | 8,387 | \$0.1000 | \$ 838.66 |
| Meeting Room | Rec Can 6in | CFL 4Pin | 3 | 2 | 6 | 32 | O | 18 | 7 | 1,258 | \$0.1000 | \$ 125.80 |
| Meeting Room | 1X4 Hanging Strip | T-8 | 6 | 4 | 24 | 32 | O | 18 | 7 | 5,032 | \$0.1000 | \$ 503.19 |
| Meeting Room | 1X4 Hanging Strip | T-8 | 4 | 8 | 32 | 32 | 0 | 18 | 7 | 6,709 | \$0.1000 | \$ 670.92 |
| Meeting Room Under Cabinet | Undercabinet | T-8 | 4 | 2 | 8 | 32 | 0 | 18 | 7 | 1,677 | \$0.1000 | \$ 167.73 |
| Closet | 2X4 Rec Para | T-8 | 2 | 3 | 6 | 32 | O | 18 | 7 | 1,258 | \$0.1000 | \$ 125.80 |
| Closet | 2X4 Rec Para | T-8 | 2 | 3 | 6 | 32 | 0 | 18 | 7 | 1,258 | \$0.1000 | \$ 125.80 |
| Men's Room | Rec Can 8in BB | CFL 4Pin | 2 | 2 | 4 | 32 | 0 | 18 | 7 | 839 | \$0.1000 | \$ 83.87 |
| Men's Room | Rec Can 8in | CFL 4Pin | 1 | 2 | 2 | 32 | 0 | 18 | 7 | 419 | \$0.1000 | \$ 41.93 |
| Men's Room | 1X4 Strip | T-8 | 2 | 2 | 4 | 32 | O | 18 | 7 | 839 | \$0.1000 | \$ 83.87 |
| Men's Room | 1X2 Strip | T-8 | 1 | 2 | 2 | 32 | O | 18 | 7 | 419 | \$0.1000 | \$ 41.93 |
| Men's Room | 1X2 Strip | T-8 | 2 | 2 | 4 | 32 | 0 | 18 | 7 | 839 | \$0.1000 | \$ 83.87 |
| Ladies's Room | Rec Can 8in BB | T-8 | 2 | 2 | 4 | 32 | 0 | 18 | 7 | 839 | \$0.1000 | \$ 83.87 |
| Ladies's Room | Rec Can 8in | T-8 | 1 | 2 | 2 | 32 | 0 | 18 | 7 | 419 | \$0.1000 | \$ 41.93 |
| Ladies's Room | 1X4 Strip | T-8 | 2 | 2 | 4 | 32 | 0 | 18 | 7 | 839 | \$0.1000 | \$ 83.87 |
| Ladies's Room | 1X2 Strip | T-8 | 3 | 2 | 6 | 32 | O | 18 | 7 | 1,258 | \$0.1000 | \$ 125.80 |
| Ladies's Room | 1X2 Strip | T-8 | 2 | 2 | 4 | 32 | O | 18 | 7 | 839 | \$0.1000 | \$ 83.87 |
| Day Care | 2X4 Rec Para BB | T-8 | 1 | 4 | 4 | 32 | 0 | 18 | 7 | 839 | \$0.1000 | \$ 83.87 |
| Day Care | 2X4 Rec Para | T-8 | 4 | 4 | 16 | 32 | 0 | 18 | 7 | 3,355 | \$0.1000 | \$ 335.46 |
| Day Care Restroom | 2X2 Rec Utube Para | T-8 | 2 | 2 | 4 | 32 | o | 18 | 7 | 839 | \$0.1000 | \$ 83.87 |
| Kid's Play Room | Rec Can 8in | CFL 4Pin | 1 | 2 | 2 | 32 | О | 18 | 7 | 419 | \$0.1000 | \$ 41.93 |
| Kid's Play Room | 2X4 Rec Para BB | T-8 | 1 | 4 | 4 | 32 | О | 18 | 7 | 839 | \$0.1000 | \$ 83.87 |
| Kid's Play Room | 2X4 Rec Para | T-8 | 5 | 4 | 20 | 32 | О | 18 | 7 | 4,193 | \$0.1000 | \$ 419.33 |
| Closet | 2X2 Rec Para BB | T-8 | 1 | 2 | 2 | 32 | О | 18 | 7 | 419 | \$0.1000 | \$ 41.93 |
| Party Room B | 2X4 Rec Para BB | T-8 | 2 | 3 | 6 | 32 | О | 18 | 7 | 1,258 | \$0.1000 | \$ 125.80 |
| Party Room B | 2X4 Rec Para | T-8 | 2 | 3 | 6 | 32 | О | 18 | 7 | 1,258 | \$0.1000 | \$ 125.80 |
| Party Rooom A | 2X4 Rec Para BB | T-8 | 1 | 3 | 3 | 32 | 0 | 18 | 7 | 629 | \$0.1000 | \$ 62.90 |
| Party Room A | 2X4 Rec Para | T-8 | 3 | 3 | 9 | 32 | 0 | 18 | 7 | 1,887 | \$0.1000 | \$ 188.70 |
| Men's Locker Room | Rec Can 8in BB | CFL 4Pin | 7 | 2 | 14 | 32 | 0 | 18 | 7 | 2,935 | \$0.1000 | \$ 293.53 |
| Men's Locker Room | Rec Can 8in | CFL 4Pin | 25 | 2 | 50 | 32 | 0 | 18 | 7 | 10,483 | \$0.1000 | |
| Men's Locker Room | 1X4 Strip | T-8 | 4 | 2 | 8 | 32 | О | 18 | 7 | 1,677 | \$0.1000 | \$ 167.73 |

| | | | | | | I | | 1 | 1 | | | I | |
|---------------------------|-----------------------|----------|----|---|-----|----|---|----|---|--------|----------|------|----------|
| Ladies's Room Locker Room | Rec Can 8in BB | CFL 4Pin | 7 | 2 | 14 | 32 | 0 | 18 | 7 | 2,935 | \$0.1000 | \$ | 293.53 |
| Ladies's Room Locker Room | Rec Can 8in | CFL 4Pin | 21 | 2 | 42 | 32 | 0 | 18 | 7 | 8,806 | \$0.1000 | \$ | 880.59 |
| Ladies's Room Locker Room | 1X4 Strip | T-8 | 2 | 2 | 4 | 32 | 0 | 18 | 7 | 839 | \$0.1000 | \$ | 83.87 |
| Ladies's Room Locker Room | 1X2 Strip | T-8 | 1 | 2 | 2 | 32 | 0 | 18 | 7 | 419 | \$0.1000 | \$ | 41.93 |
| Exit | 2X2 Rec Utube BB | T-8 | 2 | 2 | 4 | 32 | 0 | 18 | 7 | 839 | \$0.1000 | \$ | 83.87 |
| Exit | 2X2 Rec Utube | T-8 | 1 | 2 | 2 | 32 | 0 | 18 | 7 | 419 | \$0.1000 | \$ | 41.93 |
| File Risser Room | 1X4 Strip | T-8 | 4 | 2 | 8 | 32 | 0 | 18 | 7 | 1,677 | \$0.1000 | \$ | 167.73 |
| Janitor | 2X4 Rec Para BB | T-8 | 1 | 3 | 3 | 32 | 0 | 18 | 7 | 629 | \$0.1000 | \$ | 62.90 |
| Janitor | 2X4 Rec Para | T-8 | 2 | 3 | 6 | 32 | 0 | 18 | 7 | 1,258 | \$0.1000 | \$ | 125.80 |
| Storage | 1X4 Strip | T-8 | 4 | 2 | 8 | 32 | 0 | 18 | 7 | 1,677 | \$0.1000 | \$ | 167.73 |
| Weight Room | 2X2 Rec Utube Para BB | T-8 | 2 | 2 | 4 | 32 | 0 | 18 | 7 | 839 | \$0.1000 | \$ | 83.87 |
| Weight Room | 2X2 Rec Utube Para | T-8 | 4 | 2 | 8 | 32 | 0 | 18 | 7 | 1,677 | \$0.1000 | \$ | 167.73 |
| Under Gym Walk Way | 1X4 Wrap | T-8 | 24 | 2 | 48 | 32 | 0 | 18 | 7 | 10,064 | \$0.1000 | \$ 1 | 1,006.39 |
| Stairwell | 1X4 Strip BB | T-8 | 2 | 2 | 4 | 32 | 0 | 18 | 7 | 839 | \$0.1000 | \$ | 83.87 |
| Stairwell | 1X4 Strip | T-8 | 2 | 2 | 4 | 32 | 0 | 18 | 7 | 839 | \$0.1000 | \$ | 83.87 |
| Activity Room | 1X8 Hanging Fix BB | T-8 | 2 | 4 | 8 | 32 | 0 | 18 | 7 | 1,677 | \$0.1000 | \$ | 167.73 |
| Activity Room | 1X8 Hanging Strip | T-8 | 3 | 4 | 12 | 32 | 0 | 18 | 7 | 2,516 | \$0.1000 | \$ | 251.60 |
| Main Top | 2X2 Rec Utube Para BB | T-8 | 12 | 2 | 24 | 32 | 0 | 18 | 7 | 5,032 | \$0.1000 | \$ | 503.19 |
| Main Top | 2X2 Rec Utube Para | T-8 | 33 | 2 | 66 | 32 | 0 | 18 | 7 | 13,838 | \$0.1000 | \$ 1 | 1,383.78 |
| Work out Deck | 1X4 Strip | T-8 | 81 | 2 | 162 | 32 | 0 | 18 | 7 | 33,966 | \$0.1000 | \$ 3 | 3,396.56 |
| Stairwell | 1X4 Strip BB | T-8 | 2 | 2 | 4 | 32 | 0 | 18 | 7 | 839 | \$0.1000 | \$ | 83.87 |
| Stairwell | 1X4 Strip | T-8 | 2 | 2 | 4 | 32 | 0 | 18 | 7 | 839 | \$0.1000 | \$ | 83.87 |
| High Wall | 1X4 Strip | T-8 | 4 | 2 | 8 | 32 | 0 | 18 | 7 | 1,677 | \$0.1000 | \$ | 167.73 |
| Bail Room | 2X2 Rec Utube Para BB | T-8 | 1 | 2 | 2 | 32 | 0 | 18 | 7 | 419 | \$0.1000 | \$ | 41.93 |
| Bail Room | 2X2 Rec Utube Para | T-8 | 7 | 2 | 14 | 32 | 0 | 18 | 7 | 2,935 | \$0.1000 | \$ | 293.53 |
| Dance Room | 2X2 Rec Para BB | T-8 | 6 | 2 | 12 | 32 | 0 | 18 | 7 | 2,516 | \$0.1000 | \$ | 251.60 |
| Dance Room | 2X2 Rec Para | T-8 | 17 | 2 | 34 | 32 | 0 | 18 | 7 | 7,129 | \$0.1000 | \$ | 712.86 |
| Utility Room | 2X2 Rec Para BB | T-8 | 1 | 2 | 2 | 32 | 0 | 18 | 7 | 419 | \$0.1000 | \$ | 41.93 |

| Utility Room | 2X2 Rec Troffer | T-8 | 5 | 2 | 10 | 32 | 0 | 18 | 7 | 2,097 | \$0.1000 | \$ 209.6 |
|----------------------|-----------------------|----------|---|---|----|----|---|----|---|---------|----------|-------------|
| Rec. | 2X2 Rec Utube Para | T-8 | 2 | 3 | 6 | 32 | 0 | 18 | 7 | 1,258 | \$0.1000 | \$ 125.8 |
| Rec. | 2X2 Rec Utube Para | T-8 | 2 | 3 | 6 | 32 | 0 | 18 | 7 | 1,258 | \$0.1000 | \$ 125.8 |
| 2 Restrooms | 2X2 Rec Utube BB | T-8 | 2 | 2 | 4 | 32 | 0 | 18 | 7 | 839 | \$0.1000 | \$ 83.8 |
| Weight Room | 1X8 Hanging Strip | T-8 | 3 | 4 | 12 | 32 | 0 | 18 | 7 | 2,516 | \$0.1000 | \$ 251.6 |
| Pool Hallway | 2X2 Rec Utube Para BB | T-8 | 2 | 2 | 4 | 32 | 0 | 18 | 7 | 839 | \$0.1000 | \$ 83.8 |
| Pool Hallway | 2X2 Rec Utube Para | T-8 | 2 | 2 | 4 | 32 | 0 | 18 | 7 | 839 | \$0.1000 | \$ 83.8 |
| 4 Changing Rooms | Rec Can 6in | CFL 4Pin | 8 | 2 | 16 | 32 | 0 | 18 | 7 | 3,355 | \$0.1000 | \$ 335.4 |
| 4 Changing Rooms | 2X2 Rec Utube Para BB | T-8 | 4 | 2 | 8 | 32 | 0 | 18 | 7 | 1,677 | \$0.1000 | \$ 167.7 |
| Pool Entrance | 2X2 Rec Utube Para | T-8 | 2 | 2 | 4 | 32 | 0 | 18 | 7 | 839 | \$0.1000 | \$ 83.8 |
| Pool Entrance | 2X2 Rec Utube Para | T-8 | 2 | 2 | 4 | 32 | 0 | 18 | 7 | 839 | \$0.1000 | \$ 83.8 |
| Pool Entrance | 2X2 Rec Utube Para | T-8 | 2 | 2 | 4 | 32 | 0 | 18 | 7 | 839 | \$0.1000 | \$ 83.8 |
| Life Guard Office | 2X4 Rec Troffer | T-8 | 2 | 3 | 6 | 32 | 0 | 18 | 7 | 1,258 | \$0.1000 | \$ 125.8 |
| Aquatic Office | 2X4 Rec Troffer | T-8 | 2 | 3 | 6 | 32 | 0 | 18 | 7 | 1,258 | \$0.1000 | \$ 125.8 |
| Storage | 2X4 Rec Troffer | T-8 | 2 | 3 | 6 | 32 | 0 | 18 | 7 | 1,258 | \$0.1000 | \$ 125.8 |
| Add Surge Protection | | | 2 | 1 | 2 | | | 24 | 7 | | \$0.1000 | |
| Total For Lights | | | | | | | | | | 241,271 | | \$ 24,12 |



LED Lighting Conversion Analysis

Burleson Recreation Center

| Location | Current Fixture Type | Bulb Type | No. of Fixture | Bulb Per Fixture | No. of Bulb | Watt Per Bulb | Ballast Factor (w) | Total kW | LED Replacement | No. of Fixture | Bulb Per Fixture | No. of Bulb | Watt Per Bulb | Total kW | kW Reduced | Hours/ Day | Days Per Week | kWh Usage/ Year | Current \$/kWh | Electric Cost/ Year \$ |
|-------------------------|--------------------------|-----------------|-------------------|---------------------|----------------|---------------------|--------------------------|-------------|---|-------------------|---------------------|----------------|---------------------|-------------|---------------|---------------|---------------------|-----------------------|-------------------|------------------------------|
| Main Entrance | Rec Can 8in | CFL 4Pin | 3 | 3 2 | 2 6 | 32 | - | 0.19 | HA-81146 PL10H/850/BYP/LED | 3 | 3 2 | 6 | 10 | 0.06 | 0.13 | 18 | 3 7 | 393 | 0.1000 | \$ 39 |
| Main Entrance | Rec Can 8in BB | CFL 4Pin | 2 | 2 2 | 2 4 | 32 | - | 0.13 | HA-82119 PL12H/850/DIR/LED2 | 2 | 2 2 | 4 | 12 | 0.048 | 0.08 | 18 | 3 7 | 314 | 0.1000 | \$ 31 |
| Main Entrance | Rec Can 8in | CFL 4Pin | 1 | 1 2 | 2 2 | 32 | - | 0.0 | HA-81146 PL10H/850/BYP/LED | 1 | 1 2 | 2 | 10 | 0.02 | 0.04 | 18 | 3 7 | 131 | 0.1000 | \$ 13 |
| Offices Left | 2X2 Rec Utube Para BB | T-8 | 2 | 2 2 | 2 4 | 32 | - | 0.13 | EI-10928 LED13WT8/U6/850-G9DM-ERG- EBKIT12WUV1000 | | 2 2 | 4 | 13 | 0.052 | 0.08 | 18 | 3 7 | 341 | 0.1000 | \$ 34 |
| Offices Left | 2X2 Rec Utube Para | T-8 | 5 | 5 2 | 2 10 | 32 | - | 0.3 | EI-10928 LED13WT8/U6/850-G9DM | į | 5 2 | 10 | 13 | 0.13 | 0.19 | 18 | 3 7 | 852 | 0.1000 | \$ 85 |
| Allison's Office | 2X4 Rec Para | T-8 | 2 | 2 3 | 3 6 | 32 | - | 0.19 | EI-10878 LED10.5WT8/48/850-DBL-G8D | : | 2 3 | 6 | 10.5 | 0.063 | 0.13 | 18 | 3 7 | 413 | 0.1000 | \$ 41 |
| Dept. Director | 2X4 Rec Para | T-8 | 2 | 2 3 | 3 6 | 32 | - | 0.19 | EI-10878 LED10.5WT8/48/850-DBL-G8D | 1 | 2 3 | 6 | 10.5 | 0.063 | 0.13 | 18 | 3 7 | 413 | 0.1000 | \$ 41 |
| Recreation Manager | 2X4 Rec Para | T-8 | 2 | 2 3 | 6 | 32 | - | 0.19 | EI-10878 LED10.5WT8/48/850-DBL-G8D | 2 | 2 3 | 6 | 10.5 | 0.063 | 0.13 | 18 | 3 7 | 413 | 0.1000 | \$ 41 |
| Break Room | 2X4 Rec Para BB | T-8 | 1 | L 3 | 3 3 | 32 | - | 0.10 | EI-10878 LED10.5WT8/48/850-DBL-G8D - EBKIT12WUV1000- | - | 1 3 | 3 | 10.5 | 0.032 | 0.06 | 18 | 3 7 | 206 | 0.1000 | \$ 21 |
| Break Room | 2X4 Rec Para | T-8 | 2 | 2 3 | 6 | 32 | - | 0.19 | EI-10878 LED10.5WT8/48/850-DBL-G8D | 2 | 2 3 | 6 | 10.5 | 0.063 | 0.13 | 18 | 3 7 | 413 | 0.1000 | \$ 41 |
| Director of Parks | s Rec Can 6in | CFL Screw In | 6 | 5 1 | 1 6 | 28 | - | 0.1 | SA-S9623 BR30 | (| 5 1 | 6 | 9.5 | 0.057 | 0.11 | 18 | 3 7 | 373 | 0.1000 | \$ 37 |
| Director of Parks | s Hanging Fixture | T-8 | 1 | 1 6 | 6 6 | 32 | - | 0.19 | EI-10878 LED10.5WT8/48/850-DBL-G8D | : | 1 6 | 6 | 10.5 | 0.063 | 0.13 | 18 | 3 7 | 413 | 0.1000 | \$ 41 |
| Senior Administrator | 2X4 Rec Para | T-8 | 2 | 2 3 | 3 6 | 32 | - | 0.19 | EI-10878 LED10.5WT8/48/850-DBL-G8D | 2 | 2 3 | 6 | 10.5 | 0.063 | 0.13 | 18 | 3 7 | 413 | 0.1000 | \$ 41 |
| Accounting Office | 2X4 Rec Para | T-8 | 2 | 2 3 | 3 6 | 32 | - | 0.19 | EI-10878 LED10.5WT8/48/850-DBL-G8D | 2 | 2 3 | 6 | 10.5 | 0.063 | 0.13 | 18 | 3 7 | 413 | 0.1000 | \$ 41 |
| Stairwell | 1X4 Strip BB | T-8 | 2 | 2 2 | 2 4 | 32 | - | 0.13 | EI-10878 LED10.5WT8/48/850-DBL-G8- EBKIT12WUV1000 | 2 | 2 2 | 4 | 10.5 | 0.042 | 0.09 | 18 | 3 7 | 275 | 0.1000 | \$ 28 |
| Stairwell | 1X4 Strip | T-8 | 2 | 2 2 | 2 4 | 32 | - | 0.13 | EI-10878 LED10.5WT8/48/850-DBL-G8D | 2 | 2 2 | 4 | 10.5 | 0.042 | 0.09 | 18 | 3 7 | 275 | 0.1000 | \$ 28 |
| Reception Desk | Rec Can 8in | CFL 4Pin | 2 | 2 1 | 1 2 | 32 | - | 0.0 | HA-81143 PL10V/850/BYP/LED - | : | 2 1 | 2 | 10 | 0.02 | 0.04 | 18 | 7 | 131 | 0.1000 | \$ 13 |
| Reception Desk | 2X2 Rec Utube Para | T-8 | 2 | 2 2 | 2 4 | 32 | - | 0.13 | EI-10928 LED13WT8/U6/850-G9DM | 1 | 2 2 | 4 | 13 | 0.052 | 0.08 | 18 | 3 7 | 341 | 0.1000 | \$ 34 |
| Main Foyer | Rec Can 8in | CFL 4Pin | 11 | 1 2 | 2 22 | 32 | - | 0.70 | HA-81146 PL10H/850/BYP/LED-1 | 1: | 1 2 | 22 | 10 | 0.22 | 0.48 | 18 | 3 7 | 1,441 | 0.1000 | \$ 144 |
| Main Foyer | 2X2 Rec Utube Para BB | T-8 | 8 | 3 2 | 2 16 | 32 | - | 0.5: | EI-10928 LED13WT8/U6/850-G9DM-ERG- EBKIT12WUV1000 | 8 | 2 | 16 | 13 | 0.208 | 0.30 | 18 | 3 7 | 1,363 | 0.1000 | \$ 136 |
| Main Foyer | 2X2 Rec Utube Para | T-8 | 31 | 1 2 | 2 62 | 32 | - | 1.98 | EI-10928 LED13WT8/U6/850-G9DM | 31 | 1 2 | 62 | 13 | 0.806 | 1.18 | 18 | 3 7 | 5,281 | 0.1000 | \$ 528 |
| Main Foyer | Flood | Halogen | 12 | 2 1 | 1 12 | 100 | - | 1.20 | MO-WLL10L 29W 2100L 57K-WH | 12 | 2 1 | 12 | 29 | 0.348 | 0.85 | 18 | 7 | 2,280 | 0.1000 | \$ 228 |
| Meeting Room | Rec Can 8in BB | CFL 4Pin | 2 | 2 2 | 2 4 | 32 | - | 0.1 | HA-82114 PL12V/850/DIR/LED2 | 2 | 2 2 | 4 | 12 | 0.048 | 0.08 | 18 | 7 | 314 | 0.1000 | \$ 31 |

LED CONVERSION ANALYSIS

| | | | | | | | l l | | 1 | 1 | 1 | | | | | | 1 | | |
|-------------------------------|--------------------|----------|----|-----|------|----|----------|---|---|-----|----|-----------|-------|------|----|---|-------|-----------|--------|
| Meeting Room | Rec Can 8in | CFL 4Pin | 20 | 2 | 40 | 32 | - 1. | 28 HA-81143 PL10V/850/BYP/LED | 2 | 0 2 | 40 | 10 | 0.4 | 0.88 | 18 | 7 | 2,621 | 0.1000 | \$ 262 |
| Meeting Room | Rec Can 6in | CFL 4Pin | 3 | 2 | 6 | 32 | - 0. | 19 HA-81143 PL10V/850/BYP/LED | | 3 2 | 6 | 10 | 0.06 | 0.13 | 18 | 7 | 393 | 0.1000 | \$ 39 |
| Meeting Room | 1X4 Hanging Strip | T-8 | 6 | 4 | 1 24 | 32 | - 0. | 77 EI-10878 LED10.5WT8/48/850-DBL-G8D | | 6 4 | 24 | 10.5 | 0.252 | 0.52 | 18 | 7 | 1,651 | 0.1000 | \$ 165 |
| Meeting Room | 1X4 Hanging Strip | T-8 | 4 | 8 | 32 | 32 | - 1. | 02 EI-10878 LED10.5WT8/48/850-DBL-G8D | | 4 8 | 32 | 10.5 | 0.336 | 0.69 | 18 | 7 | 2,201 | 0.1000 | \$ 220 |
| Meeting Room Under Cabinet | Undercabinet | T-8 | 4 | 2 | 2 8 | 32 | - 0. | 26 EI-10878 LED10.5WT8/48/850-DBL-G8D | | 4 2 | 8 | 10.5 | 0.084 | 0.17 | 18 | 7 | 550 | 0.1000 | \$ 55 |
| Closet | 2X4 Rec Para | T-8 | 2 | 3 | 8 6 | 32 | - 0. | 19 EI-10878 LED10.5WT8/48/850-DBL-G8D | | 2 3 | 6 | 10.5 | 0.063 | 0.13 | 18 | 7 | 413 | 0.1000 | \$ 41 |
| Closet | 2X4 Rec Para | T-8 | 2 | 3 | 6 | 32 | - 0. | 19 EI-10878 LED10.5WT8/48/850-DBL-G8D | | 2 3 | 6 | 10.5 | 0.063 | 0.13 | 18 | 7 | 413 | 0.1000 | \$ 41 |
| Men's Room | Rec Can 8in BB | CFL 4Pin | 2 | - 2 | 4 | 32 | 1 | 13 HA-82119 PL12H/850/DIR/LED2 | | 2 2 | 4 | 12 | 0.048 | 0.08 | 18 | 7 | 314 | 0.1000 | 31 |
| Men's Room | Rec Can 8in | CFL 4Pin | 1 | 2 | 2 2 | 32 | | 06 HA-81146 PL10H/850/BYP/LED | | 1 2 | 2 | 10 | 0.02 | 0.04 | 18 | 7 | 131 | 0.1000 | |
| Men's Room | 1X4 Strip | T-8 | 2 | - | Δ | 32 | - 0 | 13 EI-10878 LED10.5WT8/48/850-DBL-G8D | | 2 2 | 4 | 10.5 | 0.042 | 0.09 | 18 | 7 | 275 | 0.1000 | 5 28 |
| Men's Room | 1X2 Strip | T-8 | 1 | | 2 2 | 32 | + | 06 EI-09599 LED9WT8/24/850-DBL-G7D | | 1 2 | 2 | 20.5 Q | 0.018 | 0.05 | 18 | 7 | 118 | 0.1000 | |
| Men's Room | 1X2 Strip | T-8 | | - | 1 | 32 | | 13 EI-09599 LED9WT8/24/850-DBL-G7D | | 2 2 | 4 | 9 | 0.016 | 0.09 | 18 | | 236 | 0.1000 | |
| Well's Room | 1A2 3(11p | 1-0 | | | - | 32 | - 0. | 13 El-09399 EED9W 18/ 24/ 830-DBE-G7D | | 2 2 | - | 3 | 0.030 | 0.03 | 10 | , | 230 | 0.1000 , | 24 |
| Ladies's Room | Rec Can 8in BB | T-8 | 2 | 2 | 4 | 32 | - 0. | 13 HA-82119 PL12H/850/DIR/LED2 | | 2 2 | 4 | 12 | 0.048 | 0.08 | 18 | 7 | 314 | 0.1000 | 31 |
| Ladies's Room | Rec Can 8in | T-8 | 1 | 2 | 2 2 | 32 | - 0. | 06 HA-81146 PL10H/850/BYP/LED | | 1 2 | 2 | 10 | 0.02 | 0.04 | 18 | 7 | 131 | 0.1000 | 5 13 |
| Ladies's Room | 1X4 Strip | T-8 | 2 | 2 | 4 | 32 | - 0. | 13 EI-10878 LED10.5WT8/48/850-DBL-G8D | | 2 2 | 4 | 10.5 | 0.042 | 0.09 | 18 | 7 | 275 | 0.1000 | \$ 28 |
| Ladies's Room | 1X2 Strip | T-8 | 3 | 2 | 6 | 32 | - 0. | 19 EI-09599 LED9WT8/24/850-DBL-G7D | | 3 2 | 6 | 9 | 0.054 | 0.14 | 18 | 7 | 354 | 0.1000 | \$ 35 |
| Ladies's Room | 1X2 Strip | T-8 | 2 | 2 | 4 | 32 | - 0. | 13 EI-09599 LED9WT8/24/850-DBL-G7D | | 2 2 | 4 | 9 | 0.036 | 0.09 | 18 | 7 | 236 | 0.1000 | \$ 24 |
| Day Care | 2X4 Rec Para BB | T-8 | 1 | 4 | 1 4 | 32 | - 0. | EI-10878 LED10.5WT8/48/850-DBL-G8D-E 13 EBKIT12WUV1000 | - | 1 4 | 4 | 10.5 | 0.042 | 0.09 | 18 | 7 | 275 | 0.1000 | \$ 28 |
| Day Care | 2X4 Rec Para | T-8 | 4 | 4 | 16 | 32 | - 0. | 51 EI-10878 LED10.5WT8/48/850-DBL-G8D | | 4 4 | 16 | 10.5 | 0.168 | 0.34 | 18 | 7 | 1,101 | 0.1000 | \$ 110 |
| Day Care Restroom | 2X2 Rec Utube Para | T-8 | 2 | 2 | 4 | 32 | - 0. | 13 EI-10928 LED13WT8/U6/850-G9DM | | 2 2 | 4 | 13 | 0.052 | 0.08 | 18 | 7 | 341 | 0.1000 | \$ 34 |
| Kid's Play Room | Rec Can 8in | CFL 4Pin | 1 | 2 | 2 2 | 32 | - 0. | 06 HA-81146 PL10H/850/BYP/LED - | | 1 2 | 2 | 10 | 0.02 | 0.04 | 18 | 7 | 131 | 0.1000 | \$ 13 |
| Kid's Play Room | 2X4 Rec Para BB | T-8 | 1 | 4 | 1 4 | 32 | - 0. | EI-10878 LED10.5WT8/48/850-DBL-G8D-E 13 EBKIT12WUV1000 | - | 1 4 | 4 | 10.5 | 0.042 | 0.09 | 18 | 7 | 275 | 0.1000 | \$ 28 |
| Kid's Play Room | 2X4 Rec Para | T-8 | 5 | 4 | 20 | 32 | - 0. | 64 EI-10878 LED10.5WT8/48/850-DBL-G8D | | 5 4 | 20 | 10.5 | 0.21 | 0.43 | 18 | 7 | 1,376 | 0.1000 | \$ 138 |
| Closet | 2X2 Rec Para BB | T-8 | 1 | 2 | 2 | 32 | - 0. | 06 EI-09599 LED9WT8/24/850-DBL-G7D | | 1 3 | 3 | 9 | 0.027 | 0.04 | 18 | 7 | 177 | 0.1000 | \$ 18 |
| Party Room B | 2X4 Rec Para BB | T-8 | 2 | 3 | 6 | 32 | - 0. | EI-10878 LED10.5WT8/48/850-DBL-G8D-E 19 EBKIT12WUV1000 | - | 2 3 | 6 | 10.5 | 0.063 | 0.13 | 18 | 7 | 413 | 0.1000 | \$ 41 |
| · | 2X4 Rec Para | T-8 | 2 | 3 | 6 | 32 | - 0. | 19 EI-10878 LED10.5WT8/48/850-DBL-G8D | | 2 3 | 6 | 10.5 | 0.063 | 0.13 | 18 | 7 | 413 | 0.1000 | \$ 41 |
| Party Rooom A | 2X4 Rec Para BB | T-8 | 1 | 3 | 3 3 | 32 | - 0. | EI-10878 LED10.5WT8/48/850-DBL-G8D-E 10 EBKIT12WUV1000 | - | 1 3 | 3 | 10.5 | 0.032 | 0.06 | 18 | 7 | 206 | 0.1000 \$ | \$ 21 |
| Party Room A | 2X4 Rec Para | T-8 | 3 | 3 | 9 | 32 | - 0. | 29 EI-10878 LED10.5WT8/48/850-DBL-G8D | | 3 3 | 9 | 10.5 | 0.095 | 0.19 | 18 | 7 | 619 | 0.1000 | 5 62 |
| Men's Locker | Rec Can 8in BB | CFL 4Pin | 7 | 2 | 14 | 32 | | 45 HA-82119 PL12H/850/DIR/LED2 | | 7 2 | 14 | 12 | 0.168 | 0.28 | 18 | 7 | 1,101 | 0.1000 | |

LED CONVERSION ANALYSIS

| Men's Locker | | | | | | | | | | | | | | | | | | |
|-------------------|--------------------------|----------|-----|---|-------|----|-------|---|-----|------|-------|---------|------|----|---|--------|-----------|-------|
| Room | Rec Can 8in | CFL 4Pin | 25 | : | 2 50 | 32 | - 1.6 | 0 HA-81146 PL10H/850/BYP/LED | 25 | 2 5 | 0 1 | 0.5 | 1.10 | 18 | 7 | 3,276 | 0.1000 \$ | 328 |
| Men's Locker | | | | | | | | | | | | | | | | | | |
| Room | 1X4 Strip | T-8 | 4 | : | 2 8 | 32 | - 0.2 | EI-10878 LED10.5WT8/48/850-DBL-G8D | 4 | 2 | 8 10. | 5 0.084 | 0.17 | 18 | 7 | 550 | 0.1000 \$ | 55 |
| Ladies's Room | | | | | | | | | | | | | | | | | | |
| Locker Room | Rec Can 8in BB | CFL 4Pin | 7 | | 2 14 | 32 | - 0.4 | 5 HA-82114 PL12V/850/DIR/LED2 | 7 | 2 1 | .4 1 | 2 0.168 | 0.28 | 18 | 7 | 1,101 | 0.1000 \$ | 110 |
| | | | | | | | | , , , , | | | | | | | | , - | | |
| Ladies's Room | | | | | | | | | | | | | | | | | | |
| Locker Room | Rec Can 8in | CFL 4Pin | 21 | : | 2 42 | 32 | - 1.3 | 4 HA-81143 PL10V/850/BYP/LED | 21 | 2 4 | 2 1 | 0.42 | 0.92 | 18 | 7 | 2,752 | 0.1000 \$ | 275 |
| Ladies's Room | | | | | | | | | | | | | | | | | | |
| Locker Room | 1X4 Strip | T-8 | 2 | | 2 4 | 32 | - 0.1 | 3 EI-10878 LED10.5WT8/48/850-DBL-G8D | 2 | 2 | 4 10. | 0.042 | 0.09 | 18 | 7 | 275 | 0.1000 \$ | 28 |
| zooker noom | 277.00.19 | | | · | | 52 | 0.2 | 2: 10070 22310:311:0, 10, 030 232 003 | | | 1 201 | 0.0.2 | 0.03 | | | 273 | 0.2000 \$ | |
| Ladies's Room | | | | | | | | | | | | | | | | | | |
| Locker Room | 1X2 Strip | T-8 | 1 | : | 2 2 | 32 | - 0.0 | 6 EI-09599 LED9WT8/24/850-DBL-G7D | 1 | 2 | 2 | 0.018 | 0.05 | 18 | 7 | 118 | 0.1000 \$ | 12 |
| | | | | | | | | EI-10928 LED13WT8/U6/850-G9DM-ERG- | | | | | | | | | | |
| Exit | 2X2 Rec Utube BB | T-8 | 2 | | 2 4 | 32 | | 3 EBKIT12WUV1000 | 2 | | 4 1 | | 0.08 | 18 | | 341 | 0.1000 \$ | 34 |
| Exit | 2X2 Rec Utube | T-8 | 1 | : | 2 2 | 32 | - 0.0 | 6 EI-10928 LED13WT8/U6/850-G9DM | 1 | 2 | 2 1 | 3 0.026 | 0.04 | 18 | 7 | 170 | 0.1000 \$ | 17 |
| File Diseas Decas | 1V4 Chaire | т о | 4 | | | 22 | 0.3 | G FL 10070 LED10 FWT0/40/050 DDL COD | | | . 10 | - 0004 | 0.17 | 10 | 7 | 550 | 0.1000 6 | |
| File Risser Room | 1X4 Strip | T-8 | 4 | | 2 8 | 32 | - 0.2 | EI-10878 LED10.5WT8/48/850-DBL-G8D EI-10878 LED10.5WT8/48/850-DBL-G8D-E- | 4 | 4 | 8 10. | 0.084 | 0.17 | 18 | 7 | 550 | 0.1000 \$ | 55 |
| Janitor | 2X4 Rec Para BB | T-8 | 1 | | 3 3 | 32 | - 0.1 | G EBKIT12WUV1000 | 1 | 3 | 3 10. | 5 0.032 | 0.06 | 18 | 7 | 206 | 0.1000 \$ | 21 |
| | | | | | | | | | | 1 | | - | | | - | | | |
| Janitor | 2X4 Rec Para | T-8 | 2 | : | 3 6 | 32 | - 0.1 | 9 EI-10878 LED10.5WT8/48/850-DBL-G8D | 2 | 3 | 6 10. | 0.063 | 0.13 | 18 | 7 | 413 | 0.1000 \$ | 41 |
| | | | | | | | | | | | | | | | | | | |
| Storage | 1X4 Strip | T-8 | 4 | | 2 8 | 32 | - 0.2 | 6 EI-10878 LED10.5WT8/48/850-DBL-G8D | 4 | 2 | 8 10. | 0.084 | 0.17 | 18 | 7 | 550 | 0.1000 \$ | 55 |
| Weight Room | 2X2 Rec Utube Para BB | T-8 | 2 | | 2 4 | 32 | 0.1 | EI-10928 LED13WT8/U6/850-G9DM-ERG- 3 EBKIT12WUV1000 | 2 | 2 | 4 1 | 3 0.052 | 0.08 | 18 | 7 | 341 | 0.1000 \$ | 34 |
| Weight Room | ВВ | 1-0 | | | 4 | 32 | - 0.1 | 3 LBK1112W0V1000 | 4 | 4 | 4 1 | 3 0.032 | 0.08 | 10 | , | 341 | 0.1000 \$ | 34 |
| Weight Room | 2X2 Rec Utube Para | T-8 | 4 | : | 2 8 | 32 | - 0.2 | 6 EI-10928 LED13WT8/U6/850-G9DM | 4 | 2 | 8 1 | 3 0.104 | 0.15 | 18 | 7 | 681 | 0.1000 \$ | 68 |
| Under Gym | | | | | | | | | | | | | | | | | | |
| Walk Way | 1X4 Wrap | T-8 | 24 | : | 2 48 | 32 | - 1.5 | 4 EI-10878 LED10.5WT8/48/850-DBL-G8D | 24 | 2 4 | 8 10. | 5 0.504 | 1.03 | 18 | 7 | 3,302 | 0.1000 \$ | 330 |
| | | | | | | | | EI-10878 LED10.5WT8/48/850-DBL-G8D-E- | | | | | | | | | | |
| Stairwell | 1X4 Strip BB | T-8 | 2 | | 2 4 | 32 | - 0.1 | 3 EBKIT12WUV1000 | 2 | 2 | 4 10. | 5 0.042 | 0.09 | 18 | 7 | 275 | 0.1000 \$ | 28 |
| Stairwell | 1X4 Strip | T-8 | 2 | | 2 4 | 32 | - 0.1 | 3 EI-10878 LED10.5WT8/48/850-DBL-G8D | 2 | 2 | 4 10. | 0.042 | 0.09 | 18 | 7 | 275 | 0.1000 \$ | 28 |
| Stan Wen | 277.00.19 | | _ | | | 52 | 0.2 | EI-10878 LED10.5WT8/48/850-DBL-G8D- | | | 1 201 | 0.0.2 | 0.03 | | | 273 | 0.2000 \$ | |
| Activity Room | 1X8 Hanging Fix BB | T-8 | 2 | | 4 8 | 32 | - 0.2 | EBKIT12WUV1000 | 2 | 4 | 8 10. | 5 0.084 | 0.17 | 18 | 7 | 550 | 0.1000 \$ | 55 |
| | | | | | | | | | | | | | | | | | | |
| Activity Room | 1X8 Hanging Strip | T-8 | 3 | | 4 12 | 32 | - 0.3 | 8 EI-10878 LED10.5WT8/48/850-DBL-G8D | 3 | 4 1 | 2 10. | 5 0.126 | 0.26 | 18 | 7 | 826 | 0.1000 \$ | 83 |
| | 2X2 Rec Utube Para | | 4.0 | | | | | EI-10928 LED13WT8/U6/850-G9DM-ERG- | | | | | | | _ | | | |
| Main Top | BB | T-8 | 12 | | 2 24 | 32 | - 0.7 | 7 EBKIT12WUV1000 | 12 | 4 4 | 4 1 | 3 0.312 | 0.46 | 18 | 7 | 2,044 | 0.1000 \$ | 204 |
| Main Top | 2X2 Rec Utube Para | T-8 | 33 | | 2 66 | 32 | - 2.1 | 1 EI-10928 LED13WT8/U6/850-G9DM | 33 | 2 6 | 6 1 | 3 0.858 | 1.25 | 18 | 7 | 5,622 | 0.1000 \$ | 562 |
| | | | | | | | | | | | | | | | - | -, | 7 | |
| Work out Deck | 1X4 Strip | T-8 | 81 | : | 2 162 | 32 | - 5.1 | 8 EI-10878 LED10.5WT8/48/850-DBL | 81 | 2 16 | 2 10. | 5 1.701 | 3.48 | 18 | 7 | 11,145 | 0.1000 \$ | 1,114 |
| | | | | | | | | EI-10878 LED10.5WT8/48/850-DBL-G8D-E- | | | | | | | | | | |
| Stairwell | 1X4 Strip BB | T-8 | 2 | | 2 4 | 32 | - 0.1 | 3 EBKIT12WUV1000 | 2 | 2 | 4 10. | 5 0.042 | 0.09 | 18 | 7 | 275 | 0.1000 \$ | 28 |
| Stainwall | 1V4 Strip | T-8 | | | | 33 | | 2 EL 10079 LED10 EMT0/40/050 DDL C00 | | | 4 10 | 0.043 | 0.00 | 40 | - | 275 | 0.1000 | 28 |
| Stairwell | 1X4 Strip | 1-8 | | | 4 | 32 | - 0.1 | 3 EI-10878 LED10.5WT8/48/850-DBL-G8D | 1 1 | 4 | 4 10. | 0.042 | 0.09 | 18 | 7 | 2/5 | 0.1000 \$ | 28 |
| High Wall | 1X4 Strip | T-8 | 4 | : | 2 8 | 32 | - 0.2 | 6 EI-10878 LED10.5WT8/48/850-DBL-G8D | 4 | 2 | 8 10. | 5 0.084 | 0.17 | 18 | 7 | 550 | 0.1000 \$ | 55 |
| | | 1 - | · · | | 1 1 | | 0.2 | | 1 1 | 7 | 1 -0. | 1 | | | | | | |
| <u> </u> | 2X2 Rec Utube Para | 1 | | | | | | EI-10928 LED13WT8/U6/850-G9DM-ERG- | | | | | | | | | | |

LED CONVERSION ANALYSIS

| 2X2 Rec Utube Para | T-8 | 7 | 2 14 | 32 | - 0.4 | 1 1 | 7 | 2 | 14 | 13 | 0.182 | 0.27 | 18 | 7 | 1,192 | 0.1000 | \$ 11 |
|--------------------------|--|--|---|--|---|---|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|------------------|----------------|
| 2X2 Rec Para BB | T-8 | 6 | 2 12 | 32 | - 0.3 | , , | 6 | 2 | 12 | 9 | 0.108 | 0.28 | 18 | 7 | 708 | 0.1000 | \$ 7 |
| 2X2 Rec Para | T-8 | 17 | 2 34 | 32 | - 1.0 | 1 1 | 17 | 2 | 34 | 9 | 0.306 | 0.78 | 18 | 7 | 2,005 | 0.1000 | \$ 20 |
| 2X2 Rec Para BB | T-8 | 1 | 2 2 | . 32 | - 0.0 | | 1 | 2 | 2 | 9 | 0.018 | 0.05 | 18 | 7 | 118 | 0.1000 | |
| 2X2 Rec Troffer | T-8 | 5 | 2 10 | 32 | - 0.3 | 2 EI-09599 LED9WT8/24/850-DBL-G7D | 5 | 2 | 10 | 9 | 0.09 | 0.23 | 18 | 7 | 590 | 0.1000 | \$ 5 |
| 2X2 Rec Utube Para | T-8 | 2 | 3 6 | 32 | - 0.1 | 9 EI-10928 LED13WT8/U6/850-G9DM | 2 | 2 | 4 | 13 | 0.052 | 0.14 | 18 | 7 | 341 | 0.1000 | \$ 3 |
| 2X2 Rec Utube Para | T-8 | 2 | 3 6 | 32 | - 0.1 | | 2 | 2 | 4 | 13 | 0.052 | 0.14 | 18 | 7 | 341 | 0.1000 | \$ 3 |
| 2X2 Rec Utube BB | T-8 | 2 | 2 4 | 32 | - 0.1 | | 2 | 2 | 4 | 13 | 0.052 | 0.08 | 18 | 7 | 341 | 0.1000 | \$ 3 |
| 1X8 Hanging Strip | T-8 | 3 | 4 12 | 32 | - 0.3 | | 3 | 4 | 12 | 10.5 | 0.126 | 0.26 | 18 | 7 | 826 | 0.1000 | \$ 8 |
| 2X2 Rec Utube Para BB | T-8 | 2 | 2 4 | 32 | - 0.1 | | 2 | 2 | 4 | 13 | 0.052 | 0.08 | 18 | 7 | 341 | 0.1000 | \$ 3 |
| 2X2 Rec Utube Para | T-8 | 2 | 2 4 | 32 | - 0.1 | 3 EI-10928 LED13WT8/U6/850-G9DM | 2 | 2 | 4 | 13 | 0.052 | 0.08 | 18 | 7 | 341 | 0.1000 | \$ 3 |
| Rec Can 6in | CFL 4Pin | 8 | 2 16 | 32 | - 0.5 | | 8 | 2 | 16 | 10 | 0.16 | 0.35 | 18 | 7 | 1,048 | 0.1000 | \$ 10 |
| 2X2 Rec Utube Para BB | T-8 | 4 | 2 8 | 32 | - 0.2 | | 4 | 2 | 8 | 13 | 0.104 | 0.15 | 18 | 7 | 681 | 0.1000 | \$ 6 |
| 2X2 Rec Utube Para | T-8 | 2 | 2 4 | 32 | - 0.1 | 3 EI-10928 LED13WT8/U6/850-G9DM | 2 | 2 | 4 | 13 | 0.052 | 0.08 | 18 | 7 | 341 | 0.1000 | \$ 3 |
| 2X2 Rec Utube Para | T-8 | 2 | 2 4 | 32 | - 0.1 | 3 EI-10928 LED13WT8/U6/850-G9DM | 2 | 2 | 4 | 13 | 0.052 | 0.08 | 18 | 7 | 341 | 0.1000 | \$ 3 |
| 2X2 Rec Utube Para | T-8 | 2 | 2 4 | 32 | - 0.1 | 3 EI-10928 LED13WT8/U6/850-G9DM | 2 | 2 | 4 | 13 | 0.052 | 0.08 | 18 | 7 | 341 | 0.1000 | \$ 3 |
| 2X4 Rec Troffer | T-8 | 2 | 3 6 | 32 | - 0.1 | 9 EI-10878 LED10.5WT8/48/850-DBL-G8D | 2 | 3 | 6 | 10.5 | 0.063 | 0.13 | 18 | 7 | 413 | 0.1000 | \$ 4 |
| 2X4 Rec Troffer | T-8 | 2 | 3 6 | 32 | - 0.1 | 9 EI-10878 LED10.5WT8/48/850-DBL-G8D- | 2 | 3 | 6 | 10.5 | 0.063 | 0.13 | 18 | 7 | 413 | 0.1000 | \$ 4 |
| 2X4 Rec Troffer | T-8 | 2 | 3 6 | 32 | - 0.1 | 9 EI-10878 LED10.5WT8/48/850-DBL-G8D- | 2 | 3 | 6 | 10.5 | 0.063 | 0.13 | 18 | 7 | 413 | 0.1000 | \$ 4 |
| 0 | 0 | 2 | 1 2 | | - 0.0 | 0 Eaton Surge Protection | 2 | 1 | 2 | 0 | 0 | - | 24 | 7 | - | 0.1000 | \$ |
| l. I. | | | | | | | | | | | | | | | 62.00 | | A 0.5- |
| | 1 | | | | | | | | | | | | | | | | \$ 8,20 |
| ed | - | | | | | | | | | | | | | | 159,246 | | \$ 15,92 |
| uction | 1 | | | | | | | | | | | | | | 66.00% | | 66.00 |
| ear | 1 | | | | | | | | | | | | | | | | 24. |
| | | | | | | | | | | | | | | | | | |
| t | 2X2 Rec Para BB 2X2 Rec Para BB 2X2 Rec Para BB 2X2 Rec Utube Para 2X2 Rec Utube Para 2X2 Rec Utube BB 1X8 Hanging Strip 2X2 Rec Utube Para BB 2X2 Rec Utube Para 2X2 Rec Utube Para BB 2X2 Rec Utube Para 2X4 Rec Troffer 2X4 Rec Troffer 2X4 Rec Troffer 0 hts t Lights ed iction | 2X2 Rec Para BB T-8 2X2 Rec Para T-8 2X2 Rec Para BB T-8 2X2 Rec Troffer T-8 2X2 Rec Utube Para T-8 2X2 Rec Utube Para T-8 2X2 Rec Utube BB T-8 1X8 Hanging Strip T-8 2X2 Rec Utube Para T-8 2X4 Rec Troffer T-8 2X4 Rec Troffer T-8 2X4 Rec Troffer T-8 2X4 Rec Troffer T-8 0 0 | 2X2 Rec Para BB T-8 6 2X2 Rec Para T-8 17 2X2 Rec Para BB T-8 1 2X2 Rec Troffer T-8 5 2X2 Rec Utube Para T-8 2 2X2 Rec Utube Para T-8 2 2X2 Rec Utube BB T-8 2 1X8 Hanging Strip T-8 3 2X2 Rec Utube Para T-8 2 2X2 Rec Utube Para T-8 2 Rec Can 6in CFL 4Pin 8 2X2 Rec Utube Para T-8 4 2X2 Rec Utube Para T-8 2 2X2 Rec Utube Para T-8 2 2X2 Rec Utube Para T-8 2 2X4 Rec Troffer T-8 2 2X4 Rec Troffer T-8 2 2X4 Rec Troffer T-8 2 0 0 2 | 2X2 Rec Para BB T-8 6 2 12 2X2 Rec Para T-8 17 2 34 2X2 Rec Para BB T-8 1 2 2 2X2 Rec Troffer T-8 5 2 10 2X2 Rec Utube Para T-8 2 3 6 2X2 Rec Utube Para T-8 2 3 6 2X2 Rec Utube BB T-8 2 2 4 1X8 Hanging Strip T-8 3 4 12 2X2 Rec Utube Para T-8 2 2 4 2X4 Rec Troffer T-8 2 3 6 2X4 Rec Troffer T-8 2 3 6 0 0 2 1 <t< td=""><td>2X2 Rec Para BB T-8 6 2 12 32 2X2 Rec Para T-8 17 2 34 32 2X2 Rec Para BB T-8 1 2 2 32 2X2 Rec Troffer T-8 5 2 10 32 2X2 Rec Utube Para T-8 2 3 6 32 2X2 Rec Utube Para T-8 2 3 6 32 2X2 Rec Utube BB T-8 2 2 4 32 1X8 Hanging Strip T-8 3 4 12 32 2X2 Rec Utube Para T-8 2 2 4 32 2X2 Rec Utube Para T-8 2 2 4 32 2X2 Rec Utube Para T-8 2 2 4 32 2X2 Rec Utube Para T-8 2 2 4 32 2X2 Rec Utube Para T-8 2 2 4 32 2X4 Rec Troffer T-8 2 2 4 32 2X4 Rec Troffer T-8 2 3 6 32 2X4 Rec Troffer T-8 2 3 6 32 2X4 Rec Troffer T-8 2<td>2X2 Rec Para BB T-8 6 2 12 32 - 0.3 2X2 Rec Para T-8 17 2 34 32 - 1.0 2X2 Rec Para BB T-8 1 2 2 32 - 0.0 2X2 Rec Troffer T-8 5 2 10 32 - 0.3 2X2 Rec Utube Para T-8 2 3 6 32 - 0.1 2X2 Rec Utube Para T-8 2 2 4 32 - 0.1 1X8 Hanging Strip T-8 3 4 12 32 - 0.1 1X8 Hanging Strip T-8 3 4 12 32 - 0.1 1X8 Hanging Strip T-8 3 4 12 32 - 0.1 2X2 Rec Utube Para T-8 2 2 4 32 - 0.1 2X2 Rec Utube Para T-8 2 2 4 32 - 0.1 2X2 Rec Utube Para T-8 2 2</td><td>2X2 Rec Para BB</td><td>2X2 Rec Para BB</td><td>2X2 Rec Para BB</td><td>2X2 Rec Para BB</td><td>2X2 Rec Para BB</td><td> 222 Rec Para BB</td><td>222 Rec Para BB</td><td>222 Rec Para BB</td><td>222 Rec Para BB</td><td>222 Rec Paris BB</td><td>22 Rec Part 88</td></td></t<> | 2X2 Rec Para BB T-8 6 2 12 32 2X2 Rec Para T-8 17 2 34 32 2X2 Rec Para BB T-8 1 2 2 32 2X2 Rec Troffer T-8 5 2 10 32 2X2 Rec Utube Para T-8 2 3 6 32 2X2 Rec Utube Para T-8 2 3 6 32 2X2 Rec Utube BB T-8 2 2 4 32 1X8 Hanging Strip T-8 3 4 12 32 2X2 Rec Utube Para T-8 2 2 4 32 2X2 Rec Utube Para T-8 2 2 4 32 2X2 Rec Utube Para T-8 2 2 4 32 2X2 Rec Utube Para T-8 2 2 4 32 2X2 Rec Utube Para T-8 2 2 4 32 2X4 Rec Troffer T-8 2 2 4 32 2X4 Rec Troffer T-8 2 3 6 32 2X4 Rec Troffer T-8 2 3 6 32 2X4 Rec Troffer T-8 2 <td>2X2 Rec Para BB T-8 6 2 12 32 - 0.3 2X2 Rec Para T-8 17 2 34 32 - 1.0 2X2 Rec Para BB T-8 1 2 2 32 - 0.0 2X2 Rec Troffer T-8 5 2 10 32 - 0.3 2X2 Rec Utube Para T-8 2 3 6 32 - 0.1 2X2 Rec Utube Para T-8 2 2 4 32 - 0.1 1X8 Hanging Strip T-8 3 4 12 32 - 0.1 1X8 Hanging Strip T-8 3 4 12 32 - 0.1 1X8 Hanging Strip T-8 3 4 12 32 - 0.1 2X2 Rec Utube Para T-8 2 2 4 32 - 0.1 2X2 Rec Utube Para T-8 2 2 4 32 - 0.1 2X2 Rec Utube Para T-8 2 2</td> <td>2X2 Rec Para BB</td> <td> 222 Rec Para BB</td> <td>222 Rec Para BB</td> <td>222 Rec Para BB</td> <td>222 Rec Para BB</td> <td>222 Rec Paris BB</td> <td>22 Rec Part 88</td> | 2X2 Rec Para BB T-8 6 2 12 32 - 0.3 2X2 Rec Para T-8 17 2 34 32 - 1.0 2X2 Rec Para BB T-8 1 2 2 32 - 0.0 2X2 Rec Troffer T-8 5 2 10 32 - 0.3 2X2 Rec Utube Para T-8 2 3 6 32 - 0.1 2X2 Rec Utube Para T-8 2 2 4 32 - 0.1 1X8 Hanging Strip T-8 3 4 12 32 - 0.1 1X8 Hanging Strip T-8 3 4 12 32 - 0.1 1X8 Hanging Strip T-8 3 4 12 32 - 0.1 2X2 Rec Utube Para T-8 2 2 4 32 - 0.1 2X2 Rec Utube Para T-8 2 2 4 32 - 0.1 2X2 Rec Utube Para T-8 2 2 | 2X2 Rec Para BB | 222 Rec Paris BB | 22 Rec Part 88 |



LED Conversion Cost

Burleson Recreation Center

| | | | | | | | <u> </u> | | 111100 | i catio | i center |
|-------------------------------|-----------------------|-------------------|---------------------|----|------------------|---|-------------------|---------------------|--------|------------------|--------------------|
| Location C | Current Fixture Type | No. of Fixture | Bulb per Fixture | | Watt per Bulb | LED Replacement | No. of Fixture | Bulb per Fixture | | Watt per Bulb | Total Cost |
| | Rec Can 8in | 3 | 2 | 6 | | HA-81146 PL10H/850/BYP/LED | 3 | 2 | 6 | 10 | \$ 25,229.00 |
| | Rec Can 8in BB | 2 | 2 | 4 | | HA-82119 PL12H/850/DIR/LED2 | 2 | 2 | 4 | 12 | 3 23,229.00 INC |
| | Rec Can 8in | 1 | 2 | 2 | | HA-81146 PL10H/850/BYP/LED | 1 | 2 | 2 | 10 | INC |
| | 2X2 Rec Utube Para BB | 2 | 2 | 4 | | EI-10928 LED13WT8/U6/850-G9DM-ERG-EBKIT12WUV1000 | 2 | 2 | 4 | 13 | INC |
| Offices Left 2 | 2X2 Rec Utube Para | 5 | 2 | 10 | 32 | EI-10928 LED13WT8/U6/850-G9DM | 5 | 2 | 10 | 13 | INC |
| Allison's Office 2 | 2X4 Rec Para | 2 | 3 | 6 | 32 | EI-10878 LED10.5WT8/48/850-DBL-G8D | 2 | 3 | 6 | 11 | INC |
| Dept. Director 2 | 2X4 Rec Para | 2 | 3 | 6 | 32 | EI-10878 LED10.5WT8/48/850-DBL-G8D | 2 | 3 | 6 | 11 | INC |
| Recreation Manager 2 | 2X4 Rec Para | 2 | 3 | 6 | 32 | EI-10878 LED10.5WT8/48/850-DBL-G8D | 2 | 3 | 6 | 11 | INC |
| Break Room 2 | 2X4 Rec Para BB | 1 | 3 | 3 | 32 | EI-10878 LED10.5WT8/48/850-DBL-G8D -EBKIT12WUV1000- | 1 | 3 | 3 | 11 | INC |
| Break Room 2 | 2X4 Rec Para | 2 | 3 | 6 | 32 | EI-10878 LED10.5WT8/48/850-DBL-G8D | 2 | 3 | 6 | 11 | INC |
| Director of Parks R | Rec Can 6in | 6 | 1 | 6 | 28 | SA-S9623 BR30 | 6 | 1 | 6 | 10 | INC |
| Director of Parks | Hanging Fixture | 1 | 6 | 6 | 32 | EI-10878 LED10.5WT8/48/850-DBL-G8D | 1 | 6 | 6 | 11 | INC |
| Senior Administrator 2 | 2X4 Rec Para | 2 | 3 | 6 | 32 | EI-10878 LED10.5WT8/48/850-DBL-G8D | 2 | 3 | 6 | 11 | INC |
| Accounting Office 2 | 2X4 Rec Para | 2 | 3 | 6 | 32 | EI-10878 LED10.5WT8/48/850-DBL-G8D | 2 | 3 | 6 | 11 | INC |
| Stairwell 1 | LX4 Strip BB | 2 | 2 | 4 | 32 | EI-10878 LED10.5WT8/48/850-DBL-G8-EBKIT12WUV1000 | 2 | 2 | 4 | 11 | INC |
| Stairwell 1 | LX4 Strip | 2 | 2 | 4 | 32 | EI-10878 LED10.5WT8/48/850-DBL-G8D | 2 | 2 | 4 | 11 | INC |
| Reception Desk R | Rec Can 8in | 2 | 1 | 2 | 32 | HA-81143 PL10V/850/BYP/LED - | 2 | 1 | 2 | 10 | INC |
| Reception Desk 2 | 2X2 Rec Utube Para | 2 | 2 | 4 | 32 | EI-10928 LED13WT8/U6/850-G9DM | 2 | 2 | 4 | 13 | INC |
| Main Foyer R | Rec Can 8in | 11 | 2 | 22 | 32 | HA-81146 PL10H/850/BYP/LED-1 | 11 | 2 | 22 | 10 | INC |
| Main Foyer 2 | 2X2 Rec Utube Para BB | 8 | 2 | 16 | 32 | EI-10928 LED13WT8/U6/850-G9DM-ERG-EBKIT12WUV1000 | 8 | 2 | 16 | 13 | INC |
| Main Foyer 2 | 2X2 Rec Utube Para | 31 | 2 | 62 | 32 | EI-10928 LED13WT8/U6/850-G9DM | 31 | 2 | 62 | 13 | INC |
| Main Foyer F | lood | 12 | 1 | 12 | 100 | MO-WLL10L 29W 2100L 57K-WH | 12 | 1 | 12 | 29 | INC |
| Meeting Room R | Rec Can 8in BB | 2 | 2 | 4 | 32 | HA-82114 PL12V/850/DIR/LED2 | 2 | 2 | 4 | 12 | INC |
| Meeting Room R | Rec Can 8in | 20 | 2 | 40 | 32 | HA-81143 PL10V/850/BYP/LED | 20 | 2 | 40 | 10 | INC |
| Meeting Room R | Rec Can 6in | 3 | 2 | 6 | 32 | HA-81143 PL10V/850/BYP/LED | 3 | 2 | 6 | 10 | INC |
| Meeting Room 1 | LX4 Hanging Strip | 6 | 4 | 24 | 32 | El-10878 LED10.5WT8/48/850-DBL-G8D | 6 | 4 | 24 | 11 | INC |
| Meeting Room 1 | LX4 Hanging Strip | 4 | 8 | 32 | 32 | El-10878 LED10.5WT8/48/850-DBL-G8D | 4 | 8 | 32 | 11 | INC |
| Meeting Room Under Cabinet | Jndercabinet | 4 | 2 | 8 | 32 | EI-10878 LED10.5WT8/48/850-DBL-G8D | 4 | 2 | 8 | 11 | INC |
| Closet 2 | 2X4 Rec Para | 2 | 3 | 6 | 32 | EI-10878 LED10.5WT8/48/850-DBL-G8D | 2 | 3 | 6 | 11 | INC |

| Classit | 2X4 Rec Para | 2 | 3 | 6 | 22 | EI-10878 LED10.5WT8/48/850-DBL-G8D | 2 | 3 | 6 | 11 | INC |
|------------------------------|--------------------|-----|---|----|----|---|----|---|----|----|-----|
| Closet | _ | + + | | | | · | | | | | INC |
| Men's Room | Rec Can 8in BB | 2 | 2 | 4 | | HA-82119 PL12H/850/DIR/LED2 | 2 | 2 | 4 | 12 | INC |
| Men's Room | Rec Can 8in | 1 | 2 | 2 | | HA-81146 PL10H/850/BYP/LED | 1 | 2 | 2 | 10 | INC |
| Men's Room | 1X4 Strip | 2 | 2 | 4 | | EI-10878 LED10.5WT8/48/850-DBL-G8D | 2 | 2 | 4 | 11 | INC |
| Men's Room | 1X2 Strip | 1 | 2 | 2 | | EI-09599 LED9WT8/24/850-DBL-G7D | 1 | 2 | 2 | 9 | INC |
| Men's Room | 1X2 Strip | 2 | 2 | 4 | | EI-09599 LED9WT8/24/850-DBL-G7D | 2 | 2 | 4 | 9 | INC |
| Ladies's Room | Rec Can 8in BB | 2 | 2 | 4 | | HA-82119 PL12H/850/DIR/LED2 | 2 | 2 | 4 | 12 | INC |
| Ladies's Room | Rec Can 8in | 1 | 2 | 2 | | HA-81146 PL10H/850/BYP/LED | 1 | 2 | 2 | 10 | INC |
| Ladies's Room | 1X4 Strip | 2 | 2 | 4 | | EI-10878 LED10.5WT8/48/850-DBL-G8D | 2 | 2 | 4 | 11 | INC |
| Ladies's Room | 1X2 Strip | 3 | 2 | 6 | 32 | EI-09599 LED9WT8/24/850-DBL-G7D | 3 | 2 | 6 | 9 | INC |
| Ladies's Room | 1X2 Strip | 2 | 2 | 4 | 32 | EI-09599 LED9WT8/24/850-DBL-G7D | 2 | 2 | 4 | 9 | INC |
| Day Care | 2X4 Rec Para BB | 1 | 4 | 4 | 32 | EI-10878 LED10.5WT8/48/850-DBL-G8D-E-EBKIT12WUV1000 | 1 | 4 | 4 | 11 | INC |
| Day Care | 2X4 Rec Para | 4 | 4 | 16 | 32 | EI-10878 LED10.5WT8/48/850-DBL-G8D | 4 | 4 | 16 | 11 | INC |
| Day Care Restroom | 2X2 Rec Utube Para | 2 | 2 | 4 | 32 | EI-10928 LED13WT8/U6/850-G9DM | 2 | 2 | 4 | 13 | INC |
| Kid's Play Room | Rec Can 8in | 1 | 2 | 2 | 32 | HA-81146 PL10H/850/BYP/LED - | 1 | 2 | 2 | 10 | INC |
| Kid's Play Room | 2X4 Rec Para BB | 1 | 4 | 4 | 32 | EI-10878 LED10.5WT8/48/850-DBL-G8D-E-EBKIT12WUV1000 | 1 | 4 | 4 | 11 | INC |
| Kid's Play Room | 2X4 Rec Para | 5 | 4 | 20 | 32 | EI-10878 LED10.5WT8/48/850-DBL-G8D | 5 | 4 | 20 | 11 | INC |
| Closet | 2X2 Rec Para BB | 1 | 2 | 2 | 32 | EI-09599 LED9WT8/24/850-DBL-G7D | 1 | 3 | 3 | 9 | INC |
| Party Room B | 2X4 Rec Para BB | 2 | 3 | 6 | 32 | EI-10878 LED10.5WT8/48/850-DBL-G8D-E-EBKIT12WUV1000 | 2 | 3 | 6 | 11 | INC |
| Party Room B | 2X4 Rec Para | 2 | 3 | 6 | 32 | EI-10878 LED10.5WT8/48/850-DBL-G8D | 2 | 3 | 6 | 11 | INC |
| Party Rooom A | 2X4 Rec Para BB | 1 | 3 | 3 | 32 | EI-10878 LED10.5WT8/48/850-DBL-G8D-E-EBKIT12WUV1000 | 1 | 3 | 3 | 11 | INC |
| Party Room A | 2X4 Rec Para | 3 | 3 | 9 | 32 | EI-10878 LED10.5WT8/48/850-DBL-G8D | 3 | 3 | 9 | 11 | INC |
| Men's Locker Room | Rec Can 8in BB | 7 | 2 | 14 | 32 | HA-82119 PL12H/850/DIR/LED2 | 7 | 2 | 14 | 12 | INC |
| Men's Locker Room | Rec Can 8in | 25 | 2 | 50 | 32 | HA-81146 PL10H/850/BYP/LED | 25 | 2 | 50 | 10 | INC |
| Men's Locker Room | 1X4 Strip | 4 | 2 | 8 | 32 | EI-10878 LED10.5WT8/48/850-DBL-G8D | 4 | 2 | 8 | 11 | INC |
| Ladies's Room Locker Room | Rec Can 8in BB | 7 | 2 | 14 | 32 | HA-82114 PL12V/850/DIR/LED2 | 7 | 2 | 14 | 12 | INC |
| Ladies's Room Locker Room | Rec Can 8in | 21 | 2 | 42 | 32 | HA-81143 PL10V/850/BYP/LED | 21 | 2 | 42 | 10 | INC |
| Ladies's Room Locker Room | 1X4 Strip | 2 | 2 | 4 | 32 | EI-10878 LED10.5WT8/48/850-DBL-G8D | 2 | 2 | 4 | 11 | INC |
| Ladies's Room Locker Room | 1X2 Strip | 1 | 2 | 2 | 32 | EI-09599 LED9WT8/24/850-DBL-G7D | 1 | 2 | 2 | 9 | INC |
| Exit | 2X2 Rec Utube BB | 2 | 2 | 4 | 32 | EI-10928 LED13WT8/U6/850-G9DM-ERG-EBKIT12WUV1000 | 2 | 2 | 4 | 13 | INC |
| Exit | 2X2 Rec Utube | 1 | 2 | 2 | 32 | EI-10928 LED13WT8/U6/850-G9DM | 1 | 2 | 2 | 13 | INC |
| File Risser Room | 1X4 Strip | 4 | 2 | 8 | 32 | EI-10878 LED10.5WT8/48/850-DBL-G8D | 4 | 2 | 8 | 11 | INC |
| Janitor | 2X4 Rec Para BB | 1 | 3 | 3 | 32 | EI-10878 LED10.5WT8/48/850-DBL-G8D-E-EBKIT12WUV1000 | 1 | 3 | 3 | 11 | INC |

| Janitor | 2X4 Rec Para | 2 | 3 | 6 | 32 | EI-10878 LED10.5WT8/48/850-DBL-G8D | 2 | 3 | 6 | 11 | INC |
|--------------------|-----------------------|----|---|-----|----|---|----|---|-----|----|-----|
| Storage | 1X4 Strip | 4 | 2 | 8 | 32 | EI-10878 LED10.5WT8/48/850-DBL-G8D | 4 | 2 | 8 | 11 | INC |
| | | | | | | | | | | | |
| Weight Room | 2X2 Rec Utube Para BB | 2 | 2 | 4 | 32 | EI-10928 LED13WT8/U6/850-G9DM-ERG-EBKIT12WUV1000 | 2 | 2 | 4 | 13 | INC |
| Weight Room | 2X2 Rec Utube Para | 4 | 2 | 8 | 32 | EI-10928 LED13WT8/U6/850-G9DM | 4 | 2 | 8 | 13 | INC |
| Under Gym Walk Way | 1X4 Wrap | 24 | 2 | 48 | 32 | EI-10878 LED10.5WT8/48/850-DBL-G8D | 24 | 2 | 48 | 11 | INC |
| Stairwell | 1X4 Strip BB | 2 | 2 | 4 | 32 | EI-10878 LED10.5WT8/48/850-DBL-G8D-E-EBKIT12WUV1000 | 2 | 2 | 4 | 11 | INC |
| Stairwell | 1X4 Strip | 2 | 2 | 4 | 32 | EI-10878 LED10.5WT8/48/850-DBL-G8D | 2 | 2 | 4 | 11 | INC |
| Activity Room | 1X8 Hanging Fix BB | 2 | 4 | 8 | 32 | EI-10878 LED10.5WT8/48/850-DBL-G8D-EBKIT12WUV1000 | 2 | 4 | 8 | 11 | INC |
| Activity Room | 1X8 Hanging Strip | 3 | 4 | 12 | 32 | EI-10878 LED10.5WT8/48/850-DBL-G8D | 3 | 4 | 12 | 11 | INC |
| Main Top | 2X2 Rec Utube Para BB | 12 | 2 | 24 | 32 | EI-10928 LED13WT8/U6/850-G9DM-ERG-EBKIT12WUV1000 | 12 | 2 | 24 | 13 | INC |
| Main Top | 2X2 Rec Utube Para | 33 | 2 | 66 | 32 | EI-10928 LED13WT8/U6/850-G9DM | 33 | 2 | 66 | 13 | INC |
| Work out Deck | 1X4 Strip | 81 | 2 | 162 | 32 | EI-10878 LED10.5WT8/48/850-DBL | 81 | 2 | 162 | 11 | INC |
| Stairwell | 1X4 Strip BB | 2 | 2 | 4 | 32 | EI-10878 LED10.5WT8/48/850-DBL-G8D-E-EBKIT12WUV1000 | 2 | 2 | 4 | 11 | INC |
| Stairwell | 1X4 Strip | 2 | 2 | 4 | 32 | EI-10878 LED10.5WT8/48/850-DBL-G8D | 2 | 2 | 4 | 11 | INC |
| High Wall | 1X4 Strip | 4 | 2 | 8 | 32 | EI-10878 LED10.5WT8/48/850-DBL-G8D | 4 | 2 | 8 | 11 | INC |
| Bail Room | 2X2 Rec Utube Para BB | 1 | 2 | 2 | 32 | EI-10928 LED13WT8/U6/850-G9DM-ERG-EBKIT12WUV1000 | 1 | 2 | 2 | 13 | INC |
| Bail Room | 2X2 Rec Utube Para | 7 | 2 | 14 | 32 | EI-10928 LED13WT8/U6/850-G9DM | 7 | 2 | 14 | 13 | INC |
| Dance Room | 2X2 Rec Para BB | 6 | 2 | 12 | 32 | EI-09598 LED9WT8/24/840-DBL-G7D- 1-EBKIT12WUV1000 | 6 | 2 | 12 | 9 | INC |
| Dance Room | 2X2 Rec Para | 17 | 2 | 34 | 32 | EI-09598 LED9WT8/24/840-DBL-G7D- 1 | 17 | 2 | 34 | 9 | INC |
| Utility Room | 2X2 Rec Para BB | 1 | 2 | 2 | 32 | EI-09598 LED9WT8/24/840-DBL-G7D- 1 EBKIT12WUV1000 | 1 | 2 | 2 | 9 | INC |
| Utility Room | 2X2 Rec Troffer | 5 | 2 | 10 | 32 | EI-09599 LED9WT8/24/850-DBL-G7D | 5 | 2 | 10 | 9 | INC |
| Rec. | 2X2 Rec Utube Para | 2 | 3 | 6 | 32 | EI-10928 LED13WT8/U6/850-G9DM | 2 | 2 | 4 | 13 | INC |
| Rec. | 2X2 Rec Utube Para | 2 | 3 | 6 | 32 | EI-10928 LED13WT8/U6/850-G9DM | 2 | 2 | 4 | 13 | INC |
| 2 Restrooms | 2X2 Rec Utube BB | 2 | 2 | 4 | 32 | EI-10928 LED13WT8/U6/850-G9DM-ERG-EBKIT12WUV1000 | 2 | 2 | 4 | 13 | INC |
| Weight Room | 1X8 Hanging Strip | 3 | 4 | 12 | 32 | EI-10878 LED10.5WT8/48/850-DBL-G8D | 3 | 4 | 12 | 11 | INC |
| Pool Hallway | 2X2 Rec Utube Para BB | 2 | 2 | 4 | 32 | EI-10928 LED13WT8/U6/850-G9DM-ERG-EBKIT12WUV1000 | 2 | 2 | 4 | 13 | INC |
| Pool Hallway | 2X2 Rec Utube Para | 2 | 2 | 4 | 32 | EI-10928 LED13WT8/U6/850-G9DM | 2 | 2 | 4 | 13 | INC |
| 4 Changing Rooms | Rec Can 6in | 8 | 2 | 16 | 32 | HA-81146 PL10H/850/BYP/LED | 8 | 2 | 16 | 10 | INC |
| 4 Changing Rooms | 2X2 Rec Utube Para BB | 4 | 2 | 8 | 32 | EI-10928 LED13WT8/U6/850-G9DM-ERG-EBKIT12WUV1000 | 4 | 2 | 8 | 13 | INC |
| Pool Entrance | 2X2 Rec Utube Para | 2 | 2 | 4 | 32 | EI-10928 LED13WT8/U6/850-G9DM | 2 | 2 | 4 | 13 | INC |
| Pool Entrance | 2X2 Rec Utube Para | 2 | 2 | 4 | 32 | EI-10928 LED13WT8/U6/850-G9DM | 2 | 2 | 4 | 13 | INC |
| Pool Entrance | 2X2 Rec Utube Para | 2 | 2 | 4 | 32 | EI-10928 LED13WT8/U6/850-G9DM | 2 | 2 | 4 | 13 | INC |

| Life Guard Office | 2X4 Rec Troffer | 2 | 3 | 6 | 32 | EI-10878 LED10.5WT8/48/850-DBL-G8D | 2 | 3 | 6 | 11 | II |
|------------------------|-----------------|-----|---|---|----|-------------------------------------|---|---|---|----|-------------|
| Aquatic Office | 2X4 Rec Troffer | 2 | 3 | 6 | 32 | EI-10878 LED10.5WT8/48/850-DBL-G8D- | 2 | 3 | 6 | 11 | II |
| Storage | 2X4 Rec Troffer | 2 | 3 | 6 | 32 | EI-10878 LED10.5WT8/48/850-DBL-G8D- | 2 | 3 | 6 | 11 | II |
| Add Surge Protection | | 0 2 | 1 | 2 | - | Eaton Surge Protection | 2 | 1 | 2 | - | II |
| | | | | | | | | | | | |
| Shipping | | | | | | | | | | | \$ 2,018.3 |
| Installation | | | | | | | | | | | \$ 31,031.6 |
| Sales Tax | | | | | | | | | | | N/ |
| | | | | | | | | | | | |
| Total LED Project Cost | | | | | | | | | | | \$ 58,278.9 |
| | | | | | | | | | | | |



LED Project Next Steps

- 1. MHSC to provide Customer with a Purchase Agreement outlining terms and conditions of purchase including down payment of 60% of Project Total.
- 2. Authorize Purchase Agreement and/or Issue Purchase Order w/ Agreement as attachment
- 3. Fill Out Utility Application (if applicable)
- 4. Remit down payment to MHSC in the amount stated and agreed to by Customer
- 5. Once payment is received, project lights will be ordered and/or reserved in MHSC Inventory
- 6. All products will be shipped directly to Customer for Installation.
- 7. MHSC will coordinate Installation (if MHSC Providing Installation) with Customer once all LED lighting products have been received.
- 8. If Customer providing Installation, MHSC will provide technical consultation with installers
- 9. Final payment due upon LED delivery if Customer providing installation or upon completion of installation of LED lighting if MHSC is providing installation.

MHSCENE-02

GAYLA



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 8/15/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the noticy/ise) must have ADDITIONAL INSURED provisions or be endorsed

| lf | SUBROGATION IS WAIVED, subject sertificate dollars with the certificate does not confer rights to | t to the terms and conditions of | the policy, certain | policies may | | | | | | | |
|------------|---|---|--|----------------------------|---|-------|------------|--|--|--|--|
| PROD | UCER | | CONTACT Grant Graham, CLCS, CIC | | | | | | | | |
| | Insurance ox 3889 | | PHONE (A/C, No, Ext): (979) 774-6263 FAX (A/C, No): (979) 774- | | | | | | | | |
| | n, TX 77805 | | E-MAIL ADDRESS: zientek@ | anco.com | , , , , | | | | | | |
| | | | INS | SURER(S) AFFOR | RDING COVERAGE | | NAIC # | | | | |
| | | | INSURER A : Tri-Stat | e Insuranc | e Company Of Minnes | sota | 31003 | | | | |
| INSUF | RED | | INSURER B : Texas I | Mutual Insu | rance Company | | 22945 | | | | |
| | MHSC Energy Management, | LLC Dba MHSC Electric | INSURER C: | | | | | | | | |
| | PO Box 10048 | | INSURER D: | | | | | | | | |
| | College Station, TX 77842 | | INSURER E : | | | | | | | | |
| | | | INSURER F: | | | | | | | | |
| COV | ERAGES CER | TIFICATE NUMBER: | | | REVISION NUMBER: | | | | | | |
| INI CE | IS IS TO CERTIFY THAT THE POLICIE DICATED. NOTWITHSTANDING ANY RI RTIFICATE MAY BE ISSUED OR MAY CLUSIONS AND CONDITIONS OF SUCH I | EQUIREMENT, TERM OR CONDITION PERTAIN, THE INSURANCE AFFORD | OF ANY CONTRA DED BY THE POLIC | CT OR OTHER IES DESCRIB | R DOCUMENT WITH RESPE ED HEREIN IS SUBJECT T | CT TO | WHICH THIS | | | | |
| NSR LTR | TVDT 07 11011D 1110T | ADDL SUBR INSD WVD POLICY NUMBER | POLICY EFF | POLICY EXP (MM/DD/YYYY) | LIMIT | s | | | | | |
| Α | X COMMERCIAL GENERAL LIABILITY | | | , | EACH OCCURRENCE | \$ | 1,000,000 | | | | |
| | CLAIMS-MADE X OCCUR | ADV 9148089 | 8/15/2022 | 8/15/2023 | DAMAGE TO RENTED PREMISES (Ea occurrence) | \$ | 300,000 | | | | |
| | | | | | MED EXP (Any one person) | \$ | 10,000 | | | | |
| | | | | | DEDOCALAL & ADVIALIUDY | • | 1,000,000 | | | | |

| INSR LTR | | TYPE OF INSURANCE | ADDL INSD | SUBR WVD | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS | | |
|-------------|--------|--|--------------|-------------|---------------|----------------------------|----------------------------|--|----|-----------|
| Α | Х | COMMERCIAL GENERAL LIABILITY | | | | ,, | , | EACH OCCURRENCE | \$ | 1,000,000 |
| | | CLAIMS-MADE X OCCUR | | | ADV 9148089 | 8/15/2022 | 8/15/2023 | DAMAGE TO RENTED PREMISES (Ea occurrence) | \$ | 300,000 |
| | | | | | | | | MED EXP (Any one person) | \$ | 10,000 |
| | | | | | | | | PERSONAL & ADV INJURY | \$ | 1,000,000 |
| | GEN | N'L AGGRE <u>GAT</u> E LIMIT AP <u>PLIE</u> S PER: | | | | | | GENERAL AGGREGATE | \$ | 2,000,000 |
| | | POLICY X PRO- | | | | | | PRODUCTS - COMP/OP AGG | \$ | 2,000,000 |
| | X | OTHER: | | | | | | | \$ | |
| Α | AUT | OMOBILE LIABILITY | | | | | | COMBINED SINGLE LIMIT (Ea accident) | \$ | 1,000,000 |
| | | ANY AUTO | | | ADV 9148089 | 8/15/2022 | 8/15/2023 | BODILY INJURY (Per person) | \$ | |
| | | OWNED X SCHEDULED AUTOS ONLY | | | | | | | \$ | |
| | X | HIRED X NON-OWNED AUTOS ONLY | | | | | | PROPERTY DAMAGE (Per accident) | \$ | |
| | | | | | | | | | \$ | |
| Α | X | UMBRELLA LIAB OCCUR | | | | | | EACH OCCURRENCE | \$ | 5,000,000 |
| | | EXCESS LIAB CLAIMS-MADE | | | ADV 9148089 | 8/15/2022 | 8/15/2023 | AGGREGATE | \$ | |
| | | DED RETENTION \$ | | | | | | | \$ | |
| В | WOF | RKERS COMPENSATION EMPLOYERS' LIABILITY | | | | | | PER OTH- STATUTE ER | | |
| | ANY | PROPRIETOR/PARTNER/EXECUTIVE CER/MEMBER EXCLUDED? | N/A | | SBP0001277973 | 8/15/2022 | 8/15/2023 | E.L. EACH ACCIDENT | \$ | 1,000,000 |
| | (Mar | idatory in NH) | 117.7 | | | | | E.L. DISEASE - EA EMPLOYEE | \$ | 1,000,000 |
| | If yes | s, describe under CRIPTION OF OPERATIONS below | | | | | | E.L. DISEASE - POLICY LIMIT | \$ | 1,000,000 |
| Α | Equ | ipment Floater | | | ADV 9148089 | 8/15/2022 | 8/15/2023 | Rented Equipt | | 100,000 |
| | | | | | | | | | | |
| | | | | | | | | | | |
| | | | | | | | | | | |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

| CERTIFICATE HOLDER | CANCELLATION |
|---|--|
| | SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. |
| 1 | AUTHORIZED REPRESENTATIVE Land Charleson |
| ACORD 25 (2016/03) The ACORD name and logo are | © 1988-2015 ACORD CORPORATION. All rights reregistered marks of ACORD |

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

GENERAL LIABILITY ULTRA PLUS ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SUMMARY OF COVERAGE EXTENSIONS

| Provision | Name Of Coverage Extension | Included or Limit of Insurance |
|-----------|---|--------------------------------|
| Α. | Miscellaneous Additional Insureds | Included |
| В. | Expected Or Intended Injury Or Damage | Included |
| C. | Knowledge Of Occurrence | Included |
| D. | Legal Liability – Damage To Premises Rented To You (Fire, Lightning, Explosion, Smoke, Or Leakage From Automatic Fire Protective Systems) | \$300,000 |
| E. | Medical Payments | See Declarations |
| F. | Mobile Equipment Redefined | Included |
| G. | Newly Formed Or Acquired Organization, Partnership Or Limited Liability Company And Extended Period Of Coverage | Included |
| H. | Who Is An Insured – Amendment | Included |
| I. | Non-Owned Watercraft (Increased to maximum length of less than 51 feet) | Included |
| J. | Supplementary Payments – Increased Limits | |
| | 1. Bail Bonds | \$ 3,000 |
| | 2. Loss Of Earnings | \$ 1,000 |
| K. | Unintentional Omission Or Unintentional Error In Disclosure | Included |
| L. | Waiver Of Transfer Of Rights Of Recovery Against Others | Included |
| M. | Liberalization Clause | Included |
| N. | Incidental Medical Malpractice | Included |

The above is a summary only. Please consult the specific provisions that follow for complete information on the extensions provided.

The provisions of the Commercial General Liability Coverage Part apply except as otherwise provided in this endorsement. This endorsement applies only if such Coverage Part is included in this policy.

A. MISCELLANEOUS ADDITIONAL INSUREDS

 Section II – Who Is An Insured is amended to include as an insured any person or organization (referred to as an additional insured below) described in Paragraphs A.1.c.(1) through A.1.c.(9) below when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy, provided that:

- The written contract or written agreement is:
 - Currently in effect or becoming effective during the term of this policy; and
 - (2) Fully executed by you and the additional insured prior to the "bodily

- injury", "property damage" or "personal and advertising injury".
- b. The insurance afforded by this provision does not apply to any person or organization included as an additional insured by a separate endorsement issued by us and made a part of this policy or coverage part.
- c. Only the following persons or organizations are additional insureds under this provision, with coverage for such additional insureds limited as provided herein:

(1) Persons or Organizations For Whom Operations Are Performed

- (a) Any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured to your policy;
- (b) Any other person or organization you are required to add as an additional insured under the contract or agreement described in paragraph (a) above.
- (c) Such person(s) or organization(s) is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:
 - (i) Your acts or omissions; or
 - (ii) The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured.

(d) With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

(i) "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

- (1.1) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
- (1.2) Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of, or the failure to render, any professional architectural, engineering or surveying services.

- (ii) "Bodily injury" or "property damage" occurring after:
 - (1.1)ΑII work, including parts materials. or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
 - (1.2) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

(2) Managers Or Lessors Of Premises

A manager or lessor of premises but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you and subject to the following additional exclusions:

This insurance does not apply to:

- (a) Any "occurrence" which takes place after you cease to be a tenant in that premises.
- (b) Structural alterations, new construction or demolition operations performed by or on behalf of such additional insured.

(3) Mortgagee, Assignee Or Receiver

A mortgagee, assignee, or receiver but only with respect to their liability as mortgagee, assignee, or receiver and arising out of the ownership, maintenance, or use of a covered premises by you.

This insurance does not apply to structural alterations, new construction or demolition operations performed by or on behalf of such additional insured.

(4) Owners Or Other Interests From Whom Land Has Been Leased

An owner or other interest from whom land has been leased to you but only with respect to liability arising out of the ownership, maintenance or use of that part of the land leased to you and subject to the following additional exclusions:

This insurance does not apply to:

- (a) Any "occurrence" which takes place after you cease to lease that land.
- **(b)** Structural alterations, new construction or demolition operations performed by or on behalf of such additional insured.

(5) Lessor Of Leased Equipment

Any person(s) or organization(s) from whom you lease equipment but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person(s) or organization(s).

A person's or organization's status as an additional insured under this endorsement ends when their written contract or written agreement with you for such leased equipment ends.

This insurance does not apply to any "occurrence" which takes place after the equipment lease expires.

(6) State, Municipality, Governmental Agency Or Subdivision Or Other Political Subdivision – Permits Or Authorizations Relating To Premises

Any state, municipality, governmental agency or subdivision or other political subdivision subject to the following additional provisions:

- (a) This insurance applies only with respect to:
 - (i) The following hazards for which the state, municipality, governmental agency or subdivision or other political subdivision has issued a permit or authorization in connection with premises you own, rent or control and to which this insurance applies:
 - (1.1) The existence. maintenance, repair, construction, erection removal of advertising signs, awnings, canopies, cellar entrances, coal holes. driveways, manholes, marquees, hoist away openings, sidewalk vaults, street banners or decorations and similar exposures;
 - (1.2) The construction, erection or removal of elevators; or
 - (1.3) The ownership, maintenance or use of any elevators covered by this insurance.
 - (ii) Operations performed by you or on your behalf for which the state, municipality, governmental agency or subdivision or other political subdivision has issued a permit or authorization.

(b) This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state, municipality, governmental agency or subdivision or other political subdivision.

(7) Controlling Interest

Any person(s) or organization(s) with a controlling interest in the Named Insured but only with respect to their liability arising out of:

- (a) Their financial control of you; or
- (b) Premises they own, maintain or control while you lease or occupy these premises.

This insurance does not apply to structural alterations, new construction or demolition operations performed by or for such person(s) or organization(s).

(8) Co-Owner Of Insured Premises

A co-owner of a premises co-owned by you and covered under this insurance but only with respect to the co-owner's liability as co-owner of such premises.

(9) Vendors

(a) Any person(s) or organization(s) (referred to as vendor), but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business.

The insurance afforded the vendor does not apply to:

- (i) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a written contract or written agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the written contract or written agreement;
- (ii) Any express warranty unauthorized by you;

- (iii) Any physical or chemical change in the product made intentionally by the vendor;
- (iv) Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
- (v) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
- (vi) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;
- (vii) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or
- (viii) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:
 - (1.1) The exceptions contained in Sub-paragraphs (iv) or (vi); or
 - (1.2) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make

in the usual course of business, in connection with the distribution or sale of the products.

- (b) This insurance does not apply to any insured person or organization, from whom you have acquired products, or any ingredient, part or container, entering into, accompanying or containing such products.
- With respect to coverage provided by this Provision A. Miscellaneous Additional Insureds, the following additional provisions apply:
 - Any insurance provided to an additional insured designated under Paragraphs
 A.1.c.(1) through A.1.c.(8) above does not apply:
 - (1) To "bodily injury" or "property damage" included within the "products-completed operations hazard"; or
 - (2) To "bodily injury", "property damage" or "personal and advertising injury" arising out of the sole negligence of such additional insured.
 - **b.** The insurance afforded to such additional insured only applies to the extent permitted by law.
 - c. The insurance afforded to such additional insured will not be broader than that which you are required to provide by the written contract or written agreement.
- With respect to the insurance afforded to the additional insureds within this Provision A. Miscellaneous Additional Insureds, the following is added to Section III – Limits Of Insurance:

The most we will pay on behalf of the additional insured is the amount of insurance:

- **a.** Required by the written contract or written agreement; or
- **b.** Available under the applicable Limits Of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits Of Insurance shown in the Declarations.

B. EXPECTED OR INTENDED INJURY OR DAMAGE

Exclusion 2.a. Expected Or Intended Injury of Section I – Coverage A – Bodily Injury And Property Damage Liability is deleted and replaced by the following:

a. Expected Or Intended Injury Or Damage

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property.

C. KNOWLEDGE OF OCCURRENCE

Paragraph 2.a. Duties In The Event Of Occurrence, Offense, Claim Or Suit of Section IV – Commercial General Liability Conditions is deleted and replaced by the following:

- a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim only when the "occurrence" or offense is known to:
 - (1) You, if you are an individual;
 - (2) A partner, if you are a partnership;
 - (3) A manager, if you are a limited liability company; or
 - (4) An "executive officer" or the "employee" designated by you to give such notice, if you are an organization other than a partnership or a limited liability company.

To the extent possible, notice should include:

- (i) How, when and where the "occurrence" or offense took place;
- (ii) The names and addresses of any injured persons and witnesses; and
- (iii) The nature and location of any injury or damage arising out of the "occurrence" or offense.
- D. LEGAL LIABILITY DAMAGE TO PREMISES RENTED TO YOU (Fire, Lightning, Explosion, Smoke, Or Leakage From Automatic Fire Protective Systems)

If damage to premises rented to you is not otherwise excluded from this policy or coverage part, then the following provisions apply:

 Under Section I – Coverage A – Bodily Injury And Property Damage Liability, the last paragraph (after the exclusions) is deleted and replaced by the following: Exclusions **c.** through **n.** do not apply to damage by fire, lightning, explosion, "smoke", or leakage from automatic fire protective systems to premises while rented to you or temporarily occupied by you with the permission of the owner. A separate limit of insurance applies to this coverage as described in **Section III** – **Limits Of Insurance**.

2. The paragraph immediately after Subparagraph j.(6) of Paragraph 2. Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability is deleted and replaced by the following:

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire, lightning, explosion, "smoke", or leakage from automatic fire protective systems) to premises, including the contents of such premises, rented to you for a period of seven or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in Section III – Limits Of Insurance.

- Paragraph 6. of Section III Limits Of Insurance is deleted and replaced by the following:
 - **6.** Subject to Paragraph **5.** above, the greater of:
 - **a.** \$300,000; or
 - **b.** The Damage To Premises Rented To You Limit shown in the Declarations,

is the most we will pay under **Coverage A** for damages because of "property damage" to premises while rented to you, or in the case of damage by fire, lightning, explosion, "smoke", or leakage from automatic fire protective systems, while rented to you or temporarily occupied by you with permission of the owner.

This limit will apply to all damage proximately caused by the same event, whether such damage results from fire, lightning, explosion, "smoke", leakage from automatic fire protective systems, or other covered causes of loss or any combination thereof.

- 4. Subparagraph b.(1)(a)(ii) of Paragraph 4. Other Insurance of Section IV Commercial General Liability Conditions is deleted and replaced by the following:
 - (ii) That is fire, lightning, explosion, "smoke" or leakage from automatic fire protective systems insurance for premises rented to

you or temporarily occupied by you with permission of the owner:

- Subparagraph a. of Definition 9. "Insured contract" of Section V Definitions is deleted and replaced by the following:
 - a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire, lightning, explosion, "smoke" or leakage from automatic fire protective systems to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract".
- 6. As used in this Provision D. Legal Liability Damage To Premises Rented To You:

"Smoke" does not include smoke from agricultural smudging, industrial operations or "hostile fire".

E. MEDICAL PAYMENTS

The Medical Expense Limit is changed, subject to the terms of **Section III – Limits Of Insurance**, to the Medical Expense Limit shown in the Declarations.

F. MOBILE EQUIPMENT REDEFINED

Subparagraph **f.(1)** of Definition **12.** "Mobile equipment" of **Section V – Definitions** is deleted and replaced by the following:

- (1) Equipment with a gross vehicle weight of 1,000 pounds or more and designed primarily for:
 - (a) Snow removal:
 - **(b)** Road maintenance, but not construction or resurfacing; or
 - (c) Street cleaning;
- G. NEWLY FORMED OR ACQUIRED ORGANIZATION, PARTNERSHIP OR LIMITED LIABILITY COMPANY AND EXTENDED PERIOD OF COVERAGE

Paragraph 3. of Section II – Who Is An Insured is deleted and replaced by the following:

- 3. Any organization you newly acquire or form, other than a joint venture, and over which you maintain ownership or:
 - **a.** Majority interest of more than 50% if you are a corporation;
 - **b.** Majority interest of more than 50% as a general partner of a newly acquired or formed partnership; and/or

c. Majority interest of more than 50% as an owner of a newly acquired or formed limited liability company;

will qualify as a Named Insured if there is no other similar insurance available to that organization. However, for these organizations:

- (i) Coverage under this provision is afforded only until the next anniversary date of this policy's effective date after you acquire or form the organization, partnership or limited liability company, or the end of the policy period, whichever is earlier;
- (ii) Section I Coverage A Bodily Injury And Property Damage Liability does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization, partnership or limited liability company;
- (iii) Section I Coverage B Personal And Advertising Injury Liability does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization, partnership or limited liability company;
- (iv) Coverage applies only when operations of the newly acquired organization, partnership or limited liability company are the same or similar to the operations of insureds already covered under this insurance;
- (v) Coverage only applies for those limited liability companies who have established a date of formation as recorded within the filed state articles of organization, certificates of formation or certificates of organization; and
- (vi) Coverage only applies for those partnerships who have established a date of formation as recorded within a written partnership agreement or partnership certificate.

H. WHO IS AN INSURED - AMENDMENT

The last paragraph of **Section II – Who Is An Insured** is deleted and replaced by the following:

No person or organization is an insured with respect to the conduct of any:

- a. Current partnership or limited liability company, unless otherwise provided for under Paragraph 3. of Section II – Who Is An Insured;
- **b.** Current joint venture; or

c. Past partnership, joint venture or limited liability company;

that is not shown as a Named Insured in the Declarations.

I. NON-OWNED WATERCRAFT

Subparagraph (2) of Exclusion 2.g. Aircraft, Auto Or Watercraft of Section I – Coverage A – Bodily Injury And Property Damage Liability is deleted and replaced by the following:

- (2) A watercraft you do not own that is:
 - (a) Less than 51 feet long; and
 - **(b)** Not being used to carry persons or property for a charge.

J. SUPPLEMENTARY PAYMENTS – INCREASED LIMITS

Section I – Supplementary Payments – Coverages A And B is changed as follows:

- The limit shown in Paragraph 1.b. for the cost of bail bonds is changed from \$250 to \$3,000; and
- 2. The limit shown in Paragraph 1.d. for loss of earnings because of time off from work is changed from \$250 a day to \$1,000 a day.

K. UNINTENTIONAL OMISSION OR UNINTENTIONAL ERROR IN DISCLOSURE

The following provision is added to Paragraph 6. Representations of Section IV – Commercial General Liability Conditions:

However, the unintentional omission of, or unintentional error in, any information given or provided by you shall not prejudice your rights under this insurance.

This provision does not affect our right to collect additional premium or to exercise our right of cancellation or non-renewal.

WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS

The following is added to Paragraph 8. Transfer Of Rights Of Recovery Against Others To Us of Section IV – Commercial General Liability Conditions:

We waive any right of recovery we may have against any person or organization because of payments we make for injury or damage arising out of your ongoing operations or "your work" and included in the "products-completed operations hazard" when you have agreed in a written contract or written agreement that any right of recovery is waived for such person or organization. This waiver applies only to the

person(s) or organization(s) agreed to in the written contract or written agreement and is subject to those provisions.

This waiver does not apply unless the written contract or written agreement has been executed prior to the "bodily injury" or "property damage".

However, if any person or organization is separately scheduled on a separate waiver of transfer of rights of recovery which is attached to this policy, then this waiver does not apply.

M. LIBERALIZATION CLAUSE

The following is added to Section IV – Commercial General Liability Conditions:

If we adopt a mandatory attachment form change which broadens coverage under this edition of the Commercial General Liability CG0001 for no additional charge, and those changes are intended to apply to all insureds under this edition of CG0001, that change will automatically apply to your insurance as of the date we implement the change in your state. This liberalization clause does not apply to changes implemented through introduction of a subsequent edition of the Commercial General Liability form CG0001.

N. INCIDENTAL MEDICAL MALPRACTICE

- Paragraph 2.a.(1)(d) of Section II Who Is An Insured does not apply to a physician, nurse practitioner, physician assistant, nurse, emergency medical technician or paramedic employed by you if you are not in the business or occupation of providing medical, paramedical, surgical, dental, x-ray or nursing services.
- 2. This provision is excess over any other valid and collectible insurance whether such insurance is primary, excess, contingent or on any other basis. Any payments by us will follow Paragraph 4.b. of Section IV – Commercial General Liability Conditions.

Advantage Auto CL CA 20 82 07 21

| Advantage Auto - CL CA 20 82 07 21 | |
|---|------------------------------|
| Automobile Coverage | Extended Limit/Coverage |
| Additional Insured by Contract Or Agreement Including Primary and Noncontributory Other Insurance Condition | Included |
| Airbags- Extended Coverage | Included |
| Audio, Visual & Data Electronic Equipment Coverage (Including Telematics Tracking Equipment) | \$1,000 |
| Auto Loan/Lease Gap Coverage | \$2,500 |
| Autos Rented by Employees | Included |
| Bail Bonds- Extended Coverage | \$5,000 |
| Broad Form Named Insured Including Newly Acquired or Formed Organizations | Included |
| Custom Signs & Decorations | Included |
| Employees as Insureds | Included |
| Fellow Employee Coverage | Included |
| Glass Repair- No Deductible | Included |
| Hired Auto Physical Damage and Increased Loss of Use Expenses Loss of use (Per Day/Maximum) | \$100,000 \$500 / \$3,500 |
| Knowledge Of An Accident, Claim, Suit Or Loss | Included |
| Loss Of Earnings- Extended Coverage | \$1,000 |
| Rental Reimbursement Coverage | |
| Maximum Rental Expenses Per Day | \$75 |
| Maximum Rental Expenses Because Of Loss To Any One Covered "Auto" | \$3,375 |
| Maximum Rental Expenses Because Of Loss To All Covered "Autos" In Any One Policy Period | \$15,000 |
| Resultant Mental Anguish | Included |
| Towing And Labor coverage Extension | \$100 |
| Transportation Expenses- Coverage Extension (Per Day/maximum) | \$75 / \$2,500 |
| Unintentional Failure To Disclose Hazards | Included |
| Waiver Of Subrogation By Contract Or Agreement | Included |



WORKERS' COMPENSATION AND EMPLOYERS LIABILITY POLICY

WC 42 03 04 B

Insured copy

TEXAS WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

This endorsement applies only to the insurance provided by the policy because Texas is shown in item 3.A. of the Information Page.

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule, but this waiver applies only with respect to bodily injury arising out of the operations described in the schedule where you are required by a written contract to obtain this waiver from us.

This endorsement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

The premium for this endorsement is shown in the Schedule.

Schedule

- 1. () Specific Waiver Name of person or organization
 - (X) Blanket Waiver

Any person or organization for whom the Named Insured has agreed by written contract to furnish this waiver.

- 2. Operations: All Texas operations
- 3. Premium:

The premium charge for this endorsement shall be 2.00 percent of the premium developed on payroll in connection with work performed for the above person(s) or organization(s) arising out of the operations described.

4. Advance Premium: Included, see Information Page

This endorsement changes the policy to which it is attached effective on the inception date of the policy unless a different date is indicated below. (The following "attaching clause" need be completed only when this endorsement is issued subsequent to preparation of the policy.)

Policy no. 0001277973 of Texas Mutual Insurance Company effective on 8-15-22

MHSC ENERGY MANAGEMENT LLC Issued to:

DBA: MHSC ELECTRIC

This is not a bill

Authorized representative

NCCI Carrier Code: 29939

1 of 1

8/3/21

WC 42 03 04 B

GAYLA



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 8/15/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed.

| | his certificate does not confer rights to | the | cert | ificate holder in lieu of su | CONTAC | orsement(s) [∵] Grant Gr | aham CLC | CS. CIC | | |
|--------------|--|---------------------|-------------------------|--|-----------------------------|---|---|--|--------|--------------|
| | DDUCER co Insurance | | | | | | | | (070) | 774 5070 |
| PO | Box 3889 | | | | (A/C, No | _{, Ext):} (979) 7 _{SS:} zientek@ | 74-6263 | (A/C, No): | (979) | 774-5372 |
| Bry | an, TX 77805 | | | | ADDRES | | | | | I |
| | | | | | | | | RDING COVERAGE | | NAIC # |
| | | | | | | | | e Company Of Minne | sota | 31003 |
| INSU | JRED | | | | | | iutuai insu | rance Company | | 22945 |
| | MHSC Energy Management, PO Box 10048 | LLC | Dba | MHSC Electric | INSURE | | | | | |
| | College Station, TX 77842 | | | | INSURER D: | | | | | |
| | <u>-</u> | | | | INSURER E: | | | | | |
| | WED A CES | TIF1/ | ~ A T | NUMBED. | INSURE | K F : | | DEVICION NUMBER. | | |
| | VERAGES CERT THIS IS TO CERTIFY THAT THE POLICIE | | | ENUMBER: | LIAVE DE | - FN ICCLIED T | TO THE INCLU | REVISION NUMBER: | | N ICV PERIOD |
| IN C E | NDICATED. NOTWITHSTANDING ANY RESETTIFICATE MAY BE ISSUED OR MAY XCLUSIONS AND CONDITIONS OF SUCHI | EQUI PER POLI | IREMI TAIN, CIES. | ENT, TERM OR CONDITION THE INSURANCE AFFOR LIMITS SHOWN MAY HAVE | N OF AI DED BY BEEN R | NY CONTRAC THE POLICI EDUCED BY | CT OR OTHER IES DESCRIE PAID CLAIMS | R DOCUMENT WITH RESPE SED HEREIN IS SUBJECT 1 | ECT TO | WHICH THIS |
| INSR LTR | TYPE OF INSURANCE | ADDL INSD | SUBR | POLICY NUMBER | | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMIT | s | |
| Α | X COMMERCIAL GENERAL LIABILITY | | | | T | | | EACH OCCURRENCE | \$ | 1,000,000 |
| | CLAIMS-MADE X OCCUR | | | ADV 9148089 | | 8/15/2022 | 8/15/2023 | DAMAGE TO RENTED PREMISES (Ea occurrence) | \$ | 300,000 |
| | | | | | | | | MED EXP (Any one person) | \$ | 10,000 |
| | | | | | | | | PERSONAL & ADV INJURY | \$ | 1,000,000 |
| | GEN'L AGGREGATE LIMIT APPLIES PER: | | | | | | | GENERAL AGGREGATE | \$ | 2,000,000 |
| | POLICY X PRO- JECT LOC | | | | | | | PRODUCTS - COMP/OP AGG | \$ | 2,000,000 |
| | X OTHER: EMPLOYMENT RELATED PRACT | | | | | | | OOMBINIED OINIOLE LIMIT | \$ | |
| Α | AUTOMOBILE LIABILITY | | | | | | | COMBINED SINGLE LIMIT (Ea accident) | \$ | 1,000,000 |
| | ANY AUTO | | | ADV 9148089 | | 8/15/2022 | 8/15/2023 | BODILY INJURY (Per person) | \$ | |
| | OWNED AUTOS ONLY X SCHEDULED AUTOS | | | | | | | BODILY INJURY (Per accident) | \$ | |
| | X HIRED AUTOS ONLY X NON-OWNED AUTOS ONLY | | | | | | | PROPERTY DAMAGE (Per accident) | \$ | |
| | 1 | | | | | | | | \$ | E 000 000 |
| Α | X UMBRELLA LIAB OCCUR | | | ADV 9148089 | | 8/15/2022 | 8/15/2023 | EACH OCCURRENCE | \$ | 5,000,000 |
| | EXCESS LIAB CLAIMS-MADE | | | ADV 9140009 | | 0/13/2022 | 0/13/2023 | AGGREGATE | \$ | |
| В | DED RETENTION \$ | | | | | | | PER OTH- | \$ | |
| Ь | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y/N | | | SBP0001277973 | | 8/15/2022 | 8/15/2023 | PER OTH- STATUTE ER | | 1,000,000 |
| | ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) | N/A | | 3DI 0001277973 | | 0/13/2022 | 0/13/2023 | E.L. EACH ACCIDENT | \$ | 1,000,000 |
| | If yes, describe under DESCRIPTION OF OPERATIONS below | | | | | | | E.L. DISEASE - EA EMPLOYEE | | 1,000,000 |
| Α | DÉSCRIPTION OF OPERATIONS below Equipment Floater | | | ADV 9148089 | | 8/15/2022 | 8/15/2023 | Rented Equipt | \$ | 100,000 |
| ^ | Equipment Floater | | | ADV 3140003 | | 0/13/2022 | 0/13/2023 | Nonica Equipi | | 100,000 |
| | | | | | | | | | | |
| | | | | | | | | | | |
| DES | CRIPTION OF OPERATIONS / LOCATIONS / VEHICL | ES (A | ACORE | 0 101, Additional Remarks Schedu | ıle, may be | attached if mor | e space is requi | red) | | |
| | | | | | | | | | | |
| | | | | | | | | | | |
| | | | | | | | | | | |
| | | | | | | | | | | |
| | | | | | | | | | | |
| CE | BTIEICATE HOLDED | | | | CANO | ELLATION | | | | |
| CE | RTIFICATE HOLDER | | | | CANC | LLLATION | | | | |
| | | | | | SHO | JLD ANY OF 1 | THE ABOVE D | ESCRIBED POLICIES BE C | ANCEL | LED BEFORE |
| | | | | | | | | IEREOF, NOTICE WILL CY PROVISIONS. | BE DE | ELIVERED IN |
| | | | | | , ,,,,,,,,, | | | | | |

ACORD 25 (2016/03)

© 1988-2015 ACORD CORPORATION. All rights re

AUTHORIZED REPRESENTATIVE

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

GENERAL LIABILITY ULTRA PLUS ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SUMMARY OF COVERAGE EXTENSIONS

| Provision | Name Of Coverage Extension | Included or Limit of Insurance |
|-----------|---|--------------------------------|
| Α. | Miscellaneous Additional Insureds | Included |
| В. | Expected Or Intended Injury Or Damage | Included |
| C. | Knowledge Of Occurrence | Included |
| D. | Legal Liability – Damage To Premises Rented To You (Fire, Lightning, Explosion, Smoke, Or Leakage From Automatic Fire Protective Systems) | \$300,000 |
| E. | Medical Payments | See Declarations |
| F. | Mobile Equipment Redefined | Included |
| G. | Newly Formed Or Acquired Organization, Partnership Or Limited Liability Company And Extended Period Of Coverage | Included |
| H. | Who Is An Insured – Amendment | Included |
| I. | Non-Owned Watercraft (Increased to maximum length of less than 51 feet) | Included |
| J. | Supplementary Payments – Increased Limits | |
| | 1. Bail Bonds | \$ 3,000 |
| | 2. Loss Of Earnings | \$ 1,000 |
| K. | Unintentional Omission Or Unintentional Error In Disclosure | Included |
| L. | Waiver Of Transfer Of Rights Of Recovery Against Others | Included |
| M. | Liberalization Clause | Included |
| N. | Incidental Medical Malpractice | Included |

The above is a summary only. Please consult the specific provisions that follow for complete information on the extensions provided.

The provisions of the Commercial General Liability Coverage Part apply except as otherwise provided in this endorsement. This endorsement applies only if such Coverage Part is included in this policy.

A. MISCELLANEOUS ADDITIONAL INSUREDS

 Section II – Who Is An Insured is amended to include as an insured any person or organization (referred to as an additional insured below) described in Paragraphs A.1.c.(1) through A.1.c.(9) below when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy, provided that:

- The written contract or written agreement is:
 - Currently in effect or becoming effective during the term of this policy; and
 - (2) Fully executed by you and the additional insured prior to the "bodily

- injury", "property damage" or "personal and advertising injury".
- b. The insurance afforded by this provision does not apply to any person or organization included as an additional insured by a separate endorsement issued by us and made a part of this policy or coverage part.
- c. Only the following persons or organizations are additional insureds under this provision, with coverage for such additional insureds limited as provided herein:

(1) Persons or Organizations For Whom Operations Are Performed

- (a) Any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured to your policy; and
- (b) Any other person or organization you are required to add as an additional insured under the contract or agreement described in paragraph (a) above.
- (c) Such person(s) or organization(s) is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:
 - (i) Your acts or omissions; or
 - (ii) The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured.

(d) With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

(i) "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

- (1.1) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
- (1.2) Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of, or the failure to render, any professional architectural, engineering or surveying services.

- (ii) "Bodily injury" or "property damage" occurring after:
 - (1.1)ΑII work, including parts materials. or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
 - (1.2) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

(2) Managers Or Lessors Of Premises

A manager or lessor of premises but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you and subject to the following additional exclusions:

This insurance does not apply to:

- (a) Any "occurrence" which takes place after you cease to be a tenant in that premises.
- (b) Structural alterations, new construction or demolition operations performed by or on behalf of such additional insured.

(3) Mortgagee, Assignee Or Receiver

A mortgagee, assignee, or receiver but only with respect to their liability as mortgagee, assignee, or receiver and arising out of the ownership, maintenance, or use of a covered premises by you.

This insurance does not apply to structural alterations, new construction or demolition operations performed by or on behalf of such additional insured.

(4) Owners Or Other Interests From Whom Land Has Been Leased

An owner or other interest from whom land has been leased to you but only with respect to liability arising out of the ownership, maintenance or use of that part of the land leased to you and subject to the following additional exclusions:

This insurance does not apply to:

- (a) Any "occurrence" which takes place after you cease to lease that land.
- (b) Structural alterations, new construction or demolition operations performed by or on behalf of such additional insured.

(5) Lessor Of Leased Equipment

Any person(s) or organization(s) from whom you lease equipment but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person(s) or organization(s).

A person's or organization's status as an additional insured under this endorsement ends when their written contract or written agreement with you for such leased equipment ends.

This insurance does not apply to any "occurrence" which takes place after the equipment lease expires.

(6) State, Municipality, Governmental Agency Or Subdivision Or Other Political Subdivision – Permits Or Authorizations Relating To Premises

Any state, municipality, governmental agency or subdivision or other political subdivision subject to the following additional provisions:

- (a) This insurance applies only with respect to:
 - (i) The following hazards for which the state, municipality, governmental agency or subdivision or other political subdivision has issued a permit or authorization in connection with premises you own, rent or control and to which this insurance applies:
 - (1.1) The existence. maintenance, repair, construction, erection removal of advertising signs, awnings, canopies, cellar entrances, coal holes. driveways, manholes, marquees, hoist away openings, sidewalk vaults, street banners or decorations and similar exposures;
 - (1.2) The construction, erection or removal of elevators; or
 - (1.3) The ownership, maintenance or use of any elevators covered by this insurance.
 - (ii) Operations performed by you or on your behalf for which the state, municipality, governmental agency or subdivision or other political subdivision has issued a permit or authorization.

(b) This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state, municipality, governmental agency or subdivision or other political subdivision.

(7) Controlling Interest

Any person(s) or organization(s) with a controlling interest in the Named Insured but only with respect to their liability arising out of:

- (a) Their financial control of you; or
- (b) Premises they own, maintain or control while you lease or occupy these premises.

This insurance does not apply to structural alterations, new construction or demolition operations performed by or for such person(s) or organization(s).

(8) Co-Owner Of Insured Premises

A co-owner of a premises co-owned by you and covered under this insurance but only with respect to the co-owner's liability as co-owner of such premises.

(9) Vendors

(a) Any person(s) or organization(s) (referred to as vendor), but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business.

The insurance afforded the vendor does not apply to:

- (i) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a written contract or written agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the written contract or written agreement;
- (ii) Any express warranty unauthorized by you;

- (iii) Any physical or chemical change in the product made intentionally by the vendor;
- (iv) Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
- (v) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
- (vi) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;
- (vii) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or
- (viii) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:
 - (1.1) The exceptions contained in Sub-paragraphs (iv) or (vi); or
 - (1.2) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make

in the usual course of business, in connection with the distribution or sale of the products.

- (b) This insurance does not apply to any insured person or organization, from whom you have acquired products, or any ingredient, part or container, entering into, accompanying or containing such products.
- With respect to coverage provided by this Provision A. Miscellaneous Additional Insureds, the following additional provisions apply:
 - a. Any insurance provided to an additional insured designated under Paragraphs
 A.1.c.(1) through A.1.c.(8) above does not apply:
 - (1) To "bodily injury" or "property damage" included within the "products-completed operations hazard"; or
 - (2) To "bodily injury", "property damage" or "personal and advertising injury" arising out of the sole negligence of such additional insured.
 - **b.** The insurance afforded to such additional insured only applies to the extent permitted by law.
 - c. The insurance afforded to such additional insured will not be broader than that which you are required to provide by the written contract or written agreement.
- With respect to the insurance afforded to the additional insureds within this Provision A. Miscellaneous Additional Insureds, the following is added to Section III – Limits Of Insurance:

The most we will pay on behalf of the additional insured is the amount of insurance:

- **a.** Required by the written contract or written agreement; or
- **b.** Available under the applicable Limits Of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits Of Insurance shown in the Declarations.

B. EXPECTED OR INTENDED INJURY OR DAMAGE

Exclusion 2.a. Expected Or Intended Injury of Section I – Coverage A – Bodily Injury And Property Damage Liability is deleted and replaced by the following:

a. Expected Or Intended Injury Or Damage

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property.

C. KNOWLEDGE OF OCCURRENCE

Paragraph 2.a. Duties In The Event Of Occurrence, Offense, Claim Or Suit of Section IV – Commercial General Liability Conditions is deleted and replaced by the following:

- a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim only when the "occurrence" or offense is known to:
 - (1) You, if you are an individual;
 - (2) A partner, if you are a partnership;
 - (3) A manager, if you are a limited liability company; or
 - (4) An "executive officer" or the "employee" designated by you to give such notice, if you are an organization other than a partnership or a limited liability company.

To the extent possible, notice should include:

- (i) How, when and where the "occurrence" or offense took place;
- (ii) The names and addresses of any injured persons and witnesses; and
- (iii) The nature and location of any injury or damage arising out of the "occurrence" or offense.
- D. LEGAL LIABILITY DAMAGE TO PREMISES RENTED TO YOU (Fire, Lightning, Explosion, Smoke, Or Leakage From Automatic Fire Protective Systems)

If damage to premises rented to you is not otherwise excluded from this policy or coverage part, then the following provisions apply:

 Under Section I – Coverage A – Bodily Injury And Property Damage Liability, the last paragraph (after the exclusions) is deleted and replaced by the following: Exclusions **c.** through **n.** do not apply to damage by fire, lightning, explosion, "smoke", or leakage from automatic fire protective systems to premises while rented to you or temporarily occupied by you with the permission of the owner. A separate limit of insurance applies to this coverage as described in **Section III** – **Limits Of Insurance**.

2. The paragraph immediately after Subparagraph j.(6) of Paragraph 2. Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability is deleted and replaced by the following:

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire, lightning, explosion, "smoke", or leakage from automatic fire protective systems) to premises, including the contents of such premises, rented to you for a period of seven or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in Section III – Limits Of Insurance.

- Paragraph 6. of Section III Limits Of Insurance is deleted and replaced by the following:
 - **6.** Subject to Paragraph **5.** above, the greater of:
 - **a.** \$300,000; or
 - **b.** The Damage To Premises Rented To You Limit shown in the Declarations,

is the most we will pay under **Coverage A** for damages because of "property damage" to premises while rented to you, or in the case of damage by fire, lightning, explosion, "smoke", or leakage from automatic fire protective systems, while rented to you or temporarily occupied by you with permission of the owner.

This limit will apply to all damage proximately caused by the same event, whether such damage results from fire, lightning, explosion, "smoke", leakage from automatic fire protective systems, or other covered causes of loss or any combination thereof.

- 4. Subparagraph b.(1)(a)(ii) of Paragraph 4. Other Insurance of Section IV Commercial General Liability Conditions is deleted and replaced by the following:
 - (ii) That is fire, lightning, explosion, "smoke" or leakage from automatic fire protective systems insurance for premises rented to

you or temporarily occupied by you with permission of the owner:

- Subparagraph a. of Definition 9. "Insured contract" of Section V Definitions is deleted and replaced by the following:
 - a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire, lightning, explosion, "smoke" or leakage from automatic fire protective systems to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract".
- 6. As used in this Provision D. Legal Liability Damage To Premises Rented To You:

"Smoke" does not include smoke from agricultural smudging, industrial operations or "hostile fire".

E. MEDICAL PAYMENTS

The Medical Expense Limit is changed, subject to the terms of **Section III – Limits Of Insurance**, to the Medical Expense Limit shown in the Declarations.

F. MOBILE EQUIPMENT REDEFINED

Subparagraph **f.(1)** of Definition **12.** "Mobile equipment" of **Section V – Definitions** is deleted and replaced by the following:

- (1) Equipment with a gross vehicle weight of 1,000 pounds or more and designed primarily for:
 - (a) Snow removal:
 - **(b)** Road maintenance, but not construction or resurfacing; or
 - (c) Street cleaning;
- G. NEWLY FORMED OR ACQUIRED ORGANIZATION, PARTNERSHIP OR LIMITED LIABILITY COMPANY AND EXTENDED PERIOD OF COVERAGE

Paragraph 3. of Section II – Who Is An Insured is deleted and replaced by the following:

- **3.** Any organization you newly acquire or form, other than a joint venture, and over which you maintain ownership or:
 - **a.** Majority interest of more than 50% if you are a corporation;
 - **b.** Majority interest of more than 50% as a general partner of a newly acquired or formed partnership; and/or

c. Majority interest of more than 50% as an owner of a newly acquired or formed limited liability company;

will qualify as a Named Insured if there is no other similar insurance available to that organization. However, for these organizations:

- (i) Coverage under this provision is afforded only until the next anniversary date of this policy's effective date after you acquire or form the organization, partnership or limited liability company, or the end of the policy period, whichever is earlier;
- (ii) Section I Coverage A Bodily Injury And Property Damage Liability does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization, partnership or limited liability company;
- (iii) Section I Coverage B Personal And Advertising Injury Liability does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization, partnership or limited liability company;
- (iv) Coverage applies only when operations of the newly acquired organization, partnership or limited liability company are the same or similar to the operations of insureds already covered under this insurance;
- (v) Coverage only applies for those limited liability companies who have established a date of formation as recorded within the filed state articles of organization, certificates of formation or certificates of organization; and
- (vi) Coverage only applies for those partnerships who have established a date of formation as recorded within a written partnership agreement or partnership certificate.

H. WHO IS AN INSURED - AMENDMENT

The last paragraph of **Section II – Who Is An Insured** is deleted and replaced by the following:

No person or organization is an insured with respect to the conduct of any:

- a. Current partnership or limited liability company, unless otherwise provided for under Paragraph 3. of Section II – Who Is An Insured;
- **b.** Current joint venture; or

c. Past partnership, joint venture or limited liability company;

that is not shown as a Named Insured in the Declarations.

I. NON-OWNED WATERCRAFT

Subparagraph (2) of Exclusion 2.g. Aircraft, Auto Or Watercraft of Section I – Coverage A – Bodily Injury And Property Damage Liability is deleted and replaced by the following:

- (2) A watercraft you do not own that is:
 - (a) Less than 51 feet long; and
 - **(b)** Not being used to carry persons or property for a charge.

J. SUPPLEMENTARY PAYMENTS – INCREASED LIMITS

Section I – Supplementary Payments – Coverages A And B is changed as follows:

- The limit shown in Paragraph 1.b. for the cost of bail bonds is changed from \$250 to \$3,000; and
- **2.** The limit shown in Paragraph **1.d.** for loss of earnings because of time off from work is changed from \$250 a day to \$1,000 a day.

K. UNINTENTIONAL OMISSION OR UNINTENTIONAL ERROR IN DISCLOSURE

The following provision is added to Paragraph 6. Representations of Section IV – Commercial General Liability Conditions:

However, the unintentional omission of, or unintentional error in, any information given or provided by you shall not prejudice your rights under this insurance.

This provision does not affect our right to collect additional premium or to exercise our right of cancellation or non-renewal.

. WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS

The following is added to Paragraph 8. Transfer Of Rights Of Recovery Against Others To Us of Section IV – Commercial General Liability Conditions:

We waive any right of recovery we may have against any person or organization because of payments we make for injury or damage arising out of your ongoing operations or "your work" and included in the "products-completed operations hazard" when you have agreed in a written contract or written agreement that any right of recovery is waived for such person or organization. This waiver applies only to the

person(s) or organization(s) agreed to in the written contract or written agreement and is subject to those provisions.

This waiver does not apply unless the written contract or written agreement has been executed prior to the "bodily injury" or "property damage".

However, if any person or organization is separately scheduled on a separate waiver of transfer of rights of recovery which is attached to this policy, then this waiver does not apply.

M. LIBERALIZATION CLAUSE

The following is added to Section IV – Commercial General Liability Conditions:

If we adopt a mandatory attachment form change which broadens coverage under this edition of the Commercial General Liability CG0001 for no additional charge, and those changes are intended to apply to all insureds under this edition of CG0001, that change will automatically apply to your insurance as of the date we implement the change in your state. This liberalization clause does not apply to changes implemented through introduction of a subsequent edition of the Commercial General Liability form CG0001.

N. INCIDENTAL MEDICAL MALPRACTICE

- Paragraph 2.a.(1)(d) of Section II Who Is An Insured does not apply to a physician, nurse practitioner, physician assistant, nurse, emergency medical technician or paramedic employed by you if you are not in the business or occupation of providing medical, paramedical, surgical, dental, x-ray or nursing services.
- 2. This provision is excess over any other valid and collectible insurance whether such insurance is primary, excess, contingent or on any other basis. Any payments by us will follow Paragraph 4.b. of Section IV – Commercial General Liability Conditions.

Advantage Auto CL CA 20 82 07 21

| Automobile Coverage | Extended Limit/Coverage |
|--|-------------------------|
| Additional Insured by Contract Or Agreement Including Primary and Noncontributory | Included |
| Other Insurance Condition | |
| Airbags- Extended Coverage | Included |
| Audio, Visual & Data Electronic Equipment Coverage (Including Telematics Tracking Equipment) | \$1,000 |
| Auto Loan/Lease Gap Coverage | \$2,500 |
| Autos Rented by Employees | Included |
| Bail Bonds- Extended Coverage | \$5,000 |
| Broad Form Named Insured Including Newly Acquired or Formed Organizations | Included |
| Custom Signs & Decorations | Included |
| Employees as Insureds | Included |
| Fellow Employee Coverage | Included |
| Glass Repair- No Deductible | Included |
| Hired Auto Physical Damage and Increased Loss of Use Expenses | \$100,000 |
| Loss of use (Per Day/Maximum) | \$500 / \$3,500 |
| Knowledge Of An Accident, Claim, Suit Or Loss | Included |
| Loss Of Earnings- Extended Coverage | \$1,000 |
| Rental Reimbursement Coverage | |
| Maximum Rental Expenses Per Day | \$75 |
| Maximum Rental Expenses Because Of Loss To Any One Covered "Auto" | \$3,375 |
| Maximum Rental Expenses Because Of Loss To All Covered "Autos" In Any One Policy Period | \$15,000 |
| Resultant Mental Anguish | Included |
| Towing And Labor coverage Extension | \$100 |
| Transportation Expenses- Coverage Extension (Per Day/maximum) | \$75 / \$2,500 |
| Unintentional Failure To Disclose Hazards | Included |
| Waiver Of Subrogation By Contract Or Agreement | Included |



WORKERS' COMPENSATION AND EMPLOYERS LIABILITY POLICY

WC 42 03 04 B

Insured copy

TEXAS WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

This endorsement applies only to the insurance provided by the policy because Texas is shown in item 3.A. of the Information Page.

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule, but this waiver applies only with respect to bodily injury arising out of the operations described in the schedule where you are required by a written contract to obtain this waiver from us.

This endorsement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

The premium for this endorsement is shown in the Schedule.

Schedule

- 1. () Specific Waiver Name of person or organization
 - (X) Blanket Waiver

Any person or organization for whom the Named Insured has agreed by written contract to furnish this waiver.

- 2. Operations: All Texas operations
- 3. Premium:

The premium charge for this endorsement shall be 2.00 percent of the premium developed on payroll in connection with work performed for the above person(s) or organization(s) arising out of the operations described.

4. Advance Premium: Included, see Information Page

This endorsement changes the policy to which it is attached effective on the inception date of the policy unless a different date is indicated below. (The following "attaching clause" need be completed only when this endorsement is issued subsequent to preparation of the policy.)

Policy no. 0001277973 of Texas Mutual Insurance Company effective on 8-15-22

MHSC ENERGY MANAGEMENT LLC Issued to:

DBA: MHSC ELECTRIC

NCCI Carrier Code: 29939

This is not a bill

Authorized representative

8/3/21

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

| | Complete Nos. 1 - 4 and 6 if the Complete Nos. 1, 2, 3, 5, and 6 | • | | | OFFICE | USE ONLY |
|---|--|--------------------------------|-------------------------------|--------------------------|-------------------------|------------------|
| 1 | Name of business entity filing form, a entity's place of business. | nd the city, state and cou | ntry of the busine | ss | | |
| | MHSC Energy Management LLC, Colle | ege Station, TX Brazos Cou | ınty | | | |
| 2 | Name of governmental entity or state which the form is being filed. | agency that is a party to | the contract for | | | |
| | Burleson Recreation Center - City of B | Burleson | | | | |
| 3 | Provide the identification number use and provide a description of the servi | | | | | |
| | | | | | | |
| 4 | Name of Interested Party | City, State, Coun | | Nature o | f Interest (ch | neck applicable) |
| | • | (place of busine | ss) | Controlling | | Intermediary |
| | NONE | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| _ | | | | | | |
| 5 | Check only if there is NO Intereste | ed Party. | xx | | | |
| 6 | UNSWORN DECLARATION | | | | | |
| | My name is <u>David Hickson</u> | | , and my date of b | irth is 07 | /04/1955 | · |
| | My address is11503 Hickory Road | | College Station | ., _TX, | 77845 | USA |
| | (street) I declare under penalty of perjury that the fore | againg is true and correct | (city) | (state) | (zip code) | (country) |
| | | state of <u>Texas</u> , on the | aa 14 day af M | 1arch | . 2023 | |
| | County, 3 | tate of <u>rexas</u> , of the | le <u>11</u> day or <u>11</u> | (month) | , 20 <u>23</u> (year | |
| | | | ure of authorized age | nt of contra | acting business | e entity |
| | | Signat | | nt of contra clarant) | ioning business | 5 GILLLY |

ADD ADDITIONAL PAGES AS NECESSARY



City Council Regular Meeting

DEPARTMENT: Parks and Recreation

FROM: Jen Basham, Director of Parks and Recreation

MEETING: May 1, 2023

SUBJECT:

Consider approval of a change order with The Brandt Companies LLC through a cooperative purchasing agreement with Buyboard in the amount of \$10,015 for additional repairs to the Burleson Recreation Center HVAC system. (Staff Presenter: Jen Basham, Director of Parks and Recreation)

SUMMARY:

The current AC control software and computer boards at the Brick have been failing for over a year. The issues have caused inconsistent temperatures and have made it very difficult to regulate and correct temperature issues in a timely manner. The main issue is due to the software not properly communicating with the computer boards in the units. In order to maintain comfortable temperatures, most of the units require staff to manually open and close the valves. Staff met with multiple contractors to discuss solutions and ultimately determined that Brandt Companies provided the most cost effective viable solution.

This project was approved as an FY 22-23 capital improvement project for \$500,000, the final cost came in under budget at \$160, 255. Staff is seeking to correct this issue by installing the new software Niagara 4 along with new computer boards for each unit. This software will give us the capability to make adjustments to individual preset zones all through the online system. It will also have a notification system that will alert staff when there is a malfunction. During this installation, all AC units, valves, dampers, sensors, etc. will be checked and recommended for replacement as needed.

During the initial repairs additional items for replacement were identified. The replacements include actuators for OAD and Minoad on RTU-4 and CHWV actuator for RTU-6, actuators on AHU-5 CHW valve and AHU-4 MIN OAD actuators and economizer actuators.

OPTIONS:

- 1) Approve as presented
- 2) Approve with changes
- 3) Deny

RECOMMENDATION:

Staff recommendation approval of the change order with Brandt Companies.

PRIOR ACTION/INPUT (Council, Boards, Citizens):

This supplemental request was approved for FY 22-23.

FISCAL IMPACT:

Budgeted Y/N: Y Fund Name: 4B

Full Account #s: 4105003-70050

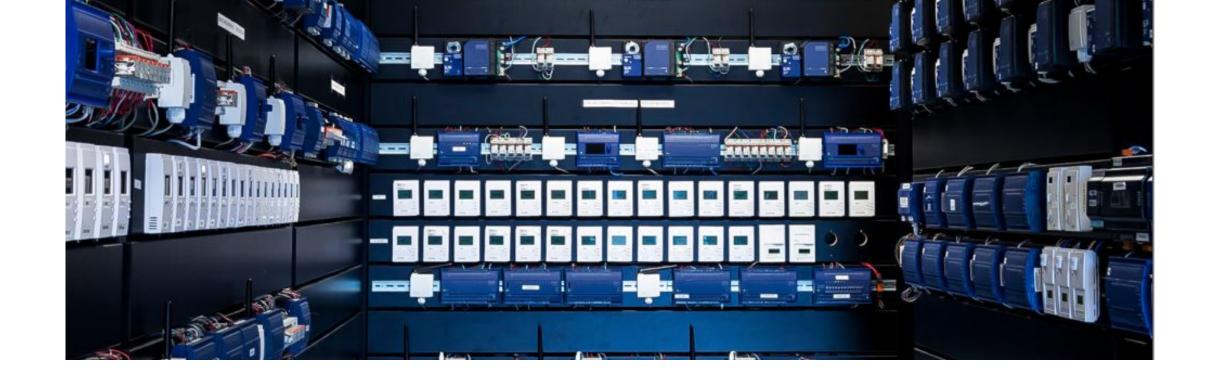
Amount: \$10,015

Project (if applicable) PK2303

Financial Consideration

STAFF CONTACT:

Jen Basham
Director of Parks and Recreation
jbasham@burlesontx.com
817-426-9201



Brick AC Software Change Order

City Council Meeting - May 1, 2023 Staff Presenter: Jen Basham, Director of Park and Recreation



Project History

The current AC control software and computer boards at the Brick were failing

This failure resulted in:

- Inconsistent temperatures
- Difficulty regulating and correcting issues in a timely manner
- Staff to manually open or close valves on several units to make adjustments

City Council authorized the replacement and repairs on December 12, 2022 in the amount not to exceed \$160,255

- The project began at the beginning of February
- During the installation of new controls additional issues were identified, requiring a change order be brought forward for council consideration (due to the initial authorization being a not to exceed amount)

Change Order Details

Additional issues were identified during the installation of the new software

Additional Replacements Include:

- Actuators on
- Minoad RTU-4, CHWV, RTU-6, AHU-5
 CHW, AHU-4 MIN-OAD

Total Cost of Change Order: \$10,015

Final total for project: \$170, 270







Timeline

- If approved, work will commence immediately
- Job is estimated to be complete within 2 weeks of start date

Options

- Approve as presented
- Deny







10-Mar-23

CONTRACTOR: Brandt Companies, LLC

Original Contract Amount

Burleson Parks and Recreation

DATE:

OWNER:

CHANGE ORDER NO. 1 TO Vendor

THE CITY OF BURLESON, TEXAS

After evaluating the different options of wall sensors we have decided to go with different options for the offices and rental spaces.

During this project Brandt two units that needed additional repairs, the change order includes labor and materials to replace actuators for OAD & MINOAD on RTU-4 and CHWV actuator for RTU-6.

160,255.00

| Net INCREASE in Contract Amount from <u>Previous</u> Change Orders | \$ 10,015.00 | | |
|--|------------------------|---|-----------------------------|
| Net DECREASE in Contract Amount from this Change Order | | Current Increase 6.25% | |
| Revised Contract Total Amount | \$ 170,270.00 | | |
| | | Overall Decrease(%) | |
| Original Contract Completion Time | | Calendar Days | Original Completion Date |
| Change in Contract completion Time from Previous Change Orders | | Calendar Days | Completion Date |
| Change in Contract completion Time from this Change Order | 0 | Calendar Days | |
| Revised Contract Completion Time | | | Revised |
| Recommended by: | Accepted by: | | Completion Date 0-Jan-00 |
| CITY OF BURLESON | Stoolo emai | ally signed by Charles Steele n=Charles Steele, c=US, e Brandt Companies, LLC, ales Manager, =charles.steele@brandt.us 2023.04.24 11:18:39 -0500' | |
| Ву: | By: Charles Steele | 20200 12 1 1 1 1 1 0 0 0 0 0 | |
| Title: City Manager | Title: Service Sales M | <i>M</i> anager | |
| Approved by Owner: | | | |
| CITY OF BURLESON | | | |
| By: Purchasing Manager | | | |
| | | | |

December 1, 2022

For more than 60 years, Brandt has worked to design, build and service facilities that are energy efficient, environmentally sensitive & cost effective.



P-20210316-0028 R1

Burleson Rec Center BAS Upgrade

Proposal Presented To:

Marc Whitten

For Work Performed At:

Marc Whitten

Burleson Recreation Center 550 NW Summercrest Burleson, Tx 76028

Prepared By:

Karl Kirkpatrick

Service Account Manager

Cell: 817-757-9189

Fax: -

Email: karl.kirkpatrick@brandt.us

24 Hour Service Dispatch

(817) 626-1693











Austin • Dallas • Fort Worth • Houston • San Antonio • Waco





The Brandt Companies, LLC

1001 NE Loop 820 Suite 300, Fort Worth, TX 76131, (817) 626-0033, TACLA64706R/TECL20109/M40211

Proposal Date: December 1, 2022 Proposal#: P-20210316-0028 R1 24 Hour Service Dispatch: (817) 626-1693 Reference: Burleson Rec Center BAS Upgrade Customer: Service Site: Marc Whitten

Marc Whitten

Burleson Recreation Center 550 NW Summercrest Burleson, Tx 76028

Burleson Recreation Center 550 NW Summercrest Burleson, Tx 76028

X Repair work proposals are for the scope as listed on the following page.

Customer Acceptan

Accepted By

Title:

Date:

Company:

Purchase Order Number:

Equipment replacement proposals are for the scope of work as listed on the following page.

The Brandt Companies, LLC is pleased to submit the following price and general scope of work to be performed, (at the above-referenced service site), in the amount of: \$ 160,255.00 excluding any applicable taxes.

Price Valid for 30 Days

Remit To: The Brandt Companies, LLC, P.O.Box 227351, Dallas, TX 75222-7351 - Tax EIN: 37-1652957

• Austin • Dallas • Fort Worth • Houston • San Antonio • Waco

We appreciate the opportunity to provide you with our services. Upon receipt of a signed proposal, we will begin mobilizing material orders and contact you to coordinate the repairs. Our terms are net ten days from the invoice date, and past due after thirty days. This contract is not valid without attachment and signature of customer on Service Descriptions Page and Terms and conditions.

Best Regards,

Karl Kirkpatrick

Service Account Manager Cell: 817-757-9189

Fax: -

Email: karl.kirkpatrick@brandt.us

The Brandt Companies, LLC

Accepted By:

Charles Steele

Service Sales Manager Title:

The Brandt Companies, LLC

Date: 03/15/2023

www.brandt-companies.com

Regulated by The Department of Licensing and Regulation/P.O. Box 12157, Austin, TX 78711/1-800-803-9202/512-463-6599/ www.license.state.tx.us Brandt Confidential: This proposal includes data that shall not be disclosed outside of the party or company to which it is

intended, and shall not be duplicated, used or disclosed, in whole or in part, for any purpose other than to evaluate this proposal.

Scope of Work, Exclusions and Clarifications

Demolition:

- Demo existing American Auto-matrix controllers and re-use enclosures
 - Use existing wiring to end devices where applicable

DDC Controls Scope:

Global Controller & Communication Wiring:

- New Jace-8000 Global BACnet MSTP to IP Controller (existing)
 - Use of existing Power, IP drop and static IP addresses
 - Any additional IT infrastructure will be provided by the owner
 - Latest <u>Niagara 4</u> Revision will be used with <u>Distech, this is all open</u> products and non-proprietary.
 - Each piece of mechanical equipment will have a graphic depicting the status and temperature being controlled
 - Floor plan graphics will be created off customers available documentation and edited as need on start-up
 - Alarms will be configured to notify personnel if temperature problems and if equipment did not start according to the user defined time schedule or temperature triggered event, these will be sent via email
 - To monitor or control the system remotely, an authorized user with a password needs access to the IP address of the Niagara Server via a standard web browser on a PC, Tablet or Smart Phone
 - Trends will be configured based on user input and what is setup in the current system
- Provision of all new Bacnet communication wire (Campus-wide)
 - This wiring will be run to all existing controller locations
- Provision of all new control drawings and as-builts is included

Chilled Water System to include the following monitored/control points:

- Air-Cooled Chillers Enable/Disable (Qty. 2)
- Air-Cooled Chillers Status (Qty. 2)
- Air-Cooled Chillers BACnet Interface (Qty. 2)
- Chiller Water Supply and Return Temperature Sensors (Qty. 2)
- Chiller Isolation Valves (Qty. 2)
- Chilled Water Bypass Valve (Qty. 1)
- Building Chilled Water Supply and Return Temperature Sensors (Qty. 4)
- Chilled Water Pump Enable/Disable (Qty. 4)
- Chilled Water Pump Status (Qty. 4)
- Chilled Water VFD Speed Control with BACnet Interface (Qty. 4)

Hot Water System to include the following monitored/control points:

- Boiler Enable/Disable (Qty. 2)
- Boiler Status (Qty. 2)
- Boiler BACnet Interface (Qty. 2)
- Boiler Hot Water Supply Temperature Sensor (Qty. 2)
- Hot Water Pump Enable/Disable (Qty. 2)
- Hot Water Pump Status (Qty. 2)
- Hot Water Pump VFD Speed Control (Qty. 2)

- Hot Water Supply Temperature Sensor (Qty. 1)
- Return Temperature Sensor (Qty. 1)

Constant Volume Chilled Water/ Hot Water RTU's to include the following monitored/control points (Qty. 5):

- Supply Fan Enable/Disable
- Supply Fan Status
- Return Air Temperature Sensor
- Supply Air Temperature Sensor
- Mixed Air Temperature Sensor
- Chilled Water Valve Modulation
- Hot Water Valve Modulation
- Safety Circuit (High Duct Pressure, Low Duct Pressure, Freeze Stat)
- Final Filter Pressure Switch
- Outside Air Damper Modulation
- Return Air Damper Modulation
- Chilled Water Supply Temperature Sensor
- Chilled Water Return Temperature Sensor
- Hot Water Supply Temperature Sensor
- Hot Water Return Temperature Sensor

Constant Volume Chilled Water/ Hot Water RTU's with Economizers to include the following monitored/control points (Qty. 5):

- Supply Fan Enable/Disable
- Supply Fan Status
- Return Air Temperature Sensor
- Supply Air Temperature Sensor
- Mixed Air Temperature Sensor
- Chilled Water Valve Modulation
- Hot Water Valve Modulation
- Safety Circuit (High Duct Pressure, Low Duct Pressure, Freeze Stat)
- Final Filter Pressure Switch
- Outside Air Damper Modulation
- Return Air Damper Modulation
- Relief Air Damper Modulation
- Chilled Water Supply Temperature Sensor
- Chilled Water Return Temperature Sensor
- Hot Water Supply Temperature Sensor
- Hot Water Return Temperature Sensor

Constant Volume Chilled Water/ Hot Water RTU's with Economizers and Air Flow Monitoring Station to include the following monitored/control points (Qty. 1):

- Supply Fan Enable/Disable
- Supply Fan Status
- Relief Fan Enable/Disable
- Relief Fan Status
- Return Air Temperature Sensor

- Supply Air Temperature Sensor
- Mixed Air Temperature Sensor
- Circulating Pump Enable/Disable
- Chilled Water Valve Modulation
- Hot Water Valve Modulation
- Safety Circuit (High Duct Pressure, Low Duct Pressure, Freeze Stat)
- Final Filter Pressure Switch
- Outside Air Damper Modulation
- Return Air Damper Modulation
- Relief Air Damper Modulation
- Chilled Water Supply Temperature Sensor
- Chilled Water Return Temperature Sensor
- Hot Water Supply Temperature Sensor
- Hot Water Return Temperature Sensor
- Outside Air Flow Monitoring Station

Fan Coil Unit to include the following monitored/control points (Qty. 1):

- Fan Enable/Disable
- Fan Status
- Space Temperature Sensor
- Supply Air Temperature Sensor
- Chilled Water Control Valve
- Hot Water Valve Modulation
- Filter Status
- Drain Pan Alarm Switch
- Outside Air Damper Actuator

Pool Room Units (BACnet Interface) to include the following monitored/control points (Qty. 2):

- Provide single point interface cabling from BMS to Pool Room Unit Interface Card and software mapping for up to 20 Points
- 4 Pool Unit Pump Enable/Disable
- 4 Pool Unit Pump Status

Fan Powered Terminal Boxes with Hot Water Reheat to include the following monitored/control points (Qty. 16):

- Damper control
- CFM Flow Monitoring
- Zone Temperature
- Hot Water Control Valve Modulation
- Supply Fan Enable/Disable
- Supply Air Temperature Sensor

VAV Terminal Box with Hot Water Reheat to include the following monitored/control points (Qty. 1):

- Damper control
- CFM Flow Monitoring
- Zone Temperature
- Hot Water Control Valve Modulation

Supply Air Temperature Sensor

Exhaust Fans to include the following monitored/control points (Qty. 11):

- Fan Enable/Disable
- Fan Status

Exhaust Fans with Space Temperature to include the following monitored/control points (Qty. 2):

- Fan Enable/Disable
- Fan Status
- Space Temperature Sensor

Exhaust Fans with VFD Speed Control to include the following monitored/control points (Qty. 1):

- Fan Enable/Disable
- Fan Status
- Space Temperature Sensor
- Exhaust Fan VFD Speed Control

Unit Heaters to include the following monitored/control points (Qty. 1):

- Fan Enable/Disable
- Fan Status
- Hot Water Control Valve Modulation

Dessert Air Units to include the following monitored (Qty .2):

- DAT
- RAT
- Fan Status

Clarifications and Items Excluded

- All existing control devices and associated wiring is assumed to be in working order.
 Any repairs needed to existing devices or wiring will be documented and change order proposals will be provided
- Upon completion of the project, Burleson Recreational Center will receive all administrative level credentials and ownership of all programming, graphics, and databases
- All new BACnet communication wiring will be installed
- This assumes all current fire/smoke alarm interlock devices are in proper working order
 - If current interlock devices are found to be defective, the owner will be responsible for repair/replacement
- Brandt assumes that all fire/smoke dampers are in proper working order
- Installation with plenum rated cabling (without conduit) above accessible ceilings and installed with EMT conduit where exposed
- Brandt will re-use existing DDC panels, controllers, conduit, and wiring where applicable
- All engineering, programming, graphics, submittals and as-builts are included
- One-year warranty on new parts & labor
- Up to Eight (8) hours of on-site training of control system operation
- Excludes fire/smoke dampers and duct mounted smoke detectors
- Drywall patching and painting is excluded in all locations where applicable
- All network drops will be provided for by the owner
- Natatorium Dessert Aire Units Reprogramming or Control





The Brandt Companies, LLC

1001 NE Loop 820 Suite 300, Fort Worth, TX 76131, (817) 626-0033, TACLA64706R/TECL20109/M40211

| Proposal Date: December 1, 2022 | Proposal#: | P-20210316-0028 R1 |
|--|------------|---------------------------------|
| 24 Hour Service Dispatch: (817) 626-1693 | Reference: | Burleson Rec Center BAS Upgrade |

Brandt's Service Proposal # P-20210316-0028 R1 ("Proposal") is conditioned upon the following terms and conditions, which

are incorporated by reference and, together with the Proposal, form the Contract between the parties:

- 1 Warranty. Brandt shall furnish to Customer all manufacturers' parts and equipment warranties received by Brandt. For a period of one (1) year from the date of the respective work, repair or installation performed by Brandt, Brandt agrees to repair, replace or otherwise make good to the satisfaction of Customer, any defects in parts or materials supplied by Brandt that are not covered under a manufacturer's warranty and that are adversely affecting the performance of the equipment installed by Brandt, if any. Brandt warrants to Customer that all labor performed or provided shall be performed by licensed personnel, if required by applicable law, and will be performed in a good workman like manner, For a period of ninety (90) days from the date of the respective work, repair or installation performed by Brandt, Brandt agrees to repair, replace or otherwise make good to the satisfaction of Customer, any defects in workmanship that is adversely affecting the performance of the equipment installed by Brandt, if any,
- 2 <u>Insurance.</u> So long as any of the Work remains to be com-pleted, Brandt shall, at Brandt's sole cost and expense, carry and maintain in full force and effect, the following insurance coverages:
 - (A) Workers' compensation insurance coverage on all individuals employed upon or about the Property according to the requirements of the laws of the State of Texas:
 - (B) General liability insurance coverage with the limits maintained by Brandt at the time of this Proposal (which are: \$1M each occurrence; \$1M personal/advertising injury; \$10M general aggregate; \$2M products/completed operations aggregate; \$10,000 medical expense (any one person)).

 The policies will be issued by companies reasonably acceptable to Customer. In the event of any covered loss, or upon Customer's reasonable request, Brandt shall deliver to Customer copies of the insurance policies. Brandt and Customer mutually agree to a waiver by their respective insurer(s) of any and all rights to subrogation.
- 3 General Limitations on Scope of Work. Notwithstanding any other provision to the contrary in this Contract, including the incorporated Proposal, the Mechanical Service scope excludes:
 - (a.) Maintenance or repair of Equipment cabinets;
 - (b.) Ductwork and air distribution devices;
 - (c.) Water supply or drain beyond the Equipment;
- (d.) Repair or replacement of heat exchangers in gas fired furnaces and duct heaters;
- (e.) Repair or replacement of metal tubes in condensers, chiller, boilers or any other heat exchanger;
- (f.) Moving or relocation of the subject equipment;
- (g.) Repairs due to freezing;
- (h.) Work made necessary by the enforcement of government codes, building and union regulations or as recommended by insurance companies;
- (i.) Damage of any kind due to corrosion, erosion, electrolytic actions, acts of God, power failure, vandalism, or any other cause whatsoever beyond the control of Brandt:
- (j.) Electrical components associated with the Equipment including: disconnect switches, fuses, circuit breakers, and electrical wiring not specifically identified within the scope of work;
- (k.) Water treatment; and
- (l.) Piping systems of any nature.
- Hoisting/Rigging Operations. Prior to the use of heavy commercial hoisting or rigging equipment that could potentially cause damage to the Property or injury, Brandt will notify Customer in writing and shall not proceed without Customer's prior written consent. While all precautions will be exercised to protect Customer's Property, Brandt will not accept any responsibility for damage to parking lots, driveways, or landscaping that may occur as a result of normal hoisting and rigging operations, except to the extent that the damage is caused by Brandt's gross negligence or willful misconduct.
- Work Hours. Unless indicated otherwise, all pricing is based upon work being performed during regular working hours of 8:00 am to 5:00 pm, Monday through Friday, except holidays. If work is required at times other than normal working hours, Customer agrees to pay the Brandt's standard overtime charge rates.
- Payments. Customer agrees to pay Brandt all sums due with respect to this Proposal in accordance with the terms specified. Payments are due upon receipt of invoice. In the event payment is not received by Brandt within thirty (30) days following billing, such payment shall be considered past due. Beginning with the thirty-first (31st) day following billing, such payment shall bear interest at the maximum rate allowable by law until payment is received. If default is made in the payment of any sums due hereunder and it becomes necessary that this Contract be placed in the hands of an attorney for collection, Customer agrees to pay to Brandt all costs of collection, including reasonable attorney if ee. Brandt shall have the right to cancel this Contract at any time, upon five (5) business days' written notice, if payments as called for herein are not made.
- 7 <u>Cancellation.</u> This Contract may be cancelled by either party upon thirty (30) day written notice. In the event of cancellation by the Customer, Brandt reserves the right to invoice and be paid for work performed that can relation date.

| Accepted By Customer: | 12 | 3/ | Brandt: | |
|-----------------------|----|----|---------|--|
| | 1 | 1/ | | |





The Brandt Companies, LLC

1001 NE Loop 820 Suite 300, Fort Worth, TX 76131, (817) 626-0033, TACLA64706R/TECL20109/M40211

Proposal Date:December 1, 2022Proposal#:P-20210316-0028 R124 Hour Service Dispatch:(817) 626-1693Reference:Burleson Rec Center BAS Upgrade

- No Liability from System Design or Existing Equipment Installation. Unless Brandt was the engineer of record for the existing system design under a prior and separate construction/design-build contract or system design is expressly included within the scope of the Proposal (and, in either case, to the extent of that design), Customer acknowledges and stipulates that Brandt did not select, advise Customer regarding, engineer, design or install the system, equipment or any component part thereof to be maintained under this Contract. Accordingly, Brandt shall not be liable in any capacity, under any theory of recovery for any claims or damages related to or originating from prior or existing defects, deficiencies, injuries, or damage (whether to the system, equipment or Property) associated therewith or as a result of prior ineffective maintenance. Brandt agrees, however, to advise the Customer about the existence of such conditions upon discovery in accordance with the terms of the Contract.
- No Liability for Incidental Microbiological Growth/Mold. Customer acknowledges that the Heating, Ventilation, and Air-Conditioning equipment and systems repaired or serviced as a part of this Contract may, under certain conditions, become conducive to or incidentally support microbiological growth. Brandt assumes no liability for nor warrants its work to protect against, eliminate or inhibit any type of incidental microbiological growth including, but not limited to, molds, fungi and other related matter, in or around duct systems, HVAC and related equipment or areas. Brandt agrees, however, to advise the Customer about the existence of such conditions upon discovery and to take measures to discourage such growth as required and in accordance with the terms of the Contract.
- 10 Limitation of Damages for Breach of Contract. The full extent of Brandt's liability and Customer's exclusive remedy for damages from any breach of this Contract, including, but not limited to, nonperformance or misrepresentation, and regardless of the form of action, shall be limited to the annual Contract fee of the current year.
- Mutual Waiver of Consequential and Punitive Damages. Notwithstanding any other provision to the contrary, Brandt and Customer mutually waive all claims against each other for any and all consequential/special/indirect/incidental and, to the extent allowable by law, all punitive/exemplary damages arising out of or relating to this Contract. This mutual waiver includes, but is not limited to, damages incurred for rental expenses, loss of use, lost revenue or profit, lost opportunity, loss of goodwill, loss of management or employee productivity, cost of capital, and cost of substitute facilities, services or goods regardless of the foreseeability of such damages. If Customer is a property manager or other legal agent or representative of the property owner, Customer represents and warrants that it has the express requisite authority to waive claims for and recovery of such damages on behalf of the property owner as well as for itself.
- 12 Indemnity. To the fullest extent permitted by law, to the PROPORTIONATE extent OF CUSTOMER'S AND Brandt's RESPECTIVE negligence and except as otherwise limited herein, CUSTOMER AND BRANDT agree to indemnify, defend, and hold ONE ANOTHER AND THEIR RESPECTIVE officers, directors, agents, assigns, successors and employees HARMLESS against all claims and damages, losses and expenses (including, but not limited to, REASONABLE attorney's fees) arising out of OR RELATED TO the performance of this contract. NOTWITHSTANDING THE FOREGOING PROVISION, THIS INDEMNITY IS SUBJECT TO THE LIMITATIONS OF LIABILITY IN SECTIONS 8-11 ABOVE.
- Hazardous Materials. If Brandt encounters asbestos, polychlorinated biphenyl (PCB) or other hazardous materials on the Property, Brandt will immediately stop work and report in writing the evidence of such to Customer. Brandt will not resume work in the affected area until the hazardous material has been removed or determined harmless by a qualified laboratory at Customer's expense.
- Dispute Resolution and Governing Law. This Contract shall be interpreted and construed according to the laws of the State of Texas. Any disputes arising out of or related to this Contract will be resolved by agreement through a meeting of executive representatives of each party. If no resolution can be reached, the dispute will be resolved through binding arbitration before an arbitrator experienced in construction law and according to the rules promulgated by the American Arbitration Association. The parties agree that the arbitration will be commenced within sixty (60) days of occurrence of the meeting of executive representatives. This Contract shall be governed by the laws of the State of Texas without regard to conflicts of laws principles.
- Property Manager. If Customer is a property manager or other legal agent or representative of the property owner, Customer represents and warrants that it has the express requisite authority to enter into all of the terms of this Contract including, without limitation, the authority to waive claims for and recovery of consequential (special/indirect/incidental) and punitive damages on behalf of the property owner as well as for itself.
- 16 Entire Agreement. This Contract constitutes the entire agreement and is not assignable by either party without the express written consent of the other party. This Contract may be modified or amended only by written agreement of both parties.

Brandt

Accepted By Customer:

March 14, 2023

For more than 60 years, Brandt has worked to design, build and service facilities that are energy efficient, environmentally sensitive & cost effective.



P-20210316-0028 R4

Burleson Rec Center BAS Upgrade - R4

Proposal Presented To:

Marc Whitten

For Work Performed At:

Marc Whitten

Burleson Recreation Center 550 NW Summercrest Burleson, Tx 76028

<u>Prepared By:</u> Karl Kirkpatrick

Service Account Manager

Cell: 817-757-9189

Fax: -

Email: karl.kirkpatrick@brandt.us

24 Hour Service Dispatch

(817) 626-1693











Austin • Dallas • Fort Worth • Houston • San Antonio • Waco



The Brandt Companies, LLC

1001 NE Loop 820 Suite 300, Fort Worth, TX 76131, (817) 626-0033, TACLA64706R/TECL20109/M40211

| Proposal Date: March 14, 2023 | Proposal#: | P-20210316-0028 R4 Burleson Rec Center BAS Upgrade - R4 | | |
|---|--------------------------------|---|--|--|
| 24 Hour Service Dispatch: (817) 626-1693 | Reference: | | | |
| Customer: | Service Site: | | | |
| Marc Whitten | | Marc Whitten | | |
| Burleson Recreation Center | | Burleson Recreation Center | | |
| 550 NW Summercrest | | 550 NW Summercrest | | |
| Burleson, Tx 76028 | | Burleson, Tx 76028 | | |
| \boldsymbol{X} Repair work proposals are for the scope as listed on the following page. | | | | |
| Equipment replacement proposals are for the scope of work as listed on the following | owing page. | | | |
| The Brandt Companies, LLC is pleased to subm | nit the following price and | general scope of work to be performed, | | |
| (at the above-referenced service site), in the amou | int of: \$ 177 | 7,561.00 excluding any applicable taxes. | | |
| Prie | ce Valid for 30 Days | | | |
| Remit To: The Brandt Companies, LLC, P.C | D.Box 227351, Dallas, T | X 75222-7351 - Tax EIN: 37-1652957 | | |
| • Austin • Dallas • Fort | Worth • Houston • Sa | n Antonio • Waco | | |
| We appreciate the opportunity to provide you with our se | ervices. Upon receipt of a sig | aned proposal, we will begin mobilizing material | | |
| orders and contact you to coordinate the repairs. Our term | ms are net ten days fr | om the invoice date, and past due after thirty days. | | |
| This contract is not valid without attachment and signal | ature of customer on Service | Descriptions Page and Terms and conditions. | | |
| | Best Regards, | | | |
| | Ка | rl Kirkpatrick | | |
| | Servic | e Account Manager | | |
| | Cell: | 817-757-9189 | | |
| | 1 4 | - | | |
| | Email: | karl.kirkpatrick@brandt.us | | |
| Customer Acceptance | | The Brandt Companies, LLC | | |
| Accepted By: | | Accepted By: | | |
| Name: | | Name: Charles Steele | | |
| Citle: | | Title: Service Sales Manager | | |
| Company: | | The Brandt Companies, LLC | | |
| Date: | | Date: 03/15/2023 | | |
| Purchase Order Number: | | www.brandt-companies.com | | |

Regulated by The Department of Licensing and Regulation/P.O. Box 12157, Austin, TX 78711/1-800-803-9202/512-463-6599/www.license.state.tx.us

Brandt Confidential: This proposal includes data that shall not be disclosed outside of the party or company to which it is intended, and shall not be duplicated, used or disclosed, in whole or in part, for any purpose other than to evaluate this proposal.

Scope of Work, Exclusions and Clarifications

Change Order 3/14/2023

 Provide Labor and Materials to Replace Actuators on AHU-5 CHW Valve, AHU-4 2 MIN OAD Actuators and (2) Economizer Actuators.

Change Order 3/8/2023

- Provide labor to troubleshoot Exhaust Fans 1-13 and provide a separate quote for necessary repairs.
- Provide labor and materials to replace Actuators for OAD & MINOAD on RTU-4 and CHWV Actuator for RTU-6

Change Order 2/28/2023

• Delivery of customer requested wall sensors

Demolition:

- Demo existing American Auto-matrix controllers and re-use enclosures
 - Use existing wiring to end devices where applicable

DDC Controls Scope:

Global Controller & Communication Wiring:

- New Jace-8000 Global BACnet MSTP to IP Controller (existing)
 - Use of existing Power, IP drop and static IP addresses
 - Any additional IT infrastructure will be provided by the owner
 - Latest <u>Niagara 4</u> Revision will be used with <u>Distech, this is all open</u> <u>products and non-proprietary.</u>
 - Each piece of mechanical equipment will have a graphic depicting the status and temperature being controlled
 - Floor plan graphics will be created off customers available documentation and edited as need on start-up
 - Alarms will be configured to notify personnel if temperature problems and if equipment did not start according to the user defined time schedule or temperature triggered event, these will be sent via email
 - To monitor or control the system remotely, an authorized user with a password needs access to the IP address of the Niagara Server via a standard web browser on a PC, Tablet or Smart Phone
 - Trends will be configured based on user input and what is setup in the current system
- Provision of all **new** Bacnet communication wire (Campus-wide)
 - This wiring will be run to all existing controller locations
- Provision of all new control drawings and as-builts is included

Chilled Water System to include the following monitored/control points:

- Air-Cooled Chillers Enable/Disable (Qty. 2)
- Air-Cooled Chillers Status (Qty. 2)
- Air-Cooled Chillers BACnet Interface (Qty. 2)
- Chiller Water Supply and Return Temperature Sensors (Qty. 2)
- Chiller Isolation Valves (Qty. 2)
- Chilled Water Bypass Valve (Qty. 1)
- Building Chilled Water Supply and Return Temperature Sensors (Qty. 4)
- Chilled Water Pump Enable/Disable (Qty. 4)
- Chilled Water Pump Status (Qty. 4)
- Chilled Water VFD Speed Control with BACnet Interface (Qty. 4)

Hot Water System to include the following monitored/control points:

- Boiler Enable/Disable (Qtv. 2)
- Boiler Status (Qty. 2)
- Boiler BACnet Interface (Qty. 2)
- Boiler Hot Water Supply Temperature Sensor (Qty. 2)
- Hot Water Pump Enable/Disable (Qty. 2)
- Hot Water Pump Status (Qty. 2)
- Hot Water Pump VFD Speed Control (Qty. 2)
- Hot Water Supply Temperature Sensor (Qty. 1)
- Return Temperature Sensor (Qty. 1)

Constant Volume Chilled Water/ Hot Water RTU's to include the following monitored/control points (Qty. 5):

- Supply Fan Enable/Disable
- Supply Fan Status
- Return Air Temperature Sensor
- Supply Air Temperature Sensor
- Mixed Air Temperature Sensor
- Chilled Water Valve Modulation
- Hot Water Valve Modulation
- Safety Circuit (High Duct Pressure, Low Duct Pressure, Freeze Stat)
- Final Filter Pressure Switch
- Outside Air Damper Modulation
- Return Air Damper Modulation
- Chilled Water Supply Temperature Sensor
- Chilled Water Return Temperature Sensor
- Hot Water Supply Temperature Sensor
- Hot Water Return Temperature Sensor

Constant Volume Chilled Water/ Hot Water RTU's with Economizers to include the following monitored/control points (Qty. 5):

- Supply Fan Enable/Disable
- Supply Fan Status
- Return Air Temperature Sensor
- Supply Air Temperature Sensor
- Mixed Air Temperature Sensor
- Chilled Water Valve Modulation
- Hot Water Valve Modulation
- Safety Circuit (High Duct Pressure, Low Duct Pressure, Freeze Stat)
- Final Filter Pressure Switch
- Outside Air Damper Modulation
- Return Air Damper Modulation
- Relief Air Damper Modulation
- Chilled Water Supply Temperature Sensor
- Chilled Water Return Temperature Sensor
- Hot Water Supply Temperature Sensor
- Hot Water Return Temperature Sensor

Constant Volume Chilled Water/ Hot Water RTU's with Economizers and Air Flow Monitoring Station to include the following monitored/control points (Qty. 1):

- Supply Fan Enable/Disable
- Supply Fan Status
- Relief Fan Enable/Disable
- Relief Fan Status
- Return Air Temperature Sensor
- Supply Air Temperature Sensor
- Mixed Air Temperature Sensor
- Circulating Pump Enable/Disable
- Chilled Water Valve Modulation
- Hot Water Valve Modulation
- Safety Circuit (High Duct Pressure, Low Duct Pressure, Freeze Stat)
- Final Filter Pressure Switch
- Outside Air Damper Modulation
- Return Air Damper Modulation
- Relief Air Damper Modulation
- Chilled Water Supply Temperature Sensor
- · Chilled Water Return Temperature Sensor
- Hot Water Supply Temperature Sensor
- Hot Water Return Temperature Sensor
- · Outside Air Flow Monitoring Station

Fan Coil Unit to include the following monitored/control points (Qty. 1):

- Fan Enable/Disable
- Fan Status
- Space Temperature Sensor
- Supply Air Temperature Sensor
- · Chilled Water Control Valve
- Hot Water Valve Modulation
- · Filter Status
- Drain Pan Alarm Switch
- Outside Air Damper Actuator

Pool Room Units (BACnet Interface) to include the following monitored/control points (Qty. 2):

- Provide single point interface cabling from BMS to Pool Room Unit Interface Card and software mapping for up to 20 Points
- 4 Pool Unit Pump Enable/Disable
- 4 Pool Unit Pump Status

Fan Powered Terminal Boxes with Hot Water Reheat to include the following monitored/control points (Qty. 16):

- Damper control
- CFM Flow Monitoring
- Zone Temperature
- Hot Water Control Valve Modulation
- Supply Fan Enable/Disable
- Supply Air Temperature Sensor

VAV Terminal Box with Hot Water Reheat to include the following monitored/control points (Qty. 1):

- Damper control
- CFM Flow Monitoring
- Zone Temperature
- Hot Water Control Valve Modulation
- Supply Air Temperature Sensor

Exhaust Fans to include the following monitored/control points (Qty. 11):

- Fan Enable/Disable
- Fan Status

Exhaust Fans with Space Temperature to include the following monitored/control points (Qty. 2):

- Fan Enable/Disable
- Fan Status
- Space Temperature Sensor

Exhaust Fans with VFD Speed Control to include the following monitored/control points (Qty. 1):

- Fan Enable/Disable
- Fan Status
- Space Temperature Sensor
- Exhaust Fan VFD Speed Control

Unit Heaters to include the following monitored/control points (Qty. 1):

- Fan Enable/Disable
- Fan Status
- Hot Water Control Valve Modulation

Dessert Air Units to include the following monitored (Qty .2):

- DAT
- RAT
- Fan Status

Clarifications and Items Excluded

- All existing control devices and associated wiring is assumed to be in working order.
 Any repairs needed to existing devices or wiring will be documented and change order proposals will be provided
- Upon completion of the project, Burleson Recreational Center will receive all administrative level credentials and ownership of all programming, graphics, and databases
- All new BACnet communication wiring will be installed
- This assumes all current fire/smoke alarm interlock devices are in proper working order
 - If current interlock devices are found to be defective, the owner will be responsible for repair/replacement
- Brandt assumes that all fire/smoke dampers are in proper working order
- Installation with plenum rated cabling (without conduit) above accessible ceilings and installed with EMT conduit where exposed
- Brandt will re-use existing DDC panels, controllers, conduit, and wiring where applicable
- All engineering, programming, graphics, submittals and as-builts are included
- One-year warranty on new parts & labor
- Up to Eight (8) hours of on-site training of control system operation
- Excludes fire/smoke dampers and duct mounted smoke detectors
- Drywall patching and painting is excluded in all locations where applicable
- All network drops will be provided for by the owner
- Natatorium Dessert Aire Units Reprogramming or Control



The Brandt Companies, LLC

1001 NE Loop 820 Suite 300, Fort Worth, TX 76131, (817) 626-0033, TACLA64706R/TECL20109/M40211

| Proposal Date: March 14, 2023 | Proposal#: | P-20210316-0028 R4 |
|--|------------|--------------------------------------|
| 24 Hour Service Dispatch: (817) 626-1693 | Reference: | Burleson Rec Center BAS Upgrade - R4 |

Exclusions:

- · Parts, materials and equipment will have a restocking fee if work order is cancelled. Some items have a 100% restocking fee and are non-returnable.
- Anything not listed in the scope of work. Work after normal business hours.
- Not responsible for unlocated utilities.

| Accepted By Customer: | Brandt: |
|-----------------------|-------------|



The Brandt Companies, LLC

1001 NE Loop 820 Suite 300, Fort Worth, TX 76131, (817) 626-0033, TACLA64706R/TECL20109/M40211

| Proposal Date: March 14, 2023 | | | sal#: | P-20210316-0028 R4 | |
|-------------------------------|--------------------|--|-----------------------------|--------------------------------------|--|
| 24 Hour Service Dispatch: | (817) 626-1693 | Refere | ence: B | turleson Rec Center BAS Upgrade - R4 | |
| Brandt's Service Proposal # | P-20210316-0028 R4 | _('Proposal') is conditioned upon _ | tne rollowing terms and con | aitions, wnicn | |
| | 1 | 16 11 6 1 11 1 | | | |

are incorporated by reference and, together with the Proposal, form the Contract between the parties:

- Warranty. Brandt shall furnish to Customer all manufacturers' parts and equipment warranties received by Brandt. For a period of one (1) year from the date of the respective work, repair or installation performed by Brandt, Brandt agrees to repair, replace or otherwise make good to the satisfaction of Customer, any defects in parts or materials supplied by Brandt that are not covered under a manufacturer's warranty and that are adversely affecting the performance of the equipment installed by Brandt, if any. Brandt warrants to Customer that all labor performed or provided shall be performed by licensed personnel, if required by applicable law, and will be performed in a good workman like manner. For a period of ninety (90) days from the date of the respective work, repair or installation performed by Brandt, Brandt agrees to repair, replace or otherwise make good to the satisfaction of Customer, any defects in workmanship that is adversely affecting the performance of the equipment installed by Brandt, if any.
- 2 Insurance. So long as any of the Work remains to be com-pleted, Brandt shall, at Brandt's sole cost and expense, carry and maintain in full force and effect, the following insurance coverages:
 - (A) Workers' compensation insurance coverage on all individuals employed upon or about the Property according to the requirements of the laws of the State of Texas;
 - (B)General liability insurance coverage with the limits maintained by Brandt at the time of this Proposal (which are: \$1M each occurrence; \$1M personal/advertising injury; \$10M general aggregate; \$2M products/completed operations aggregate; \$10,000 medical expense (any one person)).
 - The policies will be issued by companies reasonably acceptable to Customer. In the event of any covered loss, or upon Customer's reasonable request, Brandt shall deliver to Customer copies of the insurance policies. Brandt and Customer mutually agree to a waiver by their respective insurer(s) of any and all rights to subrogation.
- 3 <u>General Limitations on Scope of Work.</u> Notwithstanding any other provision to the contrary in this Contract, including the incorporated Proposal, the Mechanical Service scope excludes:
 - (a.) Maintenance or repair of Equipment cabinets;
 - (b.) Ductwork and air distribution devices;
 - (c.) Water supply or drain beyond the Equipment;
 - (d.) Repair or replacement of heat exchangers in gas fired furnaces and duct heaters;
 - (e.) Repair or replacement of metal tubes in condensers, chiller, boilers or any other heat exchanger;
 - $(f.) \ \ Moving \ or \ relocation \ of \ the \ subject \ equipment;$
 - (g.) Repairs due to freezing;
 - (h.) Work made necessary by the enforcement of government codes, building and union regulations or as recommended by insurance companies;
 - (i.) Damage of any kind due to corrosion, erosion, electrolytic actions, acts of God, power failure, vandalism, or any other cause whatsoever beyond the control of Brandt;
 - (j.) Electrical components associated with the Equipment including: disconnect switches, fuses, circuit breakers, and electrical wiring not specifically identified within the scope of work:
 - (k.) Water treatment; and
 - (l.) Piping systems of any nature.
- 4 <u>Hoisting/Rigging Operations</u>. Prior to the use of heavy commercial hoisting or rigging equipment that could potentially cause damage to the Property or injury, Brandt will notify Customer in writing and shall not proceed without Customer's prior written consent. While all precautions will be exercised to protect Customer's Property, Brandt will not accept any responsibility for damage to parking lots, driveways, or landscaping that may occur as a result of normal hoisting and rigging operations, except to the extent that the damage is caused by Brandt's gross negligence or willful misconduct.
- Work Hours. Unless indicated otherwise, all pricing is based upon work being performed during regular working hours of 8:00 am to 5:00 pm, Monday through Friday, except holidays. If work is required at times other than normal working hours, Customer agrees to pay the Brandt's standard overtime charge rates.
- Payments. Customer agrees to pay Brandt all sums due with respect to this Proposal in accordance with the terms specified. Payments are due upon receipt of invoice. In the event payment is not received by Brandt within thirty (30) days following billing, such payment shall be considered past due. Beginning with the thirty-first (31st) day following billing, such payment shall bear interest at the maximum rate allowable by law until payment is received. If default is made in the payment of any sums due hereunder and it becomes necessary that this Contract be placed in the hands of an attorney for collection, Customer agrees to pay to Brandt all costs of collection, including reasonable attorney's fee. Brandt shall have the right to cancel this Contract at any time, upon five (5) business days' written notice, if payments as called for herein are not made.
- 7 <u>Cancellation.</u> This Contract may be cancelled by either party upon thirty (30) day written notice. In the event of cancellation by the Customer, Brandt reserves the right to invoice and be paid for work performed thru cancellation date.

| A 4 - J D C 4 | | D | |
|-------------------|-------|---------|--|
| Accepted By Custo | omer: | Brandt: | |
| | | | |

Accepted By Customer: ______ Brandt:___

The Brandt Companies, LLC

1001 NE Loop 820 Suite 300, Fort Worth, TX 76131, (817) 626-0033, TACLA64706R/TECL20109/M40211

| Propos | al Date: | Marcl | h 14, 2023 | Proposal#: | P-20210316-0028 R4 |
|--------|--|--|---|--|---|
| 24 Hou | r Service Dis | patch: | (817) 626-1693 | Reference: | Burleson Rec Center BAS Upgrade - R4 |
| | construction/o acknowledges maintained un prior or existin | design-bu and stip der this (ng defect | uild contract or system design is exp ulates that Brandt did not select, ad Contract. Accordingly, Brandt shall s, deficiencies, injuries, or damage (| pressly included within the scope of the Proposa vise Customer regarding, engineer, design or ins not be liable in any capacity, under any theory o | cord for the existing system design under a prior and separate al (and, in either case, to the extent of that design), Customer stall the system, equipment or any component part thereof to be of recovery for any claims or damages related to or originating from associated therewith or as a result of prior ineffective maintenance. accordance with the terms of the Contract. |
| | as a part of thi work to protect systems, HVAC | s Contract against and rela | ct may, under certain conditions, be t, eliminate or inhibit any type of inc | ecome conducive to or incidentally support micricidental microbiological growth including, but n rees, however, to advise the Customer about the | lation, and Air-Conditioning equipment and systems repaired or serviced robiological growth. Brandt assumes no liability for nor warrants its not limited to, molds, fungi and other related matter, in or around duct e existence of such conditions upon discovery and to take measures to |
| | | _ | | ent of Brandt's liability and Customer's exclusiv regardless of the form of action, shall be limited | re remedy for damages from any breach of this Contract, including, but d to the annual Contract fee of the current year. |
| | for any and all mutual waiver employee proo other legal age | consequ includes luctivity, ent or rep | ential/special/indirect/incidental a s, but is not limited to, damages incu cost of capital, and cost of substitu | and, to the extent allowable by law, all punitive/ourred for rental expenses, loss of use, lost revenute facilities, services or goods regardless of the fourtenance represents and warrants that it has the | rary, Brandt and Customer mutually waive all claims against each other exemplary damages arising out of or relating to this Contract. This ue or profit, lost opportunity, loss of goodwill, loss of management or foreseeability of such damages. If Customer is a property manager or he express requisite authority to waive claims for and recovery of such |
| | CUSTOMER AN | ND BRAN ms and d | DT agree to indemnify, defend, and lamages, losses and expenses (include | hold ONE ANOTHER AND THEIR RESPECTIVE of | Brandt's RESPECTIVE negligence and except as otherwise limited herein, officers, directors, agents, assigns, successors and employees HARMLESS is fees) arising out of OR RELATED TO the performance of this contract. OF LIABILITY IN SECTIONS 8-11 ABOVE. |
| | in writing the | evidence | | | materials on the Property, Brandt will immediately stop work and repor zardous material has been removed or determined harmless by a |
| | Contract will be arbitration be arbitration will | e resolve fore an ai l be com | ed by agreement through a meeting rbitrator experienced in constructio | of executive representatives of each party. If no on law and according to the rules promulgated b | e laws of the State of Texas. Any disputes arising out of or related to this o resolution can be reached, the dispute will be resolved through bindin by the American Arbitration Association. The parties agree that the atives. This Contract shall be governed by the laws of the State of Texas |
| | requisite auth | ority to e | enter into all of the terms of this Con | | rty owner, Customer represents and warrants that it has the express y to waive claims for and recovery of consequential |
| | | | s Contract constitutes the entire agr d only by written agreement of both | | ithout the express written consent of the other party. This Contract may |

CERTIFICATE OF INTERESTED PARTIES

FORM **1295**

1 of 1

| | | | | | | 1011 | |
|---|--|--------------------------|--|------------------------------------|----------------|-----------------|--|
| | Complete Nos. 1 - 4 and 6 if there are interested parties. Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties. | | | | FFICE USE | | |
| 1 | Name of business entity filing form, and the city, state and country of the business entity's place of business. | | | Certificate Number: 2022-960541 | | | |
| | The Brandt Companies, LLC | | | 2022-90 | 00341 | | |
| | Carrollton , TX United States | | | Date File | ed: | | |
| 2 | Name of governmental entity or state agency that is a party to the | e contract for which the | form is | 12/01/2 | 022 | | |
| | being filed. | | | | | | |
| | The City of Burleson | | | Date Ac | knowledged: | | |
| 3 | Provide the identification number used by the governmental ent description of the services, goods, or other property to be provided in the provided in the services of the services. | | ck or identify t | he cont | ract, and prov | ide a | |
| | The City of Burleson | | | | | | |
| | HVAC controls | | | | | | |
| 4 | | | | | Nature of | interest | |
| - | Name of Interested Party | City, State, Country (p | lace of busine | iess) (check ap | | plicable) | |
| | | | | | Controlling | Intermediary | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| 5 | Check only if there is NO Interested Party. | | | | | | |
| 6 | UNSWORN DECLARATION | | | | | | |
| | My name is Charles Steele | , a | nd my date of b | irth is 0 | 6-08-1964 | L | |
| | My address is7408 Brownley Place | _, Plano | , <u>T</u> X | , , | 75025 | USA | |
| | (street) | (city) | (sta | te) | (zip code) | (country) | |
| | I declare under penalty of perjury that the foregoing is true and correct | et. | | | | | |
| | Executed in DallasCount | y, State of Texas | , on the 2 | 4th day | of April | _, 20 23 | |
| | | | | | (month) | (year) | |
| | | Charles | Digitally signed by Cha DN: cn=Charles Steele | , c=US, | | | |
| | | Steele | o=The Brandt Compan email=Charles.steele@ Date: 2023.04.24 11:16 | Brandt.us | | | |
| | | Signature of authorized | | | usiness entity | | |
| | | | | 3 - | , | | |



City Council Regular Meeting

DEPARTMENT: Public Works – Equipment Services

FROM: Eric Oscarson, Director of Public Works

MEETING: May 1, 2023

SUBJECT:

Consider approval of a minute order for repair services and replacement parts for a fire apparatus from Metro Fire, using the H-GAC Cooperative Contract, in the amount of \$100,000. (Staff Presenter: Eric Oscarson, Director of Public Works)

SUMMARY:

The Public Works Department is responsible for the maintenance and overall lifecycle management of the City's fleet. Proper inspection and maintenance of vehicles and equipment in a timely manner ensures safety, helps to prevent catastrophic breakdown or failure, and reduces the increased cost of repairs.

The National Fire Protection Association (NFPA) 1911: Standard for the Inspection, Maintenance, Testing and Retirement of In-Service Emergency Vehicles requires preventative maintenance to be performed on an annual basis and non-destructive test (NDT) inspection every five years. These inspections include but are not limited to visual, operational and load tests.

During the NDT inspection, numerous items were identified as deficiencies. All deficiencies that were considered to be out of service items were repaired immediately in order to place the apparatus in safe and serviceable condition and back into service. The remaining deficiencies still need to be repaired in order to prevent structural damage and unsafe conditions during future operation of the apparatus. These items include complete ladder rebuild to replace normal wear items, replacement of corroded and rusted items, and repairs to cracked welds. These repairs will help to reduce future equipment downtime, positively affect safe operation and response time, potentially save lives, and greatly reduce any possible liability exposure.

Public Works initiated a purchase order to cover the purchase of parts and for maintenance repairs beyond the capabilities of the fleet shop in October 2022 with increases not to exceed \$50,000.00. This purchase order has been depleted due to the rising cost of parts associated with an aging apparatus fleet. The projected cost for repairs to Ladder 2 is \$60,000. The remaining \$40,000 should cover any repairs required throughout the remaining fiscal year.

OPTIONS:

- 1) Approve a minute order for repair services and replacement parts for a fire apparatus from Metro Fire, using the H-GAC Cooperative Contract, in the amount of \$100,000.
- Deny a minute order for repair services and replacement parts for a fire apparatus from Metro Fire, using the H-GAC Cooperative Contract, in the amount of \$100,000.

RECOMMENDATION:

Approve a minute order for repair services and replacement parts for a fire apparatus from Metro Fire, using the H-GAC Cooperative Contract, in the amount of \$100,000.

PRIOR ACTION/INPUT (Council, Boards, Citizens):

List date and description of any prior action related to the subject

FISCAL IMPACT:

Budgeted Y/N:

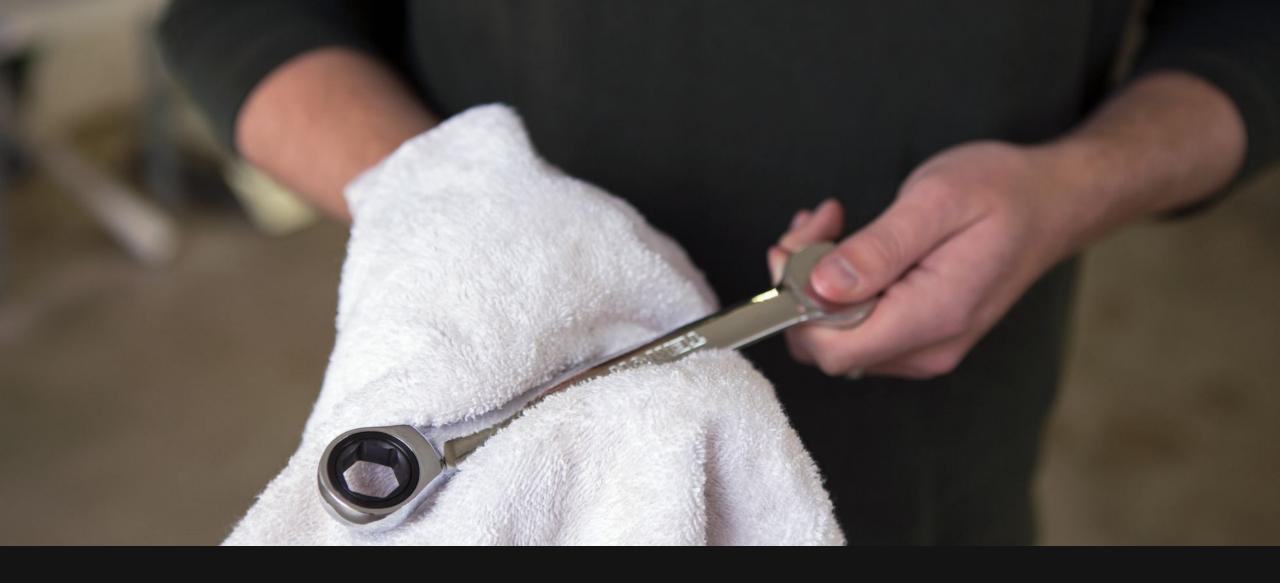
Fund Name: Equipment Services Fund

Full Account #s: 6013201-63510 **Amount:** \$100,000

Project (if applicable):
Financial Considerations:

STAFF CONTACT:

Eric Oscarson
Director of Public Works
eoscarson@burlesontx.com
817-426-9837



FIRE APPARATUS REPLACEMENT PARTS

FIRE APPARATUSES INSPECTED

- LADDER 16 AND LADDER 2 WERE INSPECTED BY PRECISION FIRE SERVICES. THIS INSPECTION IS REQUIRED EVERY 5 YEARS.
- BOTH LADDER TRUCKS PASSED INSPECTION. HOWEVER COMPONENTS WERE IDENTIFIED TO BE REPLACED IN THE NEAR FUTURE IN ORDER TO MAINTAIN THE SAFETY AND SERVICEABILITY OF EACH APPARATUS
- DUE TO PART AVAILABILITY AND SERVICE TIME, PARTS FOR REPAIR WILL BE PURCHASED FROM METRO FIRE AND SIDDONS-MARTIN THROUGH A COOPERATIVE CONTRACT



PARTS AND REPAIRS

- PUBLIC WORKS CURRENTLY HAS PURCHASE ORDERS WITH SIDDONS-MARTIN AND METRO FIRE IN THE NOT TO EXCEED AMOUNT OF \$50,000. DUE TO THE RISING COST OF PARTS ASSOCIATED WITH AN AGING APPARATUS FLEET, THESE PO'S HAVE BEEN DEPLETED.
- REPAIRS IDENTIFIED IN THE 5 YEAR INSPECTION ARE ESTIMATED AT \$125,000.
- STAFF RECOMMENDS ADDING ADDITIONAL CONTINGENCY TO FUND ANY UNFORESEEN REPAIRS OR PARTS THAT MAY BE NEEDED THROUGHOUT THE YEAR.



ORIGINAL MANUFACTURE PARTS

- THE FIRE DEPARTMENT CURRENTLY OPERATES 8 APPARATUSES MANUFACTURED BY METRO FIRE AND SIDDONS-MARTIN.
- SIDDONS MARTIN IS THE MANUFACTURER SUPPLIER AND SERVICE CENTER OF PIERCE FIRE APPARATUSES AND METRO FIRE IS THE MANUFACTURER SUPPLIER AND SERVICE CENTER OF SPARTAN FIRE APPARATUSES. BOTH COMPANIES MANUFACTURE PARTS THAT ARE TRUCK-SPECIFIC.
- METRO FIRE AND SIDDONS-MARTIN SUPPLY ORIGINAL MANUFACTURE PARTS. THEY GUARENTEE WORK AND RE-CERTIFIY APPARATUSES FOR USE UPON COMPLETION OF REPAIRS.
- THESE PARTS ARE PROPRIETARY TO EACH LADDER MANUFACTURE.





COOPERATIVE CONTRACT

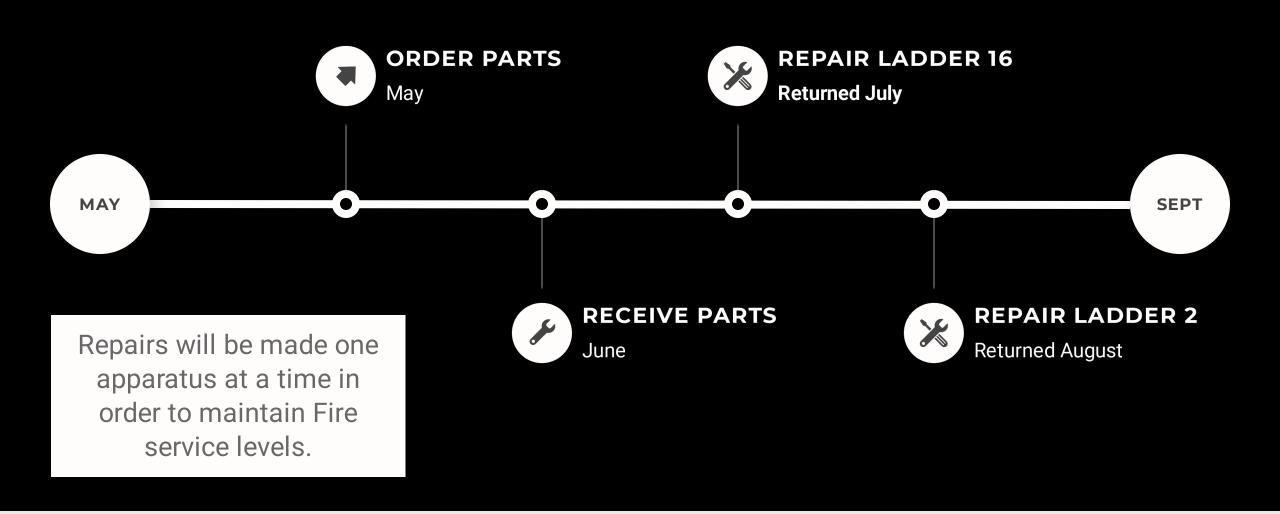
- THEY CREATE THE OPPORTUNITY TO LOWER COST OF PROCURING GOODS OR SERVICES THAT MULTIPLE ENTITIES COMMONLY NEED.
- ALL COOPERATIVE CONTRACT USERS FOLLOW CITY PURCHASING POLICIES AND PROCEDURES.
- ENABLES THE CITY TO HAVE BUYING POWER BY PARTICIPATING IN POOLS OF SERVICES THAT HAVE GUARANTEED MINIMUM QUANTITIES.











OPTIONS



APPROVE A MINUTE
ORDER FOR REPAIR
SERVICES AND
REPLACEMENT PARTS TO
FIRE APPARATUS', FROM
METRO FIRE, USING THE HGAC COOPERATIVE
CONTRACT, IN THE
AMOUNT OF \$100,000.



DENY A MINUTE ORDER FOR REPAIR SERVICES AND REPLACEMENT PARTS TO FIRE APPARATUS', FROM METRO FIRE, USING THE H-GAC COOPERATIVE CONTRACT, IN THE AMOUNT OF \$100,000.



FIRE DEPARTMENT

OPTIONS



APPROVE A MINUTE ORDER FOR REPAIR SERVICES AND REPLACEMENT PARTS TO FIRE APPARATUS', FROM SIDDONS-MARTIN, USING THE H-GAC COOPERATIVE CONTRACT, IN THE AMOUNT OF \$100,000.



DENY A MINUTE ORDER FOR REPAIR SERVICES AND REPLACEMENT PARTS TO FIRE APPARATUS', FROM SIDDONS-MARTIN, USING THE H-GAC COOPERATIVE CONTRACT, IN THE AMOUNT OF \$100,000.



FIRE DEPARTMENT

H-GAC

P.O. Box 22777 · 3555 Timmons · Houston, Texas 77227-2777

Cooperative Agreement - Metro Fire Apparatus Specialists, Inc. - Public Services - 19-00582

GENERAL PROVISIONS

This Agreement is made and entered into, by and between the Houston-Galveston Area Council hereinafter referred to as H-GAC having its principal place of business at 3555 Timmons Lane, Suite 120, Houston, Texas 77027 and Metro Fire Apparatus Specialists, Inc., hereinafter referred to as the Contractor, having its principal place of business at 17350 SH 249-#250, Houston, TX 77064.

WITNESSETH:

WHEREAS, H-GAC hereby engages the Contractor to perform certain services in accordance with the specifications of the Agreement; and

WHEREAS, the Contractor has agreed to perform such services in accordance with the specifications of the Agreement;

NOW, THEREFORE, H-GAC and the Contractor do hereby agree as follows:

ARTICLE 1: LEGAL AUTHORITY

The Contractor warrants and assures H-GAC that it possesses adequate legal authority to enter into this Agreement. The Contractor's governing body, where applicable, has authorized the signatory official(s) to enter into this Agreement and bind the Contractor to the terms of this Agreement and any subsequent amendments hereto.

ARTICLE 2: APPLICABLE LAWS

The Contractor agrees to conduct all activities under this Agreement in accordance with all applicable rules, regulations, directives, standards, ordinances, and laws, in effect or promulgated during the term of this Agreement, including without limitation, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, and licensing laws and regulations. When required, the Contractor shall furnish H-GAC with satisfactory proof of its compliance therewith.

ARTICLE 3: INDEPENDENT CONTRACTOR

The execution of this Agreement and the rendering of services prescribed by this Agreement do not change the independent status of H-GAC or the Contractor. No provision of this Agreement or act of H-GAC in performance of the Agreement shall be construed as making the Contractor the agent, servant or employee of H-GAC, the State of Texas or the United States Government. Employees of the Contractor are subject to the exclusive control and supervision of the Contractor. The Contractor is solely responsible for employee related disputes and discrepancies, including employee payrolls and any claims arising therefrom.

ARTICLE 4: WHOLE AGREEMENT

The General Provisions, Special Provisions, and Attachments, as provided herein, constitute the complete Agreement ("Agreement") between the parties hereto, and supersede any and all oral and written agreements between the parties relating to matters herein. Except as otherwise provided herein, this Agreement cannot be modified without written consent of the parties.

ARTICLE 5: SCOPE OF SERVICES

The services to be performed by the Contractor are outlined in an Attachment to this Agreement.

ARTICLE 6: PERFORMANCE PERIOD

This Agreement shall be performed during the period which begins Aug 01 2019 and ends Jul 31 2021. All services under this Agreement must be rendered within this performance period, unless directly specified under a written change or extension provisioned under Article 15, which shall be fully executed by both parties to this Agreement.

ARTICLE 7: PAYMENT OR FUNDING

Payment provisions under this Agreement are outlined in the Special Provisions.

ARTICLE 8: REPORTING REQUIREMENTS

If the Contractor fails to submit to H-GAC in a timely and satisfactory manner any report required by this Agreement, or otherwise fails to satisfactorily render performances hereunder, H-GAC may terminate this agreement with notice as identified in Article 16 of these General Provisions. H-GAC has final determination of the adequacy of performance and reporting by Contractor. Termination of this agreement for failure to perform may affect Contractor's ability to participate in future opportunities with H-GAC. The Contractor's failure to timely submit any report may also be considered cause for termination of this Agreement.

Any additional reporting requirements shall be set forth in the Special Provisions of this Agreement.

ARTICLE 9: INSURANCE

Contractor shall maintain insurance coverage for work performed or services rendered under this Agreement as outlined and defined in the attached Special Provisions.

ARTICLE 10: SUBCONTRACTS and ASSIGNMENTS

Except as may be set forth in the Special Provisions, the Contractor agrees not to subcontract, assign, transfer, convey, sublet or otherwise dispose of this Agreement or any right, title, obligation or interest it may have therein to any third party without prior written approval of H-GAC. The Contractor acknowledges that H-GAC is not liable to any subcontractor or assignee of the Contractor. The Contractor shall ensure that the performance rendered under all subcontracts shall result in compliance with all the terms and provisions of this Agreement as if the performance rendered was rendered by the Contractor. Contractor shall give all required notices, and comply with all laws and regulations applicable to furnishing and performance of the work. Except where otherwise expressly required by applicable law or regulation, H-GAC shall not be responsible for monitoring Contractor's compliance, or that of Contractor's subcontractors, with any laws or regulations.

ARTICLE 11: AUDIT

Notwithstanding any other audit requirement, H-GAC reserves the right to conduct or cause to be conducted an independent audit of any transaction under this Agreement, such audit may be performed by the H-GAC local government audit staff, a certified public accountant firm, or other auditors designated by H-GAC and will be conducted in accordance with applicable professional standards and practices. The Contractor understands and agrees that the Contractor shall be liable to the H-GAC for any findings that result in monetary obligations to H-GAC.

ARTICLE 12: EXAMINATION OF RECORDS

The Contractor shall maintain during the course of the work complete and accurate records of all of the Contractor's costs and documentation of items which are chargeable to H-GAC under this Agreement. H-GAC, through its staff or designated public accounting firm, the State of Texas, and United States

Government, shall have the right at any reasonable time to inspect, copy and audit those records on or off the premises by authorized representatives of its own or any public accounting firm selected by H-GAC. The right of access to records is not limited to the required retention period, but shall last as long as the records are retained. Failure to provide access to records may be cause for termination of the Agreement. The records to be thus maintained and retained by the Contractor shall include (without limitation): (1) personnel and payroll records, including social security numbers and labor classifications, accounting for total time distribution of the Contractor's employees working full or part time on the work, as well as cancelled payroll checks, signed receipts for payroll payments in cash, or other evidence of disbursement of payroll payments; (2) invoices for purchases, receiving and issuing documents, and all other unit inventory records for the Contractor's stocks or capital items; and (3) paid invoices and cancelled checks for materials purchased and for subcontractors' and any other third parties' charges.

The Contractor further agrees that the examination of records outlined in this article shall be included in all subcontractor or third-party agreements.

ARTICLE 13: RETENTION OF RECORDS

The Contractor and its subcontractors shall maintain all records pertinent to this Agreement, and all other financial, statistical, property, participant records, and supporting documentation for a period of no less than seven (7) years from the later of the date of acceptance of the final payment or until all audit findings have been resolved. If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the retention period, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the seven (7) years, whichever is later, and until any outstanding litigation, audit, or claim has been fully resolved.

ARTICLE 14: CHANGES AND AMENDMENTS

- A. Any alterations, additions, or deletions to the terms of this Agreement, which are required by changes in federal or state law or by regulations, are automatically incorporated without written amendment hereto, and shall become effective on the date designated by such law or by regulation.
- B. To ensure the legal and effective performance of this Agreement, both parties agree that any amendment that affects the performance under this Agreement must be mutually agreed upon and that all such amendments must be in writing. After a period of no less than 30 days subsequent to written notice, unless sooner implementation is required by law, such amendments shall have the effect of qualifying the terms of this Agreement and shall be binding upon the parties as if written herein.

ARTICLE 15: TERMINATION PROCEDURES

The Contractor acknowledges that this Agreement may be terminated for Convenience or Default.

- A Convenience
 - H-GAC may terminate this Agreement at any time, in whole or in part, with or without cause, whenever H-GAC determines that for any reason such termination is in the best interest of H-GAC, by providing written notice by certified mail to the Contractor. Upon receipt of notice of termination, all services hereunder of the Contractor and its employees and subcontractors shall cease to the extent specified in the notice of termination.
 - The Contractor may cancel or terminate this Agreement upon submission of thirty (30) days written notice, presented to H-GAC via certified mail. The Contractor may not give notice of cancellation after it has received notice of default from H-GAC.
- B. Default

H-GAC may, by written notice of default to the Contractor, terminate the whole or any part of the Agreement, in any one of the following circumstances:

- (1) If the Contractor fails to perform the services herein specified within the time specified herein or any extension thereof; or
- (2) If the Contractor fails to perform any of the other provisions of this Agreement for any reason whatsoever, or so fails to make progress or otherwise violates the Agreements that completion of services herein specified within the Agreement term is significantly endangered, and in either of these two instances does not cure such failure within a period often (10) days (or such longer period of time as may be authorized by H-GAC in writing) after receiving written notice by certified mail of default from H-GAC.

ARTICLE 16: SEVERABILITY

H-GAC and Contractor agree that should any provision of this Agreement be determined to be invalid or unenforceable, such determination shall not affect any other term of this Agreement, which shall continue in full force and effect.

ARTICLE 17: FORCE MAJEURE

To the extent that either party to this Agreement shall be wholly or partially prevented from the performance of any obligation or duty placed on such party by reason of or through strikes, stoppage of labor, riot, fire, flood, acts of war, insurrection, accident, order of any court, act of God, or specific cause reasonably beyond the party's control and not attributable to its neglect or nonfeasance, in such event, the time for the performance of such obligation or duty shall be suspended until such disability to perform is removed. Determination of force majeure shall rest solely with H-GAC.

ARTICLE 18: CONFLICT OF INTEREST

No officer, member or employee of the Contractor or subcontractor, no member of the governing body of the Contractor, and no other public officials of the Contractor who exercise any functions or responsibilities in the review or Contractor approval of this Agreement, shall participate in any decision relating to this Agreement which affects his or her personal interest, or shall have any personal or pecuniary interest, direct or indirect, in this Agreement.

ARTICLE 19: FEDERAL COMPLIANCE

Contractor agrees to comply with all federal statutes relating to nondiscrimination, labor standards, and environmental compliance. Additionally, for work to be performed under the Agreement or subcontract thereof, including procurement of materials or leases of equipment, Contractor shall notify each potential subcontractor or supplier of the Contractor's federal compliance obligations. These may 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) the Fair Labor Standards Act of 1938 (29 USC 676 et. seq.), (d) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps and the Americans with Disabilities Act of 1990; (e) the Age Discrimination in Employment Act of 1967 (29 USC 621 et. seq.) and the Age Discrimination Act of 1974, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (f) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (g) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to the nondiscrimination on the basis of alcohol abuse or alcoholism; (h) §§ 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; (i) 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; (j) any other nondiscrimination provisions in any specific statute(s)

applicable to any Federal funding for this Agreement; (k) the requirements of any other nondiscrimination statute(s) which may apply to this Agreement; (l) applicable provisions of the Clean Air Act (42 U.S.C. §7401 et seq.), the Federal Water Pollution Control Act, as amended (33 U.S.C. §1251 et seq.), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and the Environmental Protection Agency regulations at 40 CPR Part 15; (m) applicable provisions of the Davis- Bacon Act (40 U.S.C. 276a - 276a-7), the Copeland Act (40 U.S.C. 276c), and the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-332), as set forth in Department of Labor Regulations at 20 CPR 5.5a; (n) the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163).

ARTICLE 20: CRIMINAL PROVISIONS AND SANCTIONS

The Contractor agrees to perform the Agreement in conformance with safeguards against fraud and abuse as set forth by the H-GAC, the State of Texas, and the acts and regulations of any related state or federal agency. The Contractor agrees to promptly notify H-GAC of any actual or suspected fraud, abuse, or other criminal activity through the filing of a written report within twenty-four (24) hours of knowledge thereof. Contractor shall notify H-GAC of any accident or incident requiring medical attention arising from its activities under this Agreement within twenty-four (24) hours of such occurrence. Theft or willful damage to property on loan to the Contractor from H-GAC, if any, shall be reported to local law enforcement agencies and H-GAC within two (2) hours of discovery of any such act.

The Contractor further agrees to cooperate fully with H-GAC, local law enforcement agencies, the State of Texas, the Federal Bureau of Investigation and any other duly authorized investigative unit, in carrying out a full investigation of all such incidents.

The Contractor shall notify H-GAC of the threat of lawsuit or of any actual suit filed against the Contractor pertaining to this Agreement or which would adversely affect the Contractor's ability to perform services under this Agreement.

ARTICLE 21: INDEMNIFICATION AND RECOVERY

H-GAC's liability under this Agreement, whether for breach of contract, warranty, negligence, strict liability, in tort or otherwise, is limited to its order processing charge. In no event will H-GAC be liable for any loss of use, loss of time, inconvenience, commercial loss, lost profits or savings or other incidental, special or consequential damages to the full extent such use may be disclaimed by law. Contractor agrees, to the extent permitted by law, to defend and hold harmless H-GAC, its board members, officers, agents, officials, employees and indemnities from any and all claims, costs, expenses (including reasonable attorney fees), actions, causes of action, judgements, and liens arising as a result of Contractor's negligent act or omission under this Agreement. Contractor shall notify H-GAC of the threat of lawsuit or of any actual suit filed against Contractor relating to this Agreement.

ARTICLE 22: LIMITATION OF CONTRACTOR'S LIABILITY

Except as specified in any separate writing between the Contractor and an END USER, Contractor's total liability under this Agreement, whether for breach of contract, warranty, negligence, strict liability, in tort or otherwise, but excluding its obligation to indemnify H-GAC, is limited to the price of the particular products/services sold hereunder, and Contractor agrees either to refund the purchase price or to repair or replace product(s) that are not as warranted. In no event will Contractor be liable for any loss of use, loss of time, inconvenience, commercial loss, loss of profits or savings or other incidental, special or consequential damages to the full extent such use may be disclaimed by law. Contractor understands and agrees that it shall be liable to repay and shall repay upon demand to

END USER any amounts determined by H-GAC, its independent auditors, or any agency of State or Federal government to have been paid in violation of the terms of this Agreement.

ARTICLE 23: TITLES NOT RESTRICTIVE

The titles assigned to the various Articles of this Agreement are for convenience only. Titles shall not be considered restrictive of the subject matter of any Article, or part of this Agreement.

ARTICLE 24: JOINT WORK PRODUCT

This Agreement is the joint work product of H-GAC and the Contractor. This Agreement has been negotiated by H-GAC and the Contractor and their respective counsel and shall be fairly interpreted in accordance with its terms and, in the event of any ambiguities, no inferences shall be drawn against any party.

ARTICLE 25: DISPUTES

All disputes concerning questions of fact or of law arising under this Agreement, which are not addressed within the Whole Agreement as defined pursuant to Article 4 hereof, shall be decided by the Executive Director of H-GAC or his designee, who shall reduce his decision to writing and provide notice thereof to the Contractor. The decision of the Executive Director or his designee shall be final and conclusive unless, within thirty (30) days from the date of receipt of such notice, the Contractor requests a rehearing from the Executive Director of H-GAC. In connection with any rehearing under this Article, the Contractor shall be afforded an opportunity to be heard and offer evidence in support of its position. The decision of the Executive Director after any such rehearing shall be final and conclusive. The Contractor may, if it elects to do so, appeal the final and conclusive decision of the Executive Director to a court of competent jurisdiction. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the Agreement and in accordance with H-GAC's final decision.

ARTICLE 26: CHOICE OF LAW: VENUE

This Agreement shall be governed by the laws of the State of Texas. Venue and jurisdiction of any suit or cause of action arising under or in connection with the Agreement shall lie exclusively in Harris County, Texas. Disputes between END USER and Contractor are to be resolved in accordance with the law and venue rules of the state of purchase. Contractor shall immediately notify H-GAC of such disputes.

ARTICLE 27: ORDER OF PRIORITY

In the case of any conflict between or within this Agreement, the following order of priority shall be utilized: 1) General Provisions, 2) Special Provisions, 3) Scope of Work, and, 4) Other Attachments.

SIGNATURES:

H-GAC and the Contractor have read, agreed, and executed the whole Agreement as of the date first written above, as accepted by:

Metro Fire Asparatus Specialists, Inc.

Signature 027B3F2973FA45E

Name Andy King

Title Operations Manager

Date 7/31/2019

H-GAC ____DocuSigned by

Signature

Name Chuck Wemple

Title Executive Director

Date 6/21/2019

H-GAC

Houston-Galveston Area Council P.O. Box 22777 · 3555 Timmons · Houston, Texas 77227-2777

Cooperative Agreement - Metro Fire Apparatus Specialists, Inc. - Public Services -

19-00582

SPECIAL PROVISIONS

Incorporated by attachment, as part of the whole agreement, H-GAC and the Contractor do, hereby agree to the Special Provisions as follows:

ARTICLE 1: BIDS/PROPOSALS INCORPORATED

In addition to the whole Agreement, the following documents listed in order of priority are incorporated into the Agreement by reference: Bid/Proposal Specifications and Contractor's Response to the Bid/Proposal.

ARTICLE 2: END USER AGREEMENTS ("EUA")

H-GAC acknowledges that the END USER may choose to enter into an End User Agreement ("EUA) with the Contractor through this Agreement, and that the term of the EUA may exceed the term of the current H-GAC Agreement. H-GAC's acknowledgement is not an endorsement or approval of the End User Agreement's terms and conditions. Contractor agrees not to offer, agree to or accept from the END USER, any terms or conditions that conflict with those in Contractor's Agreement with H-GAC. Contractor affirms that termination of its Agreement with H-GAC for any reason shall not result in the termination of any underlying EUA, which shall in each instance, continue pursuant to the EUA's stated terms and duration. Pursuant to the terms of this Agreement, termination of this Agreement will disallow the Contractor from entering into any new EUA with END USERS. Applicable H-GAC order processing charges will be due and payable to H-GAC on any EUAs, surviving termination of this Agreement between H-GAC and Contractor.

ARTICLE 3: MOST FAVORED CUSTOMER CLAUSE

Contractor shall provide its most favorable pricing and terms to H-GAC. If at any time during this Agreement, Contractor develops a regularly followed standard procedure of entering into agreements with other governmental customers within the State of Texas, and offers the same or substantially the same products/services offered to H-GAC on a basis that provides prices, warranties, benefits, and or terms more favorable than those provided to H-GAC, Contractor shall notify H-GAC within ten (10) business days thereafter, and this Agreement shall be deemed to be automatically retroactively amended, to the effective date of Contractor's most favorable past agreement with another entity. **Contractor** shall provide the same prices, warranties, benefits, or terms to **H-GAC** and its END USER as provided in its most favorable past agreement. H-GAC shall have the right and option at any time to decline to accept any such change, in which case the amendment shall be deemed null and void. If Contractor claims that a more favorable price, warranty, benefit, or term that was charged or offered to another entity during the term of this Agreement, does not constitute more favorable treatment, than Contractor shall, within ten (10) business days, notify H-GAC in writing, setting forth the detailed reasons Contractor believes the aforesaid offer is not in fact most favored treatment. **H-GAC**, after due consideration of Contractor's written explanation, may decline to accept such explanation and thereupon this Agreement between **H-GAC** and **Contractor** shall be automatically amended, effective retroactively, to the effective date of the most favored agreement, to provide the same prices, warranties,

132

benefits, or terms to H-GAC and the END USER.

EXCEPTION: This clause shall not be applicable to prices and price adjustments offered by a bidder, Proposer or contractor, which are not within bidder's/proposer's control [example; a manufacturer's bid concession], or to any prices offered to the Federal Government and its agencies.

ARTICLE 4: PARTY LIABILITY

Contractor's total liability under this Agreement, whether for breach of contract, warranty, negligence, strict liability, in tort or otherwise, is limited to the price of the particular products/services sold hereunder. Contractor agrees either to refund the purchase price or to repair or replace product(s) that are not as warranted. Contractor accepts liability to repay, and shall repay upon demand to END USER, any amounts determined by H-GAC, its independent auditors, or any state or federal agency, to have been paid in violation of the terms of this Agreement.

ARTICLE 5: GOVERNING LAW & VENUE

Contractor and H-GAC agree that Contractor will make every reasonable effort to resolve disputes with the **END USER** in accord with the law and venue rules of the state of purchase. **Contractor** shall immediately notify **H-GAC** of such disputes.

ARTICLE 6: SALES AND ORDER PROCESSING CHARGE

Contractor shall sell its products to END USERS based on the pricing and terms of this Agreement. H-GAC will invoice Contractor for the applicable order processing charge when H-GAC receives notification of an END USER order. Contractor shall remit to H-GAC the full amount of the applicable order processing charge, after delivery of any product or service and subsequent END USER acceptance. Payment of the Order Processing Charge shall be remitted from Contractor to H-GAC, within thirty (30) calendar days or ten (10) business days after receipt of an END USER's payment, whichever comes first, notwithstanding Contractor's receipt of invoice. For sales made by Contractor based on this Agreement, including sales to entities without Interlocal Agreements, Contractor shall pay the applicable order processing charges to H-GAC. Further, Contractor agrees to encourage entities who are not members of H-GAC's Cooperative Purchasing Program to execute an H-GAC Interlocal Agreement. H-GAC reserves the right to take appropriate actions including, but not limited to, Agreement termination if Contractor fails to promptly remit the appropriate order processing charge to H-GAC. In no event shall H-GAC have any liability to Contractor for any goods or services an END USER procures from Contractor. At all times, Contractor shall remain liable to pay to H-GAC any order processing charges on any portion of the Agreement actually performed, and for which compensation was received by Contractor.

ARTICLE 7: LIQUIDATED DAMAGES

Contractor and H-GAC agree that Contractor shall cooperate with the END USER at the time an END USER purchase order is placed, to determine terms for any liquidated damages.

ARTICLE 8: INSURANCE

Unless otherwise stipulated in Section B of the Bid/Proposal Specifications, **Contractor** must have the following insurance and coverage minimums:

a. General liability insurance with a Single Occurrence limit of at least \$1,000,000.00, and a General

Page 2 of 4

Aggregate limit of at least two times the Single Occurrence limit.

Product liability insurance with a Single Occurrence limit of at least \$1,000,000.00, and a General Aggregate limit of at least two times the Single Occurrence limit for all Products except Automotive Fire Apparatus. For Automotive Fire Apparatus, see Section B of the Bid/Proposal Specifications.

Property Damage or Destruction insurance is required for coverage of **End User** owned equipment while in **Contractor's** possession, custody or control. The minimum Single Occurrence limit is \$500,000.00 and the General Aggregate limit must be at least two times the Single Occurrence limit. This insurance may be carried in several ways, e.g. under an Inland Marine policy, as art of Automobile coverage, or under a Garage Keepers policy. In any event, this coverage must be specifically and clearly listed on insurance certificate(s) submitted to **H-GAC**.

- b. Insurance coverage shall be in effect for the length of any contract made pursuant to the Bid/Proposal, and for any extensions thereof, plus the number of days/months required to *deliver* any outstanding order after the close of the contract period.
- c. Original Insurance Certificates must be furnished to **H-GAC** on request, showing **Contractor** as the insured and showing coverage and limits for the insurances listed above.
- d. If any Product(s) or Service(s) will be provided by parties other than **Contractor**, all such parties are required to carry the minimum insurance coverages specified herein, and if requested by **H-GAC**, a separate insurance certificate must be submitted for each such party.
- e. **H-GAC** reserves the right to contact insurance underwriters to confirm policy and certificate issuance and document accuracy.

ARTICLE 9: PERFORMANCE AND PAYMENT BONDS FOR INDIVIDUAL ORDERS

H-GAC's contractual requirements DO NOT include a Performance & Payment Bond (PPB); therefore, Contractor shall offer pricing that reflects this cost savings. **Contractor** shall remain prepared to offer a PPB to cover any order if so requested by the **END USER**. **Contractor** shall quote a price to **END USER** for provision of any requested PPB, and agrees to furnish the PPB within ten business (10) days of receipt of **END USER's** purchase order.

ARTICLE 10: CHANGE OF STATUS

Contractor shall immediately notify H-GAC, in writing, of ANY change in ownership, control, dealership/franchisee status, Motor Vehicle license status, or name. Contractor shall offer written guidance to advise H-GAC if this Agreement shall be affected in any way by such change. H-GAC shall have the right to determine whether or not such change is acceptable, and to determine what action shall be warranted, up to and including cancellation of Agreement.

ARTICLE 11: TEXAS MOTOR VEHICLE BOARD LICENSING

All that deal in motor vehicles shall maintain current licenses that are required by the Texas Motor Vehicle Commission Code. If at any time during this Agreement term, any required **Contractor** license is denied, revoked, or not renewed, **Contractor** shall be in default of this Agreement, unless the Texas Motor Vehicle

Page 3 of 4

Board issues a stay or waiver. Contractor shall promptly provide copies of all current applicable Texas Motor Vehicle Board documentation to **H-GAC** upon request.

Page 4 of 4

135

Attachment A Metro Fire Apparatus Specialists, Inc. Emergency Medical & Rescue Equipment Contract No.: EE08-19

| Product Code | Mfg. | Model & Description | Base Offered Price |
|-----------------|--------------------|---|--------------------------|
| EE19ADA | 3M Scott Safety | 2019 3M Scott Fire & Safety Price List Effective 02/01/2019 | 15% |
| EE19BCA | Holmatro | Holmatro Rescue Tools Suggested List Price, Effective February 18, 2019 | -3% |
| EE19CCA | Holmatro | Holmatro Rescue Tools Suggested List Price, Effective February 18, 2019 | -3% |
| EE19DCA | Holmatro | Holmatro Rescue Tools Suggested List Price, Effective February 18, 2019 | -3% |
| EE19ECA | Holmatro | Holmatro Rescue Tools Suggested List Price, Effective February 18, 2019 | -3% |
| EE19FBA | Holmatro | Holmatro Rescue Tools Suggested List Price, Effective February 18, 2019 | -3% |
| EE19FCA | Paratech | Paratech 2019 List Price Schedule | List- 7% |
| EE19GBA | Holmatro | Holmatro Rescue Tools Suggested List Price, Effective February 18, 2019 | -3% |
| EE19GDA | Paratech | Paratech 2019 List Price Schedule | List- 7% |
| EE19HCA | Scott / ISG | 2019 Master Price List, excel-2019 US Price List, PDF | 0% |
| EE19ICA | Unifire | Unifire Products Price List August 1, 2019 | List-10% |
| EE19IDA | Super Vac | Super Vac Fan Price List, 2018-2019 | List-22% |
| EE19IEA | Stihl | Stihl Saws 2019 - Effective 01/01/2019 | List-2% |
| EE19IFA | Partner | Fire Hooks Unlimited 2019 Price List - Effective 01/01/2019 | List-2% |
| EE19KAA | 3M Scott Safety | 3M Scott Safety Compressor Product 2019 Price List | 0% |
| EE19KEA | Artic | Artic 2019 List Price - Effective 02/01/2019 | List-2% |
| EE19LHA | Lakeland Fire | OSX Brand - Lakeland Fire 2019 List Price Schedule - Effective 01/01/2019 | List-36% |
| EE19LHB | Lakeland Fire | SCX Brand - Lakeland Fire 2019 List Price Schedule - Effective 01/01/2019 | List-36% |
| EE19LHC | Lakeland Fire | MTS Brand - Lakeland Fire 2019 List Price Schedule - Effective 01/01/2019 | List-36% |
| EE19LCA | TECGEN | 2019 Fire-Dex Consumer Price List | 45% |
| EE19LJA | Fire-Dex | 2019 Fire-Dex Consumer Price List (Eff. March 2019) | 45% |
| EE19LKA | Chieftain | 2019 Fire-Dex Consumer Price List (Eff. March 2019) | 45% |
| EE19LSA | Dragon Gloves | Dragon Fire Brand Gloves August 1, 2019 | List-15% |

AMENDMENT No. 2 to CONTRACT No. EE08-19

For

Emergency Medical & Rescue Equipment

Between

HOUSTON-GALVESTON AREA COUNCIL

And

Metro Fire Apparatus Specialists, Inc.

THIS AMENDMENT modifies the above referenced Contract as follows:

This contract is extended through July 31, 2023 Midnight CT.

Unless otherwise noted, this amendment goes into effect on the date signed by **H-GAC.** All other terms and conditions of this Contract shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective duly authorized representatives.

| Signed for Houston-Galveston Area Council, Houston, Texas | Chuck Wemple, Executive Di 7/29/2022 | rector |
|---|--|----------------|
| | Date: | |
| Signed for: Metro Fire Apparatus Specialists, Inc. Printed Name & Title: | Docusigned by: Andy King 027B3F2973FA45E Andy King Oper | rations Manage |
| | 7/25/2022 Date: | |



Choose an item.

DEPARTMENT: Public Works – Equipment Services

FROM: Eric Oscarson, Director of Public Works

MEETING: May 1, 2023

SUBJECT:

Consider approval of a minute order for repair services and replacement parts for a fire apparatus from Siddons-Martin, using the H-GAC Cooperative Contract, in the amount of \$100,000. (Staff Presenter: Eric Oscarson, Director of Public Works)

SUMMARY:

The Public Works Department is responsible for the maintenance and overall lifecycle management of the City's fleet. Proper inspection and maintenance of vehicles and equipment in a timely manner ensures safety, helps to prevents catastrophic breakdown or failure, and reduces the increased cost of repairs.

The National Fire Protection Association (NFPA) 1911: Standard for the Inspection, Maintenance, Testing and Retirement of In-Service Emergency Vehicles requires preventative maintenance to be performed on an annual basis and non-destructive test (NDT) inspection every five years. These inspections include but are not limited to visual, operational and load tests.

During the NDT inspection, numerous items were identified as deficiencies. All deficiencies that were considered to be out of service items were repaired immediately in order to place the apparatus in safe and serviceable condition and back into service. The remaining deficiencies still need to be repaired in order to prevent structural damage and unsafe conditions during future operation of the apparatus. These items include complete ladder rebuild to replace normal wear items, replacement of corroded and rusted items, and repairs to cracked welds. These repairs will help to reduce future equipment downtime, positively affect safe operation and response time, potentially save lives, and greatly reduce any possible liability exposure.

Public Works initiated a purchase order to cover the purchase of parts and for maintenance repairs beyond the capabilities of the fleet shop in October 2022 with increases not to exceed \$50,000.00. This purchase order has been depleted due to the rising cost of parts associated with an aging apparatus fleet. The projected cost for repairs to Truck 16 is \$65,000, the remaining \$35,000 should cover any repairs required throughout the remaining fiscal year.

OPTIONS:

- Approve a minute order for repair services and replacement parts for a fire apparatus from Siddons-Martin, using the H-GAC Cooperative Contract, in the amount of \$100,000.
- 2) Deny a minute order for repair services and replacement parts for a fire apparatus from Siddons-Martin, using the H-GAC Cooperative Contract, in the amount of \$100,000.

RECOMMENDATION:

Approve a minute order for repair services and replacement parts for a fire apparatus from Siddons-Martin, using the H-GAC Cooperative Contract, in the amount of \$100,000.

PRIOR ACTION/INPUT (Council, Boards, Citizens):

None

FISCAL IMPACT:

Budgeted Y/N: Y

Fund Name: Equipment Services Fund

Full Account #s: 6013201-63510 **Amount:** \$100,000

Project (if applicable):
Financial Considerations:

STAFF CONTACT:

Eric Oscarson
Director of Public Works
eoscarson@burlesontx.com
817-426-9837



FIRE APPARATUS REPLACEMENT PARTS

FIRE APPARATUSES INSPECTED

- LADDER 16 AND LADDER 2 WERE INSPECTED BY PRECISION FIRE SERVICES. THIS INSPECTION IS REQUIRED EVERY 5 YEARS.
- BOTH LADDER TRUCKS PASSED INSPECTION. HOWEVER COMPONENTS WERE IDENTIFIED TO BE REPLACED IN THE NEAR FUTURE IN ORDER TO MAINTAIN THE SAFETY AND SERVICEABILITY OF EACH APPARATUS
- DUE TO PART AVAILABILITY AND SERVICE TIME, PARTS FOR REPAIR WILL BE PURCHASED FROM METRO FIRE AND SIDDONS-MARTIN THROUGH A COOPERATIVE CONTRACT



PARTS AND REPAIRS

- PUBLIC WORKS CURRENTLY HAS PURCHASE ORDERS WITH SIDDONS-MARTIN AND METRO FIRE IN THE NOT TO EXCEED AMOUNT OF \$50,000. DUE TO THE RISING COST OF PARTS ASSOCIATED WITH AN AGING APPARATUS FLEET, THESE PO'S HAVE BEEN DEPLETED.
- REPAIRS IDENTIFIED IN THE 5 YEAR INSPECTION ARE ESTIMATED AT \$125,000.
- STAFF RECOMMENDS ADDING ADDITIONAL CONTINGENCY TO FUND ANY UNFORESEEN REPAIRS OR PARTS THAT MAY BE NEEDED THROUGHOUT THE YEAR.



ORIGINAL MANUFACTURE PARTS

- THE FIRE DEPARTMENT CURRENTLY OPERATES 8 APPARATUSES MANUFACTURED BY METRO FIRE AND SIDDONS-MARTIN.
- SIDDONS MARTIN IS THE MANUFACTURER SUPPLIER AND SERVICE CENTER OF PIERCE FIRE APPARATUSES AND METRO FIRE IS THE MANUFACTURER SUPPLIER AND SERVICE CENTER OF SPARTAN FIRE APPARATUSES. BOTH COMPANIES MANUFACTURE PARTS THAT ARE TRUCK-SPECIFIC.
- METRO FIRE AND SIDDONS-MARTIN SUPPLY ORIGINAL MANUFACTURE PARTS. THEY GUARENTEE WORK AND RE-CERTIFIY APPARATUSES FOR USE UPON COMPLETION OF REPAIRS.
- THESE PARTS ARE PROPRIETARY TO EACH LADDER MANUFACTURE.





COOPERATIVE CONTRACT

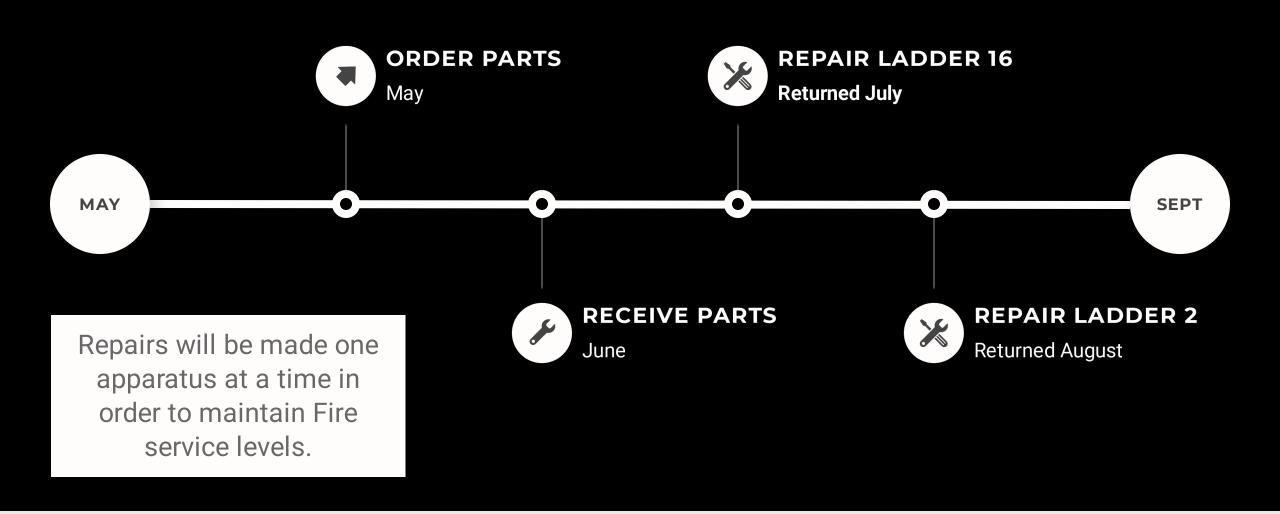
- THEY CREATE THE OPPORTUNITY TO LOWER COST OF PROCURING GOODS OR SERVICES THAT MULTIPLE ENTITIES COMMONLY NEED.
- ALL COOPERATIVE CONTRACT USERS FOLLOW CITY PURCHASING POLICIES AND PROCEDURES.
- ENABLES THE CITY TO HAVE BUYING POWER BY PARTICIPATING IN POOLS OF SERVICES THAT HAVE GUARANTEED MINIMUM QUANTITIES.











OPTIONS



APPROVE A MINUTE
ORDER FOR REPAIR
SERVICES AND
REPLACEMENT PARTS TO
FIRE APPARATUS', FROM
METRO FIRE, USING THE HGAC COOPERATIVE
CONTRACT, IN THE
AMOUNT OF \$100,000.



DENY A MINUTE ORDER FOR REPAIR SERVICES AND REPLACEMENT PARTS TO FIRE APPARATUS', FROM METRO FIRE, USING THE H-GAC COOPERATIVE CONTRACT, IN THE AMOUNT OF \$100,000.



FIRE DEPARTMENT

OPTIONS



APPROVE A MINUTE ORDER FOR REPAIR SERVICES AND REPLACEMENT PARTS TO FIRE APPARATUS', FROM SIDDONS-MARTIN, USING THE H-GAC COOPERATIVE CONTRACT, IN THE AMOUNT OF \$100,000.



DENY A MINUTE ORDER FOR REPAIR SERVICES AND REPLACEMENT PARTS TO FIRE APPARATUS', FROM SIDDONS-MARTIN, USING THE H-GAC COOPERATIVE CONTRACT, IN THE AMOUNT OF \$100,000.



FIRE DEPARTMENT

H-GAC

Houston-Galveston Area Council P.O. Box 22777 · 3555 Timmons · Houston, Texas 77227-2777

Cooperative Agreement - Siddons Martin Emergency Group, LLC - Public Services - - 20-00348

GENERAL PROVISIONS

This Agreement is made and entered into, by and between the Houston-Galveston Area Council hereinafter referred to as H-GAC having its principal place of business at 3555 Timmons Lane, Suite 120, Houston, Texas 77027 and Siddons Martin Emergency Group, LLC, hereinafter referred to as the Contractor, having its principal place of business at 1362 E Richey Road, Houston, TX 77073.

WITNESSETH:

WHEREAS, H-GAC hereby engages the Contractor to perform certain services in accordance with the specifications of the Agreement; and

WHEREAS, the Contractor has agreed to perform such services in accordance with the specifications of the Agreement;

NOW, THEREFORE, H-GAC and the Contractor do hereby agree as follows:

ARTICLE 1: LEGAL AUTHORITY

The Contractor warrants and assures H-GAC that it possesses adequate legal authority to enter into this Agreement. The Contractor's governing body, where applicable, has authorized the signatory official(s) to enter into this Agreement and bind the Contractor to the terms of this Agreement and any subsequent amendments hereto.

ARTICLE 2: APPLICABLE LAWS

The Contractor agrees to conduct all activities under this Agreement in accordance with all applicable rules, regulations, directives, standards, ordinances, and laws, in effect or promulgated during the term of this Agreement, including without limitation, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, and licensing laws and regulations. When required, the Contractor shall furnish H-GAC with satisfactory proof of its compliance therewith.

ARTICLE 3: INDEPENDENT CONTRACTOR

The execution of this Agreement and the rendering of services prescribed by this Agreement do not change the independent status of H-GAC or the Contractor. No provision of this Agreement or act of H-GAC in performance of the Agreement shall be construed as making the Contractor the agent, servant or employee of H-GAC, the State of Texas or the United States Government. Employees of the Contractor are subject to the exclusive control and supervision of the Contractor. The Contractor is solely responsible for employee related disputes and discrepancies, including employee payrolls and any claims arising therefrom.

ARTICLE 4: WHOLE AGREEMENT

The General Provisions, Special Provisions, and Attachments, as provided herein, constitute the complete Agreement ("Agreement") between the parties hereto, and supersede any and all oral and written agreements between the parties relating to matters herein. Except as otherwise provided herein, this Agreement cannot be modified without written consent of the parties.

ARTICLE 5: SCOPE OF SERVICES

The services to be performed by the Contractor are outlined in an Attachment to this Agreement.

ARTICLE 6: PERFORMANCE PERIOD

This Agreement shall be performed during the period which begins Apr 01 2020 and ends Nov 30 2021. All services under this Agreement must be rendered within this performance period, unless directly specified under a written change or extension provisioned under Article 14, which shall be fully executed by both parties to this Agreement.

ARTICLE 7: PAYMENT OR FUNDING

Payment provisions under this Agreement are outlined in the Special Provisions.

ARTICLE 8: REPORTING REQUIREMENTS

If the Contractor fails to submit to H-GAC in a timely and satisfactory manner any report required by this Agreement, or otherwise fails to satisfactorily render performances hereunder, H-GAC may terminate this agreement with notice as identified in Article 15 of these General Provisions. H-GAC has final determination of the adequacy of performance and reporting by Contractor. Termination of this agreement for failure to perform may affect Contractor's ability to participate in future opportunities with H-GAC. The Contractor's failure to timely submit any report may also be considered cause for termination of this Agreement.

Any additional reporting requirements shall be set forth in the Special Provisions of this Agreement.

ARTICLE 9: INSURANCE

Contractor shall maintain insurance coverage for work performed or services rendered under this Agreement as outlined and defined in the attached Special Provisions.

ARTICLE 10: SUBCONTRACTS and ASSIGNMENTS

Except as may be set forth in the Special Provisions, the Contractor agrees not to subcontract, assign, transfer, convey, sublet or otherwise dispose of this Agreement or any right, title, obligation or interest it may have therein to any third party without prior written approval of H-GAC. The Contractor acknowledges that H-GAC is not liable to any subcontractor or assignee of the Contractor. The Contractor shall ensure that the performance rendered under all subcontracts shall result in compliance with all the terms and provisions of this Agreement as if the performance rendered was rendered by the Contractor. Contractor shall give all required notices, and comply with all laws and regulations applicable to furnishing and performance of the work. Except where otherwise expressly required by applicable law or regulation, H-GAC shall not be responsible for monitoring Contractor's compliance, or that of Contractor's subcontractors, with any laws or regulations.

ARTICLE 11: AUDIT

Notwithstanding any other audit requirement, H-GAC reserves the right to conduct or cause to be conducted an independent audit of any transaction under this Agreement, such audit may be performed by the H-GAC local government audit staff, a certified public accountant firm, or other auditors designated by H-GAC and will be conducted in accordance with applicable professional standards and practices. The Contractor understands and agrees that the Contractor shall be liable to the H-GAC for any findings that result in monetary obligations to H-GAC.

ARTICLE 12: EXAMINATION OF RECORDS

The Contractor shall maintain during the course of the work complete and accurate records of all of the Contractor's costs and documentation of items which are chargeable to H-GAC under this Agreement. H-GAC, through its staff or designated public accounting firm, the State of Texas, and United States Government, shall have the right at any reasonable time to inspect, copy and audit those records on or

off the premises by authorized representatives of its own or any public accounting firm selected by H-GAC. The right of access to records is not limited to the required retention period, but shall last as long as the records are retained. Failure to provide access to records may be cause for termination of the Agreement. The records to be thus maintained and retained by the Contractor shall include (without limitation): (1) personnel and payroll records, including social security numbers and labor classifications, accounting for total time distribution of the Contractor's employees working full or part time on the work, as well as cancelled payroll checks, signed receipts for payroll payments in cash, or other evidence of disbursement of payroll payments; (2) invoices for purchases, receiving and issuing documents, and all other unit inventory records for the Contractor's stocks or capital items; and (3) paid invoices and cancelled checks for materials purchased and for subcontractors' and any other third parties' charges.

The Contractor further agrees that the examination of records outlined in this article shall be included in all subcontractor or third-party agreements.

ARTICLE 13: RETENTION OF RECORDS

The Contractor and its subcontractors shall maintain all records pertinent to this Agreement, and all other financial, statistical, property, participant records, and supporting documentation for a period of no less than seven (7) years from the later of the date of acceptance of the final payment or until all audit findings have been resolved. If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the retention period, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the seven (7) years, whichever is later, and until any outstanding litigation, audit, or claim has been fully resolved.

ARTICLE 14: CHANGES AND AMENDMENTS

- A. Any alterations, additions, or deletions to the terms of this Agreement, which are required by changes in federal or state law or by regulations, are automatically incorporated without written amendment hereto, and shall become effective on the date designated by such law or by regulation.
- B. To ensure the legal and effective performance of this Agreement, both parties agree that any amendment that affects the performance under this Agreement must be mutually agreed upon and that all such amendments must be in writing. After a period of no less than 30 days subsequent to written notice, unless sooner implementation is required by law, such amendments shall have the effect of qualifying the terms of this Agreement and shall be binding upon the parties as if written herein.

ARTICLE 15: TERMINATION PROCEDURES

The Contractor acknowledges that this Agreement may be terminated for Convenience or Default.

- A. Convenience
 - H-GAC may terminate this Agreement at any time, in whole or in part, with or without cause, whenever H-GAC determines that for any reason such termination is in the best interest of H-GAC, by providing written notice by certified mail to the Contractor. Upon receipt of notice of termination, all services hereunder of the Contractor and its employees and subcontractors shall cease to the extent specified in the notice of termination.
 - The Contractor may cancel or terminate this Agreement upon submission of thirty (30) days written notice, presented to H-GAC via certified mail. The Contractor may not give notice of cancellation after it has received notice of default from H-GAC.
- B. Default

H-GAC may, by written notice of default to the Contractor, terminate the whole or any part of the Agreement, in any one of the following circumstances:

- (1) If the Contractor fails to perform the services herein specified within the time specified herein or any extension thereof; or
- (2) If the Contractor fails to perform any of the other provisions of this Agreement for any reason whatsoever, or so fails to make progress or otherwise violates the Agreements that completion of services herein specified within the Agreement term is significantly endangered, and in either of these two instances does not cure such failure within a period often (10) days (or such longer period of time as may be authorized by H-GAC in writing) after receiving written notice by certified mail of default from H-GAC.

ARTICLE 16: SEVERABILITY

H-GAC and Contractor agree that should any provision of this Agreement be determined to be invalid or unenforceable, such determination shall not affect any other term of this Agreement, which shall continue in full force and effect.

ARTICLE 17: FORCE MAJEURE

To the extent that either party to this Agreement shall be wholly or partially prevented from the performance of any obligation or duty placed on such party by reason of or through strikes, stoppage of labor, riot, fire, flood, acts of war, insurrection, accident, order of any court, act of God, or specific cause reasonably beyond the party's control and not attributable to its neglect or nonfeasance, in such event, the time for the performance of such obligation or duty shall be suspended until such disability to perform is removed. Determination of force majeure shall rest solely with H-GAC.

ARTICLE 18: CONFLICT OF INTEREST

No officer, member or employee of the Contractor or subcontractor, no member of the governing body of the Contractor, and no other public officials of the Contractor who exercise any functions or responsibilities in the review or Contractor approval of this Agreement, shall participate in any decision relating to this Agreement which affects his or her personal interest, or shall have any personal or pecuniary interest, direct or indirect, in this Agreement.

ARTICLE 19: FEDERAL COMPLIANCE

Contractor agrees to comply with all federal statutes relating to nondiscrimination, labor standards, and environmental compliance. Additionally, for work to be performed under the Agreement or subcontract thereof, including procurement of materials or leases of equipment, Contractor shall notify each potential subcontractor or supplier of the Contractor's federal compliance obligations. These may 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) the Fair Labor Standards Act of 1938 (29 USC 676 et. seq.), (d) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps and the Americans with Disabilities Act of 1990; (e) the Age Discrimination in Employment Act of 1967 (29 USC 621 et. seq.) and the Age Discrimination Act of 1974, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (f) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (g) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to the nondiscrimination on the basis of alcohol abuse or alcoholism; (h) §§ 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; (i) 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; (j) any other nondiscrimination provisions in any specific statute(s)

applicable to any Federal funding for this Agreement; (k) the requirements of any other nondiscrimination statute(s) which may apply to this Agreement; (I) applicable provisions of the Clean Air Act (42 U.S.C. §7401 et seq.), the Federal Water Pollution Control Act, as amended (33 U.S.C. §1251 et seq.), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and the Environmental Protection Agency regulations at 40 CPR Part 15; (m) applicable provisions of the Davis- Bacon Act (40 U.S.C. 276a - 276a-7), the Copeland Act (40 U.S.C. 276c), and the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-332), as set forth in Department of Labor Regulations at 20 CPR 5.5a; (n) the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163).

ARTICLE 20: CRIMINAL PROVISIONS AND SANCTIONS

The Contractor agrees to perform the Agreement in conformance with safeguards against fraud and abuse as set forth by the H-GAC, the State of Texas, and the acts and regulations of any related state or federal agency. The Contractor agrees to promptly notify H-GAC of any actual or suspected fraud, abuse, or other criminal activity through the filing of a written report within twenty-four (24) hours of knowledge thereof. Contractor shall notify H-GAC of any accident or incident requiring medical attention arising from its activities under this Agreement within twenty-four (24) hours of such occurrence. Theft or willful damage to property on loan to the Contractor from H-GAC, if any, shall be reported to local law enforcement agencies and H-GAC within two (2) hours of discovery of any such act.

The Contractor further agrees to cooperate fully with H-GAC, local law enforcement agencies, the State of Texas, the Federal Bureau of Investigation and any other duly authorized investigative unit, in carrying out a full investigation of all such incidents.

The Contractor shall notify H-GAC of the threat of lawsuit or of any actual suit filed against the Contractor pertaining to this Agreement or which would adversely affect the Contractor's ability to perform services under this Agreement.

ARTICLE 21: INDEMNIFICATION AND RECOVERY

H-GAC's liability under this Agreement, whether for breach of contract, warranty, negligence, strict liability, in tort or otherwise, is limited to its order processing charge. In no event will H-GAC be liable for any loss of use, loss of time, inconvenience, commercial loss, lost profits or savings or other incidental, special or consequential damages to the full extent such use may be disclaimed by law. Contractor agrees, to the extent permitted by law, to defend and hold harmless H-GAC, its board members, officers, agents, officials, employees and indemnities from any and all claims, costs, expenses (including reasonable attorney fees), actions, causes of action, judgements, and liens arising as a result of Contractor's negligent act or omission under this Agreement. Contractor shall notifiy H-GAC of the threat of lawsuit or of any actual suit filed against Contractor relating to this Agreement.

ARTICLE 22: LIMITATION OF CONTRACTOR'S LIABILITY

Except as specified in any separate writing between the Contractor and an END USER, Contractor's total liability under this Agreement, whether for breach of contract, warranty, negligence, strict liability, in tort or otherwise, but excluding its obligation to indemnify H-GAC, is limited to the price of the particular products/services sold hereunder, and Contractor agrees either to refund the purchase price or to repair or replace product(s) that are not as warranted. In no event will Contractor be liable for any loss of use, loss of time, inconvenience, commercial loss, loss of profits or savings or other incidental, special or consequential damages to the full extent such use may be disclaimed by law. Contractor understands and agrees that it shall be liable to repay and shall repay upon demand to

END USER any amounts determined by H-GAC, its independent auditors, or any agency of State or Federal government to have been paid in violation of the terms of this Agreement.

ARTICLE 23: TITLES NOT RESTRICTIVE

The titles assigned to the various Articles of this Agreement are for convenience only. Titles shall not be considered restrictive of the subject matter of any Article, or part of this Agreement.

ARTICLE 24: JOINT WORK PRODUCT

This Agreement is the joint work product of H-GAC and the Contractor. This Agreement has been negotiated by H-GAC and the Contractor and their respective counsel and shall be fairly interpreted in accordance with its terms and, in the event of any ambiguities, no inferences shall be drawn against any party.

ARTICLE 25: DISPUTES

All disputes concerning questions of fact or of law arising under this Agreement, which are not addressed within the Whole Agreement as defined pursuant to Article 4 hereof, shall be decided by the Executive Director of H-GAC or his designee, who shall reduce his decision to writing and provide notice thereof to the Contractor. The decision of the Executive Director or his designee shall be final and conclusive unless, within thirty (30) days from the date of receipt of such notice, the Contractor requests a rehearing from the Executive Director of H-GAC. In connection with any rehearing under this Article, the Contractor shall be afforded an opportunity to be heard and offer evidence in support of its position. The decision of the Executive Director after any such rehearing shall be final and conclusive. The Contractor may, if it elects to do so, appeal the final and conclusive decision of the Executive Director to a court of competent jurisdiction. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the Agreement and in accordance with H-GAC's final decision.

ARTICLE 26: CHOICE OF LAW: VENUE

This Agreement shall be governed by the laws of the State of Texas. Venue and jurisdiction of any suit or cause of action arising under or in connection with the Agreement shall lie exclusively in Harris County, Texas. Disputes between END USER and Contractor are to be resolved in accordance with the law and venue rules of the state of purchase. Contractor shall immediately notify H-GAC of such disputes.

ARTICLE 27: ORDER OF PRIORITY

In the case of any conflict between or within this Agreement, the following order of priority shall be utilized: 1) General Provisions, 2) Special Provisions, 3) Scope of Work, and, 4) Other Attachments.

SIGNATURES:

H-GAC and the Contractor have read, agreed, and executed the whole Agreement as of the date first written above, as accepted by:

Siddons Martin Emergency Group, LLC

Signature Jeffrey A. Doran
B2D885F9B5D14E7...

Name Jeffrey A. Doran

Title G.M.-Sales Operation

Date 3/31/2020

H-GAC ____DocuSigned by

Signature 82EC270D5D61423.

Name Chuck Wemple

Title Executive Director

Date 3/31/2020

H-GAC

Houston-Galveston Area Council P.O. Box 22777 · 3555 Timmons · Houston, Texas 77227-2777

Cooperative Agreement - Siddons Martin Emergency Group, LLC - Public Services -

20-00348

SPECIAL PROVISIONS

Incorporated by attachment, as part of the whole agreement, H-GAC and the Contractor do, hereby agree to the Special Provisions as follows:

ARTICLE 1: BIDS/PROPOSALS INCORPORATED

In addition to the whole Agreement, the following documents listed in order of priority are incorporated into the Agreement by reference: Bid/Proposal Specifications and Contractor's Response to the Bid/Proposal.

ARTICLE 2: END USER AGREEMENTS ("EUA")

H-GAC acknowledges that the **END USER** may choose to enter into an End User Agreement ("EUA) with the **Contractor** through this Agreement, and that the term of the EUA may exceed the term of the current **H-GAC** Agreement. **H-GAC's** acknowledgement is not an endorsement or approval of the End User Agreement's terms and conditions. **Contractor** agrees not to offer, agree to or accept from the **END USER**, any terms or conditions that conflict with those in **Contractor's** Agreement with **H-GAC**. Contractor affirms that termination of its Agreement with H-GAC for any reason shall not result in the termination of any underlying EUA, which shall in each instance, continue pursuant to the EUA's stated terms and duration. Pursuant to the terms of this Agreement, termination of this Agreement will disallow the **Contractor** from entering into any new EUA with **END USERS**. Applicable **H-GAC** order processing charges will be due and payable to **H-GAC** on any EUAs, surviving termination of this Agreement between **H-GAC** and **Contractor**.

ARTICLE 3: MOST FAVORED CUSTOMER CLAUSE

Contractor shall provide its most favorable pricing and terms to H-GAC. If at any time during this Agreement, Contractor develops a regularly followed standard procedure of entering into agreements with other governmental customers within the State of Texas, and offers the same or substantially the same products/services offered to **H-GAC** on a basis that provides prices, warranties, benefits, and or terms more favorable than those provided to **H-GAC**, **Contractor** shall notify **H-GAC** within ten (10) business days thereafter, and this Agreement shall be deemed to be automatically retroactively amended, to the effective date of Contractor's most favorable past agreement with another entity. **Contractor** shall provide the same prices, warranties, benefits, or terms to **H-GAC** and its END USER as provided in its most favorable past agreement. H-GAC shall have the right and option at any time to decline to accept any such change, in which case the amendment shall be deemed null and void. If **Contractor** claims that a more favorable price, warranty, benefit, or term that was charged or offered to another entity during the term of this Agreement, does not constitute more favorable treatment, than **Contractor** shall, within ten (10) business days, notify **H-GAC** in writing, setting forth the detailed reasons **Contractor** believes the aforesaid offer is not in fact most favored treatment. **H-GAC**, after due consideration of Contractor's written explanation, may decline to accept such explanation and thereupon this Agreement between **H-GAC** and **Contractor** shall be automatically amended, effective retroactively, to the effective date of the most favored agreement, to provide the same prices, warranties,

benefits, or terms to H-GAC and the END USER.

EXCEPTION: This clause shall not be applicable to prices and price adjustments offered by a bidder, Proposer or contractor, which are not within bidder's/proposer's control [example; a manufacturer's bid concession], or to any prices offered to the Federal Government and its agencies.

ARTICLE 4: PARTY LIABILITY

Contractor's total liability under this Agreement, whether for breach of contract, warranty, negligence, strict liability, in tort or otherwise, is limited to the price of the particular products/services sold hereunder. Contractor agrees either to refund the purchase price or to repair or replace product(s) that are not as warranted. Contractor accepts liability to repay, and shall repay upon demand to END USER, any amounts determined by H-GAC, its independent auditors, or any state or federal agency, to have been paid in violation of the terms of this Agreement.

ARTICLE 5: GOVERNING LAW & VENUE

Contractor and H-GAC agree that Contractor will make every reasonable effort to resolve disputes with the **END USER** in accord with the law and venue rules of the state of purchase. **Contractor** shall immediately notify **H-GAC** of such disputes.

ARTICLE 6: SALES AND ORDER PROCESSING CHARGE

Contractor shall sell its products to END USERS based on the pricing and terms of this Agreement. H-GAC will invoice Contractor for the applicable order processing charge when H-GAC receives notification of an END USER order. Contractor shall remit to H-GAC the full amount of the applicable order processing charge, after delivery of any product or service and subsequent END USER acceptance. Payment of the Order Processing Charge shall be remitted from Contractor to H-GAC, within thirty (30) calendar days or ten (10) business days after receipt of an END USER's payment, whichever comes first, notwithstanding Contractor's receipt of invoice. For sales made by Contractor based on this Agreement, including sales to entities without Interlocal Agreements, Contractor shall pay the applicable order processing charges to H-GAC. Further, Contractor agrees to encourage entities who are not members of H-GAC's Cooperative Purchasing Program to execute an H-GAC Interlocal Agreement. H-GAC reserves the right to take appropriate actions including, but not limited to, Agreement termination if Contractor fails to promptly remit the appropriate order processing charge to H-GAC. In no event shall H-GAC have any liability to Contractor for any goods or services an END USER procures from Contractor. At all times, Contractor shall remain liable to pay to H-GAC any order processing charges on any portion of the Agreement actually performed, and for which compensation was received by Contractor.

ARTICLE 7: LIQUIDATED DAMAGES

Contractor and H-GAC agree that Contractor shall cooperate with the END USER at the time an END USER purchase order is placed, to determine terms for any liquidated damages.

ARTICLE 8: INSURANCE

Unless otherwise stipulated in Section B of the Bid/Proposal Specifications, **Contractor** must have the following insurance and coverage minimums:

a. **General liability** insurance with a Single Occurrence limit of at least \$1,000,000.00, and a General

Page 2 of 4

Aggregate limit of at least two times the Single Occurrence limit.

Product liability insurance with a Single Occurrence limit of at least \$1,000,000.00, and a General Aggregate limit of at least two times the Single Occurrence limit for all Products except Automotive Fire Apparatus. For Automotive Fire Apparatus, see Section B of the Bid/Proposal Specifications.

Property Damage or Destruction insurance is required for coverage of **End User** owned equipment while in **Contractor's** possession, custody or control. The minimum Single Occurrence limit is \$500,000.00 and the General Aggregate limit must be at least two times the Single Occurrence limit. This insurance may be carried in several ways, e.g. under an Inland Marine policy, as art of Automobile coverage, or under a Garage Keepers policy. In any event, this coverage must be specifically and clearly listed on insurance certificate(s) submitted to **H-GAC**.

- b. Insurance coverage shall be in effect for the length of any contract made pursuant to the Bid/Proposal, and for any extensions thereof, plus the number of days/months required to *deliver* any outstanding order after the close of the contract period.
- c. Original Insurance Certificates must be furnished to **H-GAC** on request, showing **Contractor** as the insured and showing coverage and limits for the insurances listed above.
- d. If any Product(s) or Service(s) will be provided by parties other than **Contractor**, all such parties are required to carry the minimum insurance coverages specified herein, and if requested by **H-GAC**, a separate insurance certificate must be submitted for each such party.
- e. **H-GAC** reserves the right to contact insurance underwriters to confirm policy and certificate issuance and document accuracy.

ARTICLE 9: PERFORMANCE AND PAYMENT BONDS FOR INDIVIDUAL ORDERS

H-GAC's contractual requirements DO NOT include a Performance & Payment Bond (PPB); therefore, Contractor shall offer pricing that reflects this cost savings. **Contractor** shall remain prepared to offer a PPB to cover any order if so requested by the **END USER**. **Contractor** shall quote a price to **END USER** for provision of any requested PPB, and agrees to furnish the PPB within ten business (10) days of receipt of **END USER's** purchase order.

ARTICLE 10: CHANGE OF STATUS

Contractor shall immediately notify **H-GAC**, in writing, of **ANY** change in ownership, control, dealership/franchisee status, Motor Vehicle license status, or name. Contractor shall offer written guidance to advise H-GAC if this Agreement shall be affected in any way by such change. **H-GAC** shall have the right to determine whether or not such change is acceptable, and to determine what action shall be warranted, up to and including cancellation of Agreement.

ARTICLE 11: TEXAS MOTOR VEHICLE BOARD LICENSING

All that deal in motor vehicles shall maintain current licenses that are required by the Texas Motor Vehicle Commission Code. If at any time during this Agreement term, any required **Contractor** license is denied, revoked, or not renewed, **Contractor** shall be in default of this Agreement, unless the Texas Motor Vehicle

Page 3 of 4

Board issues a stay or waiver. Contractor shall promptly provide copies of all current applicable Texas Motor Vehicle Board documentation to $\mathbf{H}\text{-}\mathbf{G}\mathbf{A}\mathbf{C}$ upon request.

| | Attachment A | |
|----------------|--|--------------|
| | Siddons Martin Emergency Group LLC | |
| | Fire Service Apparatus (All Types) | |
| | Contract No. FS12-19A | |
| | | |
| | BB. Skeeter | |
| B. Wildland Fi | ire Apparatus (Brush Fire) | |
| | can be sold both inside and outside Texas** | |
| FS19BBB01 | Slip In Unit: Complete Slip in firefighting package for flatbed or pickup bed. 100 GPM pump, 250 gallon poly tank. 150' hose reel. | \$12,975.00 |
| **These units | can only be sold outside Texas** | |
| FS19BBB02 | Skeeter Type 3 or 4 F-650: Brush unit, Large (33,000 gvw). Custom firefighting body. 750 gallon poly tank. 200-750 gpm pump. 150' hose reel. Stainless steel plumbing. Hose tray. Tool tray. Side body compartments. | \$167,512.28 |
| FS19BBB03 | Skeeter Type 5 F-550: Brush unit, Medium (19,500 gvw). Custom firefighting body. 400 gallon poly tank. 200 gpm pump. 150' hose reel. Stainless steel plumbing. Hose tray. Tool tray. Side body compartments. | \$104,340.00 |
| FS19BBB04 | Skeeter Type 6 F-350: Brush unit, Small (13,000 gvw). Custom firefighting body. 300 gallon poly tank. 200 gpm pump. 150' hose reel. Stainless steel plumbing. Hose tray. Tool tray. Side body compartments. | \$97,084.00 |
| FS19BBB05 | Type 5 Ram 5500 (19,000 GVW) Brush Unit Medium – 400 gallons/200 GPM pump. Hose Reel. | \$103,040.00 |
| FS19BBB06 | Type 6 Ram 3500 (12,500 GVW) Brush Unit Small – 300 gallons/200 GPM pump. Hose Reel | \$101,932.00 |
| FS19BBB07 | Type 3 International 7400 (35,000 GVW) Brush Unit Large – 750 gallons/200-750 GPM Pump. Hose reel. | \$153,692.00 |
| FS19BBB08 | Type 3 Freightliner M2 (37,000 GVW) Brush Unit Large – 750 gallons/200-750 GPM Pump. Hose reel. | \$153,089.00 |
| FS19BBB09 | Squad Rescue Ford F-450 - Small Rescue Body with (2) Front Vertical Compartments, (2) Rear Veritical Compartments and (2) Center Compartments | \$93,222.00 |
| FS19BBB10 | Squad Rescue Ram - 4500 Small Rescue Body with (2) Front Vertical Compartments, (2) Rear Veritical Compartments and (2) Center Compartments | \$95,822.00 |
| FS19BBB11 | Type 5 Chevy 5500 (19,000 GVW) Brush Unit Medium – 400 gallons/200 GPM pump. Hose Reel. | \$103,579.00 |
| FS19BBB12 | Type 6 Chevy 4500 (12,500 GVW) Brush Unit Small – 300 gallons/200 GPM pump. Hose Reel | \$101,109.00 |
| FS19BBB13 | Type 3 Chevy 6500 (22,900 GVW) Brush Unit Large – 750 gallons/200-750 GPM Pump. Hose reel. | \$114,056.28 |

AMENDMENT No. 2 to CONTRACT No. EE08-19

For

Emergency Medical & Rescue Equipment

Between

HOUSTON-GALVESTON AREA COUNCIL

And

Metro Fire Apparatus Specialists, Inc.

THIS AMENDMENT modifies the above referenced Contract as follows:

This contract is extended through July 31, 2023 Midnight CT.

Unless otherwise noted, this amendment goes into effect on the date signed by **H-GAC.** All other terms and conditions of this Contract shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective duly authorized representatives.

| Signed for Houston-Galveston Area Council, Houston, Texas | Chuck Wemple, Executive Director 7/29/2022 | |
|---|--|----|
| | Date: | |
| Signed for: Metro Fire Apparatus Specialists, Inc. Printed Name & Title: | DocuSigned by: Andy King 027B3F2973FA45E Andy King Operations Manag | eı |
| | 7/25/2022 Date: | |

CERTIFICATE OF INTERESTED PARTIES

FORM **1295**

| | | | | | 1 0† 1 | |
|----|---|-----------------------------------|----------------------|---|--------------|--|
| | Complete Nos. 1 - 4 and 6 if there are interested parties. Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties. | | | OFFICE USE ONLY CERTIFICATION OF FILING | | |
| 1 | Name of business entity filing form, and the city, state and country of the business entity's place of business. Siddons Martin Emergency Group, LLC | | | Certificate Number: 2023-1011108 | | |
| | Houston, TX United States | | | Date Filed: | | |
| 2 | Name of governmental entity or state agency that is a pabeing filed. | arty to the contract for which th | ne form is | 04/24/2023 | | |
| | City of Burleson | | Da | ate Acknowledged: | | |
| 3 | Provide the identification number used by the governme description of the services, goods, or other property to be | | | e contract, and pro | vide a | |
| | HGAC FS12-19A Fire Apparatus | | | | | |
| 4 | | | | Nature o | | |
| | Name of Interested Party | City, State, Country | (place of business | check ap | Intermediary | |
| Si | ddons Martin Holding, Inc. | Houston, TX Unite | ed States | X | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| 5 | Check only if there is NO Interested Party. | | | | | |
| 6 | UNSWORN DECLARATION | | | | | |
| | My name isKathryn Williams | | and my date of birt | h is _ | | |
| | My address is | Houston , | , <u>TX</u> | 77073 | ., | |
| | (street) I declare under penalty of perjury that the foregoing is true as | (city) | (state |) (zip code) | (country) | |
| | Executed in | | , on the | 4day ofApril | , 2023 | |
| | | | | (month) | (year) | |
| | _ | (Soline | · · | | | |
| | _ | Signature of authoriz | zed agent of contrac | cting business entity | | |



City Council Regular Meeting

DEPARTMENT: Information Technology

FROM: Hugo Rodriguez, Deputy Director, IT

MEETING: April 17, 2023

SUBJECT:

Consider approval of a resolution authorizing payment of five years of subscription fees to Upland Software for document imaging and electronic file storage services in the amount not to exceed \$144.375. (Staff Contract: Hugo Rodriguez, Deputy Director, IT)

SUMMARY:

The city has used FileBound by Upland Software as the records management program since 2016. The staff utilizes the software to scan and store electronic copies of the City's sensitive documents. The application can set retention levels for all the documents within the application to guarantee that the city follows the retention policy. By storing the documents electronically, the city can reduce the number of printed copies and off-site storage costs.

The annual software maintenance contract is a renewal to cover extended software support, updates, and new software releases for the next five years.

OPTIONS:

- Approve a resolution authorizing payment of five years of subscription fees to Upland Software for document imaging and electronic file storage services in the amount not to exceed \$144.375.00.
- 2) Approve with changes
- 3) Deny

RECOMMENDATION:

Approval of a resolution authorizing payment of five years of subscription fees to Upland Software for document imaging and electronic file storage services in the amount not to exceed \$144.375.00.

PRIOR ACTION/INPUT (Council, Boards, Citizens):

N/A

FISCAL IMPACT:

Fund: Support Services

Account: 6108001-63506

STAFF CONTACT:

Name: Hugo Rodriguez Title: Deputy Director, IT hrodriguez@burlesontx.com 682.312.2766



Information Technology

Upland Software Annual Maintenance

City Council

April 3, 2023

Upland Software (FileBound)

- Upland Software provides the City's Filebound document imaging and enterprise content management software.
- Staff uses Filebound as part of its records management program.
- Filebound allows staff to scan and store the City's documents and set required retention levels.



Upland Software (FileBound)

The current contract is set to expire, and this contract will renew our agreement for the next 5 years.

Annual software maintenance coverage:

- Extended software support for modules
- Software upgrades
- Software patches

The Annual Software Maintenance fee for 5 years is \$144,375.00 which is budgeted in the Support Service Fund.

Upland Software (FileBound)

Staff Recommendation:

Approval of a resolution authorizing payment of five years of subscription fees to Upland
 Software for document imaging and electronic file storage services in the amount not to exceed
 \$144.375.00.

Questions / Comments





This Advanced Processing & Imaging, Inc. (herein called "API") Customer Agreement (herein called the "Agreement") covers the major business transactions we may do with City of Burleson, TX (herein called the "Customer"), including:

- (a) sale of equipment;
- (b) license of programs; and
- (c) provision of services.

API, agrees to provide the equipment, programs and services, listed within on designated Schedule(s) or Supplement(s). The equipment, programs and services provided will be in accordance with the Terms and Conditions stated in this Agreement.

This Agreement supersedes all prior oral and written agreements, orders, or other writings, and together with the Schedules, constitutes the sole agreement of the parties with respect to the subject matter thereof, and may not be changed or modified except in writing signed by the parties against whom such modification is asserted. Once signed, any reproduction of this Agreement, made by reliable means (for example photocopy) is considered an original and all equipment, programs and services Customer orders under this Agreement are subjected to it.

CUSTOMER ACKNOWLEDGES THAT CUSTOMER HAS READ EACH OF THE TERMS AND CONDITIONS IN THIS AGREEMENT AND AGREES TO BE BOUND BY THEM.

Agreement No. S091601

| Agreed to and accepted for: | | Agreed to and accepted for: |
|-----------------------------|--|---|
| Advanced By: | Processing & Imaging, Inc. (Authorized Signature) | City of Burleson, TX By: (Authorized Signature) |
| Name: _ | Melvin Rothberg (Printed or Typed) | Name: <u>Cuv tis E Hawk</u> (Printed or Typed) |
| Title: _ | Chief Executive Officer | Title: City Manager |
| Date: _ | September 16, 2008 | Date: October 23, 2008 |
| Address: | 1350 E. Newport Center Drive | Address: 141 West Renfro Street |
| _ | Suite 200 | Burleson, Texas 76028 |
| | Deerfield Beach, FL 33442-7712 | |
| Phone: _ | 954-425-0018 | Phone: 817-447-5400 |

After signing, please return a copy of this agreement to the API office shown above.

Software/Hardware Products Schedule

| | City of Burleson, Tx | | Price | Ann Mainte | |
|------------------|---|--|----------|---|---|
| OptiView Docu | ment & Enterprise Content Management System | | | | |
| | l Area System License | | 30,000 | | 6,000 |
| 10 Fu | ll Scan/View Concurrent License(s) | | 20,000 | | 4,000 |
| 20 Vi | ew Plus Concurrent License(s) | | 20,000 | | 4,000 |
| Volume Discou | nt for Multi-License Purchase | | (5,100) | | |
| Multi-Departm | ent Promotion - 3 Full License(s) | | (6,000) | *************************************** | |
| OptiWorkFlow | Lite Edition (included in OptiView) | | Included | | Included |
| OptiView Profes | ssional Services per Area** | | | | |
| Server So | ftware Installation | | 1,500 | | |
| Analysis | & Configuration per Functional Area | | 6,000 | | · · · · · · · · · · · · · · · · · · · |
| Adminis | rator Training Session(s) | | 3,000 | | |
| User Trai | ning Session(s) | | 6,000 | | |
| Monitori | ng & Coaching Session(s) | 1 | 1,500 | | |
| OptiView Total | | \$ | 76,900 | \$ | 14,000 |
| Additional Lice | nses & Options | - | | | *************************************** |
| 1 Or | otiView Records Management Module | 1 | 15,000 | | 3,000 |
| | ofessional Service Day(s)** | | 6,250 | | , |
| | nses & Options Total Investment | \$ | 21,250 | \$ | 3,000 |
| OptiView Web | | ╂ | | | |
| OptiView Web | Server | S | 5,000 | | 1,000 |
| Block of 10 Co | oncurrent Users | | 4,000 | | 800 |
| OptiView Web | Professional Services** | † | | | |
| Server So | ftware Installation | | 1,500 | | |
| User Trai | ning Session(s) | 1 | 3,000 | | |
| OptiView Web | Total Investment | \$ | 13,500 | \$ | 1,800 |
| | | ļ | | | |
| Forms Processo | <u> </u> | <u> </u> | | | |
| | ms Processor - Per Server | | 15,000 | | 3,000 |
| | vices (Installation, Administrator Training)** | | 1,500 | | |
| Forms Processo | r Total Investment | \$ | 16,500 | \$ | 3,000 |
| OptiSpool Rep | ort Archival Software | + | | | |
| Single Function | al Area System License (Includes 1 Overlay)-6 users | | 16,000 | | 3,200 |
| Professional Ser | vices (Installation, Administrator Training)** | 1 | 3,000 | | |
| OptiSpool Tota | l Investment | \$ | 19,000 | \$ | 3,200 |
| | INVESTMENT SUMMARY | | Price | Ann Mainte | |
| Software Total | | | 113,900 | | 25,000 |
| Hardware Total | | | | | |
| Professional Ser | vices Total** | | 33,250 | | |
| Total Investme | nt | \$ | 147,150 | \$ | 25,000 |

1350 E. Newport Center Drive, Suite 200 | Deerfield Beach, FL 33442 | 800.430.7011 | 954.425.0018 | fax 954.425.7787 | www.apimg.com

M

- * Software maintenance fees for future years will be based on a specified percentage (currently 20%) of the then current prices for the software. Maintenance will be billed separately.
- ** Plus out-of-pocket expenses for travel and living as well as all shipping costs not to exceed API's Travel Policy limits.
- *** Please see manufacturer's warranty and agreement on all hardware maintenance.

Payment Schedule

Payment terms are due upon receipt of products and services rendered. Late fees will be assessed at 1.5% interest per month from date of invoice.

Amount due upon software delivery: \$113,900

Amount due upon hardware delivery: Not Applicable

Professional services to be paid as services are rendered.

Annual maintenance will be invoiced after software deployment and made coterminous to fiscal year end. API will prorate maintenance amount based on the number of months left to fiscal year end.

For wire transfer send to: RBC Bank (USA), 134 North Church St. Rocky Mount, NC 27804 Phone: 800-236-8872 Transit/Routing # 053100850 Account # 601-008-2617

Project Schedule

Project Start Date: July 1, 2009. Training Dates: July 6, 2009 Monitoring Dates: July 6, 2009

Initial MC

TERMS AND CONDITIONS

GENERAL TERMS AND CONDITIONS

This document, including the schedules referred to herein ("Agreement"), constitutes the entire understanding and agreement between the parties and supersedes all prior or contemporaneous agreements or understandings whether oral or written. The customer, at API's discretion, may license additional software product(s) and purchase additional hardware by way of a schedule referencing the license number of this Agreement. Such additional product(s) and services shall be governed by the terms of this Agreement.

- HEADINGS. Clause headings are inserted for ease of reference only, and do not form part of this Agreement.
- SEVERABILITY. If any provisions of this Agreement shall be held or made invalid or unenforceable by a court decision, statute or rule, the remaining provisions of this Agreement shall not be affected thereby and shall continue in full force and effect.
- 3. NOTICES. Any notice, document or request to be given or served may be given or served by sending it by hand delivery, courier service or certified mail to the address of API or the Customer set forth herein or by facsimile with receipt confirmed. Either party may give written notice to the other of a change of address, and after notice of such changes has been received, any notice, document or request given or served thereafter shall be given to or served upon such party at such changed address.
- 4. NON-ASSIGNMENT. The customer shall not assign, transfer, sublicense or grant a security interest in this Agreement in whole or in part without the prior written consent of API. Notwithstanding the foregoing the Customer may assign this Agreement to an entity controlling, controlled by or under common control with the Customer or to which substantially all of the Customer's assets are sold without API's consent, provided that such entity is not a competitor of API's and, provided further, that if the Customer is to be released from any financial obligations under this Agreement, the assignee must meet API's credit standards.
- 5. DISCLAIMER OF CONSEQUENTIAL DAMAGES. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL. DAMAGES INCLUDING, BUT NOT LIMITED TO, ECONOMIC LOSS, LOST PROFITS, LOST REVENUE, AND DAMAGES RELATING TO LOST DATA OR USE, EVEN IF THE PARTIES HAVE KNOWLEDGE OF THE POSSIBILITY OF SUCH DAMAGES AND WHETHER THE CLAIM IS MADE FOR BREACH OF CONTRACT, BREACH OF WARRANTY, IN TORT OR OTHERWISE.
- LIMITED WARRANTIES. The only warranties provided by API are those specifically set forth in this Agreement, and such limited warranties are in lieu of any and all other warranties, express or implied, including any warranties of merchantability and fitness for a particular purpose. API has authorized no other warranty or representation and the Customer has not relied on any other warranty or representation in its decision to execute this Agreement and purchase goods and/or services. API's limited warranties shall be suspended by API without recourse on the part of the Customer during the period in which the Customer's computer equipment fails to perform according to its standard performance specifications or the operating system and other program products upon which the API software product(s) depend for successful operation fail to perform according to manufacture's specifications contained in their product documentation. API's limited warranties shall not apply to extent of any defect, error or other problem caused or contributed to by the Customer or any third party, including without limitation misuse, misapplication or failure to comply with the terms of this Agreement and all related manuals and documentation.
- 7. EXCLUSIVE REMEDIES. The exclusive remedies of the Customer for a breach by API of any term of this Agreement shall be those specifically set forth herein, and shall be subject to the time limitations and notice requirement set forth herein. In the event of a breach by API of any term of this Agreement, the Customer shall be entitled to a claim for direct damages actually caused by such breach. In no event shall API have liability for any damages other than direct damages caused solely by API's breach. IN NO EVENT SHALL API'S LIABILITY TO THE CUSTOMER UNDER THIS AGREEMENT EXCEED THE AMOUNT OF THE LICENSE FEES PAID TO API HEREUNDER, REGARDLESS OF WHETHER THE CLAIM IS MADE FOR BREACH OF CONTRACT, BREACH OF WARRANTY, IN TORT OR OTHERWISE.

API UNDERTAKINGS

8. STAFF ALLOCATION. API reserves the right to determine the allocation of API personnel in furnishing services under this Agreement. This Agreement shall not prevent the API personnel who are providing services to the Customer under this Agreement from performing similar services for others nor shall it restrict API in any other way in its use of API personnel, provided API meets its obligation of confidentiality under this Agreement.

- PERSONNEL MOVEMENTS. API agrees not to solicit the Customer's
 personnel to work for API in any capacity for at least six (6) months after such
 person has left the employment of the Customer, except with the express written
 permission of the Customer.
- 10. INFRINGEMENT INDEMNITY. API will defend, at its cost, any claim brought against the Customer that the current release version of any programs provided under this Agreement infringes a patent, trademark, copyright or other intellectual property right of third parties, and will indemnify the Customer against those costs and damages finally awarded or settled by negotiations in any action against the Customer based on any such claim provided that:
- the Customer promptly notifies API in writing of any such claim;
- API has sole control of and the Customer cooperates in all respects in the defense of any such claim and all related settlement negotiations; and
- c) Such claim does not relate to any act of the Customer, including without limitation, a change in the software program, use thereof in a manner other than that specified by API or any other breach of this Agreement by the Customer.
- d) If a judgment against API for any such claim has occurred, or in API's opinion is likely to occur, the Customer agrees to permit API, at its option and expense, either:
 - 1. to produce for the Customer the right to continue using the program, or
 - 2. to modify the same so that it becomes non-infringing, or
 - to replace the same by non-infringing material so that the material as modified or replaced performs the same functions as the infringing material, or
 - to terminate the license for the allegedly infringing product and refund a prorated amount of the license fees paid.

CUSTOMER UNDERTAKINGS

- 11. PERSONNEL MOVEMENTS. The Customer agrees not to solicit API personnel to work for the CUSTOMER in any capacity for at least six (6) months after such person has left the employment of API, except with the express written permission of API.
- 12. ACKNOWLEDGMENT. The Customer grants to API the right to use the Customer's name as a customer of API. Before API uses the Customer's name in publicity, advertising releases or other materials prepared by and on behalf of API, API shall obtain the approval of the Customer.
- 13. THIRD PARTY SOFTWARE. The Customer warrants that the Customer:
 - a) has any necessary permission, expressed or otherwise, to enable any programs owned by or licensed from third parties and necessary for API to fulfill its obligations to the Customer to be copied and modified and run during the use of the software product(s) without infringing third party copyright or any other rights; and
 - the disclosure to or use of third party programs by API will not involve breach of confidence or contract.
- 14. COMPUTER CONTROLS. The Customer will be responsible for implementing sufficient procedures and checkpoints to satisfy the Customer's requirements in relation to security and accuracy of input and output data, including re-start and recovery in the event of a computer malfunction. The Customer shall provide suitably qualified user personnel to run the computer.
- 15. EXPENSES. The Customer agrees to reimburse API for reasonable incidental expenses incurred by its staff for all travel and related living expenses (out-ofpocket expenses) as a result of work performed under this Agreement.
- 16. TAXES. The Customer agrees to pay all sales, use, or other taxes or similar charges when due now or in the future, to the extent required by any local, state or federal law.
- 17. NON-API ERRORS. The Customer agrees that if operational problems or errors are subsequently discovered to be attributable to malfunction of the customer's computer(s) or the malfunction of software other than the software product(s) supplied by API, then all work performed by API in investigating and/or correcting such situation shall be payable by the Customer at API's standard rates. If the Customer or its agents has altered, added to or deleted from the program coding and/or the data files of the software product(s) so as to cause them to vary from the software product(s) delivered or subsequently upgraded by API, then the Customer must provide reasonable evidence that any errors found have been introduced by API and, if API is called upon to repair any malfunction in the software product(s) as a result of changes made by the Customer or its agents, then the Customer shall pay API, at standard rates, for all time spent by API representatives incurred in making such repairs as well as all out-of-pocket expenses.

Initials:

SOFTWARE PRODUCT(S) TERMS AND CONDITIONS

API UNDERTAKINGS

- GRANT OF LICENSE. API grants to the Customer a non-exclusive, nontransferable license to use the software product(s) and associated documentation for the Customer's own internal data processing use and not for third-party processing, in perpetuity, subject to the Customer's performance of its obligation under this Agreement, and subject to the limitations on the number of users authorized to use the software product(s) concurrently at any given time as specified in the attached Software Products Schedule(s). The Customer may incur additional user license fees in connection with the transfer of the software product(s) from one processor or platform to a new processor or platform, if the minimum number of users for such new processor or platform is greater than the number of authorized users as specified on the attached Software Products Schedule(s) or should the new processor be of greater capability as to fall into a higher price category for the software product(s) acquired herein:
 - For purpose of this Agreement, the number of "users" shall be determined by adding the number of individuals concurrently using the software product(s) at any given time.
 - For purpose of verifying the Customer's use in accordance with this Agreement, at API's written request, not more frequently than annually, the Customer shall furnish API with a signed certification verifying that the software product(s) are being used pursuant to the provisions of this Agreement, including limitations on the number of users, and,
 - listing the locations, types and serial number of the systems on which the software product(s) are run. API may, at its expense, audit the Customer's use of the software product(s). Any such audit shall be conducted during regular business hours at the Customer's facilities and shall not unreasonably interfere with the Customer's business activities. If an audit reveals that the Customer has underpaid fees to API, the Customer shall be invoiced for such underpaid fees based on the price list in effect at the time the audit is completed; if the underpaid fees exceed 5% of the license fees paid, then the Customer shall also pay API's reasonable costs of conducting the audit.
 - The Customer may copy the software product(s) solely for archival or backup purposes, provided that all titles trademarks and copyright notices are reproduced on such copies. All archival and backup copies are subject to the term of this Agreement.
- DELIVERABLES. API shall provide the following items as integral parts of 2) the license granted:
 - a) one copy of the software product(s) program and control procedures in machine readable form;
 - b) one copy of the software product(s) user manual.
- PAYMENT. The Customer agrees to pay all invoices for license fees and SPS and NRS charges in the amounts and in strict conformance with the payment terms set forth herein and without setoff or retention. Late payments shall be subject to a service charge in the amount of 1.5% per month on the unpaid invoice amount.
- LIMITED WARRANTY. For an initial period of ninety (90) days from the date of delivery of the software product(s), API warrants that it will provide the support described below for API's standard software product(s) free of charge
 - API will use its best endeavors to start and continue remedial work on errors which seriously affect operation of the software product(s).
 - API will provide media containing program fixes or upgrades to the standard software product(s) plus instruction on how to apply the program fixes or updates to the standard software product(s). Updates shall mean subsequent releases, which are generally made available to all API licenses at no additional charge but shall not include any release of future product that API decides to license separately. Work performed by API at the request of the Customer to apply program fixes or updates to either standard or customized software product(s) is an additional chargeable service.
 - API will provide upgrades to documentation after the installation date that API deems necessary to maintain continued effective use of the software product(s) by the Customer.
 - API will provide hotline support between the hours of 8:30am and 5:30pm d) EST on normal business days. Hotline support will consist of:
 i) telephone assistance with program errors.

 - telephone assistance with user problems and training, with each call limited to five (5) minutes of free time and with additional time chargeable as an additional service in fifteen (15) minute intervals.
 - API will provide on-site assistance where deemed necessary by API and the Customer (all expenses to be paid by customer)
- THESE WARRANTIES ARE EXCLUSIVE AND SUBJECT TO CLAUSE 6. LIMITED WARRANTIES AND CLAUSE 7. EXCLUSIVE REMEDIES IN THE GENERAL TERMS AND CONDITIONS.
- SOFTWARE PRODUCT SUPPORT (SPS). After expiration of the initial warranty period and upon payment of the SPSC described in Clause 7, API will

- continue to provide to the Customer the support services described in Clause 1 of the Service Terms and Conditions.
- SOFTWARE PRODUCT SUPPORT CHARGES (SPSC). SPSC is a 7) fixed percentage of the then current prices for API software product(s) and is payable in advance on an annual basis.
- NEW RELEASE SERVICE (NRS). After the expiration of the initial warranty period, API will provide to the Customer a new release service upon payment of the SPSC described in Clause 7. This service will provide all new standard releases of the software product(s) licensed to the Customer as and when they are ready for general customer use (as described in Clause 4b).
- CHARGE CALCULATION. The current software product license fee percentage for SPSC is subject to change. API shall have the right, upon three (3) months written notice to the Customer, to change the charges for any given twelve (12) month period. The Customer may terminate the SPS by giving API ninety (90) days written notice prior to the next renewal date.
- 10) FORCE MAJEURE. API will provide the standard software product(s) as requested by the Customer but shall not be liable for any delay or for the consequences of any delay in performing its obligations if such delays are due to industrial dispute of third parties or any act of God or any act beyond API's reasonable control and in such case API shall be entitled to a reasonable extension of time for performing its obligations.
- CANCELLATION OF LICENSE. If the Customer defaults in the payment of any amount due and payable under this Agreement, or otherwise defaults in the performance of any other duties hereunder and fails to remedy such default within thirty (30) days after receiving written notice from API, or if the Customer is in material breach of the confidentiality provisions contained in this Agreement, or if the Customer ceases to do business or a receiver is appointed for the Customer, or some other act of bankruptcy occurs, then in addition to and without detracting from any other remedy which API may have, API may forthwith give notice of cancellation of the license(s) granted herein, whereupon the Customer's right to use the software product(s) and the associated documentation shall cease, provided, however, that the Customer shall have a period of continued use of the software product(s) of up to sixty (60) days from notice of cancellation to allow the Customer to make alternative arrangements. Upon termination, the Customer shall deliver the software product(s) together with the associated documentation to API and shall take all such steps as may be necessary to destroy copies of the software product(s) and any record of the same contained in any data retrieval systems under the control of the Customer. An officer of the Customer shall, at the end of this sixty (60) day period, warrant in writing to API that the provisions of this Clause have been satisfied. The exercise of rights under this Clause shall not prejudice any rights of either party to damages or other equitable relief or remedies, subject to the limitations contained in this Agreement. Termination shall not relieve the Customer of the obligation to pay any fees that have accrued or are otherwise owed by the Customer.

CUSTOMER UNDERTAKINGS

- 12) ACCEPTANCE. The customer will promptly test the software product(s) provided by API using data provided by the Customer and inform API of any material errors. API will correct these under warranty. API will not warrant the software product(s) if the Customer proceeds to use the software product(s) in a live environment before API has corrected the errors found during acceptance
- CONTROLS. The Customer shall be exclusively responsible for the provision of adequate supervision, management and control of the use of the software product(s) including, but not limited to:
 - the provision of adequate and appropriate machine configuration, software product(s), installation, audit controls and operating procedure including check points and restarts; and
 - the generation of the test data needed for the acceptance test.

- 14) TRAINING. The Customer agrees to release personnel for API training courses as reasonably required by API to ensure the success of the installation of the software product(s). The courses may be held at the Customer's or at API's premises at the request of the Customer. The charge for these courses shall be as set forth in the then current edition of the API education price list.
- CONFIDENTIALITY OF SOFTWARE PRODUCT(S). The Customer agrees that during and after the term of this Agreement it shall not copy or otherwise provide or make available for use or copying the software product(s) or any portion thereof to any persons other than employees of the Customer specifically engaged in the use of the software product(s). No copies of the software product(s) or its associated documentation beyond those necessary for security purposes shall be made without the prior written consent of API. The Customer shall provide to API prompt written notice whenever it copies or makes available any software product(s) as permitted in this Clause. The Customer acknowledges that the software product(s) and documentation are the confidential information and trade secrets of API. The Customer shall take all such reasonable steps as may be necessary to ensure that its employees and any persons permitted under the Agreement to have access to the software product(s) and/or any printed material associated with the software product(s) shall preserve the secrecy and confidentiality of the software product(s) for the protection of API. The Customer agrees that if a copy of the software product(s) is found to be in use without the written permission of API by reason of the action of a Customer's employee or a person permitted by it to have access to the software then the Customer agrees to take all reasonable steps:
 - a) to notify API immediately of the circumstances surrounding the unauthorized use of software product(s);
 - b) to destroy that copy of the software product(s);
 - c) to take actions to stop the unauthorized use of such software product(s).
- 16) ACKNOWLEDGMENT OF OWNERSHIP. The Customer acknowledges it has no right to the software product(s) except that of usage, subject to the term of this Agreement, and that API, or such other person as API designates, retains sole ownership of the software product(s), including any modifications or extensions provided for the Customer. The Customer further agrees not to remove from any of the software product(s) any statement appearing therein concerning copyright and proprietary rights. The Customer agrees not to contest or challenge in any legal proceedings or otherwise the proprietorship or ownership by API of the software product(s).
- 17) NO REVERSE ENGINEERING. The Customer agrees not to reverse engineer, disassemble or decompile any of the software product(s) delivered in object code and further agrees not to cause or permit reverse engineering, disassembly or decompilation of any such software product(s) by an employee or agent of the Customer. This covenant shall survive termination of this Agreement and the license(s) granted hereunder.

EXTENDED SOFTWARE SUPPORT TERMS AND CONDITIONS

- SCOPE. API agrees to provide the Customer with Extended Software Support (ESS) for the software product(s) listed in the Software Products Schedule(s). The extended Software Support provided under this Agreement covers Software Products Support (SPS) and New Release Services (NRS) as well as additional charges for custom programming described above. All other software support, including the re-application of such programming to subsequent software product releases, will either be charged on a time and material expense basis or charged for under a separate custom programming maintenance contract. EXTENDED SOFTWARE SUPPORT IS SUBJECT TO CLAUSE 6. LIMITED WARRANTIES AND CLAUSE 7. EXCLUSIVE REMEDIES IN THE GENERAL TERMS AND CONDITIONS ABOVE.
- 2) PAYMENT. The Customer agrees to pay all invoices for Extended Software Support Charges (ESSC) in the amount and in strict conformance with the payment terms set forth herein for all invoices, and without setoff or retention. Late payment shall be subject to a service charge in the amount of 1.5% per month on the unpaid invoice amount.

SERVICE TERMS AND CONDITIONS

 SCOPE. API will supply the Customer with services on an as required basis and at the current rates.. These services will include, but are not limited to, product educating and training, consulting services, both business and technical, software product enhancement and modification, and custom software development. SERVICES ARE SUBJECT TO CLAUSE 6. LIMITED WARRANTIES AND CLAUSE 7. EXCLUSIVE REMEDIES IN THE GENERAL TERMS AND CONDITIONS ABOVE.

- 2) DELIVERABLES. API shall provide, when available, as integral parts of this Agreement:
 - a) one copy of a specification of the services to be provided;
 - one copy of any computer programs and control procedures written by API for the Customer in machine readable form; and
 - c) computer programs tested as far as is reasonably possible using API provided data on either API's, or by agreement, the Customer's computer.
- 3) PAYMENT. The Customer agrees to pay all invoices upon receipt of the invoice and without setoff or retention. Late payment shall be subject to a service charge in the amount of 1.5% per month on the unpaid invoice amount.
- OWNERSHIP. The Customer acknowledges that any deliverables provided under this Agreement shall be and remain the property of API.
- 5) ERRORS. Errors shall be defined as deviations from the specification(s) provided by API for each item of work undertaken. Precise definition of an error may, in some cases, be difficult to specify.
- 6) PROGRESS. The Customer and API shall jointly prepare and agree on an implementation plan for each piece of custom work performed by API. Joint progress meetings shall be held regularly throughout the project to monitor progress against the implementation plan and to set objectives for the next period, to clear any outstanding problems and to review and amend target dates for both API's and the Customer's sake as required by changing circumstances. These meetings will normally be at mutually convenient dates. The work content of this Agreement may be extended or reduced as agreed jointly, in writing, by API and the Customer. The Customer shall notify API in writing of requested changes to the work content. API will respond with a service estimate that the Customer will countersign indicating its acceptance.

Initials: WC

HARDWARE PRODUCT(S) TERMS AND CONDITIONS

- 1. Definitions. "Notice," as used herein, shall mean in writing given in advance and delivered at, or properly mailed to, receiving party's address. CUSTOMER'S address for the purpose of notification is set forth on the face of this Agreement. API's address for the purpose of notification is: ADVANCED PROCESSING & IMAGING, INC., 1350 E. Newport Center Drive, Suite 200, Deerfield Beach, FL 33442. Any party may, by notice, designate a change of address. Such notice shall be effective on the fourth business day after mailing in any place in the United States, postage prepaid, registered or certified mail. The initial contract shall be referred to as the "CONTRACT" as used herein shall mean the initial contract plus any and all renewal periods. "QUALIFIED EQUIPMENT," as used herein, shall mean EQUIPMENT designated on the face of this Agreement or Supplement(s).
- Price Protection. During the INITIAL TERM of this Agreement, all prices shall remain fixed.
- 3. Default. Should CUSTOMER fail to pay the charges when due and payable, API reserves the right to withhold further support and equipment shipments until all payments are then brought current. If API invokes this right, it will do so through notice to CUSTOMER. Any charges past due will be subject to interest charges, not to exceed the legal limit. Customer agrees to pay all costs actually incurred by API, including attorney's fees, in collecting such past due charges.
- 4. Assignment, Relocation. CUSTOMER shall not assign or transfer this Agreement without the prior written consent of API. Should CUSTOMER sell its business or transfer location of EQUIPMENT, this contract may be re negotiated at API's option. CUSTOMER acknowledges and understands that API may, at any time, assign all, or a portion, of its interest in this Agreement to banks, other lending institutions, or to other parties.
- 5. Customer's Purchase Order. If this Equipment Sales Agreement is accepted and CUSTOMER issues its purchase order, it is expressly understood and agreed that the terms and conditions herein set forth shall prevail insofar as the same may in any way conflict with the terms and conditions set forth in such purchase order form, and any issuance of a purchase order by CUSTOMER shall be deemed to note Customer's consent to this provision.
- 6. Amendments and Waivers. This Agreement and its Supplement(s), if any constitute the entire Agreement between API and CUSTOMER. Customer's acceptance, which includes new or different terms, to the extent that it varies from API's offer, be a counteroffer and not binding on API unless agreed to in writing. No term or condition may be modified except as specifically made in writing signed by the party against whom enforcement is sought, except that API may insert or correct the serial number of any item of EQUIPMENT on this Agreement or the appropriate Supplement(s) after receiving the signed copy from the CUSTOMER. No express or implied waiver by API of any default thereunder shall in any way be, or be considered to be, a waiver of any future or subsequent default whether similar in kind or otherwise. In the event any of the provisions of this Agreement shall be deemed contrary to Law, the remaining provisions shall remain in full force and effect
- 7. General. No action, whatever its form, which arises out of this Agreement, may be brought by either party more than one year after the cause of action has risen, or, in the case of an action for non-payment, more than five years from the date the last payment was due.

This Agreement will be governed by the laws of the State of Florida.

Initials:

401 Congress Ave Suite 1850 Austin

TX

78701-3788 United States

Phone:855-944-PLAN (7526) www.uplandsoftware.com

 Quote Number:
 Q-233197-1

 Quote Date:
 4/11/2023

 Quote Expires On:
 4/30/2023

 Proposed By:
 Kelly Refshauge

Email: krefshauge@uplandsoftware.com

Primary Contact:

Billing Currency:

Primary Phone:

Erin Walker

USD

(817) 426-9658

Customer and Billing Details

Customer: City Of Burleson

Customer Number: C-14817 Ship To: Bill To:

City Of Burleson

141 West Renfro

City Of Burleson

141 West Renfro

Burleson , TX , 76028-4261 Burleson , TX , 76028-4261

United States United States

Purchase Details

Start Date: 1/1/2023 End Date: 12/31/2027 Product Billing Frequency: Annual

Payment Terms: Net 30

License and Product Details

| Description | Billing Frequency | Quantity Unit of Measure | Term (Months) | Annual Amount | Extended Price for Full Term |
|--|----------------------|--------------------------------|------------------|------------------|------------------------------------|
| FileBound: Setup, Cloud Site Setup - 5,000,000 Document Management | Annual | 1 Units Per Month | 60.00 | \$ 28,875.00 | \$ 144,375.00 |
| FileBound: FileBound Records Management Subscription | Annual | 1 Units Per Month | 60.00 | \$ 0.00 | \$ 0.00 |
| FileBound: Importer Pro Subscription - included with subscription | Annual | 1 Each | 60.00 | \$ 0.00 | \$ 0.00 |
| FileBound: FileBound Capture Subscription - included with subscription | Annual | 3 Each | 60.00 | \$ 0.00 | \$ 0.00 |
| Total: | | | | \$ 28,875.00 | \$ 144,375.00 |

Quote Total Amount

Total: USD 144,375.00

401 Congress Ave Suite 1850 Austin

TX

78701-3788 United States

Phone:855-944-PLAN (7526) www.uplandsoftware.com

 Quote Number:
 Q-233197-1

 Quote Date:
 4/11/2023

 Quote Expires On:
 4/30/2023

Proposed By: Kelly Refshauge

Email: krefshauge@uplandsoftware.com

Terms and Conditions

- 1. <u>Binding Effect.</u> Customer and Upland are entering into this sales order or quote ("Sales Order") subject to the terms of the Master Services Agreement ("MSA") currently in effect between the parties as of the date this Sales Order is signed (this Sales Order together with the MSA, the "Agreement"). In the event there is no MSA currently in effect, then the applicable terms and conditions of the Master Services Agreement hosted at http://www.uplandsoftware.com/terms-of-service.pdf shall control. Capitalized terms not defined in this Sales Order have the meaning ascribed to them elsewhere in the Agreement.
- 2. Non-Waiver. For record-keeping purposes and the convenience of its Customers, in advance of the expiry of this Sales Order Upland may provide Customer with an updated Sales Order detailing the Services to be supplied by Upland upon renewal. For the avoidance of doubt, the parties acknowledge and agree that Upland's provision of such an updated Sales Order shall not constitute Upland's notice of (i) its intention not to renew the Agreement, or (ii) its intention to terminate the Agreement.
- 3. <u>Fees.</u> Customer agrees to pay any and all fees provided herein. Prices quoted are exclusive of any applicable taxes. All subscription fees hereunder shall be invoiced in advance and are due and payable in accordance with the Payment Terms set forth above. Customer acknowledges that fees for renewal periods shall be invoiced in advance and are due on or before the start date of such renewal period.
- 4. <u>Professional Services Fees.</u> Fees prepaid for Professional Services become non-refundable and are earned upon the earlier of: (i) the date the Professional Services are delivered (on a *pro-rata*, ongoing basis); or (ii) one year from the date of the applicable invoice.

TX

Title:

78701-3788

United States

401 Congress Ave Suite 1850 Austin

Email: krefshauge@uplandsoftware.com Phone:855-944-PLAN (7526) www.uplandsoftware.com BY AFFIXING THE SIGNATURE OF THE AUTHORIZED REPRESENTATIVE OF THE CUSTOMER TO THIS QUOTE, BY HAND OR ELECTRONICALLY, CUSTOMER IS AGREEING TO BE BOUND BY THE TERMS OF THE AGREEMENT Name (Print): Date: Title: Signature: City Of Burleson Customer: If a Purchase Order is required for the purchase or payment of the items on this Sales Order, please complete the following: PO Number: PO Amount: **Upland Signature** Jon Eilers 4/11/2023 | 4:18 PM CDT Name (Print): Date:

Q-233197-1

4/11/2023

4/30/2023

Kelly Refshauge

DocuSigned by:

592BF5D827034A5

Eilers

Quote Number:

Quote Expires On:

Quote Date:

Proposed By:

THANK YOU FOR YOUR BUSINESS!

Signature:

SVP Partner & Customer Success

401 Congress Ave Suite 1850 Austin

TX

78701-3788 United States

Phone:855-944-PLAN (7526) www.uplandsoftware.com

 Quote Number:
 Q-233197-1

 Quote Date:
 4/11/2023

 Quote Expires On:
 4/30/2023

Proposed By:Kelly RefshaugeEmail:krefshauge@uplandsoftware.com

Please verify and initial the following customer information and indicate what needs to be changed, if needed.

| Customer Checklist | | | | | |
|---|--|----------------------|--|--|--|
| Checklist Item | Response | | If there are changes,please provide details below. | | |
| Does your company require a PO# on invoices? If yes, please provide PO# in the space by signature block. | Yes \cb1_one\ No \cb1_one\ | Initial \in1_two\ | \txtSp1_one\ | | |
| Are the company name and billing address correct? | Yes \text{\tint{\text{\tin}\text{\text{\text{\text{\text{\text{\text{\text{\text{\text{\text{\text{\text{\text{\text{\text{\text{\text{\text{\tex{\tex | Initial \in1_two\ | \txt1_two\ | | |
| Does your company need Upland to fill out a supplier form to properly set Upland up as a vendor? This includes setting up supplier portals. | Yes \cb1_three\ No \cb1_three\ | Initial \in1_two\ | \txt1_three\ | | |
| Is your company a tax-exempt entity? If Yes, please provide the associated tax certificate. | Yes \cb1_four\ No \cb1_four\ | Initial \in1_two\ | \txt1_four\ | | |



City Council Regular Meeting

DEPARTMENT: Public Works

FROM: Errick Thompson P.E., Deputy Director of Public Works

MEETING: May 1, 2023

SUBJECT:

Consider approval of a community facilities contract with 225 W. Ellison, LLC, for City cash participation for the construction of 18 parking stalls along Bransom Street for \$56,217.75. (Staff Contact: Errick Thompson, Deputy Director of Public Works)

SUMMARY:

The Developer (225 W. Ellison, LLC) of the office/retail building located at 225 W. Ellison Street recently submitted a proposal to construct an additional 13 parking stalls along the east side of Bransom Street within the City's right-of-way and requested a 50% cash participation. The proposal includes parking stalls, five-foot wide sidewalk, and an ADA ramp.

Staff asked the developer to include a separate proposal to reconstruct the existing parking stalls on the southeast side of the intersection of W. Ellison Street and Bransom Street including a new sidewalk. The drive approach on Bransom Street to the Independent Bank building would be reconstructed to allow for ADA ramps improving accessibility in Old Town.

There are seven existing parking stalls on this corner in the public right-of-way today. The proposal reconstructs the drive and provides a five foot wide sidewalk with ADA ramps resulting in reconstruction of five parking stalls; however, there will be a net increase of 11 parking stalls. The sidewalk connection will provide a safe pedestrian route for visitors to Old Town. Since existing parking stalls would be modified, this portion of the improvements would be funded 100% by the City.

The City has participated in similar requests utilizing funding from the developer participation budget in the past to increase the number of parking stalls within Old Town and improve overall pedestrian mobility. The table below provides a summary of the cost of the proposed improvements.

| Proposed Improvements | Total Cost | Developer Cost | City Cost |
|--|-------------|----------------|-------------|
| 13 new parking stalls, sidewalk, ADA ramps | \$50,681.50 | \$25,340.75 | \$25,340.75 |
| Reconstruction of existing parking stalls and drive approach, sidewalk and ADA ramps | \$30,877.00 | \$0.00 | \$30,877.00 |
| Total | \$81,558.50 | \$25,340.75 | \$56,217.75 |

A Community Facilities Contract (CFC) is required whenever public improvements are proposed and when the construction of public infrastructure is funded entirely or in part by a developer. It ensures that public infrastructure adequately serves new development and that the infrastructure improvements are constructed according to City standards.

The City's Subdivision Regulations (Article 4.4) allow for administrative approval of the CFC except in the cases where the CFC is modified. Section 1(n)-Covenants of the Developer and Contractor. The section has been modified with the following language:

"Upon completion and initial acceptance (substantial completion) of the proposed eighteen (18) public parking stalls along Bransom St. per the attached site plan, the City shall reimburse the Developer in an amount not to exceed Fifty-six thousand, two-hundred seventeen and seventy-five cents (\$56,217.75) for cash participation in the construction of said parking stalls. The Developer shall submit invoices to the City for review and upon approval, payment shall be made. The Developer shall not be due any additional compensation from the City for any incidental, hidden, or unforeseen costs or expenses incurred by the Developer that are coincidental with the construction of the eighteen (18) parking stalls, sidewalk, curbs, ADA ramps, etc. including administrative and interest costs, construction quantity overruns, and contract modifications, whether or not such losses, damages, liabilities, claims, obligations, penalties, charges, costs or expenses are caused in part by the City, its officers, agents, servants, or employees."

OPTIONS:

- 1) Approve a community facilities contract with 225 W. Ellison, LLC, for City cash participation for the construction of 18 parking stalls along Bransom Street for \$56,217.75.
- 2) Deny a community facilities contract with 225 W. Ellison, LLC, for City cash participation for the construction of 18 parking stalls along Bransom Street for \$56,217.75.

RECOMMENDATION:

Approve a community facilities contract with 225 W. Ellison, LLC, for City cash participation for the construction of 18 parking stalls along Bransom Street for \$56,217.75.

PRIOR ACTION/INPUT (Council, Boards, Citizens):

N/A

FISCAL IMPACT: Project #: 21PW03 Budgeted Y/N: Y

Fund Name: Non-Bond Capital Full Account #s: 21PW03-30

Amount: \$56,217.75

STAFF CONTACT:

Errick Thompson, P.E. Public Works Deputy Director ethompson@burlesontx.com 817-426-9610

COMMUNITY FACILITIES CONTRACT

225 W. Ellison Street, LLC (Developer)

CURRENT CITY PARTICIPATION

225 W ELLISON, LLC ENTERED INTO A CFC FOR CONSTRUCTION OF PARKING STALLS ALONG W. ELLISON ST. AND BRANSOM ST. (CSO# 1871-09-2021) AUGUST 12, 2021

- Includes 19 parking stalls and associated retaining and curb
- City agreed to fund 50 percent of cost not to exceed \$25,000 through the City's developer participation budget
- Construction is nearing completion



NEW REQUEST FOR CITY PARTICIPATION

(same developer, 225 W Ellison, LLC)

CONSTRUCTION OF 13 ADDITIONAL PARKING STALLS

- Includes 5 foot wide sidewalk from W. Bufford Street to existing drive approach and ADA ramps
- City to fund 50 percent of cost through developer participation budget

RECONSTRUCTION OF EXISTING PARKING STALLS AT SOUTHEAST CORNER OF W. ELLISON STREET AND BRANSOM STREET

- Staff requested proposal to reconstruct existing parking stalls to improve pedestrian mobility
- 7 existing parking stalls Proposal reconstructs the drive, constructs a 5 foot sidewalk with ADA ramps resulting in reconstruction of 5 parking stalls - improves overall pedestrian mobility
- City to fund 100 percent of cost through developer participation budget



CURRENT REQUEST FOR CITY PARTICIPATION

18 TOTAL PARKING STALLS PROVIDED - NET INCREASE OF 11 PARKING STALLS

- 13 new stalls
- Reconstruction of seven existing parking stalls and pedestrian improvements results in 5 parking stalls

City has participated in similar requests to increase parking stalls and improve pedestrian mobility within Old Town



PROPOSED COSTS

| Proposed Improvements | Total Cost | Developer Cost | City Cost |
|---|---------------|-------------------|-------------|
| 13 new parking stalls, sidewalk, ADA ramps | \$50,681.50* | \$25,340.75 | \$25,340.75 |
| Reconstruction of existing parking stalls and drive approach, sidewalk, and ADA ramps | \$30,877.00** | \$0.00 | \$30,877.00 |
| Total | \$81,558.50 | \$25,340.75 | \$56,217.75 |

^{*} Developer requesting 50 percent cash participation for improvements **City to fund 100 percent of improvements



OPTIONS



APPROVE A COMMUNITY FACILITIES CONTRACT WITH 225 W ELLISON, LLC FOR CITY CASH PARTICIPATION FOR THE CONSTRUCTION OF 18 PARKING STALLS ALONG BRANSOM STREET FOR \$56,217.75.



DENY A COMMUNITY FACILITIES CONTRACT WITH 225 W ELLISON, LLC FOR CITY CASH PARTICIPATION FOR THE CONSTRUCTION OF 18 PARKING STALLS ALONG BRANSOM STREET FOR \$56,217.75.



COMMUNITY FACILITIES CONTRACT CITY OF BURLESON

| STATE OF TEXAS | § | PROJECT NAME: Bransom Street Parking |
|------------------------------------|-----------------------------|---|
| COUNTIES OF TARRANT AND JOHNSON | Г§ § | CONTRACT NO.: 2023-11 |
| by and between the CITY | OF BURLESON ison, LLC, a Te | day of, 2023 , TEXAS, (hereinafter referred to as xas (State) corporation (hereinafter |
| Burleson Addition, Lot 1 | I R, Blk 30 to the | vner of land which has been platted as City of Burleson, Johnson County, or Texas (hereinafter referred to as the |

WHEREAS, the Developer is required to install certain public improvements as required in this Contract (hereinafter referred to as the "Community Facilities") to serve the lots in the Subdivision; and

WHEREAS, the Developer elects to make the Community Facilities at the Developer's cost; and

WHEREAS, the Developer recognizes that the City has an interest in ensuring that the Community Facilities are properly constructed in accordance with City specifications and are paid for by the Developer, because they will become public property upon completion and acceptance by the City; and

WHEREAS, this Contract shall operate as a covenant running with the land and shall be binding upon the Developer and its successors, heirs, representatives, grantees, trustees, officers, agents, servants, employees and assigns;

NOW, THEREFORE, the City and the Developer, in consideration of the mutual covenants and agreements contained herein, do mutually agree as follows:

1. Covenants of the Developer.

"Subdivision"); and

a. The Developer shall install the Community Facilities for the Subdivision at no cost to the City. The Community Facilities shall include the items

- shown on the construction plans and specifications as released for construction by the City.
- b. The Developer shall employ the Developer's own engineer to prepare the plans and specifications for the Community Facilities, and all engineering work shall comply with the requirements of the City's Subdivision Ordinance and Design Standards Manual. The Developer's engineer shall be a civil engineer licensed to practice in Texas. All plans and specifications prepared by the Developer's engineer must be released for construction in writing by the City Engineer of the City before the construction contract for the Community Facilities is entered.
- c. The Developer shall construct and install the Community Facilities in accordance with the plans and specifications prepared by the Developer's engineer and released for construction by the City Engineer, and the procedures, specifications and standards contained in the Subdivision Ordinance and Design Standards Manual of the City. In general, the construction shall follow provisions of the "Standard Specifications for Public Works Construction, North Central Texas," as amended, published by the North Central Texas Council of Governments, except however, when specific circumstances dictate additional requirements, it shall be the responsibility of the Developer's engineer to provide the necessary details for construction acceptable to the City Engineer. The "Standard Specifications for Public Works Construction, North Central Texas," as amended, are incorporated in this Contract by reference and made a part hereof, and the Developer may obtain a copy from the North Central Texas Council of Governments. The Developer shall perform all work in a good and workmanlike manner and to the satisfaction of the City Engineer.
- d. The Developer shall meet the City's requirements for all work to be performed by persons that are licensed and bonded, and shall provide a financial statement, demonstrate experience, and utilize equipment acceptable to the City.
- e. Before commencing construction, the Developer shall deliver to the City Engineer a signed copy of the contract for construction of the Community Facilities. It is agreed that the City has an interest in the proper performance of the construction contract and may bring suit for failure to comply with the plans and specifications. The Developer shall provide the City with access to the project for the purpose of inspection of the installation of the Community Facilities.
- f. Prior to initiating any construction of the Community Facilities, the Developer shall provide the City with one original and one copy of the following construction bonds, which shall name the City as beneficiary:

- 1) <u>Performance Bond.</u> If the contract for construction of the Community Facilities is for an amount in excess of Twenty-Five Thousand Dollars (\$25,000), a good and sufficient Performance Bond in an amount equal to 100 percent of the total contract price, guaranteeing the full and faithful execution of the work and performance of the contract and for the protection of the City against any improper execution of the work or the use of inferior materials. The Performance Bond be made in favor of the City and shall guarantee completion of the Community Facilities within two years of execution of this Contract.
- 2) <u>Payment Bond.</u> If the construction contract for construction of the Community Facilities is for an amount in excess of Twenty-Five Thousand Dollars (\$25,000), a good and sufficient Payment Bond in an amount equal to one hundred percent of the total contract price of the construction contract, guaranteeing payment for all labor, materials and equipment used in construction of the Community Facilities. The Payment Bond shall be made in favor of the City and all persons, firms or corporations who may furnish materials for or perform labor upon the Community Facilities hereunder.
- 3) <u>Maintenance Bond.</u> A good and sufficient Maintenance Bond in an amount equal to 100 percent of the total cost of the Community Facilities (including all change orders) guaranteeing the maintenance in good condition of the Community Facilities for a period of two years from and after the date that a Letter of Acceptance is issued by the City indicating that the Community Facilities have been completed by the Developer and accepted by the City. The Maintenance Bond shall be made in favor of the City.

In the alternative, the Developer may furnish a cash deposit, or certificate of deposit as security. Such forms of security shall be held by the City for a period of two years or until any deficiencies identified at the expiration of the two-year maintenance period are corrected, whichever occurs last.

Each bond shall be in a form acceptable to the City and shall be written by a surety company duly authorized to do business in the State of Texas, provided that the Mayor shall have the right to reject any surety company for any work under this Contract.

Bonds from the Developer's prime contractor(s) or other entity acceptable to the City, may be accepted in lieu of Developer's obligations specified above, at the discretion of the City Manager or the City Manager's designee.

- g. The Developer covenant and agree to, and by these presents do hereby, fully indemnify, hold harmless, and defend the City, its officers, agents and employees, from all suits, actions or claims of any character, whether real or asserted, brought for or on account of any injuries or damages sustained by any persons (including death) or to any property, resulting from or in connection with the construction, design, performance or completion of any work to be performed by the Developer, its contractors, subcontractors, officers, agents or employees, or in consequence of any failure to properly safeguard the work, on account of any act, intentional or otherwise, neglect or misconduct of said Developer, its contractors, subcontractors, officers, agents, or employees, whether or not such injuries, death or damages are caused, in whole or in part, by the alleged negligence of the City of Burleson, its officers, agents, servants or employees.
- h. Release of the plans and specifications for construction by the City Engineer or other City employee(s) of any plans, designs or specifications submitted by the Developer pursuant to this Contract shall not constitute or be deemed to be an assumption of the responsibility and liability of the Developer for the competency of the Developer's design and specifications for the Community Facilities, it being the intent of the parties that release of the plans and specifications by the City Engineer or other City employee(s) signifies the City's acceptance of only the general design concept of the Community Facilities to be constructed. In this connection, the Developer shall indemnify and hold harmless the City, its officers, agents, servants and employees from any loss, damage, liability claim, obligation, penalty, charge, cost or expense including property damage, personal injury or death, to any and all persons, which may arise out of any defect, deficiency or negligence of the Engineer's design and specifications incorporated into any of the Community Facilities constructed in accordance therewith, whether or not such loss, damage, liability, claim, obligation, penalty, charge, cost or expense is caused in whole or in part by the alleged negligence of the City, its officers, agents, servants or employees, and the Developer shall defend at its own expense any suits or other proceedings brought against the City, its officers agents, servants or employees or any of them, on account thereof, and shall pay all expenses (including without limitation reasonable fees and expenses of attorneys, expert witnesses and consultants) and satisfy all judgments which may be incurred by or rendered against them in connection therewith.
- i. The Developer shall, at his own expense, purchase, maintain and keep in force during the term of this Contract the insurance set forth below. The

Developer shall not commence work on the Community Facilities until the Developer has obtained all the insurance required under this Contract and such insurance has been approved by the City, nor shall the Developer allow any subcontractor to commence work on his subcontract until all similar insurance of the subcontractor has been obtained and approved. All insurance policies provided under this Contract shall be written on an "occurrence" basis.

Compensation Insurance

Workers Compensation Statutory Limit

Employers Liability \$100,000 Each Occurrence

\$500,000Disease-Each Employee

Liability Insurance

Commercial General Liability (No standard coverages are to be excluded by endorsement)

\$500,000 Combined Single Limit

Automobile Liability Insurance

Commercial Auto Liability Policy (including coverage for owned, hired and non-owned autos)

Commercial Auto Liability Policy \$500,000 Combined Single Limit

Umbrella Liability

(Following Form and Drop Down \$1,000,000 Each Occurrence Provisions included)

It is agreed by all parties to this Contract that the insurance required under this Contract shall:

- 1) Be written with the City of Burleson as an additional insured.
- 2) Provide for thirty (30) days written notice to the City of cancellation or material change in coverage.
- 3) Be written through companies duly authorized to write the particular class of insurance in the State of Texas.
- 4) Waive subrogation rights for loss or damage so that insureds have no right to recovery or subrogation against the City of Burleson, it being the intention of this Contract that the required insurance policies shall protect all parties to this Contract and be primary coverage for all losses covered by the policies.
- 5) Provide a certificate of insurance evidencing the required coverages to:

City of Burleson Public Works Department/Engineering/Development 141 W. Renfro Street Burleson, Texas 76028.

Insurance policies from the Developer's prime contractor(s) or other entity acceptable to the City, may be accepted in lieu of Developer's obligations specified above, at the discretion of the City Manager or the City Manager's designee. Any such policy submitted shall not be subject to limitations, conditions or restrictions deemed inconsistent with the intent of the insurance requirements described in this contract.

- j. During construction of the Subdivision and after the streets have been installed, the Developer agrees to keep the streets free from collection of soil. The Developer agrees to use soil control measures such as hay bales, silt screening, hydromulch, or other applicable measures to prevent soil erosion. It will be the Developer's responsibility to present to the City Engineer a storm water pollution prevention plan that will be implemented for the Subdivision. When, in the opinion of the City Engineer, there is sufficient soil collected on the streets or other drainage areas and notification has been given to the Developer, the Developer will have 24 hours to clear the soil from the streets or affected areas. If the Developer does not remove the soil from the streets or other areas within 24 hours, the City may cause the soil to be removed either by contract or City forces and place the soil within the subdivision at the developer's expense. All expenses must be paid to the City prior to the issuance of a Letter of Acceptance for the Community Facilities.
- k. The Community Facilities shall be completed within two (2) years from the effective date of this contract.
- I. Upon completion of the Community Facilities and issuance of a Letter of Acceptance by the City, the Community Facilities shall become the property of the City free and clear of all liens, claims, charges or encumbrances of any kind.
- m. The parties understand and agree that the City has no obligation to participate or contribute to the cost of designing or constructing the Community Facilities, nor shall the City be liable for any portion of the costs incurred by the Developer, or the Developer's officers, agents, employees, contractors or subcontractors for the design and construction of the Community Facilities, unless a separate agreement is executed by the City and the Developer concerning such participation by the City.
- n. Upon completion and initial acceptance (substantial completion) of the proposed eighteen (18) public parking stalls along Bransom St.

per the attached site plan, the City shall reimburse the Developer in an amount not to exceed Fifty-six thousand, two-hundred seventeen dollars and seventy-five cents (\$56,217.75) for cash participation in the construction of said parking stalls. The Developer shall submit invoices to the city for review and upon approval, payment shall be made. The Developer shall not be due any additional compensation from the City for any incidental, hidden, or unforeseen costs or expenses incurred by the Developer that are coincidental with the construction of the eighteen (18) parking stalls, sidewalk, curbs, ADA ramps, etc. including administrative and interest costs, construction quantity overruns, and contract modifications, whether or not such losses, damages, liabilities, claims, obligations, penalties, charges, costs or expenses are caused in part by the city, its officers, agents, servants, or employees.

2. Covenants of the City

Upon proper completion of the Community Facilities, the City agrees to accept the Community Facilities by a written Letter of Acceptance. It is understood and agreed that the City shall have no liability or responsibility for the Community Facilities until a Letter of Acceptance is issued.

3. Miscellaneous

a. Compliance with Laws.

The Developer hereby agrees to comply with all federal, state and local laws and ordinances that are applicable to development of the Subdivision.

b. Venue and Governing Law

Venue of any action brought hereunder shall be in Johnson County, Texas. The terms and provisions of this Contract shall be construed in accordance with the laws of the State of Texas.

c. Assignment

Neither this Contract nor any part hereof or any interest herein shall be assigned by the Developer without the express written consent of the City Manager of the City, which consent shall not be unreasonably withheld.

d. Waiver

The Developer expressly acknowledge that by entering into this Contract, the Developer, its successors, heirs, assigns, vendors, grantees, trustees, and/or representatives shall never construe this Contract as waiving any of the requirements of the Zoning Ordinance, Subdivision Ordinance, Design Standards Manual, the Standard Specifications or any other ordinance of the City.

e. Amendments

This Contract may be amended only by a written instrument signed by the Developer and the City.

f. Liens and Assessments

If the Developer fails to comply with any of the provisions of this Contract, the City shall be authorized to cease issuance of any certificates of occupancy or building permits on property in the Subdivision owned by the Developer. Should the Developer fail to complete construction of the Community Facilities, in addition to any other remedy authorized by this Contract or by law, the City shall be authorized to complete such construction and file a mechanic's lien against the Developer's property in the Subdivision, or in the alternative, to levy an assessment against the Developer's property for public improvements in accordance with state law.

g. Continuity

This Contract shall be a covenant running with the land and shall be binding upon the Developer, its successors in title, heirs, assigns, grantees, trustees, and/or representatives.

h. Severability

DEVELOPER:

If any of the terms, sections subsections, sentences, clauses, phrases, provisions, covenants or conditions of this Contract are held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the Contract shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

IN WITNESS WHEREOF, each of the parties has executed this Contract by its undersigned duly authorized representative as of the date first written above.

| | - 41 |
|----------|---------|
| BY: | |
| NAME: | (print) |
| TITLE: | ··· |
| ADDRESS: | |

| THE CITY OF BURLESON: | | | |
|---|--|--|--|
| BY: | | | |
| CITY MANAGER | | | |
| 141 West Renfro Street Burleson, Texas 76028 | | | |

| STATE OF TEXAS § COUNTY OF JOHNSON § | CITY |
|---|--|
| COUNTY OF JOHNSON § | <u>011 1</u> |
| This instrument was acknowledged bef | |
| City of Burleson, Texas, a municipality, on be | |
| [SEAL] | |
| Notary Public in and for the State of Texas | |
| Type or Print Notary's Name | |
| My Commission Expires: | |
| THE STATE OF TEXAS § S COUNTY OF JOHNSON § | DEVELOPER |
| Before me, or, known to me [or, or through | proved to me on the oath of |
| identity card or other document)] to be the purposes and consideration therein expression | person whose name is subscribed to to me that he executed the same for |
| Given under my hand and seal of office, this | day of, 2023. |
| [SEAL] | |
| Notary Public in and for the State of Texas | |
| Type or Print Notary's Name | |
| My Commission Expires: | |

| THE STATE OF TEXAS § COUNTY OF § | | <u>Maintenar</u> | nce Bond | |
|----------------------------------|--------------------------------|------------------|------------------|--------------|
| KNOW ALL MEN BY THESE | PRESENTS: | | | |
| THAT | ONTRACTOR", and | of | County, | Texas, |
| hereinafter referred to as "CC | ONTRACTOR", and | , a | corporation of | organized |
| | f | | | |
| the State of Texas, hereinafte | er referred to as "SURETY", a | re held and f | irmly bound un | ito |
| , | and | | | |
| a municipal corporation locat | ted in Johnson County, Texas | hereinafter | referred to as | "CITY" in |
| | | | | |
| | to be paid in Burleson, Johnso | | | |
| • | be made, we bind ourselves, | • | | • |
| | I severally; and firmly by th | • | • | • |
| | i severally, and limity by th | ese present | s, the condition | אוו טו נוווא |
| obligation is such that, | | | | |
| | entered into a certain contrac | | | |
| , dated the | day of, <i>2</i> | 20 in the | proper perfor | mance of |

which the CITY OF BURLESON has an interest, a copy of which is attached hereto and made

: NOW THEREFORE.

a part hereof, for the construction of:

If CONTRACTOR will maintain and keep in good repair the work herein contracted to be done and performed for a period of two (2) years from the date of acceptance and do all necessary backfilling that may arise on account of sunken conditions in ditches, or otherwise, and do and perform all necessary work and repair any defective condition growing out of or arising from the improper joining of same, or on account of any breaking of same caused by said CONTRACTOR in laying or building same, or on account of any defect arising in any of said work laid or constructed by said CONTRACTOR, or on account of improper excavation or backfilling, it being understood that the purpose of this section is to cover all defective conditions arising by reason of defective materials, work or labor performed by said CONTRACTOR, then this obligation shall be void, otherwise to remain in full force and effect; and in case said CONTRACTOR shall fail to do so, it is agreed that CITY may do said work and supply such materials and charge the same against said CONTRACTOR and SURETY on this obligation, and said CONTRACTOR and SURETY herein shall be subject to the liquidated damages mentioned in said contract for each days' failure on its part to comply with the terms of said provisions of said contract.

Provided, further, that if any legal action is filed on this Bond, venue shall lie in Johnson County, Texas.

And, that said SURETY, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work performed thereunder, or the plans, specifications, drawings, etc. accompanying same shall in any way affect its obligation on this Bond; and it does hereby waive notice of any such change,

extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder.

The Undersigned and designated agent is hereby designated by SURETY herein as the resident agent in either Johnson or Tarrant Counties to whom any requisite notice may be delivered and on whom service of process may be had in matters arising out of such suretyship.

| IN WITNESS WHEREOF, this instrument | t is executed on this the day of |
|---|---|
| WITNESS | CONTRACTOR |
| Signature | Signature |
| Typed/Printed Name | Typed/Printed Name |
| Address | Address |
| WITNESS | SURETY |
| Signature | Signature |
| Typed/Printed Name | Typed/Printed Name |
| Address | Address |
| The Resident Agent of the SURETY in either contice and service of process is: | Johnson or Tarrant County, Texas, for delivery of |
| NAME | |
| ADDRESS | |
| | |

Page 12 of 17

NOTE: Date of Bond must NOT be prior to date of contract.

| THE STATE OF TEXAS | S | Dowformono | a Dand |
|---|--|---|--|
| COUNTY OF | S | <u>Performance</u> | <u>s Bond</u> |
| KNOW ALL MEN BY THE | ESE PRESENTS: | | |
| business in the State of T | "CONTRACTOR", and der the laws of the State of _ exas, hereinafter referred to | as "SURETY", are | held and firmly bound |
| referred to as "CITY", in the (\$\frac{\\$}{}\) lawful m Texas, for the payment of executors, administrators, the condition of this obligation. | municipal corporation locate ne penal sum of oney of the United States, f which sum well and truly to, and successors, jointly and ation is such that, | to be paid in Burles o be made, we bind d severally; and firm | DOLLARS son, Johnson County, d ourselves, our heirs, nly by these presents, |
| performance of which the | OR entered into a certain c , dated the day c CITY OF BURLESON has ereof, for the construction of ; No | an interest, a copy | 20 In the proper of which is attached |
| | shall well, truly and faithfully ons and agreements of sai | perform and fulfill a | |

covenants, terms, conditions and agreements of said contract in accordance with the plans, specifications and contract documents during the original term thereof, and any extension thereof which may be granted with or without notice to SURETY, and during the life of any guaranty required under the contract, and shall also well and truly perform and fulfill all the covenants, terms, conditions and agreements of any and all authorized modifications of said contract that may hereafter be made, notice of which modifications to SURETY being hereby waived, then this obligation shall be void, otherwise to remain in full force and effect; and in case said CONTRACTOR shall fail to do so, it is agreed that CITY may do said work and supply such materials and charge the same against said CONTRACTOR and SURETY on this obligation, and said CONTRACTOR and SURETY hereon shall be subject to the liquidated damages mentioned in said contract for each days' failure on its part to comply with the terms of said provisions of said contract.

Provided, further, that if any legal action is filed on this Bond, venue shall lie in Johnson County, Texas.

This Bond is executed pursuant to the provisions of Chapter 2253 of the Government Code, as the same may be amended from time to time, and all liabilities on this Bond shall be determined in accordance with the provisions of said Chapter to the same extent as if they were fully copied at length herein.

Surety, for value received, stipulates and agrees that the Bond shall automatically be increased by the amount of any change order or supplemental agreement which increases the contract price with or without notice to the Surety and that no change, extension of time, alternation or addition to the terms of the contract, or to the work performed thereunder, or the plans, specifications, or drawings accompanying the same shall in any way affect its obligation on this Bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the contract or to the work to be performed thereunder.

The undersigned and designated agent is hereby designated by SURETY herein as the resident agent in either Johnson or Tarrant Counties to whom any requisite notice may be delivered and on whom service of process may be had in matters arising out of such suretyship.

| IN WITNESS | | his instrument | is executed on this the | day of | | |
|-----------------|-----------------|----------------|---------------------------------------|----------------|--|--|
| WITNESS | | | CONTRACTOR | | | |
| Signature | | | Signature | | | |
| Typed/Printed N | Name | | Typed/Printed Name | | | |
| Address | | <u> </u> | Address | | | |
| WITNESS | | | SURETY | | | |
| Signature | | | Signature | | | |
| Typed/Printed N | Name | _ | Typed/Printed Name | | | |
| Address | | | Address | | | |
| | gent of the SUR | | ohnson or Tarrant County, Texas, f | or delivery of | | |
| NAME _ | | | ···· | | | |
| ADDRES | SS | | · · · · · · · · · · · · · · · · · · · | | | |

| THE STATE OF TEXAS | S | Day was a saf D | l | |
|-------------------------------|---|---------------------|----------------|------------|
| COUNTY OF | S | Payment Bo | <u>ona</u> | |
| KNOW ALL MEN BY THES | SE PRESENTS: | | | |
| THAT | | of | County, | Texas, |
| hereinafter referred to as "0 | CONTRACTOR", and | | | а |
| corporation organized under | CONTRACTOR", and er the laws of the State of | and | authorized | to do |
| | exas, hereinafter referred to a | | | |
| unto | | and | the CI | ΓÝ OF |
| BURLESON, TEXAS, a m | unicipal corporation located | in Johnson Cour | nty, Texas, he | ereinafter |
| | e penal sum of | | | LARS |
| (<u>\$),</u> lawful r | noney of the United States, t | io be paid in Burle | eson, Johnsor | ո County, |
| Texas, for the payment of | which sum well and truly to | be made, we bin- | d ourselves, o | our heirs, |

______; NOW THEREFORE,

If CONTRACTOR shall well, truly and faithfully perform its duties and make prompt payment to all persons, firms, subcontractors, corporations and claimants supplying labor and material in the prosecution of the work provided for in said contract, and any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to SURETY being hereby waived, then this obligation shall be void, otherwise to

executors, administrators, and successors, jointly and severally; and firmly by these presents,

performance of which the CITY OF BURLESON has an interest, a copy of which is attached

___, dated the ____ day of ____ , 20 . in the proper

WHEREAS, CONTRACTOR entered into a certain contract with

the condition of this obligation is such that,

remain n full force and effect.

hereto and made a part hereof, for the construction of:

Provided, further that if any legal action be filed on this Bond, venue shall lie in Johnson County, Texas.

This Bond is executed pursuant to the provisions of Chapter 2253 of the Government Code, as the same may be amended from time to time, and all liabilities on this Bond shall be determined in accordance with the provisions of said Chapter to the same extent as if they were fully copied at length herein.

Surety, for value received, stipulates and agrees that the Bond shall automatically be increased by the amount of any change order or supplemental agreement which increases the contract price with or without notice to the Surety and that no change, extension of time, alternation or addition to the terms of the contract, or to the work performed thereunder, or the plans, specifications, or drawings accompanying the same shall in any way affect its obligation

on this Bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the contract or to the work to be performed thereunder.

The Undersigned and designated agent is hereby designated by SURETY herein as the resident agent in either Johnson or Tarrant Counties to whom any requisite notice may be delivered and on whom service of process may be had in matters arising out of such suretyship.

| IN WITNESS WHI | | instrument | is | executed | on | this | the | | _ day | of |
|--|--|---------------|--------------------|-------------|-------|-------|--------|----------|----------|------|
| WITNESS | | | CO | NTRACTO | R | | | | | |
| Signature | | | Sign | nature | | | | | | |
| Typed/Printed Name | ; | | Typed/Printed Name | | | | | | | |
| Address | | | Add | lress | | | | | | |
| WITNESS | | | SUF | RETY | | | | | | |
| Signature | | | Signature | | | | | | | |
| Typed/Printed Name | <u>, </u> | | Тур | ed/Printed | Nam | е | | | | |
| Address Address | | | | | | | | | | |
| The Resident Agent notice and service of | | Y in either J | ohns | son or Tarr | ant C | ounty | у, Тех | (as, for | delivery | / of |
| NAME | | | | | | | | | | |
| ADDRESS | | | | | | | | | | |

| Date: | |
|---------------------|---|
| | SWPPP POST-CONSTRUCTION MAINTENANCE PLAN |
| inlet protection w | and final acceptance of a project, the Operator responsible for will be required to maintain all necessary devices installed until vices are no longer needed. |
| required. It will b | ill notify the Operator when the inlet protection is no longer be the Operator's responsibility to remove and discard any vices in a satisfactory method. |
| PROJECT: | |
| OPERATOR: | |
| OF LIVATOR | (Name printed) |
| By: | |
| | (Signature) |

(Signer's name printed)



Michelle McCullough, P.E., CFM
Development Services Manager / Civil Engineer
City of Burleson
141 W Renfro Street
Burleson, TX 76028

Re: Parking Proposal for Bransom Street near the Bufford Intersection, Burleson, Texas 76028

Dear Mrs. McCullough,

The purpose of this letter is to propose a parking agreement for the Bransom Street parking area closest to Bufford. In the past, we have made similar proposals to the City where Shipman Companies will design, build and bond parking in the City's right of way in Old Town that is approved by and meets all City requirements. Shipman and the City enter into a CFC agreement and upon completion, the City reimburses Shipman for 50% of the costs associated with parking. This request is for 13 parking spaces and sidewalks (shown on the attached Exhibit) with our estimated costs listed below:

| | Amount | Unit \$ | |
|--------------------------------------|---------------|------------|-------------|
| 5" Parking for Office | 2,532 sq ft | \$9.50 | \$24,054.00 |
| 6" Curb | 200 linear ft | \$28.00 | \$5,600.00 |
| Sidewalk | 920 sq ft | \$8.00 | \$7,360.00 |
| New Sod and Installation | | | \$750.00 |
| ADA Ramp and Entry Plates | | | \$1,000.00 |
| Saw Cut and Remove Concrete for Park | | \$2,500.00 | |
| Excavating and Prepping Site | | | \$3,750.00 |
| Layout and Stripe | | | \$595.00 |
| Surveying | | | \$1,000.00 |
| Wheel Stops | 13 | \$82.50 | \$1,072.50 |
| Bonding | | | \$3,000.00 |
| | | Total: | \$50,681,50 |

All work will be inspected and approved by the City. Please review and let us know if this meets your approval and staff would recommend this to Council. Thank you in advance for attention to this matter and please feel free to contact me with any questions or concerns.

Regards,

David Shipman



Michelle McCullough, P.E., CFM
Development Services Manager / Civil Engineer
City of Burleson
141 W Renfro Street
Burleson, TX 76028

Re: Parking Proposal for Bransom Street near the Ellison Intersection, Burleson, Texas 76028

Dear Mrs. McCullough,

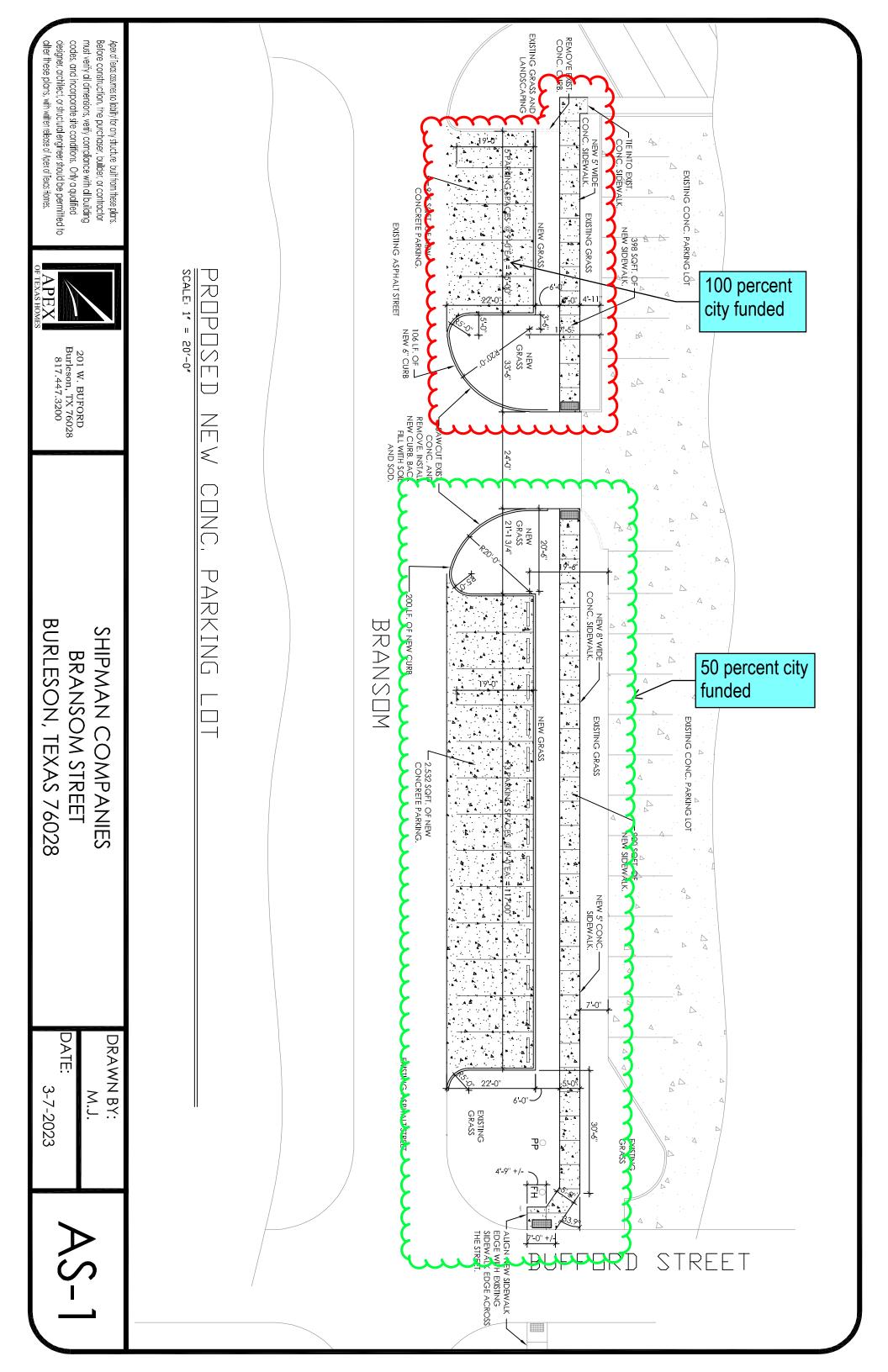
The purpose of this letter is to propose a parking agreement for Bransom Street parking area closest to Ellison. In the past, we have made similar proposals to the City where Shipman Companies will design, build and bond parking in the City's right of way in Old Town that is approved by and meets all City requirements. Shipman and the City enter into a CFC agreement and upon completion, the City reimburses Shipman for 100% of the costs associated with parking. This request is for 6 parking spaces and sidewalk (shown on the attached Exhibit) with our estimated costs listed below:

| | Amount | Unit \$ | |
|--|---------------|---------|-------------|
| 5" Parking for | 975 sq ft | \$9.50 | \$9,262.50 |
| 6" Curb | 106 linear ft | \$28.00 | \$2,968.00 |
| Sidewalk | 398 sq ft | \$8.00 | \$3,184.00 |
| ADA Ramp and Entry Plate | \$500.00 | | |
| New Sod and Installation | | | \$1,750.00 |
| Excavating, Haul Off and Prepping Site | \$5,800.00 | | |
| Saw Cut and Remove Concrete for Parking Is | \$2,500.00 | | |
| Layout and Stripe | | | \$500.00 |
| Surveying | | | \$1,000.00 |
| Wheel Stops | 5 | \$82.50 | \$412.50 |
| Bonding | | | \$3,000.00 |
| | | Total: | \$30,877.00 |

All work will be inspected and approved by the City. Please review and let us know if this meets your approval and staff would recommend this to Council. Thank you in advance for attention to this matter and please feel free to contact me with any questions or concerns.

Regards,

David Shinman



CERTIFICATE OF INTERESTED PARTIES

FORM **1295**

1 of 1

| _ | | | | - | | | | | |
|--|--|---------------------------------------|-------------------------------------|---------------------|---|--------------|--|--|--|
| | Complete Nos. 1 - 4 and 6 if there are interested parties. Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties. | | | | OFFICE USE ONLY CERTIFICATION OF FILING | | | | |
| 1 | Name of business entity filing form, and the city, state and count of business. | tity's place | Certificate Number: 2023-1008971 | | | | | | |
| | 225 W Ellison, LLC | | | 2023-1000971 | | | | | |
| | BURLESON, TX United States | | | Date Filed: | | | | | |
| 2 | Name of governmental entity or state agency that is a party to the contract for which the form | | | 04/18/2023 | | | | | |
| | being filed. City of Burleson | Date Acknowledged: | | | | | | | |
| | | | | | | | | | |
| 3 | Provide the identification number used by the governmental enti- description of the services, goods, or other property to be provided | | | the co | ntract, and pro | vide a | | | |
| | 2021-26 | | | | | | | | |
| | Constructing, installing and maintaining parking spaces in City | y Right of Way | | | | | | | |
| 4 | | City, State, Country (place of busine | | Nature of interest | | | | | |
| | Name of Interested Party | | | ess) - | | oplicable) | | | |
| _ | | | | \rightarrow | Controlling | Intermediary | | | |
| 22 | 5 W Ellison, LLC | Burleson, TX United States | | | X | | | | |
| | | | | | | | | | |
| | | | | | | | | | |
| | | | | | | | | | |
| _ | | | | \dashv | | | | | |
| | | | | _ | | | | | |
| | | | | | | | | | |
| | | | | | | | | | |
| | | ×. | | | | | | | |
| _ | | | | | | | | | |
| 5 | Check only if there is NO Interested Party. | | | | | | | | |
| | Ш | | | | | | | | |
| 6 | UNSWORN DECLARATION | | | | | | | | |
| | My name is David Shipman | | and my date of l | birth is | 02/18/198 | <u> </u> | | | |
| | My address is 201 W Bufford St. STE 101 | Burleson | , TX | | 76028 | , USA _ | | | |
| | (street) | (city) | (sta | ate) | (zip code) | (country) | | | |
| I declare under penalty of perjury that the foregoing is true and correct. | | | | | | | | | |
| | Executed in JohnsonCounty | , State of Texas | , on the _ | 18th _d a | ay of <u>April</u> | , 20_23 | | | |
| | (month) (year) | | | | | | | | |
| | Signature of authorized agent of contracting business entity (Declarant) | | | | | | | | |



City Council Regular Meeting

DEPARTMENT: Legal Department

FROM: Justin Scharnhorst, Assistant to the City Manager

MEETING: May 1, 2023

SUBJECT:

Consider approval of an interlocal agreement with the City of North Richland Hills for cooperative purchasing between the cities that will allow among other cooperative purchases, utilization of an existing City of North Richland Hills agreement with Intermountain Slurry Seal, Inc. (Staff Contact: Justin Scharnhorst, Assistant to the City Manager)

SUMMARY:

The purpose of this action is to request approval of an interlocal agreement with the City of North Richland Hills to give staff another avenue to use resources through existing contracts, leveraging economies of scale to find the best value for goods and services for the City of Burleson. There is no cost associated with this agreement. This agreement simply allows the City to purchase equipment and services through pre-negotiated contracts with the City of North Richland Hills and vice versa.

The City of Burleson is currently requesting the use of a contract the City of North Richland Hills negotiated with Intermountain Slurry Seal, Inc. for asphalt pavement sealing services.

OPTIONS:

- 1) Approve as presented
- 2) Deny

RECOMMENDATION:

Approve as presented

PRIOR ACTION/INPUT (Council, Boards, Citizens):

N/A

FISCAL IMPACT:

N/A

STAFF CONTACT:
Justin Scharnhorst Assistant to the City Manager jscharnhorst@burlesontx.com 817-426-9646



THE CITY OF NORTH RICHLAND HILLS

City Council Presentation

May 1, 2023

INTERLOCAL AGREEMENTS



Cooperative agreements between two entities for the use of existing contracts to achieve a cost benefit



Leverage economies of scale to achieve best value available



No cost associated with use of these agreements



SUMMARY

- CITY OF BURLESON HAS APPROACHED THE CITY OF NORTH RICHLAND HILLS WITH A PROPOSED INTERLOCAL AGREEMENT TO UTILIZE AN EXISTING CONTRACT WITH INTERMOUNTAIN SLURRY SEAL, INC. FOR ASPHALT PAVEMENT SEALING SERVICES
- INTERLOCAL AGREEMENTS ARE MUTUALLY BENEFICIAL AND MAY BE USED FOR FUTURE PURCHASES
- STAFF RECOMMENDS APPROVAL OF AN INTERLOCAL AGREEMENT WITH THE CITY OF NORTH RICHLAND HILLS





Approve Interlocal Agreement with the City of North Richland Hills



Deny Interlocal Agreement with the City of North Richland Hills

STAFF RECOMMENDS APPROVAL



INTERLOCAL AGREEMENT BETWEEN CITY OF NORTH RICHLAND HILLS AND THE CITY OF BURLESON

This Agreement made and entered into by and between the City of North Richland Hills, hereinafter referred to as "NRH", and the City of Burleson, hereinafter referred to as Burleson.

Pursuant to the authority granted by the Texas Interlocal Cooperation Act {Chapter 791 Texas Government Code} providing for the cooperation between local governmental bodies, the parties hereto, in consideration of the premises and mutual promises contained herein, agree as follows:

NRH and Burleson desire to enter into an Agreement for the purchase of goods and services from vendors selected through the competitive bidding process as authorized by Section 791.025 Tx. Govt. Code. Specifications for said items should be determined in cooperation with the final approval of the entity processing the bid.

The responsibility of each entity shall be as follows:

I.

NORTH RICHLAND HILLS

- 1. NRH shall be allowed to purchase goods and services from vendors who have been selected by Burleson through the competitive bidding process. NRH will place orders directly with and pay directly to the selected vendor for goods and services purchased through a contract.
- 2. All purchases will be within the specifications that have been agreed to. NRH shall be responsible for the Vendors compliance with all conditions of delivery, price and quality of the purchased goods or services.
- 3. NRH shall give a 30-day written notification to all participating agencies of any change or cancellation of participation.
- 4. The Purchasing Agent, shall be designated as the official representative to act for NRH all matters relating to this cooperative purchasing agreement.

II.

BURLESON

 Burleson shall be allowed to purchase goods and services from vendors who have been selected by NRH through the competitive bidding process of NRH. Burleson will place orders directly with and pay directly to the selected vendor for goods and services purchased through a contract.

- All purchases will be within the specifications that have been agreed to. Burleson shall be responsible for the Vendors compliance with all conditions of delivery, price and quality of the purchased goods or services.
- 3. Burleson shall give a 30-day written notification to a participating agency of any change or cancellation of participation.
- 4. The Burleson City Manager, shall be designated as the official representative to act for Burleson in all matters relating to this cooperative purchasing agreement.

III MISCELLANNEOUS

- 1. This is the entire agreement of the parties and supersedes all prior understandings and agreements between the parties regarding such matters. This Agreement may not be altered, amended, or modified except in writing signed by all parties to this Agreement. No official, agent, employee, or representative of either North Richland Hill or Burleson has the authority to alter, amend, or modify the terms of this Agreement.
- 2. Any clause, sentence, paragraph or article of this Agreement which is determined by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect shall not be deemed to impair, invalidate, or nullify the remainder of this Agreement if the Agreement can be given effect without the invalid portion.
- 3. Any act of forbearance by either party will not constitute and will not have the effect of an amendment of this Agreement. The failure of either party to exercise any right under this Agreement under certain circumstances does not imply a waiver of such right under like circumstances later occurring.
- 4. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Texas.
- 5. This Agreement shall take effect upon execution by the signatories and shall be in effect from date of execution until terminated by either party with thirty (30) written notice.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their authorized officers.

| CITY OF NORTH RICHLAND HILLS | CITY OF BURLESON | | |
|-----------------------------------|------------------------------|--|--|
| BY: Mark Hindman, City Manager | BY: Chris Fletcher, Mayor | | |
| DATF: | DATE: | | |

| ATTEST: | ATTEST: |
|---|-----------------------------------|
| Alicia Richardson City Secretary/Chief Governance Officer | Amanda Campos, City Secretary |
| APPROVED AS TO FORM AND LEGALITY: | APPROVED AS TO FORM AND LEGALITY: |
| Maleshia B. McGinnis, City Attorney | Allen Taylor, City Attorney |



City Council Regular Meeting

DEPARTMENT: Development Services

FROM: Tony McIlwain, Development Services Director

MEETING: May 1, 2023

SUBJECT:

Consider approval of an ordinance amending Chapter 14, "Businesses" of the Code of Ordinances of the City of Burleson, Texas (2005), as amended, by adding article XII, entitled "Registration of Short Term Rentals" and establishing general standards and a registration process for short-term rentals, establishing fees, and providing definitions. (*Final Reading*)(*Staff Contact: Tony McIlwain, Development Services Director*)

SUMMARY:

City staff provided a briefing to the City Council on short term rentals (STRs) during the regular meeting of February 6, 2023. STRs refers to an activity in which one party, the "host," agrees to rent out all or part of a home to another party, the "guest," on a temporary, time-limited basis. The rental duration ranges from days to weeks, but is typically much shorter than a conventional lease agreement.

City staff advised the Council that they have received zoning inquiries and citizen complaints regarding short term rentals within the community. At the conclusion of that briefing, Council directed staff to create an ordinance that provides for definitions, a registration process and a fire inspection. The ordinance being provided for approval accomplishes the direction given by Council.

The ordinance provides for a registration and permitting process that will be handled by the Development Services Department. Enforcement of non-compliant STRs will be handled Code Compliance through the city's normal violation process. The Fire Department will inspect STRs for the presence of properly placed smoke detectors, carbon monoxide detectors, fire extinguishers, electrical panels and outlets and ingress/egress routes.

OPTIONS:

- 1) Approve the ordinance as presented
- 2) Approve the ordinance with changes
- 3) Deny the ordinance

RECOMMENDATION:

Staff recommends approval of the ordinance as written.

PRIOR ACTION/INPUT (Council, Boards, Citizens):

None

FISCAL IMPACT:

With the exception of collecting the registration fee, there is no fiscal impact to the budget.

STAFF CONTACT:

Name: Tony McIlwain

Title: **Development Services Director** Email: **tmcilwain@burlesontx.com**

Phone: 817-426-9684

SHORT TERM RENTAL ORDINANCE AND FEE SCHEDULE





- Short term rental (STR) refers to an activity in which one party, the "host," agrees to rent out all or part of a home to another party, the "guest," on a temporary, time-limited basis.
- City staff provided a briefing to the City Council on STRs during the regular meeting of February 6, 2023.
- At the conclusion of that briefing, Council directed staff to move forward with the creation of an ordinance that addresses STRs.



- Based on Council's direction, staff has prepared an ordinance providing for the registration, annual permitting and inspections of STRs.
- The application will require the owner/operator's contact information, 24-hour contact information of a local representative and dimensioned floor plan illustrating an evacuation route.
- The ordinance <u>does not</u> contain a provision for the collection of a hotel occupancy tax.

- The Development Services Department will review applications, issue permits, collect fees, and manage renewals of STRs. All permits will be tracked within the city's existing permitting software.
- The Fire Marshal's office will conduct inspections of the premises to determine the placement and number of working smoke detectors, carbon monoxide detectors, presence of fire extinguishers, ingress and egress routes, electrical service panels and electrical outlets.



- Properties operating without a STR permit or properties causing nuisance violations (e.g. noise, care of premises) will be handled through Code Compliance through issuance of a notice of violation (NOV) and will be given 14 days to apply for permit.
- If non-compliance continues, a citation may be issued daily for violators. A fine may be issued up to \$500.

- The STR ordinance contains criteria and a process for denial and/or revocation of a permit as well as a process for an appeal of a denied and/or revoked permit.
- Appeals of a denied and/or revoked permit will be heard by the Zoning Board of Adjustments.
- If a permit is revoked, no additional permit may be granted for the same property within a year of the revocation.

STR 2022-23 FEE SCHEDULE AMENDMENT

- As part of this process, staff is also proposing an amendment to the City's 2022-23 fee schedule (CSO# 3069-2022) to provide new fees for the annual permitting of short term rentals.
- Staff is proposing an initial \$150 permit and \$150 permit renewal fee.
- These fees are non-refundable.

FEES IN OTHER CITIES

| CITY | STR ORDINANCE | REGISTRATION REQUIRED | INSPECTION REQUIRED | FEE AMOUNT | H.O.T. COLLECTED |
|------------------|---------------|--------------------------|------------------------|--|---------------------|
| Arlington | Yes | Yes | Yes | \$500 with \$500 renewal | Yes: 9% |
| The Colony | Yes | Yes | Yes | None | Yes: 7% |
| Coppell | Yes | Yes | Yes | \$50 (\$25 for operators 65 years and older) | Yes: 7% |
| Euless | Yes | Yes | Yes | \$200 with \$200 renewal | Yes: 7% |
| Fort Worth | Yes | Yes | Yes | \$150 with \$100 renewal | Yes: 7% |
| Grand Prairie | Yes | Yes | Yes | \$480 with \$480 renewal | Yes: 7% |

CITY COUNCIL OPTIONS

- Approve the STR ordinance and amendment to the fee schedule
- Approve the STR ordinance and amendment to the fee schedule with additional changes
- Approve the STR ordinance and deny the amendment to the fee schedule
- Deny the STR ordinance and corresponding amendment to the fee schedule

STAFF'S RECOMMENDATION

- Staff recommends approval of the short term rental ordinance and amendment to the fee schedule with a suspended start date of June 19th.
- The suspended start date will allow time for staff to create the application, update the permitting database, refine the inspection process and notify any relevant parties of the new ordinance.



ORDINANCE

AN ORDINANCE AMENDING CHAPTER 14, "BUSINESSES" OF THE CODE OF ORDINANCES OF THE CITY OF BURLESON, TEXAS (2005), AS AMENDED, BY ADDING ARTICLE XII, ENTITLED "REGISTRATION OF SHORT TERM RENTALS" AND ESTABLISHING GENERAL STANDARDS AND A REGISTRATION PROCESS FOR SHORT-TERM RENTALS, ESTABLISHING FEES, AND PROVIDING DEFINITIONS; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A PENALTY FOR VIOLATIONS HEREOF; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Burleson ("City") is a home rule city acting under its charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Texas Local Government Code; and

WHEREAS, the increase in the number of persons or entities desiring to rent their residential properties has led to the increase of transient and vacation rental uses within neighborhoods; and

WHEREAS, the use of residential premises by individuals for short periods of time may negatively impact the residential character of many neighborhoods by reducing communication and accountability between permanent residents by partially substituting permanent residents with transient visitors; and

WHEREAS, the City has investigated the nature and extent of short-term rentals in the City and has obtained public input at public meetings regarding the impact of short-term rentals on neighborhoods in the City; and

WHEREAS, the City has received complaints about short-term rentals from citizens who have contacted code enforcement, police, and City councilmembers about short-term rentals; and

WHEREAS, when investigating complaints, the City does not have adequate contact information for owners of short-term rentals, which would be beneficial in timely responding to complaints and in the event of life, health or safety emergencies; and

WHEREAS, the City Council desires to ensure the health and safety of guests and residents, but also support tourism in a balanced way; and

WHEREAS, the City Council reviewed a variety of possible regulations for short-term rentals and determined that enacting a registration program for short-term rentals will serve to balance the rights of all stakeholders through a fair and balanced regulatory framework and ensure that the short-term rentals do not become a nuisance; and

WHEREAS, the City wishes to adopt regulations requiring the registration of short-term rentals in Burleson, which will allow the City to properly identify the location of short-term rentals and to provide contact information for owners and agents of short-term rentals to aid in responding to complaints and emergencies; and

WHEREAS, City Council finds and determines that regulating the short-term rental property is necessary for the health, safety and welfare of the general public, the promotion of consistent land uses and development, and the protection of landowners and residents of the City of Burleson;

WHEREAS, the City Council finds and determines that the adoption of this ordinance is necessary and proper and in the best interests of the public health, safety, and general welfare.

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

SECTION 1.

The Code of Ordinances of Burleson, Texas (2005) is hereby amended by adding a new article, entitled Article XII "Short-Term Rental Registration" to Chapter 14 "Businesses", comprised of Sections 14-570 through 14-582 which read as follows:

"ARTICLE XIII: SHORT-TERM RENTAL REGISTRATION

Sec. 14-571. Purpose.

This Article is intended to provide a procedure to allow the rental of residential premises to visitors on a short-term basis, while ensuring that such rental use does not create adverse impacts to residential neighborhoods due to nuisances. Additionally, this Article is intended to ensure that minimum health and safety standards are maintained in such units to protect visitors from unsafe or unsanitary conditions.

Sec. 14-572. Definitions.

Advertise means the act of drawing the public's attention to a short-term rental in order to promote the availability of the residence for use as a short-term rental. Said advertising may be found in any medium, including but not limited to, newspaper, magazine, brochure, website, or social media and mobile application.

Bedroom means the living area(s) of the dwelling unit that is designed and furnished for sleeping and which has proper egress as required by the International Residential Code.

City means the City of Burleson, Texas.

City Manager means the city manager of the City.

Director means the director of the department designated by the City Manager to enforce and administer this Article, including the Director's designees.

Fire Code means the fire code adopted by the City.

Local Contact Person means the person designated by the Owner or Operator who shall be available twenty-four (24) hours per day, seven (7) days per week for the purpose of:

- (a) responding in person within one (1) hour to complaints regarding the condition, operation, or conduct of Occupants of the Short-Term Rental unit; and
- (b) taking remedial action to resolve such complaints.

The Owner or Operator may be listed as the Local Contact Person.

Municipal Court means the City of Burleson, Texas Municipal Court of Record.

Operator means every natural person, firm, partnership, association, social or fraternal organization, corporation, estate, trust, receiver, syndicate, branch of government, or any other group or combination acting as a unit who is the proprietor of a Short-Term Rental with authority to act in that capacity, whether in the capacity of Owner, lessee, sub-lessee, mortgagee in possession, licensee, or any capacity. Where the Operator performs his or her functions through a managing agent of any type or character, other than an employee, or where the Operator performs his or her functions through a rental agent, the managing agent or the rental agent shall have the same duties as his or her principal.

Owner means any person, agent, operator, firm, trust, corporation, partnership, or any other legal entity who has a legal or equitable interest in the property; or who is recorded in the official records of the county as holding title to the property; or who otherwise has control of the property, including the guardian of the estate of any such person, and the executor of the estate of such person if ordered to take possession of real property by a court.

Occupant means any individual person living in, sleeping in, or possessing a building or portion thereof. A person is not required to be paying rent, providing in-kind services, or named in any lease, contract, or other legal document to be considered an occupant.

Premises means property, a lot, plot, or parcel of land, including any structures or portions of structures thereon.

Short-Term Rental means a residential premise, or portion thereof, used for lodging accommodations to Occupants for a period of not less than one or more than thirty (30) consecutive days, other than an ongoing month-to-month tenancy granted to the same renter for the same premises. The definition of Short-Term Rental does not include a hotel, motel, bed and breakfast, executive suite, or other non-residential use.

Zoning Ordinance means the zoning ordinance adopted by the City.

Sec. 14-573. Unpermitted Short-Term Rentals Prohibited.

- (a) It shall be unlawful for any Owner, Operator, or person to rent, lease, advertise, or otherwise permit or allow any residential premises to be operated or used as an unpermitted Short-Term Rental.
- (b) It shall be an affirmative defense to violation of this section that the occupant is a party to the sale of the premises and was occupying the premises pursuant to a written post-closing occupancy agreement.

Sec. 14-574. Short-Term Rental Permit Required.

- (a) An Owner or Operator who desires to use its Premises as a Short-Term Rental must have valid, active short-term rental permit from the City prior to using, allowing the use of, or advertising the use of said Premises as a Short-Term Rental. Each rentable unit must be permitted. Upon application to the City, a Short-Term Rental permit shall be approved by the Director if the application satisfies all the conditions of this Article and the Zoning Ordinance. The Director may place reasonable conditions on Short-Term Rental permits to ensure compliance with the provisions of this Article.
- (b) A copy of the Short-Term Rental permit shall be posted at a conspicuous location inside the front entrance(s) to the Short-Term Rental.
- (c) Owners and Operators of Short-Term Rental units which were registered before the effective date of this ordinance shall have ninety (90) days from the effective date of this ordinance to secure the permit required under this Article.

Sec. 14-575. Transferability.

(a) A Short-Term Rental permit is not transferable and shall not be assigned nor transferred to another person or entity. Any attempt to transfer a permit or attempt to use another person's permit may be grounds for revocation of a permit.

Sec. 14-576. Short-Term Rental Permit Application Process.

- (a) *Application requirement*. An Owner or Operator who wishes to offer his or her residential premises as a Short-Term Rental must submit an application for a permit to the City.
- (b) Application process. Applications shall be in writing on a Short-Term Rental application form prescribed by the City Manager or his designee. The date of receipt of an application form shall be recorded by the City in a manner sufficient to verify the date of its submission. The Owner or Operator must submit the following information on the application form:
 - (1) The physical address of the short-term residential premises; and

- (2) The number of bedrooms and the applicable overnight and daytime occupancy limit of the proposed Short-Term Rental premises; and
- (3) The Owner's name, address, email address, and telephone number; and
- (4) If the Owner is not a natural person, then the name, address, and email address of a natural person who has the legal authority to act for the Owner; and
- (5) The Operator's name, address, email address, and telephone number; and
- (6) If the Operator is not a natural person, then the name, address, and email address of a natural person who has the legal authority to act for the Operator; and
- (7) The name, address, email address, and twenty-four (24) hour telephone number of a Local Contact Person; and
- (8) A statement that the Owner or Operator of the Short-Term Rental will comply with the requirements of this Article, including but not limited to, obtaining annual independent inspections of required fire extinguishers in compliance with the City's current Fire Code, and with all applicable state and local laws, and that the Owner or Operator shall be liable for any violations of applicable state and local laws; and
- (9) When applicable, written verification from the Owner that the Operator is authorized to operate the Premises as a Short-Term Rental; and
- (10) Such other information as the City Manager or his designee deems reasonably necessary to administer this Article.
- (c) There shall be a nonrefundable permit application fee. The application fee shall be in the amount set forth in the City's fee schedule.
- (d) *Additional application requirements*. The Short-Term Rental application form must be accompanied by a dimensioned floor plan of the Short-Term Rental identifying Bedrooms, other living spaces, and emergency evacuation routes.
- (e) If an application form is determined to be incomplete, the Director shall notify the Owner or Operator in writing of the incomplete nature of the application and the basis for that determination.

Sec. 14-577. Expiration of Permit; Renewals.

(a) A Short-Term Rental permit shall expire on the last day of the month one year after the date of issuance. No Short-Term Rental permit may be renewed without a completed renewal application submitted by the Owner or Operator and payment of the application fee. If the renewal application satisfies the conditions of this Article and all other provisions of the Code of Ordinances and the Zoning

- Ordinance, an application for renewal of a Short-Term Rental permit shall be approved by the Director or his designee.
- (b) An application for a Short-Term Rental renewal permit must be filed beginning thirty (30) days prior to the expiration of a current permit. Every complete application for a Short-Term Rental renewal permit shall include updates, if any to the information contained in the original permit or any subsequent renewals. The permit holder shall sign a statement affirming that there is either no change to such information, or that any updated is accurate and complete. The Director may require such certifications deemed necessary and proper to ensure continuing compliance with this Article.
- (c) An application for a Short-Term Rental renewal permit submitted after the expiration of the most recent permit for the premises shall be treated as an application for a new permit as described in Section 14-576.
- (d) If a complete application for a Short-Term Rental renewal permit is submitted less than thirty (30) days prior to the expiration of the current permit, the Director, in his sole discretion, may grant a one-time extension of the current permit not to exceed ten (10) days.
- (e) A nonrefundable permit renewal application fee shall accompany any renewal application. The application fee shall be in the amount set forth in the City's fee schedule.

Sec. 14-578. Inspection.

Prior to issuance of a Short-Term Rental permit, the Owner or Operator shall allow, within ten (10) days of receipt of notice from the City, an on-site inspection of the Short-Term Rental premises by the Director or the Director's designee to ensure compliance with minimum health and safety requirements for use and occupancy. If, upon completion of an inspection, the Premises are found to be in violation of one (1) or more provisions of applicable City codes and ordinances, the City shall provide written notice of such violation and shall set a re-inspection date for a violation to be corrected prior to issuance of a Short-Term Rental permit.

Sec. 14-579. Change of Information.

Any change of information provided in a Short-Term Rental application form must be reported to the City within ten (10) days and be continuously updated as changes occur.

Sec. 14-580. Additional Requirements.

(a) Smoke Alarms and Fire Extinguisher. Each Short-Term Rental Owner or Operator shall provide in the Short-Term Rental working smoke and carbon monoxide detectors, with alarms, in accordance with adopted codes, and at least one working Type A fire extinguisher. The Owner or Operator is responsible for obtaining

annual independent inspections of the fire extinguishers in compliance with the City's current Fire Code. The premises shall otherwise comply with applicable Code of Ordinance requirements, including but not limited to all building and fire codes.

(b) Emergency Evacuation Routes. Each Short-Term Rental Owner or Operator shall provide in a conspicuous place in the Short-Term Rental a dimensioned floor plan of the Short-Term Rental identifying Bedrooms, other living spaces, and emergency evacuation routes.

Sec. 14-581. Compliance and Enforcement; Penalty Provisions.

- (a) The Owner, Operator, Local Contact Person, and Occupants shall comply with all applicable laws, rules and regulations pertaining to the operation, use, and occupancy of a Short-Term Rental, as well as all City ordinances, including those related to trash, noise, and parking. The Owner shall not be relieved from any civil or criminal liability for a violation of this Article, regardless of whether such violation is committed by the Owner, Operator, Local Contact Person, or Occupant of the Owner's Short-Term Rental.
- (b) Nothing in this Article shall be construed to relieve any person or Owner of any other applicable requirements of federal, state, or local law, rules, or regulations. Nothing in this Article shall be construed to provide any property owner with the right or privilege to violate any private conditions, covenants, and restrictions applicable to the owner's property that may prohibit the use of such owner's property as a Short-Term Rental as defined in this Article.
- (c) It shall be unlawful for any person or entity to violate any provision of this Article. Proof that a violation of this Article occurred at a Short-Term Rental shall create a rebuttable presumption that the Owner of said Short-Term Rental committed the violation.
- (d) Prosecution under this Article shall not require the pleading or proving of any culpable mental state. Any violation of this Article which does not allege a culpable mental state is a Class C misdemeanor offense, and upon conviction shall be punished by a fine in the maximum amount of five hundred dollars (\$500.00).
- (e) If a culpable mental state is alleged in the charge of the offense and the offense governs fire safety or public health, such offense shall be punishable by a fine not to exceed two thousand dollars (\$2,000.00).
- (f) Penalties provided for in this Article are in addition to any other criminal or civil remedies that the City may pursue under federal, state, or local law.

Sec. 14-582. Revocation of Permit.

- (a) A permit may be denied or revoked by the Director for any of the following reasons:
 - (1) Providing false or misleading information on a Short-Term Rental application form.
 - (2) Information required to be provided as part of this Article has changed or is no longer accurate and the permit holder has failed to notify the City.
 - (3) Found guilty in the Municipal Court of two or more violations of the City of Burleson Code of Ordinances, this Article, or any other City ordinance within the preceding twelve-month time period.
 - (4) Failure to timely provide any information, or any corrected information, required under this Article.
- (b) Prior to denying or revoking a permit, the Director shall provide a written warning to the Owner or Operator, explaining the deficiencies in the application or permit, and provide for a deadline by which the applicant can voluntarily remedy the deficiencies.
- (c) Notice that a permit has been denied or revoked shall be given in writing to the Owner or Operator who completed the Short-Term Rental application form. The notice shall state the reason(s) for the denial or revocation, and it shall be served either by personal service or by certified United States mail to the address provided in the Short-Term Rental application form. The denial or revocation shall become effective on the date of service if served by personal service, or three (3) days from the date of mailing if served by United States mail.
- (d) To contest the denial or revocation of a permit, the applicant shall file a notice of appeal with the Director within ten (10) days following the effective date of the denial or revocation. If no notice of appeal is filed within ten (10) days, the denial or revocation is sustained.
- (e) The Director shall forward the notice of appeal to the board office of the City Zoning Board of Adjustment within three (3) business days of receipt of the notice of appeal.
- (f) The Zoning Board of Adjustment shall hold a hearing within a reasonable time, but no later than sixty (60) days of the appeal being received in the board office, and shall render a decision at the conclusion of the hearing.
- (g) An appeal shall not stay the denial or revocation of a permit unless otherwise directed by the Director.

(h) If a Short-Term Rental permit is revoked by the Director, then for one year after the date of revocation, no second or additional permit shall be issued for a Short-Term Rental on the same Premises which are the location of the revoked permit."

SECTION 2. CUMULATIVE

This ordinance shall be cumulative of all provisions of ordinances and of the Code of Ordinances of the City of Burleson, Texas, as amended, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances and such Code, in which event the conflicting provisions of such ordinances and such Code are hereby repealed. This ordinance is consistent with and is not intended to repeal any provision in the zoning ordinance.

SECTION 3. SEVERABILITY

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

SECTION 4. SAVINGS PROVISION

All rights and remedies of the City of Burleson are expressly saved as to any and all violations of the provisions of any ordinances concerning outdoor gatherings or Public Events which have accrued at the time of the effective date of this ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

SECTION 5. PENALTY

Any person, firm or corporation who violates, disobeys, omits, neglects or refuses to comply with or who resists the enforcement of any of the provisions of this ordinance shall be fined not more than Five Hundred Dollars (\$500.00) for each offense; however, if a culpable mental state is alleged in the charge of the offense and the offense governs fire safety or public health, such offense shall be punishable by a fine not to exceed two thousand dollars (\$2,000.00). Each day that a violation is permitted to exist shall constitute a separate offense. Penalties provided for in this ordinance are in addition to any other criminal or civil remedies that the City may pursue under federal, state, or local law.

SECTION 6. **PUBLICATION**

Pursuant to Section 36 of the Charter of the City of Burleson, that this ordinance shall take effect after its passage and publication, and that the City Secretary is hereby directed to give notice of the passage of this ordinance by causing the captain or title and the penalty clause of this ordinance to be published once in a newspaper of general circulation in the city and on the city's website.

SECTION 7. **EFFECTIVE DATE**

This ordinance shall be in full force and effect on and after June 19, 2023. The City Secretary shall provide for the publication of this ordinance after its passage as required by law. And it is so ordained.

| First Reading: | the | day of | , 20 | · |
|----------------|--------|----------------------------|----------|-------------|
| Final Reading: | the | day of | , 20 | · |
| PASSED AND AP | PROVED | this the day of _ | | , 20 |
| | | | | |
| | | | | |
| | | Mayor City of Burleson, | , Texas | |
| ATTEST: | | APPROVED AS | TO FORM: | |
| | | | | |
| City Secretary | | City Attorney | | |



City Council Regular Meeting

DEPARTMENT: Development Services

FROM: Tony McIlwain, Development Services Director

MEETING: May 1, 2023

SUBJECT:

Consider approval of an ordinance amending the City's fee schedule in Ordinance CSO# 3069-09-2022 by adding fees associated with the registration of short term rental properties; finding that the meeting at which this ordinance is passed was open to the public and that the recitals are true; containing a severability clause, cumulative clause, and effective date. (*Final Reading*)(*Staft Contact: Tony McIlwain, Development Services Director*)

SUMMARY:

On April 17, 2023, City Council conducted the first reading of an ordinance regarding the short term rental of real property. Registration and registration renewal fees were included as part of the proposed ordinance. Therefore, there is a need to amend the City's approved fee schedule to include the new fees associated with short term rentals. The request is to add a section within the fee schedule for short term rentals. Staff is proposing the following section to be included within the fee schedule:

| Registration fee | \$150.00 (non-refundable) |
|--------------------------|---------------------------|
| Registration renewal fee | \$150.00 (non-refundable) |

OPTIONS:

- 1) Approve the proposed amendment to the fee schedule
- 2) Approve the proposed amendment to the fee schedule with additional amendments
- 3) Deny the proposed amendment to the fee schedule

RECOMMENDATION:

Staff recommendations approval of the proposed amendment to the fee schedule.

PRIOR ACTION/INPUT (Council, Boards, Citizens):

None

FISCAL IMPACT:

Staff anticipates a positive fiscal impact as a result of this new fee.

STAFF CONTACT:

Name: Tony McIlwain

Title: **Development Services Director** Email: **tmcilwain@burlesontx.com**

Phone: 817-426-9684

SHORT TERM RENTAL ORDINANCE AND FEE SCHEDULE





- Short term rental (STR) refers to an activity in which one party, the "host," agrees to rent out all or part of a home to another party, the "guest," on a temporary, time-limited basis.
- City staff provided a briefing to the City Council on STRs during the regular meeting of February 6, 2023.
- At the conclusion of that briefing, Council directed staff to move forward with the creation of an ordinance that addresses STRs.



- Based on Council's direction, staff has prepared an ordinance providing for the registration, annual permitting and inspections of STRs.
- The application will require the owner/operator's contact information, 24-hour contact information of a local representative and dimensioned floor plan illustrating an evacuation route.
- The ordinance <u>does not</u> contain a provision for the collection of a hotel occupancy tax.

- The Development Services Department will review applications, issue permits, collect fees, and manage renewals of STRs. All permits will be tracked within the city's existing permitting software.
- The Fire Marshal's office will conduct inspections of the premises to determine the placement and number of working smoke detectors, carbon monoxide detectors, presence of fire extinguishers, ingress and egress routes, electrical service panels and electrical outlets.



- Properties operating without a STR permit or properties causing nuisance violations (e.g. noise, care of premises) will be handled through Code Compliance through issuance of a notice of violation (NOV) and will be given 14 days to apply for permit.
- If non-compliance continues, a citation may be issued daily for violators. A fine may be issued up to \$500.

- The STR ordinance contains criteria and a process for denial and/or revocation of a permit as well as a process for an appeal of a denied and/or revoked permit.
- Appeals of a denied and/or revoked permit will be heard by the Zoning Board of Adjustments.
- If a permit is revoked, no additional permit may be granted for the same property within a year of the revocation.

STR 2022-23 FEE SCHEDULE AMENDMENT

- As part of this process, staff is also proposing an amendment to the City's 2022-23 fee schedule (CSO# 3069-2022) to provide new fees for the annual permitting of short term rentals.
- Staff is proposing an initial \$150 permit and \$150 permit renewal fee.
- These fees are non-refundable.

FEES IN OTHER CITIES

| CITY | STR ORDINANCE | REGISTRATION REQUIRED | INSPECTION REQUIRED | FEE AMOUNT | H.O.T. COLLECTED |
|------------------|---------------|--------------------------|------------------------|--|---------------------|
| Arlington | Yes | Yes | Yes | \$500 with \$500 renewal | Yes: 9% |
| The Colony | Yes | Yes | Yes | None | Yes: 7% |
| Coppell | Yes | Yes | Yes | \$50 (\$25 for operators 65 years and older) | Yes: 7% |
| Euless | Yes | Yes | Yes | \$200 with \$200 renewal | Yes: 7% |
| Fort Worth | Yes | Yes | Yes | \$150 with \$100 renewal | Yes: 7% |
| Grand Prairie | Yes | Yes | Yes | \$480 with \$480 renewal | Yes: 7% |

CITY COUNCIL OPTIONS

- Approve the STR ordinance and amendment to the fee schedule
- Approve the STR ordinance and amendment to the fee schedule with additional changes
- Approve the STR ordinance and deny the amendment to the fee schedule
- Deny the STR ordinance and corresponding amendment to the fee schedule

STAFF'S RECOMMENDATION

- Staff recommends approval of the short term rental ordinance and amendment to the fee schedule with a suspended start date of June 19th.
- The suspended start date will allow time for staff to create the application, update the permitting database, refine the inspection process and notify any relevant parties of the new ordinance.



ORDINANCE

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BURLESON, TEXAS, AMENDING THE CITY'S FEE SCHEDULE IN ORDINANCE CSO#3069-09-2022 BY ADDING FEES ASSOCIATED WITH THE REGISTRATION OF SHORT TERM RENTAL PROPERTIES; FINDING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED WAS OPEN TO THE PUBLIC AND THAT THE RECITALS ARE TRUE; CONTAINING A SEVERABILITY CLAUSE, CUMULATIVE CLAUSE, AND EFFECTIVE DATE.

WHEREAS, the City of Burleson, Texas is a home rule city acting under its charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Local Government Code; and

WHEREAS, the City Council passed Ordinance CSO#3069-09-2022, which, among other things, provided a fee schedule that contained a list of all fees charged by the City of Burleson (save and except water and wastewater impact fees and solid waste collection rates which are wholly contained in separate ordinances); and

WHEREAS, the fee schedule needs to be amended to provide for additional fees related to the registration of short term rental properties for the 2022-23 fiscal year; and

WHEREAS, the proposed additional fee is included in the schedule depicted below as Exhibit "A" and incorporated as part of this Ordinance (the "Additional Fee Schedule"); and

WHEREAS, such Additional Fee Schedule is intended to be added to the Incorporated Fee Schedule in Ordinance CSO#3069-09-2022; and

WHEREAS, the City Council desires that the Additional Fee Schedule be added the current fee schedule set forth in Ordinance CSO#3069-09-2022.

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

Section 1.

Ordinance CSO#3069-09-2022 is hereby amended so that the Additional Fee Schedule attached hereto as Exhibit "A" shall supplement and be added to the Incorporated Fee Schedule in Ordinance CSO#3069-09-2022.

Section 2.

The City Council finds and determines that the meeting at which this ordinance is passed was open to the public as required by law and that public notice of the time, place and purpose of said meeting was duly given as required by the Texas Open Meetings Act.

Section 3.

The above and foregoing recitals are hereby found to be true and correct and are incorporated herein as findings of fact. The City Council further finds and determines that the rules, regulations, terms, conditions, provisions and requirements of this ordinance are reasonable and necessary to protect the public health, safety and quality of life in the City.

Section 4.

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

Section 5.

This ordinance shall be cumulative of all provisions of ordinances and of the Code of Ordinances of the City of Burleson, Texas, as amended, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances and such Code, in which event the conflicting provisions of such ordinances and such Code are hereby repealed.

Section 6. This ordinance shall take effect on ______, 20___ and from and after its passage and publication in accord with the provisions of the Texas Local Government Code. AND IT IS SO ORDAINED. PASSED AND APPROVED: First Reading: the _____ day of ______, 20_____. First Reading: the _____ day of ______, 20_____.

City of Burleson, Texas

| ATTEST: | APPROVED AS TO FORM: | | |
|-------------------------------|-------------------------------------|--|--|
| | | | |
| | | | |
| Amanda Campos, City Secretary | E. Allen Taylor, Jr., City Attorney | | |

Exhibit "A": Additional Fee Schedule

| Short Term Rental Permit Application Fee (Section 14-576(c)) | \$150.00 (non-refundable) |
|--|---------------------------|
| Short Term Rental Permit Renewal Application Fee (Section 14-577(e)) | \$150.00 (non-refundable) |



City Council Regular Meeting

DEPARTMENT: Human Resources

FROM: Rick DeOrdio, Director of Human Resources

MEETING: May 1, 2023

SUBJECT:

Consider approval of a two-year contract extension for CSO#1229-01-2020 with Bentek for online benefit enrollment software services in the amount not to exceed \$46,000. (Staff Presenter: Rick DeOrdio, Director of Human Resources)

SUMMARY:

The City of Burleson has utilized Bentek employee insurance benefit enrollment software for the annual employee benefit enrollments since 2018. Online enrollments allow employees to handle their annual, or qualifying event, benefit enrollments from either work or home. This makes the process faster, more efficient and easier than using paper forms.

Bentek is one of very few firms that work with both our current HTE system as well as our new Tyler Munis ERP software.

The contract is for 2 years with a negotiated 10% increase each year as there has only been a minimal increase once in the 5 years that we have had Bentek as our benefits enrollment software.

OPTIONS:

- 1) Approve a two-year contract extension with Bentek for online benefit enrollment software services in the amount not to exceed \$46,000
- 2) Deny the request

RECOMMENDATION:

Staff recommendations Approval

FISCAL IMPACT:

The fiscal impact is \$46,000 for years 1 and 2 of the extension.

Account Description: 6108001-63506

| Annual Cost | Term Cost |
|--|-----------|
| Year 1 \$22,000 - Oct. 2023 - Sept. 2024 | \$22,000 |
| Year 2 \$24,000 - Oct. 2023 - Sept. 2024 | \$24,000 |
| TOTAL | \$46,000 |

STAFF CONTACT:

Rick DeOrdio
Director of Human Resources
rdeordio@burlesontx.com
817-426-9641



Benefit Enrollment Software Contract Extension

Human Resources

Bentek - Benefit Enrollment Software

- Employee insurance benefit enrollment online software vendor since April 2018
- Current contract ends September 30, 2023
- Current term was 3 years for \$61,000 total
- Recommend to renew 2 years to September 30, 2025
 - City employee benefits enrollments are easier and faster
 - Rate has only increased \$1,000 for one year since inception
- The contract extension is for two years, with a 10% cost escalator annually

Bentek – Benefit Enrollment Software

Fiscal Impact:

| Annual Cost | Term Cost |
|--|-----------|
| Year 1 \$22,000 – Oct. 2023 – Sept. 2024 | \$22,000 |
| Year 2 \$24,000 – Oct. 2023 – Sept. 2024 | \$24,000 |
| TOTAL | \$46,000 |

• Will continue benefit enrollment seamlessly as we transition into the new ERP system to go live on January 1, 2024

Council Action - HUB International Benefits Consulting

- Questions
- Options
 - 1. Approve the 2 year extension as presented (recommended)
 - 2. Deny the 2 year extension

THIRD AMENDMENT TO BENTEK® MASTER SOFTWARE AS A SERVICE AGREEMENT FOR END USERS

THIS THIRD AMENDMENT is made and entered into this _21st_ day of _March__, 2023, by and between Bentek, Inc., now known as Bentek, LLC ("Bentek"), a Florida limited liability company, 3500 Kyoto Gardens Drive, Palm Beach Gardens, Florida 33410, and City of Burleson, Texas ("Customer"), 141 W. Renfro Street, Burleson, Texas 76028.

RECITALS

WHEREAS, Bentek and Customer entered into Bentek® Master Software as a Service Agreement ("Agreement") on April 10, 2018 wherein Bentek provides an internet-based benefits enrollment and administration system to Customer;

WHEREAS, the parties desire to amend the Agreement; and

NOW THEREFORE, the parties mutually agree to amend the following parts of the Agreement as set forth below:

1. The parties agree that new Bentek pricing effective October 1, 2023, shall be as follows for the following contract terms:

| Year | Bentek Annual Fee |
|------------------------|-------------------|
| Year 1 – October, 2023 | \$22,000 |
| Year 2 – October, 2024 | \$24,000 |

2. Except as otherwise provided herein all the terms and conditions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Third Amendment on the day first above written.

| CITY OF BURLESON, TEXAS (Customer) | BENTEK, LLC (Bentek) | |
|------------------------------------|----------------------|--|
| By: | By: Julis Fink | |
| Print Name: | Julie Fink | |
| Print Title | President | |

SECOND AMENDMENT TO BENTEK® MASTER SOFTWARE AS A SERVICE AGREEMENT FOR END USERS

THIS SECOND AMENDMENT is made and entered into this _____ day of ______, 20______, by and between Bentek, Inc. ("Bentek"), a Florida corporation, 11505 Fairchild Gardens Avenue, Suite 102, Palm Beach Gardens, Florida 33410, and City of Burleson, Texas ("Customer"), 141 W. Renfro Street, Burleson, Texas 76028.

RECITALS

WHEREAS, Bentek and Customer entered into Bentek® Master Software as a Service Agreement ("Agreement") on April 10, 2018 wherein Bentek provides an internet-based benefits enrollment and administration system to Customer;

WHEREAS, the parties desire to amend the Agreement; and

NOW THEREFORE, the parties mutually agree to amend the following parts of the Agreement as set forth below:

1. The parties agree that new Bentek pricing effective October 1, 2020 will be as follows:

| Year | Bentek Annual Fee |
|--------|-------------------|
| Year 1 | \$20,000 |
| Year 2 | \$20,000 |
| Year 3 | \$21,000 |

- 2. The parties agree that the attached Quote (Exhibit 1) for ACA services is an estimated cost and is subject to change.
- 3. Except as otherwise provided herein all the terms and conditions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Second Amendment on the day first above written.

CITY OF BURLESON, TEXAS (Customer)

Print Name Brug

Drint Title

BENTEK, INC. (Bentek)

Kurt N. Gehring

President

COST PROPOSAL



Date: December 19, 2019

TO:

4200 Northcorp Parkway Suite 185 Palm Beach Gardens, FL 33410 sales@mybentek.com

City of Burleson, TX

| DESCRIPTION | PRICE PER MONTH | TOTAL ANNUAL |
|---|-----------------|--------------|
| BenTek Core License includes: | | |
| Admin Community Portal | | |
| Benefits Administration (Active/Retirees/Cobra) | | |
| Electronic Data Interchange (EDI) | | |
| Initial Payroll/Carrier Data Audit | | |
| New Hire Orientation (NHO) Module | | |
| Open Enrollment (OE) Module | | |
| Qualifying Life Event (QLE) Module | \$1,666.67 | \$20,000.00 |
| Open Enrollment Payroll Export | \$1,000.07 | \$20,000.00 |
| Payroll Audit Tool | | |
| Payroll Integration: CentralSquare Technologies | | |
| Automated Personnel Import Tool | | |
| Qualifying Life Event (QLE) Module | | |
| Standard/Ad-hoc Reporting/Report Builder | | |
| Standard COBRA Reporting | | |
| Standard Carrier Self Billing | | |
| On-going Support and Service* | | |
| Professional Services | | |
| Software Licensing | | |
| System Maintenance and Upgrades | | |
| ACA Services: Greatland Yearli** | | \$1,122.00 |
| | Total Annual: | \$21,122.00 |

^{*}On-going support and service includes unlimited administrator support and training, including product user guides, webinars, email support and phone support between 8:30am and 5:00pm EST.

Note: Please refer to the Bentek Master Professional Services Agreement for additional details regarding the features described herein.

^{**}This is an estimated cost based on the number of forms generated the prior reporting year. Actual cost of ACA Services is calculated based on total number of forms generated at time of filing.



BenTek Core License Descriptions:

Admin Community Portal

Bentek's Client Community Portal is a secure online community designed for every Bentek client. This online solution provides a multi-way collaboration channel between Bentek, clients, brokers and vendors. To help minimize data being transferred via email, Administrators can share information with Bentek in one central secure location.

Benefits Administration

Within the Administration module, Benefits Administrators can manage demographics, personnel data, coverage eligibility, and dependent records for active, retired, and Cobra participants in one system. Bentek retains history of all changes made by both Administrators and employees including date/time stamp, name of user and description of the change.

Electronic Data Interchange (EDI)

Bentek will create standard (HIPAA 834 v.5010) and non-standard (TXT, XLS, CSV) files with all carriers/vendors that can accept and process eligibility data electronically.

Initial Payroll/Carrier Audit*

The Bentek Implementation Team conducts a thorough audit of eligibility data in each core benefit offered (medical, dental, vision). With assistance from Client administrators, payroll data is reconciled with each core (medical, dental, vision) insurance carrier. The Bentek system can then populated with clean data, including demographics and corresponding benefits for the active, retired, Cobra, and dependent membership.

*Assumes standard 60-day implementation

Implementation

Bentek provides a multiphase implementation led by the Client Implementation Manager, who will serve as the point person and project manager, guiding you through each phase of the implementation. Recurring weekly calls are coordinated to ensure everyone is informed project status and outstanding items throughout the life of the contract. Clients are assigned to an Account Manager who will manage day to day support and renewal planning once the initial implementation is complete.

New Hire Module

New hires can elect benefits online in a module specifically configured for new hire eligibility, add dependents and designate life insurance beneficiaries.

Open Enrollment Module

Employees can view both current and future enrollment and deduction information for all benefit options on one page including a shopping cart so employees have access to their total deductions as they enroll. Employees can view a detailed confirmation statement of all elected benefits and deductions for each session that can be saved, printed, and viewed in future sessions.

Open Enrollment Confirmation Statements (Bulk PDF)

After the initial annual enrollment period, Bentek provides clients an electronic copy of all confirmation statements in PDF format. Administrators can retain, print for filing, and/or mail to employees as confirmation of their first successful enrollment with Bentek.



Open Enrollment Payroll Export

Bentek provides a standard export of all enrollment data that can be used to update payroll systems with the new plan year deductions.

Payroll Integration*

Bentek will create custom payroll exports that can be consumed and processed by the payroll provider. Bentek also integrates with specific vendors via Application Programming Interface (API). *Clients are responsible for any fees charged by the payroll provider(s).

Payroll Audit

The standard payroll audit allows clients to audit all payroll deductions after each pay period to identify possible discrepancies and/or missed deductions. This ongoing audit allows issues to be identified after each pay period so timely adjustments/credits can be given to employees and reflected on carrier invoices.

Personnel Import

The standard personnel import eliminates the data entry required to update Bentek with new hires, status terminations, personnel and demographic changes, and rehired employees. Data transmitted from Payroll/HRIS systems is imported into Bentek providing a seamless process for updating the system.

QLE Module

Throughout the year, employees can submit a Qualifying Life Event and upload supporting documentation directly to Bentek. Administrators will be able to approve or deny all qualifying life events and produce customized letters directly from the system.

Retiree Management

Administrators can manage retiree records and offer a customized enrollment experience based on plan eligibility and administration for retirees. Administrators can transmit retiree data to carriers electronically and generate retiree specific reports to help manage eligibility and age limitations.

Standard Reporting

Bentek includes access to over 40 standard reports. Reports can be generated in Excel, PDF, or RTF.

Report Builder

Administrators can create custom reports using the report building tool including easy to use templates, data field selection, column adjustments, sorting ability and more.

Standard COBRA Reporting

Bentek works with a variety of third-party vendors that provide Cobra administrative services. Bentek can transmit data capturing new hires, terminations and Cobra qualifying life events to Cobra vendors.

Standard Carrier Billing

BenTek will configure carrier bills giving administrators the ability to generate a self-bill directly from the BenTek application.



BenTek Core License Descriptions:

Admin Community Portal

Bentek's Client Community Portal is a secure online community designed for every Bentek client. This online solution provides a multi-way collaboration channel between Bentek, clients, brokers and vendors. To help minimize data being transferred via email, Administrators can share information with Bentek in one central secure location.

Benefits Administration

Within the Administration module, Benefits Administrators can manage demographics, personnel data, coverage eligibility, and dependent records for active, retired, and Cobra participants in one system. Bentek retains history of all changes made by both Administrators and employees including date/time stamp, name of user and description of the change.

Electronic Data Interchange (EDI)

Bentek will create standard (HIPAA 834 v.5010) and non-standard (TXT, XLS, CSV) files with all carriers/vendors that can accept and process eligibility data electronically.

Initial Payroll/Carrier Audit*

The Bentek Implementation Team conducts a thorough audit of eligibility data in each core benefit offered (medical, dental, vision). With assistance from Client administrators, payroll data is reconciled with each core (medical, dental, vision) insurance carrier. The Bentek system can then populated with clean data, including demographics and corresponding benefits for the active, retired, Cobra, and dependent membership.

*Assumes standard 60-day implementation

Implementation

Bentek provides a multiphase implementation led by the Client Implementation Manager, who will serve as the point person and project manager, guiding you through each phase of the implementation. Recurring weekly calls are coordinated to ensure everyone is informed project status and outstanding items throughout the life of the contract. Clients are assigned to an Account Manager who will manage day to day support and renewal planning once the initial implementation is complete.

New Hire Module

New hires can elect benefits online in a module specifically configured for new hire eligibility, add dependents and designate life insurance beneficiaries.

Open Enrollment Module

Employees can view both current and future enrollment and deduction information for all benefit options on one page including a shopping cart so employees have access to their total deductions as they enroll. Employees can view a detailed confirmation statement of all elected benefits and deductions for each session that can be saved, printed, and viewed in future sessions.

Open Enrollment Confirmation Statements (Bulk PDF)

After the initial annual enrollment period, Bentek provides clients an electronic copy of all confirmation statements in PDF format. Administrators can retain, print for filing, and/or mail to employees as confirmation of their first successful enrollment with Bentek.



Open Enrollment Payroll Export

Bentek provides a standard export of all enrollment data that can be used to update payroll systems with the new plan year deductions.

Payroll Integration*

Bentek will create custom payroll exports that can be consumed and processed by the payroll provider. Bentek also integrates with specific vendors via Application Programming Interface (API). *Clients are responsible for any fees charged by the payroll provider(s).

Payroll Audit

The standard payroll audit allows clients to audit all payroll deductions after each pay period to identify possible discrepancies and/or missed deductions. This ongoing audit allows issues to be identified after each pay period so timely adjustments/credits can be given to employees and reflected on carrier invoices.

Personnel Import

The standard personnel import eliminates the data entry required to update Bentek with new hires, status terminations, personnel and demographic changes, and rehired employees. Data transmitted from Payroll/HRIS systems is imported into Bentek providing a seamless process for updating the system.

QLE Module

Throughout the year, employees can submit a Qualifying Life Event and upload supporting documentation directly to Bentek. Administrators will be able to approve or deny all qualifying life events and produce customized letters directly from the system.

Retiree Management

Administrators can manage retiree records and offer a customized enrollment experience based on plan eligibility and administration for retirees. Administrators can transmit retiree data to carriers electronically and generate retiree specific reports to help manage eligibility and age limitations.

Standard Reporting

Bentek includes access to over 40 standard reports. Reports can be generated in Excel, PDF, or RTF.

Report Builder

Administrators can create custom reports using the report building tool including easy to use templates, data field selection, column adjustments, sorting ability and more.

Standard COBRA Reporting

Bentek works with a variety of third-party vendors that provide Cobra administrative services. Bentek can transmit data capturing new hires, terminations and Cobra qualifying life events to Cobra vendors.

Standard Carrier Billing

BenTek will configure carrier bills giving administrators the ability to generate a self-bill directly from the BenTek application.

FIRST AMENDMENT TO BENTEK® MASTER SOFTWARE AS A SERVICE AGREEMENT FOR END USERS

THIS AMENDMENT is made and entered into this 28th day of March, 2019, by and between BenTek, Inc. ("BenTek"), a Florida corporation, 11505 Fairchild Gardens Avenue, Suite 102, Palm Beach Gardens, Florida 33410, and City of Burleson, Texas ("Customer"), 141 W. Renfro Street, Burleson, Texas 76028.

RECITALS

WHEREAS, BenTek and Customer entered into a BenTek® Master Software as a Service Agreement ("Agreement") on April 10, 2018 wherein BenTek provides an internet-based benefits enrollment and administration system to Customer;

WHEREAS, the parties desire to amend the Agreement; and

NOW THEREFORE, the parties mutually agree to amend the following parts of the Agreement as set forth below:

- 1. The Effective Date of the Agreement in the introductory paragraph is hereby amended to October 1, 2018.
- 2. The parties agree that new pricing will be negotiated after year two of the Agreement (September 30, 2020).
- 3. The second sentence of Paragraph 17 (k) Governing Law, Venue is deleted in its entirety and replaced with: The parties hereto hereby irrevocably consent to the exclusive jurisdiction and venue of the state and federal courts of the state of Texas, County of Johnson, for the purposes of all legal proceedings arising out of or relating to this agreement or the actions that are contemplated hereby.
- 4. New Section 17 (r) No Waiver of Governmental Immunity. Notwithstanding anything in this Agreement to the contrary, nothing contained in this Agreement shall be construed as a waiver of Customer's governmental immunity, or of any damage caps or limitations imposed by law, or any other legal protections granted to Customer by law, except to the extent expressly provided or necessarily implied herein. In the event of a conflict between this provision and any other provision in this Agreement the terms of this provision shall govern.
- 5. New Section 17 (s) Termination Due to Lack of Appropriations. Notwithstanding anything in this Agreement to the contrary, if Customer should not appropriate or otherwise receive funds sufficient to purchase, operate or maintain the services set forth in this Agreement, Customer may unilaterally terminate this Agreement effective on the final day of the fiscal year through which Customer has funding.

Customer will make every effort to give at least thirty (30) days' written notice prior to a termination for lack of appropriations. In the event of termination due to lack of appropriations, Customer will pay for all undisputed fees and expenses related to the services Customer has received, or vendor has incurred or delivered, prior to the effective date of termination. In the event of a conflict between this provision and any other provision in this Agreement the terms of this provision shall govern.

6. Except as otherwise provided herein all the terms and conditions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment on the day first above written.

CITY OF BURLESON, TEXAS (Customer)

Print Name: Robert Ranc

Print Title: Deputy City Manager

Acting

BENTEK, INC. (BenTek)

Kurt N. Gehring

President

BENTEK® MASTER SOFTWARE AS A SERVICE AGREEMENT FOR END USERS

This Agreement ("Master Agreement") dated April 10, 2018 ("Effective Date") by and between BenTek, Inc., a Florida corporation with a principal place of business at 11505 Fairchild Gardens Avenue, Suite 102, Palm Beach Gardens, FL 33410 ("BenTek") and City of Burleson, Texas, with a principal place of business located at 141 W. Renfro Street, Burleson, TX 76028 ("Customer").

WHEREAS:

- 1. BenTek is in the business of developing, licensing, supporting and hosting software applications for employee benefits enrollment and administration, the SaaS Solution (as defined below).
- 2. BenTek agrees to provide to the Customer and the Customer agrees to accept a license to use for its own internal business purposes only the SaaS Solution (as defined below) from BenTek as specified in Exhibit A to this Agreement.

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

1. **Definitions.**

- (a) "Customer Data" means all electronic data or information submitted by Customer to the SaaS Solution.
- (b) "End Users" means individuals who are authorized by Customer to use the SaaS Solution, for whom subscriptions to the SaaS Solution have been purchased and who have been supplied user identifications and passwords by Customer (or by BenTek at Customers request) and who may only access and use the SaaS Solution so long as they receive employee benefits coverage through programs provided by the Customer.
- (c) "Malicious Code" means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.
- (d) "Order Form" means the ordering documents for purchases of subscriptions hereunder, in the form of attached Exhibit A, including addenda thereto, that are entered into between Customer and BenTek from time to time. Order Forms shall be deemed incorporated herein by reference.
- (e) "Professional Services" means the services provided by BenTek under the terms of the BenTek Professional Services Agreement ("PSA") which are subject to a fee and which include assisting the Customer in populating the SaaS Solution with Customer Data.
- (f) "SaaS Solution" means the online, Web-based applications and platform provided by BenTek via http://www.mybentek.com and/or other designated websites as described in the User Documentation, that are ordered by Customer under an Order Form, including associated offline components.
- (g) "Third Party Payor" means the entity who has assumed responsibility for paying on behalf of Customer the License Fees due under this Agreement and who has indicated its acceptance of the payment terms by signing this Agreement and the applicable Exhibit A for each subscription order. If no Third-Party Payor has signed this Agreement and the applicable Exhibit A, then Customer is responsible for payment.
- (h) "Tools" is defined as the scripts, software, and utilities which BenTek may use to monitor and administer the SaaS Solution and to help resolve support requests.

(i) "User Documentation" means the online user guide for the Services, accessible via http://www.mybentek.com and/or other designated websites as described in the User Documentation as updated from time to time.

2. License to the SaaS Solution.

- (a) Grant and Scope of License. BenTek grants to Customer and Customer accepts a personal, non-transferable, limited, non-exclusive, worldwide, license, to access and use the SaaS Solution for its internal business purposes only during the term of this Agreement. This license automatically terminates upon Customer's breach of section 2(a) or 2(e).
- (b) License Fees. Customer (or Third Party Payor, if applicable, as provided in Section 1(g)) agrees to pay the license fees as specified in attached Exhibit A on the terms and conditions contained in this Agreement.
- (c) Subscriptions for End Users. Licenses for use of the SaaS Solution are purchased as subscriptions for specific End Users. Subscriptions for End Users are for designated End Users and cannot be shared or used by more than one End User but may be reassigned to new End Users replacing former End Users who no longer access the Services, so long as Customer (i) provides prior written notice to BenTek and (ii) Customer (or if applicable Third Party Payor) is current in all of its payment obligations.
- (d) **Provision of SaaS Solution.** BenTek shall: (i) provide to Customer basic support for the SaaS Solution at no additional charge, and/or upgraded support if purchased separately, (ii) use reasonable commercial efforts to make the Services available 24 hours a day, 7 days a week, except for: (1) planned downtime, in which event BenTek shall give at least 8 hours notice via the Services and which BenTek shall schedule to the extent practicable during the weekend hours from 6:00 p.m. Eastern time Friday to 6:00 a.m. Eastern time Monday), or (2) any unavailability caused by circumstances beyond BenTek's reasonable control, including without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems, or Internet service provider failures or delays, and (iii) provide the Services only in accordance with applicable laws and government regulations.
- Customer's Use of SaaS Solution. Customer shall (i) be responsible for all End Users' compliance with (e) this Agreement, (ii) be solely responsible for the accuracy, quality, integrity and non-infringement of Customer Data and the means by which Customer acquired Customer Data, (iii) use reasonable commercial efforts to prevent unauthorized access to or use of the SaaS Solution, and notify BenTek promptly of any such unauthorized access or use, and (iv) use the SaaS Solution only in accordance with the terms of this Agreement, the User Documentation and applicable laws and government regulations. Customer shall not (1) make the SaaS Solution available to anyone other than End Users, (2) modify, adopt, translate, reproduce, enhance, copy, or use the SaaS Solution in a manner that is illegal or violates the terms of this Agreement, (3) use the SaaS Solution to store or transmit material which is infringing, libelous, defamatory, tortious, unlawful, or violates privacy rights or data security regulations, (4) use the SaaS Solution to store or transmit Malicious Code, (5) interfere with or disrupt the integrity or performance of the SaaS Solution or third-party data contained therein, (6) gain or attempt to gain unauthorized access to the SaaS Solution or their related systems or networks, (7) intentionally cause excessive or unwanted traffic or resource consumption on the related systems or network, access data not intended for the Customer, log into a server or account that the Customer is not authorized to access, attempt to probe, scan or test the vulnerability of the SaaS Solution, any system or the network or to breach the security or authentication measures, or (8) decompile, reverse engineer or otherwise obtain the source code of the SaaS Solution (each of the enumerated subparagraphs of this section 2(e) a "Prohibited Act").

3. License to Customer Data. Customer hereby grants to, and BenTek hereby accepts a world-wide, royalty-free, and non-exclusive, license to use the Customer Data to perform its obligations during the term of this Agreement.

4. Fees and Taxes.

- (a) Fees. As consideration for the providing the SaaS Solution under this Agreement, the Customer (or Third Party Payor if applicable) agrees to pay to BenTek the various fees (collectively, the "Fees") set out in an order form (Exhibit A hereto) and in accordance with the terms and conditions set out therein. The Customer's access to the SaaS Solution is contingent upon the Customer's performance of its obligations under this Agreement including, without limitation, the payment of all Fees, subject only to a Third-Party Payor's assumption of the payment obligations. If any amount owing by Customer (or Third Party Payor if applicable) under this or any other Agreement is 30 days or more days overdue, BenTek may, without limiting its other rights and remedies, suspend Customer's access to the SaaS Solution until such amounts are paid in full; provided however that BenTek shall not exercise its rights of suspension if the Customer has reasonably and in good-faith disputed such charges and is cooperating diligently and in good-faith to resolve the dispute.
- (b) Taxes. The Customer (or Third Party Payor if applicable) shall be responsible for all sales, use, value added, or other taxes or duties, as applicable, payable with respect to the SaaS Solution, Professional Services, or otherwise arising out of or in connection with this Agreement, other than BenTek's income taxes. If BenTek pays such taxes on the Customer's behalf, the Customer (or Third Party Payor if applicable) agrees to reimburse BenTek for such payment immediately upon demand. If any tax in the nature of withholding tax is payable on any sums payable to BenTek under this Agreement, the Customer (or Third Party Payor if applicable) shall pay BenTek such amount as is necessary to ensure that the net amount received by BenTek after such withholding shall be equal to the amount originally due.

5. Professional Services.

BenTek's provision of Professional Services are governed by the terms of the PSA.

(c) The Customer shall be responsible for furnishing BenTek with all information mutually determined by BenTek to be necessary for the performance of the Support and Professional Services to be provided by BenTek as specified in this Agreement and the PSA.

6. Ownership.

- (a) Subject to the provisions of Section 7 hereof, BenTek owns all intellectual property rights, including without limitation, copyrights, patents, trade secrets, moral rights, in and to the support, Tools, and SaaS Solution, including all modifications, changes, enhancements, or additions thereto. The Customer agrees that, except for the purchase of subscriptions for End Users to access the SaaS Solution in this Agreement, nothing in this Agreement gives the Customer any right, title or interest in, to or under any of the software, network, systems, or any intellectual property rights therein. To the extent of any such interest accruing to the Customer and/or its End Users notwithstanding the provisions hereof may constitute "work for hire", the Customer hereby agrees to assign (and shall cause its End Users to assign) and, upon its creation, does hereby assign to BenTek the ownership of such intellectual property absolutely, and all patent and intellectual property rights therein.
- (b) BenTek shall own all right, title and interest (including patent rights, copyrights, trade secret rights, mask work rights, trademark rights and all other intellectual property rights throughout the world relating to any and all suggestions, enhancement requests, recommendations, or feedback provided by Customer and End Users

relating to or arising out of the Tools, SaaS Solution, and support. Customer for itself hereby makes, and shall cause End Users to make, all assignments necessary to accomplish the foregoing ownership. Customer shall itself, and shall cause End Users, to further assist BenTek, at BenTek's expense, to further evidence, record and perfect such assignments, and to perfect, obtain, maintain, enforce, and defend any rights assigned. Customer hereby irrevocably designates and appoints BenTek as its agents and attorneys-in-fact to act for and in Customer's and its End Users' behalf to execute and file any document and to do all other lawfully permitted acts to further the foregoing with the same legal force and effect as if executed by Customer and End User.

7. Customer Data.

- (a) Protection of Customer Information. BenTek acknowledges and agrees that any Customer Information, in whatever form, stored and/or processed on the network or systems hosting the SaaS Solution, is and shall remain the sole property of the Customer. BenTek agrees that it will not use any Customer Data for any purpose other than to perform its obligations under this Agreement. BenTek agrees that either (i) upon request of and as directed by the Customer, or (ii) upon the termination of this Agreement, BenTek shall either destroy or return such Customer Data to the Customer in a standard file format as BenTek and Customer may reasonably determine. BenTek shall take or cause to be taken the same efforts it exercises in protecting the security of its information, but in no event, shall BenTek exercise less than commercially reasonable precautions to protect the security of Customer Data.
- (b) Regulation of Customer Data. The Customer acknowledges and agrees that the Customer and its End Users or its agents will be solely and exclusively responsible for the collection and provision of all Customer Data including, without limitation, identifiable personal data regarding the Customer's employees, End Users, or other individuals. The Customer shall not and shall not permit its End Users or agents to provide BenTek with Customer Data or other data that constitutes a Prohibited Act hereunder. The Customer acknowledges and agrees that BenTek is under no obligation to review Customer Data to ensure either its accuracy or its compliance with the terms and conditions of this subsection.
- (c) Unauthorized Access. BenTek shall in no way be held liable for any loss of data or other claims to the extent the same arise from unauthorized access to the systems, network, or SaaS Solution by obtaining a user name or password caused by a negligent or willful act of the Customer, its End Users, or agents.
- (d) Business Associate Agreement. If Customer or a Third Party authorized by Customer provides health information to BenTek to perform any services pursuant to this Agreement, and to the extent that such health information constitutes Personal Health Information ("PHI") as that term is defined in the Business Associate Agreement attached hereto as Exhibit B ("BAA"), then the terms of the BAA shall also apply with respect to such PHI.

8. Confidentiality.

(a) Definition. For purposes of this Agreement, "Confidential Information" shall include, but is not limited to, the following: any documentation and other tangible or intangible discoveries, ideas, concepts, software, designs, drawings, specifications, source code, object code, diagrams, flow charts, procedures and "know-how" comprising all or any portion of a computer program, strategic and development plans or concepts, financial information, business plans, marketing plans, sales plans, marketing and sales strategies, data, business records, project records, market reports, Customer Data, employee lists and business manuals, policies and procedures, information relating to products, processes, technologies or theory and all other information which may be disclosed by one party (the "Disclosing Party") to the other party (the "Receiving Party"), or to which the Receiving Party may be provided access by a Disclosing Party, or others, in accordance with this Agreement, or

which is generated by the Disclosing Party as a result of or in connection with bona fide business purposes of the Disclosing Party, which is not generally available to the public.

- (b) **Obligation of Confidentiality.** The Receiving Party covenants and agrees to receive and hold the Confidential Information in confidence. Without limiting the generality of the foregoing, the Receiving Party covenants and agrees:
- (i) to protect and safeguard the Disclosing Party's Confidential Information against unauthorized use, publication or disclosure;
- (ii) not to use any of the Disclosing Party's Confidential Information except as required for its performance under this Agreement;
- (iii) not to, directly or indirectly, in any way, reveal, report, publish, disclose, transfer or otherwise use any of the Disclosing Party's Confidential Information except as specifically authorized by the Disclosing Party in accordance with this Agreement;
- (iv) to restrict access to the Disclosing Party's Confidential Information to those of its officers, directors, agents, attorneys, consultants, employees, contractors and partners who clearly and demonstrably need such access to fulfill its obligations under this Agreement;
- (v) to advise in writing each of the persons to whom it provides access to any of the Disclosing Party's Confidential Information, that such persons are strictly prohibited from making any use, publishing or otherwise disclosing to others, or permitting others to use for their benefit or to the detriment of the Disclosing Party, any of the Disclosing Party's Confidential Information, and, upon the request of the Disclosing Party, to provide the Disclosing Party with a copy of a written agreement to that effect signed by such persons; and
- (vi) to comply with any other reasonable security measures requested in writing by the Disclosing Party.
- (c) Exceptions to Confidentiality Provisions. The foregoing confidentiality obligations do not apply:
- (i) to the extent that the Confidential Information is or becomes generally available to the public other than as a result of a breach of this Agreement or any other obligation of confidentiality;
- (ii) if the other party is directly ordered by a court or other governmental authority to disclose all or any part of the Confidential Information, provided, however, that the party so ordered will give prompt notice to the other of any such order, or of any legal or governmental proceeding that might result in such an order, and will not disclose any Confidential Information until the other party has been provided with a reasonable opportunity to limit or prevent such disclosure.
 - (iii) disclosure by Customer may be made as required by Texas's Public Records Laws.
- (d) Remedies for Breach. Each party acknowledges that any unauthorized disclosure or use of Confidential Information may cause immediate and irreparable harm to the other, for which damages may not be an adequate remedy, and as such, each party shall, in addition to any other rights or remedies it may have in law or equity under this Agreement or otherwise, be entitled to injunctive relief.

(e) Return of Confidential Information. Each of the parties agrees that immediately upon request by the other, and in any event, immediately upon termination or expiration of this Agreement, it shall deliver and return to the other all copies of Confidential Information (including all copies thereof, in any form whatsoever) disclosed and/or in its possession, care or control.

9. WARRANTIES AND DISCLAIMERS.

- (a) LIMITED WARRANTY. BenTek warrants that (i) the SaaS Solution and Tools shall perform substantially in accordance with the User Documentation; (ii) BenTek owns the SaaS Solution and Tools and/or has the express authority to license the SaaS Solution and Tools; (iii) as of the Effective Date, there are no known claims of infringement by the SaaS Solution or Tools. For any breach of the warranty in section 9(a)(ii) and/or (iii), BenTek's entire liability and Sublicensor's sole and exclusive remedy is provided in section 15(a) and (c) below. For any breach of the warranty in section 9(a)(ii) and/or (iii), BenTek's entire liability and Customer's sole and exclusive remedy is at BenTek's option, either (1) to exercise reasonable efforts to correct such non-conformity in a manner determined by BenTek, within 5 business days of receiving written notice from Customer describing the non-conformity in reasonable detail; or (2) replace the SaaS Solution or Tools containing the non-conformity, or (3) refund, pro-rata the fees received by BenTek for the SaaS Solution or Tools containing the non-conformity, in which case the specific Order Form (Exhibit A) which corresponds to the subscriptions for the non-conforming SaaS Solution shall automatically terminate upon the pro rata refund of fees paid for such subscriptions.
- (b) Mutual Warranties. Each party represents and warrants that (i) it has the legal power to enter into this Agreement, and (ii) it will not transmit to the other party any Malicious Code (except for Malicious Code previously transmitted to the warranting party by the other party).
- (c) Warranty Disclaimer. EXCEPT AS EXPRESSLY PROVIDED HEREIN, BENTEK DISCLAIMS ALL WARRANTIES EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY LAW WITH REGARD TO THE SAAS SOLUTION, SUPPORT, AND ANY TOOLS WHICH MAY BE SOLD, LICENSED OR PROVIDED, INCLUDING THOSE AT NO COST, PURSUANT TO THIS AGREEMENT.

10. Security.

(a) The Customer agrees that the Customer is solely responsible for (i) the confidentiality of all Customer and End User passwords and all use or charges incurred from use of the SaaS Solution, Professional Services, and support accessed from BenTek with the Customer's and End Users' passwords, and (ii) the content of all visual, written or audible communications using the Customer's account. Although BenTek is not responsible for any such communications, BenTek may suspend any such communications of which BenTek is made aware of, at any time, and BenTek shall provide prompt notice thereof to the Customer. The Customer agrees that the Customer and Users will not use the SaaS Solution, Professional Services, Tools, support, related systems and network in a manner that constitutes a Prohibited Act.

11. Term and Termination.

- (a) Term. This Agreement commences on the Effective Date and continues until all subscriptions for End Users granted in accordance with this Agreement have expired or been terminated. Subscriptions for End Users commence on the start date specified in the applicable Order Form (Exhibit A) and continue for the subscription term specified therein. Except as otherwise specified in the applicable Order Form, all End User subscriptions shall automatically renew for additional periods equal to the then-expiring subscription term or one year (whichever is shorter), unless either party gives the other notice of non-renewal at least 90 days before the end of the relevant subscription term. The per-unit pricing during any such renewal term shall be the same as that during the prior term unless BenTek provides written notice of a pricing increase at least 90 days before the end of such prior term, in which case the pricing increase shall be effective upon renewal and thereafter.
- (b) Renewal. This Agreement shall be automatically renewed for additional one (1) year periods (a "Renewal Term") on the same terms and conditions as provided herein (or as may be otherwise negotiated between the parties) unless either party notifies the other in writing at least 90 days prior to the end of the Term or a Renewal Term, as the case may be, that it has elected to terminate this Agreement, in which case the Agreement shall terminate at the end of the relevant Term.
- (c) **Termination.** This Agreement may be terminated by either party upon the occurrence of any of the following events, which shall be deemed to be a breach of the terms of this Agreement:
- (i) there is a material breach of this Agreement; provided that the party terminating this Agreement shall first have given prior written notice to the other of its intent to terminate, together with details of the default causing the termination, and the party receiving such notice shall have been given 20 days to cure any such default;
- (ii) if either party ceases or threatens to cease to carry on its business, commits an act of bankruptcy, becomes insolvent, makes an assignment or bulk sale of its assets, or proposes a compromise or arrangement to its creditors;
- (iii) if any proceeding is taken with respect to a compromise or arrangement, or to have either party declared bankrupt or wound up, or to have a receiver appointed with respect to any part of the assets of a party, or if any encumbrancer takes possession of any part thereof and such proceeding is not dismissed within 60 days of such proceeding being initiated, and with respect to any encumbrancer, any default has not been cured within 60 days of the occurrence of such default; or
- (iv) BenTek may, at its sole option suspend the Customer's access to the Software, Support, Services, System and/or Network, and/or terminate this Agreement immediately and take any remedial action under any applicable law:
 - A. In the event that any Customer Data constitutes or may reasonably be considered to constitute a Prohibited Act hereunder; or
 - B. The Customer, its End Users or its agent commits or suffers to be committed a Prohibited Act hereunder.
- (d) Events Upon Termination. Upon termination of this Agreement:
 - (i) the Customer (or if applicable Third Party Payor) shall pay to BenTek all amounts outstanding

and owing to the effective date of termination upon receipt of a final invoice from BenTek;

- (ii) each of the parties shall deliver or destroy all Confidential Information of the other, which is in its possession, care, or control to the other as provided in Section 8(e);
- (iii) each of the parties shall release the other from all obligations under this Agreement, save and except for obligations accrued and owing up to the effective date of termination and those obligations which survive as provided in section 11(d)(iv);
 - (iv) the provisions in Section 5, 6, 7, 8, 9, 10, 11(d), 13, 14, 15, 16, 17(j), (k), (l), and (m) of this Agreement shall continue in force following termination of this Agreement.
- 12. **Inspection Right.** During normal business hours during the Term or any Renewal Term, BenTek or its authorized representative, shall have the right, upon reasonable advance written notice, to audit and inspect the Customer's utilization of the Software and/or Services via accessing the Customer's accounts, in order to verify compliance with the terms and conditions of this Agreement. BenTek shall be solely responsible for the cost and expenses of such audit; however, if Customer is not in compliance with this Agreement, then Customer shall be liable for the cost and expenses of the audit.
- 13. Access. BenTek shall have the right to access the Software, Systems and Network for purposes of maintenance, support, administration, invoicing and inspection, as reasonably necessary in its sole discretion.

14. LIMITATIONS OF LIABILITY, DAMAGES, AND CAUSE OF ACTION

Limited Liability. Excluding any breach by Customer of Sections 2(a), 2(e), 6, or any breach by (a) either party of its obligations under Section 8 or Section 15 hereof, neither party, its directors, officers, employees and agents shall in any event be liable for any loss, injury, cause of action (whether in contract, tort (including negligence) or otherwise), liability or damage of any kind with respect to the support, Tools, the SaaS Solution, or otherwise under this Agreement, as the case may be, in excess of the Fees paid or payable by Customer to BenTek in the applicable Term or Renewal Term under this Agreement in which the event giving rise to liability occurred. Without limiting the generality of the foregoing, BenTek shall in no event be liable for any loss of business, lost profits, lost data, or failure of security resulting in any way from the Customer or the Customers' use of the support, Tools, and/or the SaaS Solution, without limitation, any errors or omissions, any content, any delay or failure of performance, data loss, security breaches, scheduled or unscheduled, downtime, any data/loss of files caused by delays, non-deliveries or wrong deliveries, accuracy or quality of information accessed through the Support, Tools, SaaS Solution, or the unavailability or interruption of the support, Tools, the SaaS Solution, or the Professional Services caused by BenTek, the Customer, any third party agent of BenTek or the Customer, an act of God or power line failure or otherwise. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, EXCLUDING ANY BREACH BY CUSTOMER OF SECTIONS 2(a), 2(e), 6, OR ANY BREACH BY EITHER PARTY OF ITS OBLIGATIONS UNDER SECTION 8 OR SECTION 15 OF THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES OF ANY KIND WHATSOEVER, WHETHER OR NOT FORESEEABLE (INCLUDING, WITHOUT LIMITATION, LEGAL FEES) IN ANY WAY DUE TO, RESULTING FROM, OR ARISING IN CONNECTION WITH THE FOREGOING, REGARDLESS OF ANY PARTY'S NEGLIGENCE OR FOR ANY CAUSE OF ACTION WHATSOEVER AND REGARDLESS OF THE FORM OF THE ACTION, EVEN IF THE OTHER PARTY HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES.

- (b) LIMITATION OF DAMAGES. IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER HEREUNDER OR, WITH RESPECT TO ANY SINGLE INCIDENT, THE LESSER OF \$1,000 OR THE AMOUNT PAID BY YOU HEREUNDER IN THE 12 MONTHS PRECEDING THE INCIDENT. THE FOREGOING SHALL NOT LIMIT CUSTOMER'S LIABILITY FOR BREACH OF SECTION 2(a) (GRANT AND SCOPE OF LICENSE) AND/OR 2(e) (CUSTOMER'S USE OF SAAS SOLUTION), CUSTOMER'S (OR IF APPLICABLE THIRD PARTY PAYOR'S) PAYMENT OBLIGATIONS UNDER SECTIONS 4 (FEES AND TAXES), SECTION 15 (INDEMNIFICATION), AND BREACH OF A PARTY'S CONFIDENTIALITY OBLIGATIONS UNDER SECTION 8.
- (c) NO ACTION AGAINST EITHER PARTY OR ANY OF ITS DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS, REGARDLESS OF FORM (INCLUDING NEGLIGENCE), ARISING OUT OF ANY CLAIMED BREACH OF THIS AGREEMENT, USE OF THE SOFTWARE OR IN ANY OTHER WAY RELATED TO THIS AGREEMENT AS OUTLINED ABOVE MAY BE BROUGHT BY THE OTHER PARTY MORE THAN ONE YEAR AFTER THE CAUSE OF ACTION HAS ARISEN.

15. Indemnification for Intellectual Property Claims.

- (a) Indemnification of Customer. BenTek shall indemnify Customer against all claims, liabilities, and costs, including reasonable attorneys' fees, reasonably incurred in the defense of any claim brought against Customer by third parties alleging that Customer's and/or its End Users' use of the SaaS Solution or Tools infringes any United States patent, a copyright or trade secret, provided that such indemnity shall not apply if the alleged infringement results from use of the SaaS Solution or Tools other than in their respective unaltered forms as supplied by BenTek or unlicensed activities or use not in compliance with this Agreement, and so long as Customer promptly notifies BenTek in writing of any such claim and BenTek is permitted to control fully the defense and any settlement of such claim as long as such settlement shall not include a financial obligation on Customer. Customer shall cooperate fully in the defense of such claim and may appear, at its own expense, through counsel reasonably acceptable to BenTek may settle any claim on a basis requiring BenTek to substitute for the SaaS Solution or Tools alternative substantially equivalent non-infringing software and services. In the event Customer's continued use of any SaaS Solution or Tools is prohibited by reason of infringement or misappropriation of a valid United States patent, copyright, trademark, or trade secret, or if infringement is likely in BenTek's opinion, BenTek may, at its sole option and at is expense, obtain the rights to continued use of any such SaaS Solution or Tools; replace or modify such SaaS Solution or Tools so that they are no longer infringing; or terminate the license to the SaaS or Tools involved and issue a pro rata refund to the Customer.
- (b) Indemnification of BenTek. To the extent provided by law, Customer shall indemnify, defend, and hold BenTek harmless from and against any third party claim, suit, or proceeding, brought against BenTek based on a claim that (i) the use or transfer of any SaaS Solution or Tools which is not in compliance with the terms of this Agreement constitutes an infringement, violation, or misappropriation of a United States patent, copyright, trademark, trade secret, or other intellectual property; (ii) the use of any SaaS Solution or Tools delivered hereunder and modified, altered or combined with any equipment, device or software not supplied by BenTek hereunder and (iii) BenTek's conformity and attempted conformity with the specifications provided by Customer constitutes an infringement of any United States patent, copyright, trademark, or trade secret because of such modification, alteration conformity, attempted conformity, or combination so long as BenTek promptly notifies Customer in writing of any such claim and Customer is permitted to control fully the defense and any settlement of such claim as long as such settlement shall not include a financial obligation on BenTek or a

restriction on its ability to continue to develop, market and support the SaaS Solution or Tools. BenTek shall cooperate fully in the defense of such claim and may appear, at its own expense, through counsel reasonably acceptable to Customer.

- (c) THE PROVISIONS OF THIS SECTION 15 STATE THE SOLE, EXCLUSIVE, AND ENTIRE LIABILITY OF THE INDEMNIFYING PARTY TO THE INDEMNIFIED PARTY AND IS THE INDEMNIFIED PARTY'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO THE INFRINGEMENT OF THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS.
- 16. Additional Indemnification of BenTek. The Customer agrees to indemnify and hold harmless BenTek and its officers, directors, shareholders, employees, agents, and contractors from and against any and all BenTek Claims (as hereafter defined) arising from any Prohibited Act as well as those arising from Customer's (or Third Party Payor's if applicable) failure to pay license fees. Customer acknowledges that BenTek may terminate Customer's and its End Users' use of the SaaS Solution if after written notice, Customer (or Third Party Payor if applicable) fails to pay the license fees due and owing. "Claim" shall mean all losses, liabilities, damages, claims, taxes, and all related costs and expenses, including, without limitation, reasonable attorneys' fees and costs of investigation, litigation, settlement, judgment, interest and penalties.

17. General Provisions.

- (a) Additional Subscriptions for the SaaS Solution and Support. All Fee changes and agreements as to the provision of additional subscriptions for the SaaS Solution and support to the Customer by BenTek, from time to time, shall be appended hereto as amended or additional Exhibits and shall be subject to the terms and conditions hereof.
- (b) Entire Agreement. This Agreement, inclusive of the Exhibits and any amendments or additions thereto, constitutes the entire agreement and sets forth the entire understanding between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements, covenants, arrangements and discussions with respect thereto. In the event of an inconsistency between the terms and conditions of this Agreement and any Exhibit now or hereafter appended hereto, the terms of the applicable Exhibit shall govern to the extent necessary to remedy such inconsistency.
- (c) Marketing. BenTek will get permission from Customer prior to BenTek using the Customer's name, trademarks and trade names ("Customer Marks") to identify the Customer as a customer of BenTek on BenTek's website, and for use of such Customer Marks in BenTek's corporate, promotional and marketing literature. Once BenTek receives permission, Customer's permission grants to BenTek and BenTek accepts a world-wide, royalty free, and non-exclusive license to use the Customer's name, trademarks and trade names ("Customer Marks") to identify the Customer as a customer of BenTek on BenTek's website, and for use of such Customer Marks in BenTek's corporate, promotional and marketing literature.
- (d) Relationship of Customer and BenTek. Nothing contained in this Agreement shall be deemed or construed as creating a joint venture or partnership between the parties; no party is by virtue of this Agreement authorized as an agent, employee or agent representative of the other party.
- (e) Non-Exclusivity. Nothing in this Agreement will be construed to prevent BenTek from marketing, licensing, selling or otherwise providing the SaaS Solution and Professional Services or any aspects of BenTek's technology or services to any third party.

- (f) Modifications. No modification of, amendment or addition to this Agreement is valid or binding unless set forth in writing and fully executed by both parties hereto.
- (g) Waiver. Any waiver of any right or remedy under this Agreement must be in writing and signed by each party. No delay in exercising any right or remedy shall operate as a waiver of such right or remedy or any other right or remedy. A waiver on one occasion shall not be construed as a waiver of any right or remedy on any future occasion.
- (h) **No Assignment.** This Agreement and any rights or obligations hereunder, shall not be assigned, sublicensed or otherwise transferred by the Customer without the prior written consent of BenTek. Any transfer by merger, consolidation, or liquidation shall constitute an assignment for purposes of this Agreement. BenTek may transfer or assign its rights and obligations hereunder in the event of a change in ownership or control.
- (i) Inurement. This Agreement shall be binding upon and shall inure to the benefit of BenTek and the Customer and each of their successors and permitted assigns.
- (j) No Third-Party Beneficiaries. Notwithstanding the substitution of a Third-Party Payor for the Customer as an obligor of the payment obligations hereunder, it is not intended for the Third-Party Payor or any other third party to be a beneficiary to this Agreement.
- (k) Governing Law, Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas excluding its choice of venue provisions. The parties hereto hereby irrevocably consent to the exclusive jurisdiction and venue of the state and federal courts of the state of Texas, county of Tarrant, for the purposes of all legal proceedings arising out of or relating to this agreement or the actions that are contemplated hereby.
- (l) Notices. Any notices, demands and other communications hereunder shall be in writing and shall be delivered, sent by electronic transmission, or by mail, registered or certified, return receipt requested, postage prepaid, and addressed as follows:
 - (i) to BenTek, at:

11505 Fairchild Gardens Avenue, Suite 102 Palm Beach Gardens, Florida 33410

Attn: Chief Financial Officer Facsimile: (561) 626-6970

Email: contracts@gehringgroup.com
Email: kate.grangard@gehringgroup.com

With a copy to (which shall not constitute notice): Albert B. Maggio, Jr., P.A. CRGO Law 7900 Glades Road Suite 520 Boca Raton, Florida 33434 (ii) to the Customer, at:

Customer Name:

141 W. Renfro Street Burleson, TX 76028-4296

City of Burleson, Texas

Customer Address: Customer Contact Name:

Wanda Bullard

Customer Facsimile:

817.295.9414

Customer Email Address:

wbullard@burlesontx.com

All notices shall be effective and deemed to be delivered (i) if mailed, on the fifth business day following such mailing, unless there is an interruption in the mail, in which case it shall be deemed to have been given when received; or (ii) if delivered or sent by facsimile, on the business day following the date of dispatch or the date of transmission, as the case may be. Either party may change the address for notice by giving written notice of such change to the other party in the manner provided in this Section.

- (m) Severability. If any provision of this Agreement is held to be unenforceable or illegal by a court of competent jurisdiction, such provision shall be modified to the extent necessary to render it enforceable, or shall be severed from this Agreement, and all other provisions of this Agreement shall remain in full force and effect.
- (n) Facsimile Transmission. This Agreement may be executed and delivered by facsimile or other electronic means of transmission, and upon receipt such transmission shall be deemed delivery of an original. Within a reasonable time after such electronic delivery, the party executing the document shall mail or deliver an originally signed copy of such document to the other party.
- (o) Counterparts. This Agreement may be executed in several counterparts each of which when executed shall be deemed to be original, and such counterparts shall each constitute one and the same instrument and notwithstanding their date of execution shall be deemed to bear the day and year first above written.
- (p) Force Majeure. Neither party to this Agreement shall be liable to the other for any failure or delay in performance by circumstances beyond its control, including but not limited to, acts of God, fire, labor difficulties or governmental action, provided that the party seeking to rely on such circumstances gives written notice of such circumstances to the other party hereto and uses reasonable efforts to overcome such circumstances.
- (q) No Waiver of Governmental Immunity. Nothing contained in this Agreement shall be construed as a waiver of Customer's governmental immunity, or of any damage caps or limitations imposed by law, or any other legal protections granted to Customer by law, except to the extent expressly provided or necessarily implied herein.

BENTEK, INC.

Name: Kurt N. Gehring

Title: President

Date: April 10, 2018

| CITY OF | BURLESON, TX |
|---------|---------------|
| Ву: | De dealsm |
| Name: | Dale Cheatham |
| Title: | City Manager |
| Date: | 4/10/2018 |

EXHIBIT A-1 ORDER FORM FOR SAAS SOLUTION ADDENDUM TO THE MASTER SOFTWARE AS A SERVICE AGREEMENT BETWEEN BENTEK, INC. AND CITY OF BURLESON, TEXAS ("CUSTOMER")

This Exhibit A-1 BenTek Order Form for SaaS Solution between BenTek, Inc. ("BenTek") and City of Burleson, Texas ("Customer") is effective as of the date of execution by BenTek ("Services Effective Date"). This is an Exhibit to the Master Software as a Service Agreement between BenTek and Customer ("Master SaaS Agreement"), the terms of which are incorporated herein.

| 1. Customer. The leg | al name, address, | contact person, telephone r | number and e-mail address of the Customer: | |
|--|--------------------|-----------------------------|--|----|
| Legal Name: | City of Burleson, | Texas | | |
| Address: | 141 W. Renfro S | treet, Burleson, TX 76028 | | |
| Contact Name: | Wanda Bullard | | - | |
| Telephone Number: | 817.426.9644 | | | |
| E-mail Address: | wbullard@burlesont | x.com | - | |
| 2. SaaS Solution. Conthe corresponding fee | | | iptions to the SaaS Solution and agrees to p | ay |
| Description | | User (Group) | Fee | |
| BenTek Employee Be Enrollment & Admin | | City of Burleson, TX | Refer to Superion Add-On Quote | |

- 3. Subscription Term. The term for the subscription for SaaS Solution is Three (3) years.
- **4. Fees.** Pursuant to Section 3 of the Master SaaS Agreement, following are the payment terms for the SaaS Solution:

An implementation fee is due and payable in advance. Payment obligations are non-cancellable and fees paid are non-refundable. If SaaS Solution Fees are based upon the number of subscriptions for Users and not a fixed fee, the number of subscriptions for Users purchased cannot be decreased during the relevant subscription term stated on the Order Form. User subscription fees are based on monthly periods that begin on the subscription start date and each monthly anniversary thereof; therefore, fees for User subscriptions added in the middle of a monthly period will be charged for that full monthly period and the monthly periods remaining in the subscription term.

5. Support. So long as Customer is in compliance with the terms of the SaaS Agreement and is current in all of its (or the Third Party Payor if applicable) payment obligations, BenTek shall provide Customer with telephone support between the hours of 8:30 a.m. and 5:00 p.m., Eastern time. The support number is 888. 5BENTEK. (888.523.6835). E-mail: support@mybentek.com. Response is within one business day.

| BENTEK, INC. |
|------------------------|
| By: Jut Thrue |
| Name: Kurt N. Gehring |
| Title: President |
| Date: April 10, 2018 |
| CITY OF BURLESON TEXAS |
| By: De Cleartin |
| Name: Dale Cheatham |
| Title: City Manager |
| Date: 4/10/2018 |



Add-On Quote

Quote Prepared By:

Denise Pratt 1000 Business Center Drive Lake Mary, FL 32746

Phone: (800) 727-8088 Fax: (407) 304-3301

Email: denise.pratt@superion.com

Quote Prepared For:

Deidre Hall, Human Resources Generalist

City of Burleson 141 W Renfro Burleson, TX 76028 (817) 426-9642

Quote Q-00027123 **Date** 05/15/2017

Valid Until 08/13/2017

Third Party Annual Subscription Fees

| Product Code | Product Name | Quantity | Ext Price | |
|---------------------|-------------------------------------|----------|-------------|--|
| BEN-BA-CORE | BenTek Benefits Administration Core | 1 | 11,700.00 | |
| BEN-BILL | BenTek Billing Module | 1 | 360.00 | |
| BEN-FORMS | BenTek ACA Forms | 1 | 1,122.00 | |
| BEN-PER-IMP | BenTek Personnel Import | 1 | 360.00 | |
| BEN-PR-A | BenTek Payroll Audit | 1 | 360.00 | |
| BEN-PR-E | BenTek Payroll Export | 1 | 360.00 | |
| | • | Totals: | \$14,262.00 | |
| | | Totals: | \$14,262.00 | |

Professional Services

Services

| Product Code | Product Name | | Proj Mgmt I | nstallation | Tech Svcs | Training | Impl Svcs | Consulting | Development | Total Services |
|-----------------|-------------------------------|------------|-------------|-------------|-----------|----------|-----------|------------|-------------|----------------|
| BEN-BA-CORE-SVS | Project Management for BenTek | Ext Price: | 640.00 | - | - | - | - | - | - | 640.00 |
| | | Totals: | \$640.00 | - | - | - | - | - | - | \$640.00 |
| | | | | | | | | | | |

Third Party

| Product Code | Product Name | | Proj Mgmt Ins | tallation | Tech Svcs | Training | Impl Svcs | Consulting | Development | Total Services |
|--------------|--------------------------------------|------------|---------------|-----------|-----------|----------|------------|------------|-------------|----------------|
| BEN-BA-CORE | BenTek Benefits Administration Core | Ext Price: | - | - | - | - | 5,000.00 | - | - | 5,000.00 |
| BEN-IP-A | BenTek Initial Payroll/Carrier Audit | Ext Price: | - | - | - | - | 360.00 | - | - | 360.00 |
| | | Totals: | - | - | - | - | \$5,360.00 | - | - | \$5,360.00 |

Product & Services

Professional Services: \$640.00
Third Party Annual Subscription Fees: \$14,262.00
Third Party Professional Services: \$5,360.00

Subtotal: \$20,262.00

Total: \$20,262.00

 $a = \frac{2}{2}$

Product Notes

BEN-BA-CORE: Separate signed End User License Agreement (EULA) between Customer and BenTek is required. Minimum Requirements for the Web browser include: Internet Explorer-Version 10; Microsoft Edge-Version 12; Safari-Version 9; Chrome-Version 44; Firefox-Version 40.

BEN-BA-CORE: Additional Definitions.

"BenTek Software" means the software provided to Customer by BenTek, Inc. ("BenTek") which is identified in this Add-On Quote as the "BenTek" software.

"BenTek Services" means the services provided to Customer by BenTek which is identified in this Add-On Quote as the "BenTek" Services.

"BenTek Agreement" means the End User License Agreement as well as any BenTek agreement specifying terms and conditions for Maintenance to be executed by and between Customer and BenTek.

Ownership - BenTek, Inc. owns the BenTek Software and provides the BenTek Services

Condition on Use of BenTek Software Module(s) and BenTek Services - Customer's use of the BenTek Software and the provision of the BenTek Services is subject to Customer's execution of the BenTek Agreement. BenTek is solely responsible for delivering the BenTek Software and BenTek Services to Customer.

BEN-BILL: Additional Definitions.

"BenTek Software" means the software provided to Customer by BenTek, Inc. ("BenTek") which is identified in this Add-On Quote as the "BenTek" software.

"BenTek Services" means the services provided to Customer by BenTek which is identified in this Add-On Quote as the "BenTek" Services.

"BenTek Agreement" means the End User License Agreement as well as any BenTek agreement specifying terms and conditions for Maintenance to be executed by and between Customer and BenTek.

Ownership - BenTek, Inc. owns the BenTek Software and provides the BenTek Services

Condition on Use of BenTek Software Module(s) and BenTek Services - Customer's use of the BenTek Software and the provision of the BenTek Services is subject to Customer's execution of the BenTek Agreement. BenTek is solely responsible for delivering the BenTek Software and BenTek Services to Customer.

BEN-FORMS: Additional Definitions.

"BenTek Software" means the software provided to Customer by BenTek, Inc. ("BenTek") which is identified in this Add-On Quote as the "BenTek" software.

"BenTek Services" means the services provided to Customer by BenTek which is identified in this Add-On Quote as the "BenTek" Services.

"BenTek Agreement" means the End User License Agreement as well as any BenTek agreement specifying terms and conditions for Maintenance to be executed by and between Customer and BenTek.

Ownership - BenTek, Inc. owns the BenTek Software and provides the BenTek Services

Condition on Use of BenTek Software Module(s) and BenTek Services - Customer's use of the BenTek Software and the provision of the BenTek Services is subject to Customer's execution of the BenTek Agreement. BenTek is solely responsible for delivering the BenTek Software and BenTek Services to Custome BEN-IP-A: Additional Definitions.

"BenTek Software" means the software provided to Customer by BenTek, Inc. ("BenTek") which is identified in this Add-On Quote as the "BenTek" software.

"BenTek Services" means the services provided to Customer by BenTek which is identified in this Add-On Quote as the "BenTek" Services.

"BenTek Agreement" means the End User License Agreement as well as any BenTek agreement specifying terms and conditions for Maintenance to be executed by and between Customer and BenTek.

Ownership - BenTek, Inc. owns the BenTek Software and provides the BenTek Services

Condition on Use of BenTek Software Module(s) and BenTek Services - Customer's use of the BenTek Software and the provision of the BenTek Services is subject to Customer's execution of the BenTek Agreement. BenTek is solely responsible for delivering the BenTek Software and BenTek Services to Customer.

BEN-PER-IMP: Additional Definitions.

"BenTek Software" means the software provided to Customer by BenTek, Inc. ("BenTek") which is identified in this Add-On Quote as the "BenTek" software.

"BenTek Services" means the services provided to Customer by BenTek which is identified in this Add-On Quote as the "BenTek" Services.

"BenTek Agreement" means the End User License Agreement as well as any BenTek agreement specifying terms and conditions for Maintenance to be executed by and between Customer and BenTek.

Ownership - BenTek, Inc. owns the BenTek Software and provides the BenTek Services

Condition on Use of BenTek Software Module(s) and BenTek Services - Customer's use of the BenTek Software and the provision of the BenTek Services is subject to Customer's execution of the BenTek Agreement. BenTek is solely responsible for delivering the BenTek Software and BenTek Services to Customer.

BEN-PR-A: Additional Definitions.

"BenTek Software" means the software provided to Customer by BenTek, Inc. ("BenTek") which is identified in this Add-On Quote as the "BenTek" software.

"BenTek Services" means the services provided to Customer by BenTek which is identified in this Add-On Quote as the "BenTek" Services.

"BenTek Agreement" means the End User License Agreement as well as any BenTek agreement specifying terms and conditions for Maintenance to be executed by and between Customer and BenTek.

Ownership - BenTek, Inc. owns the BenTek Software and provides the BenTek Services

Condition on Use of BenTek Software Module(s) and BenTek Services - Customer's use of the BenTek Software and the provision of the BenTek Services is subject to Customer's execution of the BenTek Agreement. BenTek is solely responsible for delivering the BenTek Software and BenTek Services to Customer.

BEN-PR-E: Additional Definitions.

"BenTek Software" means the software provided to Customer by BenTek, Inc. ("BenTek") which is identified in this Add-On Quote as the "BenTek" software.

"BenTek Services" means the services provided to Customer by BenTek which is identified in this Add-On Quote as the "BenTek" Services.

"BenTek Agreement" means the End User License Agreement as well as any BenTek agreement specifying terms and conditions for Maintenance to be executed

between Customer and BenTek.

Ownership - BenTek, Inc. owns the BenTek Software and provides the BenTek Services

Condition on Use of BenTek Software Module(s) and BenTek Services - Customer's use of the BenTek Software and the provision of the BenTek Services is subject to Customer's execution of the BenTek Agreement. BenTek is solely responsible for delivering the BenTek Software and BenTek Services to Customer.

Payment terms as follows, unless otherwise notated below for Special Payment Terms by Product:

License, Project Planning, Project Management, Consulting, Technical Services, Conversion, Third Party Product Software and Hardware Fees are due upon execution of this Quote. Project Management Fees will be invoiced as one combined fee. Training fees and Travel & Living expenses are due as incurred monthly. Installation is due upon completion. Custom Modifications, System Change Requests or SOW's for customization, and Third Party Product Implementation Services fees are due 50% on execution of this Quote and 50% due upon invoice, upon completion. Unless otherwise provided, other Professional Services are due monthly, as such services are delivered. Additional services, if requested, will be invoiced at then-current rates. Any shipping charges shown are estimated only and actual shipping charges will be due upon invoice, upon delivery.

Annual Subscription Fee(s): Initial annual subscription fees are due 100% on the Execution Date. The initial annual subscription term for any subscription product(s) listed above shall commence on the Execution Date of this Agreement and extend for a period of one (1) year. Thereafter, the subscription terms shall automatically renew for successive one (1) year terms, unless either party gives the other party written notice of non-renewal at least sixty (60) days prior to expiration of the then-current term. The then-current fee will be specified by Superion in an annual invoice to Customer thirty (30) days prior to the expiration of then-current annual period.

Superion Application Annual Support (Maintenance): Customer is committed to the initial term of Maintenance for which the support fee is included in the License fee(s) and begins upon execution of this Quote and extends for a twelve (12) month period. Subsequent terms of Maintenance will be for twelve (12) month periods, commencing at the end of the prior support period. Maintenance fees shown are for the second term of support and which shall be due prior to the start of that term. Fees for subsequent terms of Maintenance will be due prior to the start of each term at the then prevailing rate. Except for the second term of Maintenance for which Superion is committed, subsequent terms will renew automatically until such time a party receives written notice from the other party thirty (30) days prior to the expiration of the then current term. Notification of non renewal is required prior to the start of the renewal term. Customer will be invoiced, and payment is due, upon renewal.

Third Party Product Annual Support Fees: The support fee for the initial annual period is included in the applicable Third Party Product License fees(s) unless otherwise stated. Subsequent terms invoiced by Superion will renew automatically at then-prevailing rates until such time Superion receives written notice of non-renewal from the Customer ninety (90) days in advance of the expiration of the then-current term. Notification of non-renewal is required prior to the start of the renewal term. Customer will be invoiced, and payment is due, upon renewal. As applicable for certain Third Party Products that are invoiced directly by the third party to Customer, payment terms for any renewal term(s) of support shall be as provided by the third party to Customer.

Additional Terms:

This Quote constitutes an Amendment to the Software License & Services Agreement and the Maintenance/Support Agreement (together, the "Contract and Agreement") by and between the parties hereto. The product and pricing information detailed above comprises the "Exhibit 1" schedule or "Supplement" attached to this Amendment. Except as otherwise provided herein, all terms and conditions of the Contract and Agreement shall remain in full force and effect.

Any interfaces listed above are interfaces only. Customer shall be responsible for obtaining the applicable software, hardware and system software from the appropriate third party vendor.

The Component Systems identified above are "Licensed Programs" or "Licensed Systems" licensed by Superion and are provided in and may be used in machine-readable object code form only.

Applicable taxes are not included, and, if applicable, will be added to the amount in the payment of invoice(s) being sent separately. Travel and living expenses are in addition to the prices quoted above and shall be governed by the Superion Corporate Travel and Expense Reimbursement Policy.

| Superion, LLC Page 291 |
|---|
| Authorized Signature: Date: Printed Name: |
| |
| City of Burleson |
| City of Division on |
| |
| esponsible for entire price of the training or on-site project management plus incurred expenses. |
| additional services will be provided on a time and materials basis at hourly rates equal to Superion's then-current rates for the services at issue. For training and on-site project management sessions which are cancelled at the request of Customer within fourteen (14) days of the scheduled start date, Customer is |
| Pricing for professional services provided under this quote is a good faith estimate based on the information available to Superion at the time of execution of this Quote. The total amount that Customer will pay for these services will vary based on the actual number of hours of services required to complete the services. If required, |
| Should Customer terminate this agreement per any "Term of Contract" Section of the Contract and Agreement, as may be applicable for certain customers, Customer agrees to pay, immediately upon termination, the remaining balance for all hardware, software, and services delivered prior to the termination date together with travel eimbursements, if any, related to the foregoing. Notwithstanding any language in the Contract and Agreement to the contrary, the purchase of support services is NOT necessary for the continuation of Customer's License. |
| This Agreement is based on the current licensing policies of each third party software manufacturer as well as all hardware manufacturers. In the event that a nanufacturer changes any of these respective policies or prices, Superion reserves the right to adjust this proposal to reflect those changes. |
| Third party hardware/software maintenance and/or warranty will be provided by the third party hardware and software manufacturer(s). Superion makes no representation to expected performance, suitability, or the satisfaction of Customer's requirements with respect to the hardware or other third party products specified in this Quote. The return and refund policy of each individual third party hardware/software supplier shall apply. |
| Preprinted conditions and all other terms not included in this Quote or in the Contract and Agreement, stated on any purchase order or other document submitted nereafter by Customer are of no force or effect, and the terms and conditions of the Contract and Agreement and any amendments thereto shall control unless expresslaccepted in writing by Superion to Customer. |
| The Superion application software warranty shall be for a period of one (1) year after delivery. There is no Testing and Acceptance period on the Licensed System(s) nerein. |
| The date of delivery is the date on which Superion delivers, F.O.B. Superion's place of shipment, the Component Systems to Customer. |

EXHIBIT B BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (the "Agreement") by and between City of Burleson, Texas ("Customer"), and BenTek, Inc. ("BenTek") is made and entered into effective April 10, 2018.

RECITALS

WHEREAS, Customer is a "covered entity" as those terms are defined in 45 C.F.R. § 160.103; and WHEREAS, BenTek provides administration services to Customer; and

WHEREAS, as a result of such functions, Customer has identified BenTek as a "business associate," as defined in 45 C.F.R. § 160.103, of Customer for purposes of the privacy and security requirements under the Health Insurance Portability and Accountability Act of 1996, (HIPAA) as amended by the Health Information Technology for Economic and Clinical Health Act (HITECH) and the regulations issued thereunder; and

WHEREAS, BenTek acknowledges that it is a business associate, as defined in 45 C.F.R. § 160.103, of Customer that may create, use, or disclose Protected Health Information or Electronic Protected Health Information on behalf of Customer; and

WHEREAS, Customer desires to obtain written assurances that BenTek will safeguard Protected Health Information or Electronic Protected Health Information created or received by or on behalf of Customer.

NOW, THEREFORE, the parties agree as follows:

1. **DEFINITIONS**

- "Breach" shall have the meaning set forth in 45 C.F.R. §164.402.
- 1.2 "Data Aggregation" shall have the meaning as the term "data aggregation" in 45 C.F. R. § 164.501.
- 1.3 "Designated Record Set" shall mean a group of health-related records about an Individual as provided in 45 C.F.R. § 164.501.
- 1.4 "Electronic Health Record" shall mean an electronic record of health-related information with respect to an Individual that is created, gathered, managed and consulted by authorized healthcare clinicians and staff.
- 1.5 "Electronic Protected Health Information" or "Electronic PHI' means information that BenTek or its agent, including a subcontractor, creates, receives, maintains or transmits from or on behalf of Customer that comes within paragraphs 1(i) or 1(ii) of the definition of "protected health information" at 45 C.F.R. § 160.103.
- 1.6 "Genetic Information" shall have the meaning assigned to such term in 45 C.F.R. § 160.103.
- 1.7 "HIPAA" shall mean the health information privacy provisions under the Health Insurance Portability and Accountability Act of 1996, and regulations issued thereunder at 45 C.F.R. Parts 160 and 164, as amended by HITECH.
- 1.8 "HITECH" shall mean the Health Information Technology for Economic and Clinical Health Act and

the regulations issued thereunder.

- 1.9 "Individual" shall mean a person who is the subject to the Protected Health Information of the Customer, and shall include a person who qualifies as the Individual's personal representative in accordance with 45 C.F.R. § 164.502(g).
- 1.10 "Limited Data Set" shall have the meaning assigned to such term in 45 C.F.R. §164.514(e)(2).
- 1.11 "Protected Health Information" or "PHI" shall have the same meaning as the term "protected health information" in 45 C.F.R. § 160.103, limited to the information created or received by BenTek from or on behalf of Customer. Genetic Information shall be considered PHI.
- 1.12 "Required by Law" shall mean a mandate contained in an applicable state, federal, or local law that compels Customer (or business associates acting on behalf of Customer) to make a use or disclosure of PHI that is enforceable in a court of law.
- 1.13 "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system, as defined at 45 C.F.R. § 164.304. However, certain low risk attempts to breach network security, such as the incidents listed below, shall not constitute a Security Incident under this Agreement, provided they do not penetrate the perimeter, do not result in an actual breach of security and remain within the normal incident level:
- pings on the firewall;
- port scans;
- attempts to log on to a system or enter a database with an invalid password or username;
- denial-of-service attacks that do not result in a server being taken off-line; and
- malware such as worms or viruses.
- 1.14 "Subcontractor" shall have the meaning as the term in 45 C.F.R. § 160.103.
- 1.15 "Unsecured Protected Health Information" or "Unsecured PHI" shall have the meaning assigned to such term in 45 C.F.R. § 164.402 and guidance issued thereunder.

2. **OBLIGATIONS OF THE PARTIES**

- 2.1 BenTek shall safeguard all PHI and Electronic PHI created or received by BenTek on behalf of Customer in accordance with HIPAA. BenTek shall implement administrative, physical and technical safeguards that prevent use or disclosure of the Electronic Protected Health Information other than as permitted by the Security Rules. Specifically, BenTek agrees to implement policies and procedures in accordance with 45 C.F.R. § 164.316 that:
 - i. Prevent, detect, contain and correct security violations in accordance with the administrative safeguards set forth in 45 C.F.R. § 164.308;
- ii. Limit physical access to electronic information systems and the facility or facilities in which they are housed, while ensuring that properly authorized access is allowed in accordance with the physical safeguards set forth in 45 C.F.R. § 164.310; and
 - iii. Allow access to electronic information systems that maintain Electronic PHI to only those

persons or software programs that have been granted access rights in accordance with the technical safeguards set forth in 45 C.F.R. § 164.312.

- 2.2 BenTek shall not use or disclose PHI or Electronic PHI except as permitted or required by Article 3 of this Agreement or as Required by Law. BenTek shall notify Customer of all requests for the disclosure of PHI and Electronic PHI from a law enforcement or government official, or pursuant to a subpoena, court or administrative order, or other legal request as soon as possible prior to making the requested disclosure. BenTek shall provide to Customer all PHI and Electronic PHI necessary to respond to these requests as soon as possible, but no later than ten (10) business days following its receipt of a written request from Customer.
- 2.3 Customer shall provide to BenTek, and BenTek shall request from Customer, disclose to its affiliates, subsidiaries, agents and subcontractors or other third parties, only a Limited Data Set or, if necessary or otherwise permitted by HHS regulations, the minimum PHI or Electronic PHI necessary to perform or fulfill a specific function required or permitted under the Agreement. "Minimum necessary" shall be interpreted in accordance with HITECH, and in any event, shall not include any direct identifiers of individuals such as names, street addresses, phone numbers or social security numbers, except for a unique identifier assigned by Customer as necessary for the strategic analysis.
- 2.4 BenTek shall comply with all granted restrictions on the use and/or disclosure of PHI, pursuant to 45 C.F.R. § 164.522(a), upon written notice from Customer; provided, however, that Customer shall not grant any restriction that affects BenTek's use or disclosure of PHI without first consulting with BenTek.
- 2.5 BenTek shall comply with all granted requests for confidential communication of PHI, pursuant to 45 C.F.R. § 164.522(b), upon written notice from Customer.
- 2.6 BenTek shall report to Customer any use or disclosure of PHI not permitted by this Agreement of which BenTek becomes aware within fifteen (15) business days of its becoming aware, and will take such corrective action necessary, or as reasonably directed by Customer, in order to prevent and minimize damage to any Individual and to prevent any further such occurrences.
- 2.7 Following the discovery of a Breach of Unsecured PHI, BenTek shall notify the Customer without unreasonable delay and in no case no later than fifteen (15) days after discovery of the Breach. The notification shall include the identification of each Individual whose Unsecured PHI has been or is reasonably believed by BenTek to have been accessed, acquired, used or disclosed during the Breach. BenTek shall provide the Customer with any other available information that the Customer requires to notify affected individuals under the Privacy Rule.
- 2.8 BenTek shall make reasonable efforts to mitigate, to the extent practicable or as reasonably directed by Customer, any harmful effect that is known to BenTek resulting from a breach of this Agreement or HIPAA that is directly caused by BenTek.
- 2.9 BenTek shall report to Customer any Security Incident within five (5) business days of when it becomes aware of such Security Incident. BenTek shall mitigate to the extent practicable or as reasonably directed by Customer any harmful effect that is known to BenTek of a Security Incident by BenTek.
- 2.10 BenTek shall take reasonable steps to ensure that any Subcontractor performing services for Customer agrees in writing to the same restrictions and conditions that apply to BenTek with regard to its creation, use, and disclosure of PHI and Electronic PHI in accordance with 45 C.F.R. §§ 164.308(b)(2), 164.502(e)(1)(ii) and 164.504(e)(5). BenTek shall, upon written request from Customer, provide a list of any Subcontractors with

whom BenTek has contracted to perform services for Customer. BenTek shall advise Customer if any Subcontractor breaches its agreement with BenTek with respect to the disclosure or use of PHI or Electronic PHI. If BenTek knows of a pattern of activity or practice of its Subcontractor that constitutes a material breach or violation of the Subcontractor's duties and obligations under its agreement with the Subcontractor ("Subcontractor Material Breach"), BenTek shall cure the breach or provide a reasonable period for Subcontractor to cure the Subcontractor Material Breach; provided, however, that if BenTek cannot, or Subcontractor does not, cure the Subcontractor Material Breach within such period, BenTek shall terminate the agreement with Subcontractor, if feasible, at the end of such period.

- 2.11 BenTek shall, upon written request from Customer, provide to Customer a copy of any PHI or Electronic PHI in a Designated Record Set, as defined in 45 C.F.R. § 164.501, created or maintained by BenTek, and not also maintained by Customer, within thirty (30) days of receipt of the request.
- 2.12 BenTek shall, upon written request from Customer, make any amendment to PHI in a Designated Record Set maintained by BenTek within thirty (30) days of receipt of the request unless BenTek can establish to Customer's satisfaction that the PHI at issue is accurate and complete.
- 2.13 If an Individual's PHI is held in an Electronic Health Record, BenTek shall provide requested copies in electronic format to the individual or to an entity or person designated by the Individual, provided such designation is clearly and conspicuously made by the Individual or Customer.
- 2.14 BenTek shall make its internal practices, written policies and procedures, books, records, and other documents relating to the use and disclosure of PHI and/or Electronic PHI created or maintained by BenTek on behalf of Customer available to the Secretary of the Department of Health and Human Services, or his or her designee, for purposes of the Secretary determining Customer's compliance with HIPAA.
- 2.15 BenTek shall make available the information required to provide an accounting of disclosures made on and after the Effective Date, as necessary for Customer to comply with 45 C.F.R. § 164.528, within twenty (20) business days of receipt of the request. BenTek shall provide one such accounting within a twelve-month period without charge, but may make a reasonable charge for any additional such accountings within the same twelve-month period.
- 2.16 BenTek shall maintain all records, other than those records that are also maintained by Customer, for six (6) years from the date created or last in effect, whichever is later, as necessary for Customer to comply with 45 C.F.R. § 164.530(j)(2).

3. **PERMITTED USES OF PHI**

- 3.1 BenTek may use and disclose PHI and Electronic PHI as necessary to provide services to Customer, subject to Section 2.3 of this Agreement and consistent with the requirements of HIPAA.
- 3.2 BenTek may use and disclose PHI and Electronic PHI as necessary for the proper management and administration of BenTek or to carry out BenTek's legal responsibilities, subject to Section 2.4 of this Agreement and consistent with the requirements of HIPAA; provided, however, that BenTek may disclose the PHI and Electronic PHI for such purposes only if:
 - i. the disclosure is Required by Law, or
 - ii. BenTek obtains reasonable assurances that the party to whom the PHI or Electronic PHI is

disclosed (a) will protect the confidentiality of the PHI and Electronic PHI, (b) will not further disclose the PHI or Electronic PHI except as Required by Law or for the purposes for which it was disclosed to the other party, and (c) will report any improper use or disclosure of the PHI and/or Electronic PHI to BenTek.

3.3 Except as otherwise limited in this Agreement, and to the extent provided for under this Agreement, BenTek may use PHI and Electronic PHI to provide Data Aggregation services to Customer, as permitted by 42 C.F.R. § 164.504(e)(2)(i)(B).

4. TERMINATION OF AGREEMENT

- 4.1 Except as described in Section 4.3, this Agreement shall continue in effect so long as BenTek provides service to Customer involving maintaining, using or disclosing PHI or Electronic PHI, or otherwise retains a copy of PHI or Electronic PHI provided to BenTek by Customer.
- 4.2 Customer may terminate this Agreement at any time if Customer discovers that BenTek has materially breached any provision of this Agreement.
- 4.3 If BenTek becomes aware of a pattern of activity or practice of the Customer that constitutes a material breach or violation of the Customer's duties and obligations under the Agreement, BenTek shall take reasonable steps and provide a period of thirty (30) calendar days for the Customer to cure the material breach or violation. If the Customer does not cure the material breach or violation within such 30-day period, BenTek shall terminate the Agreement, if feasible, at the end of such 30-day period.
- 4.4 Upon the expiration of Customer's relationship with BenTek, and contingent upon the payment of all outstanding fees, BenTek shall return PHI and Electronic PHI to Customer or Customer's designated agent upon Customer's request. If return of all PHI and Electronic PHI is not feasible, the provisions of this Agreement shall continue to apply to BenTek until such time as all PHI and Electronic PHI is either returned to Customer or destroyed pursuant to BenTek's document retention policy, provided that BenTek shall limit further use of PHI and Electronic PHI only to those purposes that make the destruction or return of the PHI and Electronic PHI infeasible. Following the expiration of the relationship, BenTek agrees not to disclose PHI and Electronic PHI except to Customer or as Required by Law.

5. **NOTICES**

Whenever, under this Agreement, BenTek is required to give notice to Customer, such notice shall be sent via First Class Mail to:

Attention: Privacy Officer City of Burleson, Texas 141 W. Renfro Street Burleson, TX 76028 Whenever, under this Agreement, Customer is required to give notice to BenTek, such notice shall be sent via First Class Mail to:

Katherine Bellantoni, CHP, Privacy Officer BenTek, Inc. 11505 Fairchild Gardens Ave. Suite 102 Palm Beach Gardens, FL 33410

6. **INDEMNIFICATION**

BenTek agrees to indemnify Customer, and any employees, directors, officers of Customer (collectively "Customer Indemnitees"), against all actual and direct losses resulting from or in connection with any breach of this Agreement by BenTek, or its partners, employees or other members of its workforce. Actual and direct losses shall include, but shall not be limited to, judgments, liabilities, fines, penalties, costs, and expenses (including reasonable attorneys' fees) which are imposed upon or incurred by Customer Indemnitees by reason of any suit, claim, action, investigation, or demand by any Individual, government entity, or third party. This obligation to indemnify shall survive the termination of this Agreement. Customer agrees to indemnify BenTek and any employees, directors, officers of BenTek (collectively "BenTek Indemnitees") against all actual and direct losses resulting from or in connection with any breach of this Agreement by Customer, or any violation of HIPAA resulting from any improper use or disclosure of PHI and Electronic PHI pursuant to Customer's direction. Actual and direct losses shall include, but shall not be limited to, judgments, liabilities, fines, penalties, costs, and expenses (including reasonable attorneys' fees) which are imposed upon or incurred by BenTek Indemnitees by reason of any suit, claim, action, investigation, or demand by any Individual, government entity, or third party. This obligation to indemnify shall survive the termination of this Agreement.

7. <u>AMENDMENT</u>

The parties agree to negotiate in good faith any amendments necessary to conform this Agreement to changes in applicable law. BenTek further agrees to promptly attempt to amend its agreements with its subcontractors and agents to conform to the terms of this Agreement. In the event BenTek is unable to amend this Agreement or its agreements with its subcontractors in a way that is sufficient to satisfy the requirements under HIPAA, Customer may terminate this Agreement in accordance with Section 4 upon thirty (30) days written notice.

8. TERMS OF AGREEMENT GOVERN

Any ambiguity in this Agreement shall be resolved in a way that permits compliance with HIPAA. In the event of a conflict between the terms of this Agreement and any other contract or agreement between Customer and BenTek, this Agreement shall govern.

9. **REGULATORY REFERENCES**

A reference in this Agreement to a section in the Privacy Rules or Security Rules means the section as in effect or as amended, and for which compliance is required.

IN WITNESS HEREOF, the parties have executed this Agreement by their respective duly authorized officers or representatives.

| BENTEK, INC. | CITY OF BURLESON, TEXAS |
|---------------------------|-------------------------|
| By: Kat Belt | By: Ochary |
| Katherine Bellantoni, CHP | |
| Name: KATHERINE BELLANTON | Name: Dale Cheatham |
| Privacy Officer | |
| Title: | Title: City Manager |
| Date: 04/10/2018 | Date: 4/10/2018 |

BenTek® Master Professional Services Agreement

This Master Professional Services Agreement ("PSA") sets forth the terms and conditions under which BenTek will perform certain consulting services for the undersigned Client.

- 1 Work. BenTek agrees to provide services as described in the Statement of Work ("SOW") attached hereto ("Work") and to use commercially reasonable efforts to complete the Work in accordance with the schedule set forth therein. BenTek agrees to notify Client if, at any time, it becomes apparent that the parties need to revise the schedule.
- 2 <u>Price and Payment.</u> In full consideration of the services provided hereunder and the license granted under this PSA, Client agrees to pay BenTek the fees set forth in Exhibit A within thirty (30) days of the date of invoice. Client shall be responsible for all travel and living expenses incurred by BenTek's staff in connection with this PSA, in necessary. Payments to BenTek shall be made without deduction for taxes, imposts, customs, levies or other withholding ("Tax") or shall be grossed-up to provide BenTek the same amount after such Tax as it would have received without the imposition of such Tax, together with tax receipts or similar evidence of any Tax payment by Client.
- Ownership. Client agrees that any and all deliverables, plans, specifications, documentation, and other materials delivered to Client hereunder, together with all ideas, concepts, know-how, techniques, inventions, discoveries or improvements, including but not limited to computer software, whether in object code or source code form, developed by BenTek and arising out of or relating to the Work (collectively referred to as the "Work Product") are the property of BenTek and BenTek hereby grants Client a nonexclusive, nontransferable license for internal use of the Work Product for the purposes set forth in this PSA in accordance with BenTek's standard software license terms and conditions. BenTek will retain all right, title and interest in and to the Work Product, except to the extent that the Work Product contains any Client Confidential Information to which Client will retain all right, title and interest. BenTek expressly reserves the right to perform similar work for other customers. To the extent of any such interest in the Work Product accruing to the Client may constitute "work for hire"), the Client hereby agrees to assign and, upon its creation, does hereby assign to BenTek the ownership of such intellectual property absolutely, and all patent and intellectual property rights therein.
- 4 <u>Force Majeure</u>. Neither party shall be liable for failure to perform any of its obligations hereunder where such performance is prevented or interfered with by any cause beyond the reasonable control of the parties hereto. This provision shall not be construed as relieving either party from its obligation to pay any sums due the other party.
- 5 <u>Term and Termination.</u> This PSA shall commence on the Effective Date below and shall continue until completion of all Work unless earlier terminated. Either party may terminate this PSA if the other party fails to perform any of its material obligations hereunder and such failure to perform has not been cured within thirty (30) days of written notice thereof by the terminating party. The parties' obligations under Sections 3, 9 and 11 hereof shall survive expiration or termination of this PSA regardless of the manner of termination.
- 6 <u>Warranty.</u> During the term of the applicable Work, BenTek warrants that any Work performed by BenTek during such time shall be performed with the care and skill ordinarily used by other members of BenTek's profession practicing under similar conditions at the same time and in the same locality.
- 7 <u>Client Responsibilities</u>. Client is solely responsible for the use to which it puts any deliverable or information provided by BenTek hereunder and any decisions it makes in using such deliverable or information. Client represents and warrants that it has all right and authority from any third-party suppliers to allow BenTek to perform the Work hereunder and shall defend, indemnify, and hold harmless BenTek from any claims or damages incurred relating thereto.
- 7.1 <u>Limitation/Remedies.</u> BenTek's sole liability under Section 6 shall be to reperform any service that fails to conform to the specified standard. In no event shall BenTek's liability under this Section 6 exceed the value of the product or service provided which gave rise to the claim hereunder. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 6 ABOVE, BENTEK MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED WITH REGARD TO THE WORK OR WORK PRODUCT, AND IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE.
- 8 <u>DAMAGES</u>. IN NO EVENT SHALL BENTEK BE LIABLE FOR ANY INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES, SUCH AS, BUT NOT LIMITED TO LOSS OF ANTICIPATED PROFITS OR OTHER ECONOMIC LOSS IN CONNECTION WITH OR ARISING OUT OF THE WORK, BENTEK'S TOTAL AGGREGATE LIABILITY FOR ANY AND ALL DAMAGES SHALL NOT EXCEED THE TOTAL FEES PAID UNDER THE APPLICABLE SOW WHICH GAVE RISE TO THE CLAIM.
- 9 Confidential Information.

- 9.1 <u>Definition</u>. For purposes of this Agreement, "Confidential Information" shall include, but is not limited to, the following: any documentation and other tangible or intangible discoveries, ideas, concepts, software, designs, drawings, specifications, source code, object code, diagrams, flow charts, procedures and "know-how" comprising all or any portion of a computer program, strategic and development plans or concepts, financial information, business plans, marketing plans, sales plans, marketing and sales strategies, data, business records, project records, market reports, Customer Data, employee lists and business manuals, policies and procedures, information relating to products, processes, technologies or theory and all other information which may be disclosed by one party (the "Disclosing Party") to the other party (the "Receiving Party"), or to which the Receiving Party may be provided access by a Disclosing Party, or others, in accordance with this Agreement, or which is generated by the Disclosing Party, which is not generally available to the public.
- 9.2 <u>Obligation of Confidentiality</u>. The Receiving Party covenants and agrees to receive and hold the Confidential Information in confidence. Without limiting the generality of the foregoing, the Receiving Party covenants and agrees:
- (A) to protect and safeguard the Disclosing Party's Confidential Information against unauthorized use, publication or disclosure;
- (B) not to use any of the Disclosing Party's Confidential Information except as required for its performance under this Agreement;
- (C) not to, directly or indirectly, in any way, reveal, report, publish, disclose, transfer or otherwise use any of the Disclosing Party's Confidential Information except as specifically authorized by the Disclosing Party in accordance with this Agreement;
- (D) to restrict access to the Disclosing Party's Confidential Information to those of its officers, directors, agents, attorneys, consultants, employees, contractors and partners who clearly and demonstrably need such access to fulfill its obligations under this Agreement;
- (E) to advise in writing each of the persons to whom it provides access to any of the Disclosing Party's Confidential Information, that such persons are strictly prohibited from making any use, publishing or otherwise disclosing to others, or permitting others to use for their benefit or to the detriment of the Disclosing Party, any of the Disclosing Party's Confidential Information, and, upon the request of the Disclosing Party, to provide the Disclosing Party with a copy of a written agreement to that effect signed by such persons; and
- (F) to comply with any other reasonable security measures requested in writing by the Disclosing Party.
- 9.3 <u>Exceptions to Confidentiality Provisions.</u> The foregoing confidentiality obligations do not apply:
- (A) to the extent that the Confidential Information is or becomes generally available to the public other than as a result of a breach of this Agreement;
- (B) if the other party is directly ordered by a court or other governmental authority to disclose all or any part of the Confidential Information, provided, however, that the party so ordered will give prompt notice to the other of any such order, or of any legal or governmental proceeding that might result in such an order, and will not disclose any Confidential Information until the other party has been provided with a reasonable opportunity to limit or prevent such disclosure.
- (C) To the extent the Confidential Information is required to be released under the Texas Public Information Act. In the event of a conflict between this PSA Agreement and the Public Information Act, the Texas Public Information Act shall control.
- 9.4 <u>Remedies for Breach</u>. Each party acknowledges that any unauthorized disclosure or use of Confidential Information may cause immediate and irreparable harm to the other, for which damages may not be an adequate remedy, and as such, each party shall, in addition to any other rights or remedies it may have in law or equity under this Agreement or otherwise, be entitled to injunctive relief.
- 9.5 <u>Return of Confidential Information</u>. Each of the parties agrees that immediately upon request by the other, and in any event, immediately upon termination or expiration of this Agreement, it shall deliver and return to the other all copies of Confidential Information (including all copies thereof, in any form whatsoever) disclosed and/or in its possession, care or control.
- 10 No Assignment. Client shall not assign this PSA without the prior written consent of BenTek. Any transfer by merger, consolidation or liquidation shall constitute an assignment for purposes of this PSA.
- 11 Non-Solicitation. Client agrees that, during the term of this PSA and for a period of two (2) years thereafter, Client will not, except with BenTek's prior written approval, hire, solicit or offer employment, directly or indirectly, to any BenTek employee or staff.
- 12 <u>Amendment; Waiver.</u> Neither this PSA nor any term, covenant, condition or other provision hereof may be changed, waived, discharged or terminated orally but only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought. Except as otherwise provided, failure or delay of either party to exercise any right or remedy hereunder shall not constitute a waiver of rights or remedies under this PSA.
- 13 <u>Governing Law, Venue</u>. This PSA shall be construed according to the law of the State of Texas excluding its choice of venue provisions. The parties hereto hereby

irrevocably consent to the exclusive jurisdiction and venue of the state and federal courts of the state of Texas, county of Tarrant, for the purposes of all legal proceedings arising out of or relating to this PSA agreement or the actions that are contemplated hereby.

- 14 <u>Entire Agreement</u> This PSA and all applicable SOWs shall constitute the entire agreement between the parties hereto with respect to its subject matter; and, except as otherwise expressly provided herein, this PSA shall not be affected by reference to any other document.
- 15 <u>Severability</u>. If any provision of this PSA is held unenforceable or inoperative by any court of competent jurisdiction, either in whole or in part, the remaining provisions shall be given full force and effect to the extent not inconsistent with the original terms of this PSA.
- 16 Notices. Notices and communications required by this PSA shall be in writing and may be delivered in person, by courier, transmitted by facsimile, or mailed prepaid first class, return receipt requested, to the respective parties at the address listed herein or other address most recently designated in writing. Notices directed to BenTek shall be sent "Attention: Chief Financial Officer, BenTek, Inc., 11505 Fairchild Gardens Avenue, Suite 102, Palm Beach Gardens, Florida 33410."
- 17. Effective Date. The Effective Date of this PSA shall be the date signed by BenTek.

 18. No Waiver of Governmental Immunity. Nothing contained in this Agreement shall be construed as a waiver of Client's governmental immunity, or of any damage caps or limitations imposed by law, or any other legal protections granted to Client by law, except to the extent expressly provided or necessarily implied berein.

| to the extent expressly provided of necessarily implied netern. |
|---|
| BENTEK, INC. |
| By: July Littley |
| Name: Kurt N. Gehring |
| Title: President |
| Date: April 10, 2018 |
| CUSTOMER: CITY OF BURLESON, TEXAS |
| By Do Clants |
| Name: Dale Cheatham |
| Title: City Manager |
| Date: 4/10/2018 |

BenTek® Statement of Work

This Statement of Work is Exhibit A to the Master Professional Services Agreement ("PSA") between BenTek, Inc. and City of Akron to provide services in connection with the Client's use of the BenTek Software as a Service solution licensed to Client under the terms of the Master Software as a Service Agreement.

The following sections describe the applicable implementation, customization, set-up, configuration, and training services as well as the responsibilities of the parties, and fees. An implementation timeline, system specification documents, and other supporting documentation will be provided to the Client under separate cover.

IMPLEMENTATION

- Client Administrators will be provided access to a secure Client Community Portal which provides 24/7 access to administrative support, administrative guides, product videos, project management and more.
- Optional Initial audit of core benefits (medical, dental, and vision plans) to identify and correct discrepancies prior to initial population of the BenTek application (includes audit of covered active, retired, Cobra, and dependent records as applicable)
- Evaluation and analysis of group benefits (Benefit Specification Document) for purposes of system configuration and business rules
- Collection of benefit related documents including forms, benefit booklet, plan summaries, coverage certificates, etc.
- Configuration of incoming personnel/payroll file(s) for ongoing reconciliation processes
- · Creation and testing of all electronic file transmissions for core benefits
- Implementation period begins upon receipt of executed contract and will take 60*
 days, which begins upon final approval of the completed Benefit Specification
 Document.

*60-day implementation is contingent upon both BenTek and Client adhering to mutually agreed upon implementation timeline and deadlines.

APPLICATION FUNCTIONALITY

The BenTek application is composed of two major modules: Benefits Administration and the Employee Benefits Center (EBC).

- The Benefits Administration module provides the following functionality:
 - Unique password protected user profiles.
 - Single point of entry for benefits data management including demographic, employment, and group insurance eligibility information inclusive of plan elections, employee deductions, and employer contributions.
 - Ability to view and print employee life insurance beneficiary designations.
 - Maintenance of dependent records and coverage.
 - Benefit eligibility and payroll deduction/contribution analyses of core and ancillary benefits as defined in the benefit specification document.
 - Personnel data reconciliation process of demographic and job information.
 - HIPAA 834 and non-standard file exchange for core benefits
 - Optional Third party export file exchange for core/ancillary benefits.
 - Optional Payroll data export files.
 - Optional Vendor billing and reporting with adjustment feature.
 - Approve/deny/suspend qualifying life event changes requested by plan participants.
 - Maintains historical record of employee elections and changes.
 - Annual Open Enrollment benefit and payroll deduction reports for Payroll Department.
 - 40+ standard canned reports provided and customized reports upon request (e.g. Census, OE statistics).
- The Employee Benefits Center (Employee Self Service) module will provide the following functionality to employees of Client:
 - Unique user profile creation and ability to reset passwords at any time.
 - View current and future benefit elections, deductions, covered dependents, and beneficiaries.
 - Electronic submission of qualified event elections changes with access to required forms based on life event.
 - Resource Center including videos, forms, plan summary documents, etc.
 - Benefits Highlights of coverage options offered including access to Summary of Benefit and Coverage documents, plan summaries, carrier websites, etc.
 - Online Beneficiary Designation process accessible 24/7.
 - New Hire Orientation equipped with benefit rules permitting online enrollment of all eligible benefits based on established new hire eligibility

niles

- Annual Open Enrollment equipped with benefit rules permitting the online enrollment of all available benefits based on renewal decisions.
- Generation of confirmation statements is available upon the completion of all online enrollment processes (New Hire, Open Enrollment, Qualifying Events)

BENTEK RESPONSIBILITIES

- Provides BenTek file specifications options for receipt of client files used for initial site population and ongoing audit features (Personnel Import and Payroll Audit).
- Manages initial and renewal implementation projects with timelines, weekly calls, on-site meetings, etc.
- Creates and manages communication and documentation flow via the Client Community Portal.
- Manages completion and analysis of the Benefit Specification Document during initial and renewal implementations.
- Obtains written letter of authorization from Client to permit BenTek to communicate with current insurance companies, TPA's, etc. in order to obtain enrollment files.
- Manages the completion and facilitation of initial client/vendor data audit and results.
- · Executes required vendor electronic eligibility set-up documents.
- Creates and tests all electronic file transmissions for core benefits (medical, dental, and vision plans) in 834 (version 5010) file format and non-standard formats when applicable.
- Configures BenTek application with all client's benefit rules, election options, eligibility, etc. established in the Benefit Specification Document.
- Configures BenTek application with mechanism to transmit files electronically to third party vendors (insurance carriers, Third Party Administrators, payroll systems, etc).
- Manages creation and client review of site content for all BenTek screens including Log-in and Introduction screens, New Hire Orientation, Qualifying Events, Open Enrollment, etc.
- Provides regular system enhancements and updates as needed all of which are documented in the monthly distributed BenTek Newsletter.
- Maintains Client Community Portal with current membership, documentation, files containing PII, Technical Specifications, User/Admin Guides, Newsletters, Project Timelines etc.
- Establishes BenTek task list for Client, which includes eligibility file transmission and audit process schedules.
- Establishes and maintains Renewal (open enrollment) timeline, which is determined by type of renewal (carrier changes, plan/rate changes, etc.).
- Facilitates initial and annual Client review of test site (web demonstration)
- Provides dedicated Client Success Team (Client Success Manager, Account Manager, Implementation Manager, Technical Account Manager).
- Provides on-site/web client training (as mutually agreed upon)
- Provides and maintains all hardware to host the application (server and maintenance)

CLIENT RESPONSIBILITIES

- Executes Software as a Service and Professional Services Agreements BenTek.
- Executes agreements with BenTek and Third Party vendors to establish secure electronic connection for transmission of eligibility files.
- Establishes membership in the Client Community Portal
- Exchanges data via the Client Community Portal
- Completes Benefit Specification Document including providing clarification and final approval.
- Updates Benefit Specification Document including providing clarification and approval at each annual renewal.
- Provides BenTek with Personnel and Payroll data files pursuant to BenTek file specifications. Continue to work with BenTek through layout requirement review and file testing.
- Provides BenTek with Payroll related information including but not limited to deduction and contribution codes, pay group information, deduction schedule and payroll calendar.
- Validates all employee demographic and benefit discrepancies identified during initial audit. Conveys all corrections directly to third party vendors and provides revised Personnel and Payroll data files to BenTek for initial system population.
- Reviews EBC Site Content Template documents providing updates and final approval.
- Reviews application and performs record validation in test environment prior to "Go Live" date.
- · Adheres to BenTek Implementation timeline to ensure product delivery.

CHANGE MANAGEMENT

CHANGE MANAGEMENT

BenTek is a system that is configured for each client from our standard benefits application. Additional configuration and / or requested changes may result in delays to the previously communicated implementation timeline; potentially attering the site launch date. Substantial changes that materially change the scope of services as provided in this agreement must be mutually agreed upon by BenTek and the Client prior to implementation. It is expected that new features will be added to BenTek and existing software may be modified from time to time. Any system-wide or version changes will be communicated to Client in advance of implementation if impacts are expected. expected.

DATA MANAGEMENT

It is understood that BenTek maintains the software and warehouses the data for the Client. The software is the sole property of BenTek as specified in the accompanying Professional Services Agreement, executed by both parties and a part of this agreement. The Client's data is the property of the Client. In the event of termination, the Client's data will be returned to the Client upon request in a standard format determined by BenTek.

| BENTE | K, INC. |
|--------|-----------------|
| | V+ A |
| By: | nu Vinice |
| Name: | Kurt N. Gehring |
| Title: | President |
| Date: | April 10, 2018 |

| i iuc | | |
|--------|----------------|---------|
| Date: | April 10, 2018 | |
| custo |) lec | leather |
| Name:_ | Dale Cheatham | |
| Title: | City Manager | |
| Date: | 4/10/2018 | |
| | , | |



Add-On Quote

| Debties Profit Debties Debties Profit Debties Profit Debties Profit Debties | Page 1 of 5 | | | | | | Superion, LLC | (0 | | |
|--|--|--|---|--|---|--|--|--|--|--|
| Camire Drive Carefie Drive Carefie Drive Carefie Drive Carefie Drive Carefie Drive Carefie Hall, Human Resources Generalist City of Burleson 141 W Renfir City of Burleson 141 W Renfir Date Living Moute Benfore Benf | \$20,262.00 | Total: | | | | | | - | | |
| Center Drive Center Drive City of Burlison | \$20,262.00 | Subtotal: | | *************************************** | | | ě | | Transfer and the second | |
| Camter Drive Camter Drive Camter Drive Camter Hall, Human Resources Generalist | \$640.00 \$14,262.00 \$5,360.00 | nnal Services: cription Fees: nnal Services: | Professio nnual Subsc ty Professio | ird Party A Third Par | Th | | | | | And the second s |
| Product Name Proj Mgmt Installation Tech Svcs Training Impl Svcs Consulting Development Total Senits National Process Proj Mgmt Installation Tech Svcs Training Impl Svcs Consulting Development Total Senits National Process Proj Mgmt Installation Tech Svcs Training Impl Svcs Consulting Development Total Senits National Process Proj Mgmt Installation Tech Svcs Training Impl Svcs Consulting Development Total Senits Proj Mgmt Installation Tech Svcs Training Impl Svcs Consulting Development Proj Mgmt Installation Tech Svcs Training Impl Svcs Consulting Development Proj Mgmt Installation Proj Mgmt Ins | Andrew Street, Control of the Street, | | | | | | | | rices | Product & Services |
| Product Name | 5,000.0 360.0 \$5,360.0 | | 360.00 \$ 5,360.00 | | 1 1 1 | £ 1 1 | ė. | Ext Price: Totals: | Ben Ték Initial Payroll/Carrier Audit | BEN-IP-A |
| Pratt Deleter Prive Deleter Hall, Human Resources Generalist City of Burleson 141 W Renfro 141 W Re | Total Service | Consulting Development | Impl Svcs | Training | Tech Svcs | allation | oroj Mgmt insta | · | Product Name BenTek Benefits Administration Core | Product Code BEN-BA-CORE |
| Protect Prot | *************************************** | | | | | - | - | | | Third Party |
| Product Name BenTek Denies BenTek Payroll Export Product Name Product Name BenTek Payroll Export BenTek Payroll Export Product Name BenTek Payroll Export Product Name BenTek Payroll Audit BenTek Payroll Audit BenTek Payroll Audit BenTek Payroll Export Product Name Product Name Product Name BenTek Payroll Export Product Name BenTek Payroll Export From Mighat Installation Tech Svcs Training Impl Svcs Consulting Development Total States Tr | 640.0 | | : I | , r 1 | ì i | 1 1 | \$640,00 \$640,00 | Ext Price: | rroject management for Ben Lek | |
| Pract Dy. Cultore Prepared For: Pract City of Burisson City | Total Service | Consulting Development 1 | Impl Svcs | Training | Tech Svcs | illation | roj Mgmt Insta | 1 | Product Name | Product Code |
| Pratt State Price Pratt State Price Pratt State State Price Pratt State Stat | | | | | | | • | | • | Services |
| Pratt Special State Spec | And the section of th | The second secon | | | | | | | d Services | rofessiona |
| Prafe Description Fees | | \$14,262.00 | | | Totals | and the state of t | AND | AND AND THE PERSON OF THE PERS | THE THAT THE TABLE AND LAST LAST ALSO LAST AND ASSOCIATED THE TABLE AND ASSOCIATED THE THREE THE THREE CALCULATION ASSOCIATED THE TABLE | |
| Pratt Deidre Hall, Human Resources Generalist | | 360.00 | | - | | | • | | BenTek Payroll Export | BEN-PR-E |
| Pratt Usiness Center Drive Resources Generalist City of Burleson 141 W Renfro (800) 727-8088 Fax: (407) 304-3301 denise pratt@superion.com Date Valid Until 05/15/2017 | | 380.00 | | , i | | | | , | BenTek Payroll Audit | BEN-PR-A |
| Pratt Deidre Hall, Human Resources Generalist City of Burleson 141 W Renfro (800) 727-8088 Fax; (407) 304-3301 Burleson, TX 76028 denise.pratt@superion.com Date | | 380.00 | | ٠, ٠ | | | • | | BenTek Personnel Import | BEN-PER-IMP |
| Pratt Pratt Usiness Center Drive ary, FL 32746 (800) 727-8088 Fax: (407) 304-3301 denise pratt@superion.com Date Valid Until 05/15/2017 08/13/2017 Product Name BenTek Benefits Administration Core BenTek Billing Module | | 1 133 00 | | . بد | | | | | BenTek ACA Forms | BEN-FORMS |
| Pratt Pratt Pratt Unote Prepared For: Deidre Hall, Human Resources Generalist City of Burleson 141 W Renfro Burleson, TX 76028 denise pratt@superion.com Date Valid Until 05/15/2017 08/13/2017 VAnnual Subscription Fees Product Name Ren Tat Benefits Administration Care Quantity Quantity Ext Price | | 11,700.00 350.00 | | ب ن | | | - | ה מ | BenTek Billing Module | BEN-BILL |
| Pratt Usiness Center Drive ary, FL 32746 (800) 727-8088 Fax: (407) 304-3301 denise.pratt@superion.com Date Valid Until 05/15/2017 08/13/2017 VAnnual Subscription Fees | | Ext Price | | uantity | D | | F-1 40 | 2 | Product Name | Product Code |
| e Pratt e Pratt Business Center Drive Wary, FL 32746 2: (800) 727-8088 Fax: (407) 304-3301 Genise pratt@superion.com City of Burleson 141 W Renfro Burleson, TX 76028 (817) 426-9642 Date Valid Until 05/15/2017 08/13/2017 | Carried Company | en e | e de la companya de | office of the second se | 1 1 1 1 1 1 1 1 | | ** | | Annual Subscription Fees | hird Party |
| Quote Prepared For Pratt Pratt Deidre Hall, Human Susiness Center Drive City of Burleson 141 W Renfro (800) 727-8088 Fax: (407) 304-3301 denise.pratt@superion.com (817) 426-9642 | And the second s | And Angles (Angles in State of the State of the Angles of the Angles Ang | | | | | Company of the compan | The marked becomes and the case the comme | | Quote Q-00027123 |
| Quote Prepared Fo Deidre Hall, Human City of Burleson 141 W Renfro | | | | 128 | eson, TX 760) 426-9642 | Burk (817 | | | 38 Fax: | Phone: (8 Email: d |
| aleu by: | | ** | es Generalis | an Resourc | he Hall, Hum of Burleson N Renfro | City 141 | - • | | ratt iness Center Drive y, FL 32746 | Denise Pratt 1000 Busine Lake Mary, F |
| | | | | For: | te Prepared | Quo | = | | Quote Prepared By: | Quote Pr |

between Customer and BenTek.

Ownership - BenTek, Inc. owns the BenTek Software and provides the BenTek Services

Customer's execution of the BenTek Agreement. BenTek is solely responsible for delivering the BenTek Software and BenTek Services to Customer. Condition on Use of BenTek Software Module(s) and BenTek Services - Customer's use of the BenTek Software and the provision of the BenTek Services is subject to

Payment terms as follows, unless otherwise notated below for Special Payment Terms by Product:

delivered. Additional services, if requested, will be invoiced at then-current rates. Any shipping charges shown are estimated only and actual shipping charges will be due execution of this Quote and 50% due upon invoice, upon completion. Unless otherwise provided, other Professional Services are due monthly, as such services are upon completion. Custom Modifications, System Change Requests or SOWs for customization, and Third Party Product Implementation Services fees are due 50% on upon invoice, upon delivery. this Quote. Project Management Fees will be invoiced as one combined fee. Training fees and Travel & Living expenses are due as incurred monthly. Installation is due License, Project Planning, Project Management, Consulting, Technical Services, Conversion, Third Party Product Software and Hardware Fees are due upon execution of

successive one (1) year terms, unless either party gives the other party written notice of non-renewal at least sixty (60) days prior to expiration of the then-current term. above shall commence on the Execution Date of this Agreement and extend for a period of one (1) year. Thereafter, the subscription terms shall automatically renew for Annual Subscription Fee(s): Initial annual subscription fees are due 100% on the Execution Date. The initial annual subscription term for any subscription product(s) listed The then-current fee will be specified by Superion in an annual invoice to Customer thirty (30) days prior to the expiration of then-current annual period.

and begins upon execution of this Quote and extends for a twelve (12) month period. Subsequent terms of Maintenance will be for twelve (12) month periods, commencing current term. Notification of non renewal is required prior to the start of the renewal term. Customer will be invoiced, and payment is due, upon renewal committed, subsequent terms will renew automatically until such time a party receives written notice from the other party thirty (30) days prior to the expiration of the then subsequent terms of Maintenance will be due prior to the start of each term at the then prevailing rate. Except for the second term of Maintenance for which Superion is at the end of the prior support period. Maintenance fees shown are for the second term of support and which shall be due prior to the start of that term. Fees for Superion Application Annual Support (Maintenance): Customer is committed to the initial term of Maintenance for which the support fee is included in the License fee(s)

any renewal term(s) of support shall be as provided by the third party to Customer. be invoiced, and payment is due, upon renewal. As applicable for certain Third Party Products that are invoiced directly by the third party to Customer, payment terms for stated. Subsequent terms invoiced by Superion will renew automatically at then-prevailing rates until such time Superion receives written notice of non-renewal from the Customer ninety (90) days in advance of the expiration of the then-current term. Notification of non-renewal is required prior to the start of the renewal term. Customer will Third Party Product Annual Support Fees: The support fee for the initial annual period is included in the applicable Third Party Product License fees(s) unless otherwise

Additional Terms:

Amendment. Except as otherwise provided herein, all terms and conditions of the Contract and Agreement shall remain in full force and effect. Agreement") by and between the parties hereto. The product and pricing information detailed above comprises the "Exhibit 1" schedule or "Supplement" attached to this This Quote constitutes an Amendment to the Software License & Services Agreement and the Maintenance/Support Agreement (together, the "Contract and

Any interfaces listed above are interfaces only. Customer shall be responsible for obtaining the applicable software, hardware and system software from the appropriate third party vendor.

machine-readable object code form only. The Component Systems identified above are "Licensed Programs" or "Licensed Systems" licensed by Superion and are provided in and may be used in

addition to the prices quoted above and shall be governed by the Superion Corporate Travel and Expense Reimbursement Policy Applicable taxes are not included, and, if applicable, will be added to the amount in the payment of invoice(s) being sent separately. Travel and living expenses are in

Superion, LLC

Page 4 of 5

The date of delivery is the date on which Superion delivers, F.O.B. Superion's place of shipment, the Component Systems to Customer.

The Superion application software warranty shall be for a period of one (1) year after delivery. There is no Testing and Acceptance period on the Licensed System(s)

accepted in writing by Superion to Customer. Preprinted conditions and all other terms not included in this Quote or in the Contract and Agreement, stated on any purchase order or other document submitted hereafter by Customer are of no force or effect, and the terms and conditions of the Contract and Agreement and any amendments thereto shall control unless expressly

as to expected performance, suitability, or the satisfaction of Customer's requirements with respect to the hardware or other third party products specified in this Quote. The return and refund policy of each individual third party hardware/software supplier shall apply. Third party hardware/software maintenance and/or warranty will be provided by the third party hardware and software manufacturer(s). Superion makes no representations

manufacturer changes any of these respective policies or prices, Superion reserves the right to adjust this proposal to reflect those changes. This Agreement is based on the current licensing policies of each third party software manufacturer as well as all hardware manufacturers. In the event that a

necessary for the continuation of Customer's License. agrees to pay, immediately upon termination, the remaining balance for all hardware, software, and services delivered prior to the termination date together with travel Should Customer terminate this agreement per any "Term of Contract" Section of the Contract and Agreement, as may be applicable for certain customers, Customer reimbursements, if any, related to the foregoing. Notwithstanding any language in the Contract and Agreement to the contrary, the purchase of support services is NOT

additional services will be provided on a time and materials basis at hourly rates equal to Superion's then-current rates for the services at issue. The total amount that Customer will pay for these services will vary based on the actual number of hours of services required to complete the services. If required, Pricing for professional services provided under this quote is a good faith estimate based on the information available to Superion at the time of execution of this Quote.

For training and on-site project management sessions which are cancelled at the request of Customer within fourteen (14) days of the scheduled start date, Customer is responsible for entire price of the training or on-site project management plus incurred expenses.

| | Authorized Signature: | City of Burleson |
|---------------|-----------------------|------------------|
| | Mark Edh | |
| Superion, LLC | Date: 8/1/17 | |
| | Printed Name: | |
| | Mark | |
| | Eder | |
| Page 5 of 5 | | |

Page 5 of 5



1000 Business Center Drive Lake Mary, FL 32746 www.Superion.com Toll free 800-727-8088

Billing Inquiries: Accounts.Receivable@Superion.com

Invoice

Invoice No 203224 **Date** 12/29/2017

Page 1 of 1

Received

JAK 20 A.15

Bill To City of Burleson 141 West Renfro BURLESON TX 76028 United States Attn. Accounts Payable 817-447-5400 Ship To Finance Department
City of Burleson
141 West Renfro
BURLESON TX 76028
United States
Attn. Accounts Payable
817-447-5400

| Customer N | No Customer Name | Customer PO # | Currency | Terms | Due Date |
|---|--|---|-----------------|------------|--------------------|
| 1167LG | City of Burleson | | USD | Net 30 | 1/28/2018 |
| No 2 | Description | Ur | nits | Rate | Extended |
| 1 | 2852 Hardware BenTek Benefits Administration Core - 000027123 | | 1 | \$2,500.00 | \$2,500.0 |
| 2 | 2852 Hardware BenTek Initial Payroll/Carrier Audit - 00027123 | | 1 | \$180.00 | \$180.0 |
| | 50% Third party Implementation Services Due Upor | Completion | | | |
| | 50% Till party importantation of the party | . • • • • • • • • • • • • • • • • • • • | | | |
| Oleace mak | | | Subtotal | | \$2,680.0 |
| ACH / EFT: Routing Nur | re remittance payable to Superion, LLC | | Subtotal Tax | | \$2,680.0 \$0.0 |
| ACH / EFT: Routing Nur Account Nu Bank of Am | te remittance payable to Superion, LLC mber 0710-000-39 mber 81880-15335 erica (Phone 800-432-1000) | | | : | |
| ACH / EFT: Routing Nur Account Nu Bank of Am | te remittance payable to Superion, LLC mber 0710-000-39 mber 81880-15335 | | Tax | : | \$0.0 |

Price Quote



| Pricing for City of Burleson, TX BenTek Software 300 | 4 | . PEPM | Affinual /t | May 2₁2017 Annual Gost |
|--|----------------------|--------------------------------------|----------------------|--|
| Core License | 1 - | in a section are to | \$3.25 | \$11,700 |
| Open Enrollment Module | | Included | | |
| New Hire Module | | Included | | |
| QLE Module | | Included | | and the second s |
| Benefits Administration | | Included | | |
| Standard Reporting | | Included | Annual | |
| Standard COBRA Reporting | | Included | | |
| Annual Enrollment Export | | Included | | |
| Admin Community Portal | | Included | | |
| Annual Enrollment Confirmation Statements (Bulk PDF) | ` | Included | | |
| Implementation / Support* | 1 | \$5,000 | One-time | \$5,000 |
| Sub Total | | | | \$16,700 |
| @pitorallModules 300 | Units | . PEPVI | Annual / One Time | s - → Gost |
| Custom Cobra Reporting & Notifications (New Hire and QLE) | 0 | \$0.10 | One time | \$0 |
| Custom Retirement Reporting & Notifications | 0 | \$0.10 | One time | \$0 |
| Leave of Absence Tracking | 0 | \$0.10 | One time | \$0 |
| Initial Payroll/Carrier Audit (Discrepancy Report) | 1 | \$0.10° | One time | \$360 |
| Payroll Audit | 1 | \$0.10 | Annual | \$360 |
| Payroll Export | ·· 1 · | \$0.10 | Annual | \$360 |
| Personnel Import | 1 | \$0:10 | Annual | \$360 |
| Wellness Program Management | 0 | \$0.10 | Annual | \$0 |
| Billing Module | 1 | \$0.10 | Annual | \$360 |
| Payment Tracker | 0 | \$0.10 | Annual | \$0 |
| Optional Modules Sub-Total | | , | | \$1,800 |
| Opitonal Services 425 | | | Annual / One Time | - Cost |
| ACA Forms Fulfillment** | 1 | \$2.64 | Per Form | \$1,122 |
| Optional Services Sub-total | * | . **;* | · | \$1,122 |
| Grand Total - Year I (Including Optional Services) Grand Total - Subsequent Years (Including Optional Services) *Platform set-up and rule configuration, system maintenance are initial data load, email support, telephone support between 8:00 | nd upgra 1-5:00pn | ades, project ma n EST, unlimited | anagement, | \$19,622 \$14,262 |
| administrator support, training, and product user guides. **Service provided by a third party vendor. In addition to the pe a \$79 per year registration fee. | r form f | ee, the vendor a | lso charges | |

CERTIFICATE OF INTERESTED PARTIES

FORM **1295**

1 of 1

| _ | | | | 1011 | |
|----|---|---|--------------------------------|--|--|
| | Complete Nos. 1 - 4 and 6 if there are interested parties. Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties. | | OFFICE USI CERTIFICATION | | |
| 1 | Name of business entity filing form, and the city, state and count of business. | Certificate Number: 2023-1011632 | | | |
| | Bentek, LLC | | | | |
| | Palm Beach Gardens, FL United States | | Date Filed: | | |
| 2 | Name of governmental entity or state agency that is a party to th | e contract for which the form is | 04/25/2023 | | |
| | being filed. | | Dato Aolmandad | | |
| | City of Burleson, TX | | Date Acknowledged: | · | |
| 3 | Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract. | | | | |
| | 6837-2018-1001 | | | | |
| | Software administration system for employee benefits | | | | |
| 1 | | Oite St. 1 | I | of interest | |
| | Name of Interested Party | City, State, Country (place of busin | · - | pplicable) | |
| | | | Controlling | Intermediary | |
| Ge | ehring, Kurt | Palm Beach Gardens, FL United States | X | | |
| | | | | | |
| | | | | | |
| _ | | | | | |
| _ | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| 5 | Check only if there is NO Interested Party. | | | | |
| ; | UNSWORN DECLARATION | | | | |
| | My name is Kurt Gehring | , and my date of | birth is | | |
| | My address is <u>3500 Kyoto Gardens Drive</u> (street) | ,,,,, | FL , 33410 rate) (zip code) | _, _U.S.A (country) | |
| | I declare under penalty of perjury that the foregoing is true and correct | ct. | | | |
| | Executed in Palm Beach County County | y, State of Florida, on the | 25th day of April (month) | , 20 <u>23</u> (year) | |
| | | Signature of authorized agent of con- | traction business entire | <u>. </u> | |
| | | Signature of authorized agent of con- | acang business entity | | |



City Council Regular Meeting

DEPARTMENT: City Secretary's Office

FROM: Amanda Campos, City Secretary

MEETING: May 1, 2023

SUBJECT:

Consider approval of an ordinance appointing Cass Callaway for a two-year term ending May 15, 2025 to serve as Associate Judge for the City of Burleson. (First Reading). (Staff contact: Amanda Campos, City Secretary).

SUMMARY:

The Burleson City Charter Section 30 states the qualifications and manner to appoint municipal judges; as a competent and duly licensed attorney practicing law in the State of Texas and shall be appointed by ordinance. Cass Calloway meets all the requirements and serves currently as an Associate Judge for the city. It is the recommendation of Presiding Judge Greg Coontz that the city re-appoint Judge Calloway for an additional two years.

The attached ordinance is before council for consideration on first reading and if approved will be presented for final reading at the May 15, 2023, council meeting. After approval of ordinance on final reading and execution of the Professional Services Agreement the judge will be sworn in by the City Secretary and will be considered qualified. The professional service agreement is attached for review and revisions if necessary. The final agreement will be considered for approval the May 15, 2023, council meeting.

OPTIONS:

- 1) Council may approve the ordinance on first reading.
- Council may deny the ordinance on first reading and direct staff to begin search for a new Associate Judge.

RECOMMENDATION:

Approve.

PRIOR ACTION/INPUT (Council, Boards, Citizens):

N/A.

FISCAL IMPACT:

All municipal court judge expenses are budgeted in 1011104-62040 Legal Expenses.

STAFF CONTACT:

Name Amanda Campos, TRMC

Title: City Secretary

Email: <u>acampos@burlesontx.com</u>

Phone: 817-426-9665

ORDINANCE

AN ORDINANCE OF THE CITY OF BURLESON, TEXAS APPOINTMENT ASSOCIATE JUDGE OF THE MUNICIPAL COURT OF RECORD OF THE CITY OF BURLESON; AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH THE ASSOCIATE MUNICIPAL COURT JUDGE; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Burleson is a home rule city acting under its charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Local Government Code; and

WHEREAS, the City Council has established its municipal court as a municipal court of record; and

WHEREAS, Chapter 30 of the Texas Government Code relating to municipal courts of record provides that the judge of the municipal court of record shall be appointed by the City Council by ordinance.

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

SECTION 1.

That **Cass Callaway** is hereby appointed as the associate judge of the municipal court of record in the City of Burleson, Texas, in accordance with the terms of the Agreement attached as Exhibit "A" and incorporated by reference herein.

SECTION 2.

That the Mayor is hereby authorized to execute the Agreement attached as Exhibit "A".

SECTION 3.

This appointment of the associate judge shall be for a term of two years, which shall expire on **May 15, 2025**.

SECTION 4.

This ordinance shall be cumulative of all provisions of ordinances and of the Code of Ordinances of the City of Burleson, Texas, as amended, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances and such Code, in which event the conflicting provisions of such ordinances and such Code are hereby repealed.

SECTION 5.

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

SECTION 6.

This ordinance shall be in full force and effect from and after its passage, and it is so

| ordained. | |
|-------------------------------|--|
| PASSED AND APPROVED this | day of, 20 |
| | |
| | Chris Fletcher, Mayor City of Burleson, Texas |
| ATTEST: | APPROVED AS TO FORM: |
| Amanda Campos, City Secretary | City Attorney |
| First Panding: the day of | 20 |

EXHIBIT A

Professional Services Agreement Associate Municipal Judge

The Agreement made and executed into this <u>15th</u> day of <u>May, 2023</u> by and between the City of Burleson, Texas, a Municipal Court of Record of the State of Texas, hereinafter referred to as "City" and <u>Cass Callaway</u>, the Associate Municipal Judge of the Burleson Municipal Court of Record hereinafter referred to as "Associate".

- 1. City does hereby agree to enter into an agreement with <u>Cass Callaway</u> for Municipal Court services beginning on <u>May 15, 2023</u> and continuing through midnight on <u>May 15, 2025</u> at a contract rate of \$100 per hour, and a \$1,200 monthly stipend for on-call services.
- 2. Associate understands and agrees that Associate is an appointed contractor of City, the benefits, appeal and grievance provisions set forth in the City employment policies do not apply to appointed contractors, and Associate is not entitled to any benefits except as provided herein.
- 3. City will provide judge's robe. Additionally, City does hereby agree to budget and pay for professional memberships, subscription, and dues to state and local legal associations and organizations necessary and desirable for continued professional participation, growth, and advancement, and for the good of the City. Membership to include but not limited to the following:
 - Texas State Bar Association
 - Tarrant County Bar Association
 - Johnson County Bar Association
- 4. City does hereby agree to budget and to pay for the travel and subsistence expenses of Associate training, short courses, institutes and seminars that are necessary for professional development that directly relate to City municipal judicial duties. Applicable requested training and estimated expense must be authorized in advance for budgetary purposes.
- 5. The Associate shall perform all functions and duties required under the City Charter, city ordinances, and as delineated and defined in the City of Burleson Job Description and shall perform such other legally permissible and proper duties and functions as said position shall require.
- 6. The Associate shall keep the Presiding Municipal Judge and City Secretary informed of issues related to the Presiding Municipal Court and shall execute their performance in cooperation with the Presiding Municipal Judge to the extent such cooperation does not impair the necessity of judicial independence and avoids the appearance of impropriety.

- 7. During this agreement, the Associate agrees to comply with all provisions of the code of Judicial Conduct, Section 30 of the Burleson City Charter, Chapter 26 of the Code of Ordinances of the City of Burleson, Section 30 of the Texas Government Code, and all other applicable laws pertaining to the operation of the Burleson Municipal Court of Record. In the event of a conflict between the terms of this Agreement and said Code, Charter, Statutes and laws, the terms of said Code, Charter, Statutes and laws shall govern.
- 8. The Associate shall not take on representation of a client adverse to the City. The Associate shall not represent a client in a case where an employee of the City in his capacity as an employee of the City is a witness or may be summoned to appear as a witness.
- 9. The Associate warrants they meet the minimum qualifications listed in Chapter 26 of the Code Ordinances of the City of Burleson.
- 10. The City Council may remove the Associate from office during their term pursuant to Section 30 of the City Charter and in accordance with the requirements of Chapter 30 of the Texas Government Code or its successor, as same may hereafter be amended.

In Witness Whereof, City has caused this agreement to be signed in its name by the Mayor of the City of Burleson and City corporate seal to be hereunto affixed and attested by its City Secretary, and the Associate has hereunto set their hand.

| Signed: | |
|-------------------------------|--------|
| Cass Callaway | Date |
| Signed: | |
| Chris Fletcher, Mayor | |
| Attest: | (Seal) |
| Amanda Campos, City Secretary | |



City Council Regular Meeting

DEPARTMENT: Public Works

FROM: Errick Thompson, Deputy Director of Public Works - Engineering

MEETING: May 1, 2023

SUBJECT:

Consider approval of an amendment to the Engineering Services Contract (CSO#1408-06-2020) with Kimley-Horn and Associates for design of the SH174 Widening project in the amount of \$449,985.00 for a total contract amount of \$1,335,485.00. (Staff Presenter: Errick Thompson, Deputy Director of Public Works - Engineering)

SUMMARY:

Expansion of SH 174 between Elk and the city limit is planned in two phases. As TxDOT roadways, schematic design approval and environmental clearance are required prior to final construction documents being completed. Schematic Design and Environmental Clearance for Phase 1 (Elk to Wicker Hill) is 95% complete. Full design for Elk to Hulen is 90% complete. Full design of the remainder (Hulen to Wicker Hill) of Phase 1 was not included in the original design contract, as construction funding only supported Elk to Hulen. Recently, additional state/federal construction funding was identified to allow for the full length of Phase 1 (Elk to Wicker Hill) to be constructed.

This contract amendment would complete full design for Hulen to Wicker Hill so that construction of the entire Phase 1 can be bid by TxDOT as a single project in approximately June 2024.

Phase 2 schematic design, environmental clearance, and full design are funded in the G.O. Bond Program.

OPTIONS:

1) Approve an amendment to the Engineering Services Contract (CSO#1408-06-2020) with Kimley-Horn and Associates for design of the SH174 Widening project in the amount of \$449,985.00 for a total contract amount of \$1,335,485.00.

2) Deny an amendment to the Engineering Services Contract (CSO#1408-06-2020) with Kimley-Horn and Associates for design of the SH174 Widening project in the amount of \$449,985.00 for a total contract amount of \$1,335,485.00.

RECOMMENDATION:

Approve an amendment to the Engineering Services Contract (CSO#1408-06-2020) with Kimley-Horn and Associates for design of the SH174 Widening project in the amount of \$449,985.00 for a total contract amount of \$1,335,485.00.

PRIOR ACTION/INPUT (Council, Boards, Citizens):

June 15, 2020 - City Council approved an Engineering Services Contract with Kimley-Horn and Associates for the design of State Highway 174 widening in the amount not to exceed \$885,500.00. (Item 6.F)

FISCAL IMPACT:

Project Number: 197405

Fund Name: GO Bond (Refunding Resolution)

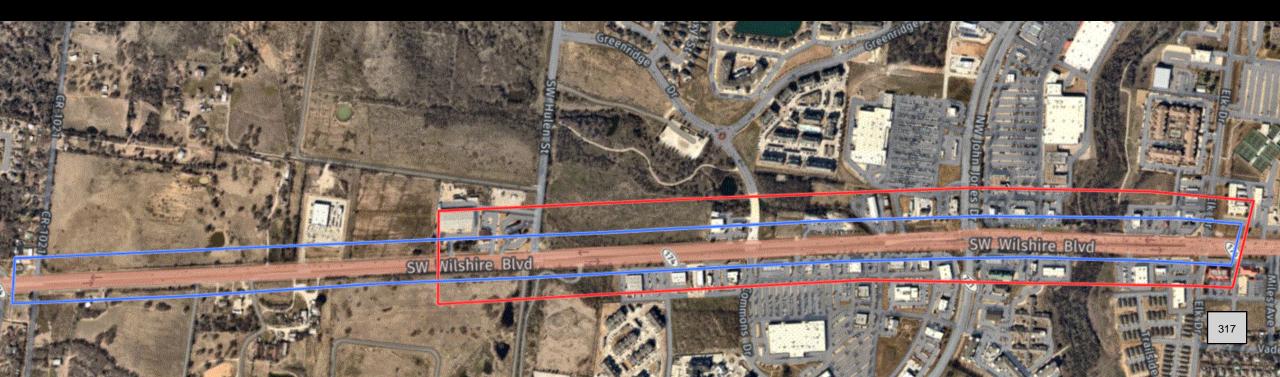
Amount: \$449,985.00

STAFF CONTACT:

Errick Thompson
Deputy Director of Public Works - Engineering ethompson@burlesontx.com
817-426-9610

SH 174 WIDENING

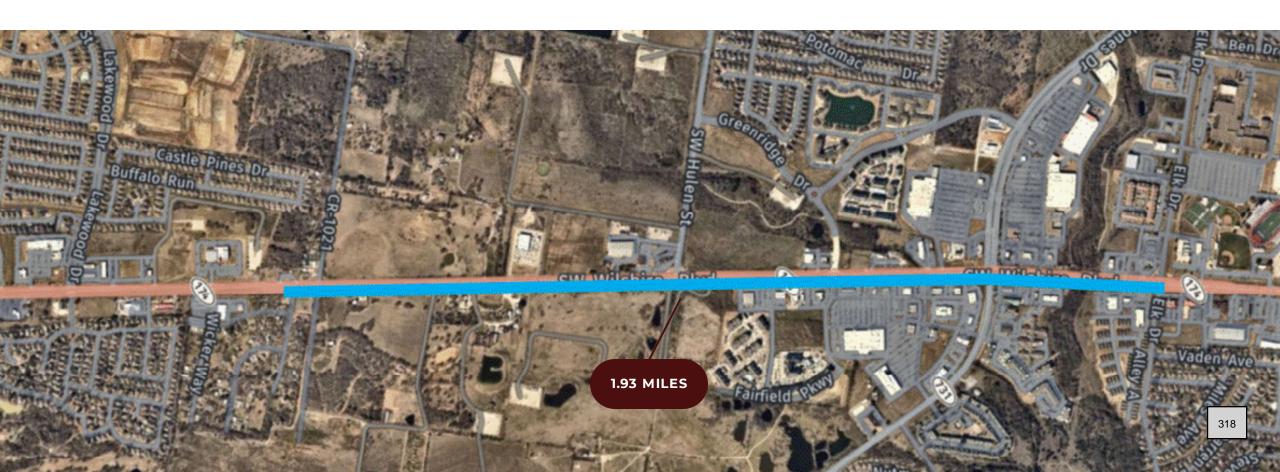
Professional Services Agreement



SH 174 PHASE 1A (SCHEMATIC & ENVIRONMENTAL)

TxDOT projects require a Schematic & Environmental process as well as PS&E (full design) process.

Schematic Design and Environmental Clearance for Phase 1 (Elk to Wicker Hill) is 95% complete (blue line).



SH 174 PHASE 1B (FULL DESIGN)

TxDOT projects require a Schematic & Environmental process as well as PS&E (full design) process.

Full design for Elk to Hulen is 90% complete (solid red line).



SH 174 PHASE 2A (SCHEMATIC & ENVIRONMENTAL)

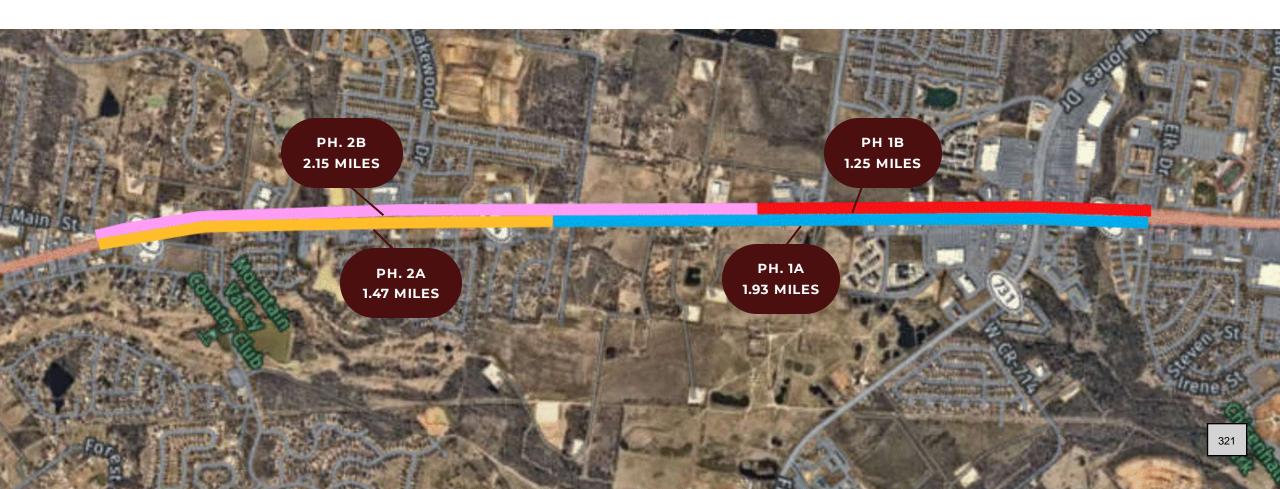
Schematic Design and Environmental Clearance for Wicker Hill to City Limits is within the G.O. Bond in Fiscal year 2024 (yellow line).



SH 174 PHASE 2B (FULL DESIGN)

Full design for Wicker Hill to City Limits is within the G.O. Bond in Fiscal year 2026 (pink line).

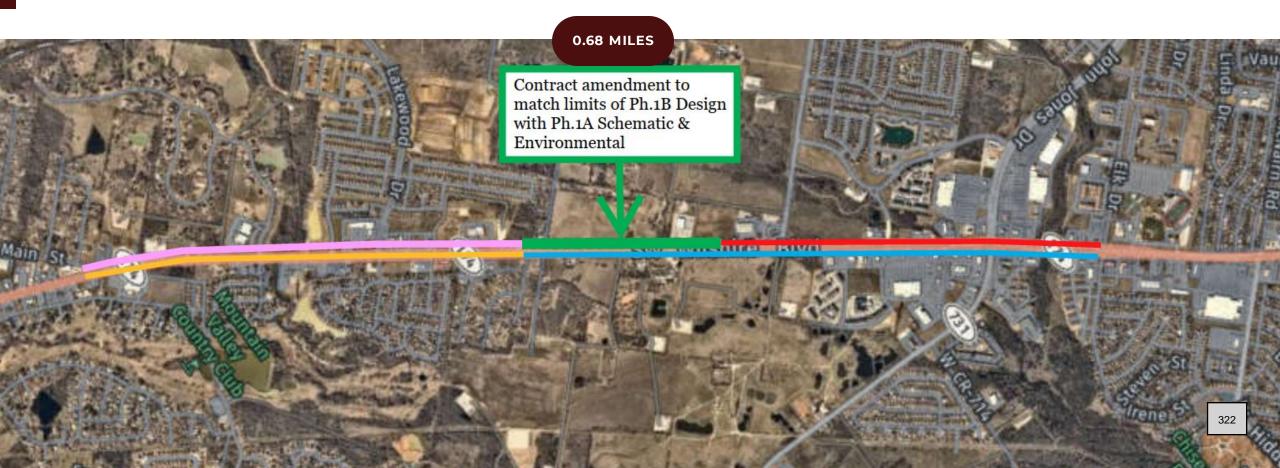
Currently the overall SH174 expansion is split into two phases where the limits differ between Schematic and Environmental to PS&E (full design).



SH 174 PHASE 1B- AMENDMENT

This contract amendment (green line) would complete full design for Hulen to Wicker Hill so that construction of the entire Phase 1 can be let as a single TxDOT project.

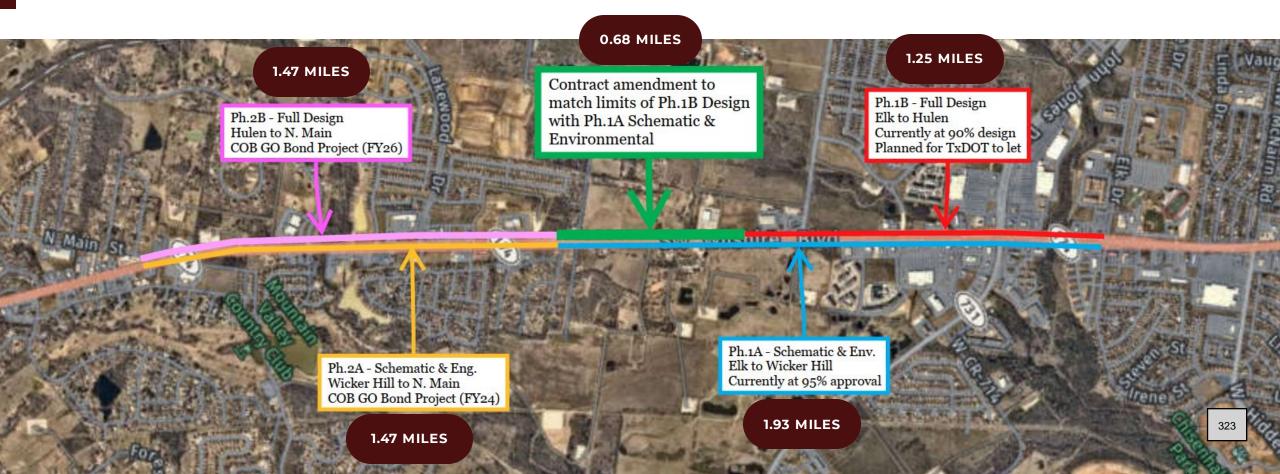
This amendment (green line) will correct the mis-alignment and allow a longer segment of SH 174 to be widened sooner.



SH 174 IMPROVEMENTS OVERVIEW

TxDOT projects require Schematic & Environmental process (yellow and blue lines) as well as PS&E (full design) process (pink and red lines). Previously, the overall SH174 expansion was split into two phases where the limits differed between Schematic and Environmental to PS&E. This amendment (green line) will correct the mis-alignment and allow a longer segment of SH 174 to be widened sooner.

Phase 2 schematic and environmental clearance (yellow), and full design (pink) are funded in the G.O. Bond Program (FY24 & FY26).



CONTRACT AMENDMENT

Includes full design of the additional 0.68 miles between Hulen and Wicker Hill to match Schematic and Environmental Clearance limits for design fee of \$449,985.

This contract amendment accelerates a 0.68 mile portion of Phase 2 and is funded from that project's allocation in the G.O. Bond (\$1.9M). Accelerating this funding will be considered by council in the 5-year CIP update this summer.











PROJECT COST DISTRIBUTION AND SCHEDULE



DESIGN

Design: Summer 2020- Early 2024

Original \$885,500 (1.25 miles)

THIS ITEM • Amendment \$449,985 (0.68 miles)

City funded



CONSTRUCTION

Construction: Summer 2024 - Summer 2026 Estimated \$29.5M

Funded and let by TxDOT & NCTCOG

Extending design limits to Wicker Hill shifts construction by 5 months from current schedule, but would complete an additional 0.68 miles of the expansion



OPTIONS

RECOMMENDED



APPROVE

Approve an Engineering
Services Contract
Amendment with
Kimley-Horn and
Associates for the design
of SH174 Widening project
in an amount not to exceed
\$449,985.00.



DENY

Deny an Engineering
Services Contract
Amendment with
Kimley-Horn and
Associates for the design
of SH174 Widening project
in an amount not to exceed
\$449,985.00.



AMENDMENT NUMBER 1 TO THE AGREEMENT BETWEEN CLIENT AND KIMLEY-HORN AND ASSOCIATES. INC.

This is Amendment number 1 dated April 26, 2023 to the agreement between City of Burleson ("City") and Kimley-Horn and Associates, Inc. ("Engineer") dated June 16, 2020 ("the Agreement") concerning SH 174 Final Design, City Project No. 187398 ("Project").

The Engineer has entered into the Agreement with City for the furnishing of professional services, and the parties now desire to amend the Agreement.

The Agreement is amended to include services to be performed by Engineer for compensation as set forth below in accordance with the terms of the Agreement, which are incorporated by reference.

Engineer will provide the services specifically set forth in the Scope of Services Attachment A.

The services currently authorized to be performed by Engineer in accordance with the Agreement and previous amendments.

Engineer and City agree to the following general schedule in connection with the services set forth in Attachment A:

- 60% Plan Submittal completed by end of August 2023
- 90% Plan Submittal completed by end of November 2023
- Final Design Plans completed by end of February 2024

For the services set forth in Attachment A, City shall pay Engineer a lump sum total of: \$449,985. A breakdown by task is provided in Attachment A.

| CITY: | ENGINEER: |
|-------------------------|----------------------------------|
| CITY OF BURLESON, TEXAS | KIMLEY-HORN AND ASSOCIATES, INC. |
| Ву: | By: Aroth Amold |
| Title: | Title: Vice President |
| Date: | Date: April 26, 2023 |

Rev. 7/18

ATTACHMENT A

I. Scope of Services

The Consultant understands that the City wishes to prepare plans, specifications and estimates (PS&E) for SH 174 widening from Hulen Street to Wicker Hill Road. SH 174 will be widened to six lanes, the widening will be within the median. Turn lanes will be added at key intersections as determined by the Traffic Study previously performed, intersection improvements and traffic signal for Wicker Hill Road and SH 174 is not included in this scope of services. Sidewalks will not be designed for the limits.

The original contract included schematic design and environmental from Elk Drive to Wicker Hill Road and PS&E development from Elk Drive to Hulen Street. This scope will include 60% PS&E, 90% PS&E and final design plans to incorporate into the current PS&E package. TxDOT coordination, meetings, survey and geotechnical engineering will also be included.

The Consultant will complete the following tasks:

Task 1 – Design Survey

The Consultant, through its subconsultant, Gorrondona and Associates, Inc. will provide topographic survey for the following limits: six hundred feet west Wicker Hill Drive to Wicker Hill Drive along the right-of-way, three hundred feet north along Wicker Hill Drive along the right-of-way and twenty feet on each side of the right of way, and the intersection of Commons Drive and SH 174. Other subtasks for this task consist of:

A. Topographic Survey

- Making a topographic survey of all existing features above ground level by using both Mobile LIDAR and on the ground survey. These features will consist of telephone poles, power poles, utilities, utility markers, fences, retaining walls, water meters, detector check valves, manholes, vaults, sprinkler heads, structures, culvert pipes and any other facilities in close proximity to the anticipated construction limits. Also, all buildings, trees, and other topographical features.
- 2) Determining horizontal and vertical location of all underground utilities or other underground structures where they cross any part of the proposed project.
- 3) Making of all surveys necessary to determine limits of any existing right-of-way or easements.
- 4) Tie all public improvements to existing City monument system.

Task 2- Preliminary and Final Design

- A. Preliminary Design Construction Plans (60%) for Preliminary plans will consist of the following:
 - 1) Updated cover sheet, sheet index, and project control
 - 2) Typical sections for all proposed and existing roadways and cross streets. Typical

Professional Services Agreement Page 1

- sections to include width of travel lanes, shoulders, outer separations, border widths, curb offsets, sidewalk and ROW.
- 3) Estimate summary sheets.
- 4) Summary of small signs sheets.
- 5) Removal sheets.
- 6) Paving Plan and Profile Sheets showing:
 - a. Pavement edges for all improvements (mainlanes, cross streets, and driveways if applicable).
 - b. Sidewalk, retaining walls, and curb ramps.
 - c. Calculated roadway centerlines for mainlanes and cross streets, as applicable. Horizontal control points must be shown. The alignments must be calculated using GEOPAK.
 - d.Lane and pavement width dimensions.
 - e. Radii call outs, curb location, Concrete Traffic Barrier (CTB), guard fence, crash safety items and Texas Accessibility Standards (TAS) compliance items.
 - f. Direction of traffic flow on all roadways. Lane lines and arrows indicating the number of lanes must also be shown.
 - g.ROW lines and easements.
 - h.Begin and end superelevation transitions and cross slope changes.
 - i. Limits of rip-rap, block sod, and seeding.
 - j. Existing utilities and structures.
 - k. Edge of existing pavement, existing structures, mailboxes, water meters, utility poles, fire hydrants, existing driveways, existing utilities, existing and proposed rights-of-way and easements, proposed centerline, proposed curb line on plan and profile sheets, and existing ground elevation in profile at the proposed centerline and right-of-way lines.
 - 1. Benchmark information.
- 7) Cross-sections of existing ground surface line and proposed ground surface lines.
- 8) Drainage area map and runoff calculations.
- 9) Storm sewer modifications such as extension of existing box culverts or storm drain pipe and headwalls.
- 10) All drainage computations within TxDOT ROW will be in accordance with TxDOT criteria.
- 11) Traffic control sequencing plan
- 12) Traffic control typical sections
- 13) Traffic control phasing layouts
- 14) Erosion control layouts
- 15) Pavement markings, striping and signage plans.
- 16) Plans to comply with TxDOT PS&E Checklists.
- 17) An opinion of probable construction cost.
- B. Final Design Construction Plans Final plans will contain all information and requirements of the preliminary plans and will incorporate comments from City and TxDOT. The Consultant will also prepare contract documents, specifications, and special provisions. In addition, the following will be submitted:
 - 1) Detail and standard sheets for all elements of the Project.
 - 2) Special provisions and specifications.
 - 3) An opinion of probable cost based upon the items and quantities listed in the proposal in the contract documents. This estimate will be based on current unit prices bid on similar projects.

- 4) Prepare Project Manual and Specifications.
- C. Project Management Perform general project management related tasks such as routine communication with the City, project status updates, quality control efforts, internal team meetings, project invoicing, project planning efforts, preparation of the project schedule and updates to the project schedule.

Task 3 – TxDOT Documentation

- A. TxDOT and Federal Documentation
 - 1) Update Design Summary Report (DSR) to reflect update to the project limits.
 - 2) PS&E comment response form for the 60% submittal.
 - 3) Coordinate with TxDOT during the duration of the project via email correspondence and phone calls.

Task 4 – Meetings

- A. Meetings
 - 1) The Consultant will attend one monthly virtual progress meeting with the City PM to discuss project progress.
 - 2) The Consultant will attend up to ten (10) coordination meetings with the City and TxDOT, NCTCOG or other project stakeholders to discuss progress, design and/or coordination items beyond in addition to the review meetings listed above.
 - 3) The Consultant will prepare an agenda and meeting notes for all meetings.

Task 5 - Franchise Utility Coordination and Utility Clearance

A. Document and verify existing utilities, prepare utility conflict matrix.

Task 6 – Geotechnical Investigation

The Consultant, through its subconsultant (CMJ Engineering), will provide geotechnical services as follows:

A. The Consultant will perform geotechnical investigations and analyses necessary to complete the design. The Consultant will prepare a geotechnical report describing existing geotechnical conditions and considerations necessary for design and construction of the project for City and TxDOT review and approval. The report will consist of up to eight (8) pavement borings in the outside shoulder.

II. Method of Compensation

The Consultant will perform the services in Tasks 1 - 6 for the total lump sum fee below. Individual task amounts are informational only. All permitting, application, and similar project fees will be paid directly by the City.

| Task 1 – Design Survey | \$ 16,520 |
|---|-----------|
| Task 2 – Preliminary and Final Design | \$365,360 |
| Task 3 – TxDOT Documentation | \$ 19,650 |
| Task 4 – Meetings | \$ 25,630 |
| Task 5 – Franchise Utility Coordination | \$4,800 |
| Task 6 – Geotechnical Investigation | \$18,025 |
| | |
| Total Lump Sum Fee | \$449,985 |

Lump sum fees will be invoiced monthly based upon the overall percentage of services performed.

The Consultant will not exceed the total maximum labor fee shown without authorization from the Client. Individual task amounts are provided for budgeting purposes only. The Consultant reserves the right to reallocate amounts among tasks as necessary.

Labor fee will be billed on an hourly basis according to our then-current rates. As to these tasks, direct reimbursable expenses such as express delivery services, fees, air travel, and other direct expenses will be billed at 1.15 times cost. An amount equal to 6% of our labor fee added to each invoice to cover certain other expenses as to these tasks such as telecommunications, in-house reproduction, postage, supplies, project related computer time, and local mileage. Administrative time related to the project may be billed hourly.

Kimley-Horn and Associates, Inc. Hourly Labor Rate Schedule

| Classification | Rate |
|---|---------------|
| Analyst | \$125 - \$210 |
| Professional | \$200 - \$250 |
| Senior Professional I/Project Manager | \$250 - \$310 |
| Senior Professional II/Senior Project Manager | \$330 - \$390 |
| Support Staff | \$100 - \$160 |

THE STATE OF TEXAS §

ENGINEERING SERVICES CONTRACT

COUNTYOF JOHNSON

§

THIS CONTRACT is made and entered into this 16th day of June, 2020 by and between the CITY OF BURLESON, Texas, a home-rule municipality, hereinafter called "City," and Kimley-Horn and Associates, Inc, hereinafter called "Engineer," whose address is 801 Cherry Street Suite 1300, Fort Worth, TX, 76102.

WITNESSETH:

That in consideration of the terms and conditions contained herein the parties do mutually agree as follows:

I. EMPLOYMENT OF ENGINEER

Engineer shall perform all services under this contract to the prevailing engineering professional standards consistent with the level of care and skill ordinarily exercised by members of the engineering profession, both public and private, currently practicing in the same locality under similar conditions, including reasonable, informed judgments and prompt, timely action. Engineer shall provide services necessary for the construction of improvements to the City's Infrastructure, the location and extent of which is as follows:

SH 174 FINAL DESIGN (Hulen Street to Elk Drive)

City of Burleson Project No. 187398, being located within the City of Burleson, Texas, and hereinafter referred to as "Project."

Actually 197405

I. COMPENSATION TO ENGINEER

A. City agrees to pay Engineer for all services outlined in Section III in accordance with the following:

| 1. | Basic Design Fee | \$ <u>688,000</u> |
|----|---|-------------------|
| 2. | Additional Services Fee (not to exceed) | \$ <u>187,500</u> |
| 3. | Direct Cost Fee (not to exceed) | \$ 10,000 |
| | Total Fee | \$885,500 |

B. Payment for services rendered shall be paid upon written request and as follows:

1. Basic Design Fee

- a. Upon completion of the preliminary design construction plans as set forth in Section III.B.1, and City shall pay to Engineer an amount not to exceed fifty five percent (55%) of the basic design fee.
- b. Upon completion of the final design construction plans and specifications as set forth in Section III.B.2. City shall pay to Engineer an amount which when combined with previous basic design fee payments shall not exceed ninety-five percent (95%) of the basic design fee.
- c. Upon receipt and approval by the City of two (2) half-size hard copy sets of and one (1) set in pdf format to the City of the "as-constructed" plans, City shall pay Engineer an amount which when combined with previous basic design fee payments shall equal One-Hundred percent (100%) of the basic design fee.

- d. For payment purposes of this contract, work items associated with III.A General Requirements shall be considered subsidiary to the basic design fee.
- Additional Services Fee Fees for additional services as set forth in Section III.C shall be billed
 monthly based upon the percentage of work complete. Evidence of completion shall be submitted
 with each billing. Evidence of work completed shall be submitted with each billing. No more than
 seventy-five percent (75%) of the maximum fee for an additional service shall be paid prior to
 completion of the work and approval by City.
- 3. Direct Cost Fees Direct costs shall be paid by City to Engineer as shown on Attachment A. Direct costs may be charged for printing and reproduction expenses; travel, transportation and subsistence out of Johnson, Tarrant, and Dallas Counties; and laboratory analysis and testing. Evidence of cost incurred for direct expenses shall be submitted with each billing.
- 4. No interest shall be due on any payments.

II. SERVICES

The work to be performed by the Engineer shall consist of providing engineering services required for the preparation of plans, specifications and estimates (PS&E) and related documents for SH 174 widening from Elk Drive to Hulen Street. SH 174 will be widened to six lanes, the widening will be within the median. Tum lanes will be added at key intersections as determined by the Traffic Study previously performed. Sidewalks will be added within the right-of-way in various locations.

General Requirements

- 1. Each time Engineer submits plans and specifications to City, four (4) copies of each (1 full size, 2 half size, 1 electronic in PDF format) shall be submitted. These shall be reviewed and checked by City and returned to Engineer for corrections. When the corrected copies of the plans and specifications are returned to City, the original and reviewed plans and specifications shall also be returned to City. All plans, specifications, documents, provisions, attachments, and correspondence provided in accordance with this contract shall be dated.
- 2. Each set of plans shall be stamped "Review," and each sheet of the plans shall be signed and dated with license number of the responsible engineer and Firm Registration Number until approval of the final design construction plans by City. Upon approval of the final plans the word "Review" shall be omitted and the plans shall be stamped "Final" on the cover sheet. Each sheet of the final plans shall be sealed, signed, and dated by Engineer.
- 3. Engineer shall coordinate with utility companies, including, but not limited to franchised utilities, City of Burleson Public Works and Engineering Services Departments, pipeline companies, railroad companies, telecommunication companies, or anyother entity which has facilities within Project, any and all exposure, removal, and/or relocation work necessaryfor implementation of the Project. This shall also include aiding City in obtaining any permits required by any of these entities. Engineer shall supply construction plans for all design phases of the Project to all utility companies or other entities that have facilities within the limits of the Project via certified mail. Engineer shall also attend preliminaryand final utility coordination meetings for Project.
- 4. Engineer shall coordinate with all utility companies, franchise companies and other entities for any proposed improvements they may have planned, either on the surface, below or above the surface, that may be affected by the Project and indicate on the final plans said proposed improvements in both plan and profile, if available.

- 5. Engineer shall determine the type of existing pavement on Project, including all intersecting streets, driveways, and alleys, accurately showing this information on the plans.
- 6. Engineer shall establish the scope of and arrange for test borings and other subsurface investigations using a geotechnical firm acceptable to the City. The Engineer shall furnish specifications, coordinate and designate the locations for the making and recording of such borings or excavations included in the additional services fee being paid for by the City. Engineer shall stake such locations and record the results.
- Upon completion of the final design construction plans, special provisions and specifications, and contract documents, Engineer shall submit a letter of notification to City stating completion of design of Project.
- 8. Review by City does not relieve Engineer of responsibility to prepare construction plans and specifications in accordance with prevailing engineering standards.
- Engineer shall prepare and provide City with a Stormwater Pollution Prevention Plan (SWPPP)
 including erosion control plans for improvements associated with the Project. Engineer shall assist
 the City in obtaining any necessary permitting through the Texas Commission on Environmental
 Quality (TCEQ).

B. Preliminary and Final Design

Engineer shall coordinate and design the street and drainage system and perform the following:

- 1. Preliminary Design Construction Plans (30% and 60%) Preliminary plans shall be prepared at a horizontal scale of 1"= 100' and a vertical scale of 1"= 10' on 11" x 17" sheets and shall include the following:
 - a. Pavement edges for all improvements (mainlanes, cross streets, and driveways if applicable).
 - b. Sidewalk, retaining walls, and curb ramps.
 - c. Calculated roadway centerlines for mainlanes and cross streets, as applicable. Horizontal control points must be shown. The alignments must be calculated using GEOPAK.
 - d. Lane and pavement width dimensions.
 - e. Proposed structure locations, lengths, and widths.
 - f. Direction of traffic flow on all roadways. Lane lines and arrows indicating the number of lanes must also be shown.
 - g. ROW lines and easements.
 - h. Begin and end superelevation transitions and cross slope changes.
 - i. Limits of rip-rap, block sod, and seeding.
 - j. Existing utilities and structures.
 - All existing improvements on property within twenty feet (20') of the proposed right-of-way or easement line on construction plans.
 - I. Benchmark information.
 - m. Radii call outs, curb location, Concrete Traffic Barrier (CTB), guard fence, crash safety items and Texas Accessibility Standards (TAS) compliance items.

- a. The location, size, and species of all trees and shrubs within the limits of proposed street Right-of-Way, drainage, slope or temporary construction easements. If due to the density of the growth it is impractical to show all trees and shrubs, the limits of dense stands of trees and shrubs will be shown. In any case, all trees six inches (6") in diameter, or larger, shall be shown, unless directed otherwise Engineer shall indicate on the plans those trees that are to be removed, and those trees to be preserved.
- Typical sections for all proposed and existing roadways and cross streets. Typical sections to include width of travel lanes, shoulders, outer separations, border widths, curb offsets, sidewalk and ROW.
- c. Cross-sections of existing ground surface line and proposed ground surface lines.
- d. Overall drainage areas, sub-drainage areas, existing and proposed drainage facilities, discharges, times of concentration, and drainage area acreage for proposed structures (including the existing drainage system).
- e. All drainage computations such as inlet and pipe calculations. Unless directed otherwise in writing by City, the design of these systems shall be in accordance with the latest revision of the City of Burleson's Design Standards Manual.
- f. Hydraulic analysis and modeling of the impact of proposed structures within a designated 100year floodplain or as determined by City.
- g. Storm sewer plan and profile sheets, including hydraulic grade lines.
- h. Culvert layout for each bridge class culvert.
- i. Bridge layout plan sheet for bridge expansion over Booger Creek.
- Traffic signal design. Traffic Signal modification plans for the intersections of SH 174 and the following cross streets: Elk Drive, John Jones Drive, Commons Drive, and Hulen Street.
- k. Items associated with Section II.C.
- I. Pavement markings, striping and/or traffic button plans.
- m. A "Time of Relocation" schedule containing the estimated time for each utility company with facilities impacted by Project to relocate their facilities.
- n. Plans to comply with TxDOT PS&E Checklists
- o. An opinion of probable cost of Project.
- 2. Final Design Construction Plans -Upon acceptance of preliminary plans by City, Engineer shall prepare final plans at a horizontal scale of 1" = 100' and a vertical scale of 1" = 10' on 11" x 17" sheets. Final plans shall contain all information and requirements of the preliminary plans and shall incorporate comments from City and utility companies. Engineer shall also prepare contract documents, specifications, and special provisions. In addition, the following shall be submitted:
 - a. Standard City title page with location map and revision block in the lower right corner showing date of revision, description of revision and initials of the engineer authorizing the revision.
 - b. All requirements of Section II,B,1
 - c. Storm sewer improvement plan and profile sheets (as needed).
 - Detail and standard sheets for all elements of the Project.
 - e. Special provisions and specifications.
 - f. Final right-of-way plans or easements as required in Section III.D.

- g. An opinion of probable cost based upon the items and quantities listed in the proposal in the contract documents. This estimate shall be based on current unit prices bid on similar projects.
- A utility "Time for Relocation" report stating the status of utility relocations and time required for each utility companyto clear its facilities for the project.
- i. Street addresses of all properties adjacent to the Project.
- j. Plan sheets for traffic signals, and signs and pavement markings as required by this contract.
- k. Water and/or sanitary sewer adjustment sheets (as needed).
- The Engineer shall use Geopak to generate preliminary cross-sections every 100 feet and at culvert locations in conjunction with the Geometric Schematic. The Engineer shall determine earthwork volumes for use in the cost estimate and shall prepare 11"x17" or roll plots of the cross-sections.
- m. Bridge Design. The Engineer shall prepare each structural design and develop detailed structural drawings of all required details in compliance with above-listed manuals and guidelines. The Engineer shall assemble and complete all applicable State Standard Details sheets. Additionally.
 - Perform calculations for design of bridge abutments.
 - Perform calculations for bridge slab design.
 - Perform calculations to determine elevations of bridge substructure and super structure elements.
 - Perform calculations for bridge box beam design.
 - · Prepare necessary foundation details and plan sheets.
 - · Prepare plan sheets for abutment design.
 - Prepare plan sheets for additional abutment details.
 - Prepare framing plan and slab plan sheets.
 - Compute and prepare tables for slab and bearing seat elevations, dead load deflections, etc.
 - Design beams and prepare beam design tables.
 - Prepare special provisions and special specifications in accordance to the above-listed manuals and guidelines.
- n. Plans to comply with TxDOT PS&E Checklists.
- 3. Environmental Documentation as listed in Section III.C.
- 4. TxDOT Requirements and Coordination
 - a. Prepare a Design Summary Report (DSR) to reflect discussion and decisions at the kickoff meeting. DSR will be updated throughout project development as design progresses.
 - b. Prepare Page 3 of TxDOT Form 1002
 - c. The Engineer shall schedule, participate in mail out, and pay for meeting notices, and facilitate a Meeting with Affected Property Owners (MAPO) located within or near the project's studyarea.

d. Compile public comments received and responses to comments during the MAPO, public meeting into a summary of public meeting and the public meeting into a summary of public meeting and the public hearing into a Public Hearing SummaryReport.

5. Meetings

- a. The Engineer will prepare for and attend Project Kickoff Meeting with City and TxDOT.
- b. The Engineer will attend up to three (3) plan review meetings with the City and TxDOT staffat 30%, 60% and 90% level.
- c. The Engineer will attend a constructability site visit with City and TxDOT after 60% Submittal.
- d. The Engineer will attend up to ten (10) meetings with the City and/or TxDOT staff during this task to discuss progress, design and/or coordination items. (meeting maybe conference call if requested by TxDOT).
- e. Public Meetings. The Engineer shall assist in conducting one (1) public meeting and one (1) public hearing during the project development process. The public meetings are required for the environmental process and documentation for TxDOT requirements.
- f. The Engineer will prepare an agenda and meeting notes for all meetings.

C. Additional Services

Engineer will also perform the following additional services. For each individual service, the maximum fee is indicated in parenthesis. The fee shall be on an hourly basis, as shown in Attachment "A".

- Engineer shall perform geotechnical investigations and analyses necessary to complete the design.
 Engineer shall prepare a geotechnical report describing existing geotechnical conditions and
 considerations necessary for design and construction of the project for City's review and approval.
 The report will include up to ten (10) pavement borings in the outside shoulder. (maximum fee not
 to exceed \$17,500.)
- Environmental Services. The Engineer shall prepare Environmental Documentation in accordance
 with TxDOT Requirements. Prepare the Environmental Technical Report Meeting TxDOT
 requirements. It is assumed that the proposed project may be Environmentally Cleared as a C-list or
 Open-Ended D-list Categorical Exclusion. If the project is elevated to an Environmental Assessment
 (EA) an addition scope and fee may be required. (maximum fee not to exceed \$65,000)
- 3. Provide Subsurface Utility Engineering (SUE) to Quality Level D,C,B, and A, SUE level A shall be performed on anyutilities where conflicts with proposed improvements are suspected based on level B SUE. The SUE shall be performed in accordance with CI/ASCE 38-02. (maximum fee not to exceed \$80,000)
 - a. Expose and locate utilities at up to 30 specific locations (Level A).
 - b. Perform Level B SUE for the Level A locations (up to 6,000 linear feet).
- 4. Construction Phase Services (maximum fee not to exceed \$ 25,000)
 - Review and approve shop drawings, samples and other data which contractor(s) are required to submit,
 - b. Evaluate and determine the acceptability of substitute materials and equipment proposed by contractor(s).
 - c. Attend pre-construction conference with the Contractor.

- d. Make one visit per month to the site for observation, and interpretation of plans and specifications as requested by the City period of time specified for construction in the project manual. A total of twelve (12) site visits by the Engineer is anticipated during the construction phase.
- e. Preparation of change orders and associated plans, specifications or other revisions if due to improper design, plan preparation, specifications, quantities, materials, or other fault of the Engineer shall be prepared by the Engineer and included in the basic Design fee.
- f. Revise the construction drawings in accordance with the information furnished by construction Contractor(s) reflecting changes in the project made during construction.

III. TIME FOR COMPLETION

Engineer agrees to complete and submit all work required by City as follows:

A. Final design construction plans and specifications to be completed by February 22, 2022.

1. No extensions of time shall be granted unless a written request is submitted by Engineer, and such request is approved in writing by City.

IV. REVISIONS OF PLANS AND SPECIFICATIONS

If revisions of the final plans, special provisions, and specifications, or drawings are required by reason of Engineer's error or omission, then such revisions shall be made by Engineer without additional compensation to the fees herein specified, and in a time frame as directed by City.

City reserves the right to direct substantial revision of the plans, special provisions, and specifications after acceptance by City as City may deem necessary, but when the revision is not due to Engineer's error or omission, City shall pay Engineer equitable compensation for services rendered in making such revisions. In any event, when Engineer is directed to make substantial revisions under this Section of the contract, Engineer shall provide to City a written proposal for the entire cost involved in providing City a completed set of plans, specifications and special provisions and the completion time involved in the revisions. Prior to Engineer undertaking any substantial revisions as directed by City, City must authorize in writing the nature and scope of the revisions and accept the method and amount of compensation and the time involved in all phases of the work.

It is expressly understood and agreed by Engineer that any compensation not specified in Section II., "Compensation to Engineer," may require additional Burleson City Council approval and is subject to funding limitations.

V. ENGINEER'S COORDINATION WITH OWNER

Engineer shall be available for conferences with City so that Project can be designed with the full benefit of City's experience and knowledge of existing needs and facilities and be consistent with current policies and construction standards. City shall make available to Engineer all existing plans, maps, field notes, and other data in its possession relative to the Project. Engineer may show justification to City for changes in design from City standards due to the judgment of said Engineer. Engineer shall accompany City representatives on Project observation visits during construction of Project when design issues arise. City shall make the final decision as to any changes after appropriate request by Engineer.

Engineer shall accompany City representatives on Project observation visits during construction of Project when design issues arise.

VI. CONTRACT TERMINATION PROVISION

This contract maybe terminated at any time by City for any cause without penalty or liability except as may otherwise be specified herein. Upon receipt of written notice by City, Engineer shall immediately discontinue all services and Engineer shall immediately terminate placing orders or entering into contracts for supplies, assistance, facilities or materials in connection with this contract and shall proceed to cancel promptlyall existing contracts insofar as they are related to this contract. As soon as practicable after receipt of notice of termination, Engineer shall submit a statement, showing in detail the services performed but not paid for under this contract to the date of termination. City shall then pay Engineer promptly the accrued and unpaid services to the date of termination, to the extent the services are approved by City.

This contract maybe terminated by Engineer with mutual consent of City at any time for any cause without penalty or liability except as may otherwise be specified herein. Engineer shall submit written notice to terminate contract and shall submit to City all plans and documents relative to the design of Project. City shall then ascertain cost to complete the balance of the work under this contract. If the cost to complete the balance of the work is greater than the unpaid contract amount, City shall retain all unpaid balances and, in addition, Engineer shall pay directly to City the difference in the unpaid balance and the cost to complete the work. In no case shall City pay Engineer any additional monies other than those previously paid under the contract.

VII. OWNERSHIP OF DOCUMENTS

All drawings and specifications prepared or assembled by Engineer under this contract shall become the sole property of City and shall be delivered to City, without restriction on future use. Engineer shall retain in their files all original drawings, specifications and all other pertinent information for the work for a period of at least 3 years after completion of the work. Engineer shall have no liability for changes made to the drawings, specifications, and other documents by other engineers subsequent to the completion of the contract. City shall require that any such change be sealed, dated, and signed by the engineer making that change and shall be appropriately marked to reflect what was changed or modified.

VIII. INSURANCE

A. Requirements

Engineer shall at Engineer's own expense, purchase, maintain and keep in force during the term of this contract such insurance as set forth below. Engineer shall not commence work under this contract until Engineer has obtained all the insurance required under this contract and such insurance has been approved by City, nor shall Engineer allow any subcontractor to commence work on his or her own subcontract until all similar insurance of the subcontractor has been obtained and approved. All insurance policies provided under this contract shall be written on an "occurrence" basis, except for professional liability. The insurance requirements shall remain in effect throughout the term of this contract. Professional liability insurance shall also be maintained for one year after completion of the project.

 Worker's Compensation as required by law, <u>Employers Liability Insurance</u> of not less than \$100,000.00 for each accident, \$100,000.00 disease-each employee, \$500,000.00 disease-policy limit.

- Commercial General Liability Insurance, including Independent Contractor's Liability, Completed
 <u>Operations and Contractual Liability</u>, covering but not limited to the indemnification provisions of this
 contract, fully insuring Engineer's liability for injury to or death of employees of City and third parties,
 extended to include personal injury liability coverage, and for damage to property of third parties,
 with a combined bodilyinjury and property damage minimum limit of \$1,000,000.00 per occurrence.
- Comprehensive Automobile and Truck Liability Insurance, covering owned, hired and non-owned vehicles, with a minimum combined bodily injury and property damage limit of \$1,000,000.00 per occurrence.
- Professional Liability Insurance: Standard comprehensive professional liability coverage in an amount of at least \$1,000,000.00 aggregate per year, covering the services provided under this contract.

B. Conditions

Each insurance policyto be furnished by Engineer shall include the following conditions by endorsement to the policy:

- 1. Except for Worker's Compensation and professional liability insurance, the policy shall name Cityas an additional insured as to all applicable coverage;
- Each policy will require that thirty (30) days prior to the expiration, cancellation, nonrenewal or any
 material change in coverage, a notice thereof shall be given to City by certified mail to: Director of
 Engineering Services, City of Burleson, 141 West Renfro Street, Burleson, Texas 76028-4261. If
 the policyis canceled for nonpayment of premium, onlyten (10) days advance written notice to City
 is required;
- 3. The term "Owner" or "City" shall include all authorities, boards, bureaus, commissions, divisions, departments and offices of City and the individual members, employees and agents thereof in their official capacities, and/or while acting on behalf of City.
- 4. The policyphrase "other insurance" shall not apply to City where City is an additional insured on the policy; and
- 5. All provisions of the contract concerning liability, duty and standards of care, together with the indemnification provision, shall be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.

C. Concerning insurance to be furnished by Engineer, it is a condition precedent to acceptability thereof that:

- 1. All policies are to be written through companies dulyapproved to transact that class of insurance in the State of Texas; and
- Insurance is to be placed with carriers with a Best rating of A:VII, or as otherwise acceptable to City.

D. Engineer agrees to the following:

1. Except for professional liability, Engineer hereby waives subrogation rights for loss or damage to the extent same are covered by insurance. Insurers shall have no right of recovery or subrogation against City, it being the intention that the insurance policies shall protect all parties to the contract and be primary coverage for all losses covered by the policies.

- Companies issuing the insurance policies and Engineer shall have no recourse against City for payment of any premiums or assessments for any deductible, as all such premiums and deductibles are the sole responsibility and risk of Engineer.
- Approval, disapproval or failure to act by City regarding any insurance supplied by Engineer (or any subcontractors) shall not relieve Engineer of full responsibility or liability for damages and accidents as set forth in the contract documents. Neither shall the insolvency or denial of liability by the insurance company exonerate Engineer from liability.
- 4. Engineer shall provide Certificates of Insurance completed on the ACORD form only and endorsements effecting coverage required by this section to City to by forwarding to: City of Burleson, Director of Engineering Services, 141 West Renfro, Burleson, Texas 76028-4261.
- E. Any of the insurance policies required under this section may be written in combination with any of the others, where legally permitted, but none of the specified limits may be lowered thereby.

IX. MONIES WITHHELD

When City has reasonable grounds for believing that:

- A. Engineer will be unable to perform this contract fully and satisfactorily within the time fixed for performance; or
- B. A claim exists or will exist against Engineer or City arising out of the negligence of Engineer or Engineer's breach of any provision of this contract; then

City may withhold payment of any amount otherwise due and payable to Engineer under this contract. Any amount so withheld maybe retained by City for that period of time as it may deem advisable to protect City against any loss and may, after written notice to Engineer, be applied in satisfaction of any claim described herein. This provision is intended solely for the benefit of City, and no other person or entity shall have any right or claim against City by reason of City's failure or refusal to withhold monies. No interest shall be payable by City on any amounts withheld under this provision. This provision is not intended to limit or in any way prejudice anyother right of City.

X. PROCUREMENT OF GOODS AND SERVICES FROM BURLESON BUSINESSES

In performing this contract, Engineer agrees to use diligent efforts to purchase all goods and services from Burleson businesses whenever such goods and services comparable in availability, quality and price.

XI. NO DAMAGES FOR DELAYS

Notwithstanding any other provision of this contract, Engineer shall not be entitled to claim or receive any compensation as a result of or arising out of any delay, hindrance, disruption, force majeure, impactor interference, foreseen or unforeseen.

XII. RIGHT TO INSPECT RECORDS

Engineer agrees that City shall have access to and the right to examine any directly pertinent books, documents, papers and records of Engineer involving transactions relating to this contract. Engineer agrees that City shall have access during normal working hours to all necessary Engineer facilities and shall be

provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. City shall give Engineer reasonable advance notice of intended audits.

Engineer further agrees to include in subcontract(s), if any, a provision that any subcontractor or consultant agrees that City shall have access to and the right to examine any directly pertinent books, documents, papers and records of such consultant or subcontractor involving transactions to the subcontract, and further, that City shall have access during normal working hours to all consultant or subcontractor facilities, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with the provisions of this paragraph. City shall give the consultant or subcontractor reasonable advance notice of intended audits.

XIII. NO THIRD PARTY BENEFICIARY

For purposes of this contract, including its intended operation and effect, the parties (City and Engineer) specifically agree and contract that: (1) the contract only affects matters/disputes between the parties to this contract, and is in no way intended by the parties to benefit or otherwise affect any third person or entity, notwithstanding the fact that such third person or entities may be in a contractual relationship with City or Engineer or both; and (2) the terms of this contract are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either City or Engineer.

XIV. SUCCESSORS AND ASSIGNS

City and Engineer each binds himself and his successors, executors, administrators and assigns to the other party of this contract and to the successor, executors, administrators and assigns of such other party in respect to all covenants of this contract. Neither City nor Engineer shall assign or transfer its interest herein without the prior written consent of the other.

XV. ENGINEER'S LIABILITY

Acceptance of the final plans by City shall not constitute nor be deemed a release of the responsibility and liability of Engineer, its employees, associates, agents or consultants for the accuracy and competency of their designs, working drawings, specifications or other documents and work; nor shall such acceptance be deemed an assumption of responsibility or liability by City for any defect in the designs, working drawings, specifications, or other documents and work prepared by said Engineer, its employees, subcontractor, agents and consultants.

XVI. INDEMNIFICATION

Engineer shall indemnify and hold City and all of its officers, agents, servants, and employees harmless from any loss, damage, liability or expenses, on account of damage to property or injury, including death, to any and all persons, including but not limited to officers, agents, or employees of City or Engineer and all other persons performing any act pursuant to this contract, to the extent caused by a negligent act, error, or omission by Engineer, its officers, agents, employees, invitees, or other persons for whom it is legallyliable, with regard to the performance of this contract; Engineer shall defend at its own expense any suits or other proceedings brought against City or its officers, agents, servants, employees and shall pay all expenses and satisfy all judgments which maybe incurred byor rendered against City, its officers, agents, servants or employees or any of them, in connection with the foregoing described negligent act, error, or omission by Engineer or which Engineer is found to be legallyliable. The Engineer is not obligated to indemnify the City in any manner whatsoever for City's own negligence.

XVII. SEVERABILITY

If any of the terms, sections, subsections, sentences, clauses, phrases, provisions, covenants, or conditions of this contract are for any reason held to be invalid, void or unenforceable, the remainder of the terms, sections, subsections, sentences, clauses, phrases, provisions, covenants, or conditions of this contract shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

XVIII. INDEPENDENT CONTRACTOR

Engineer covenants and agrees that he/she is an independent contractor, and not an officer, agent, servant or employee of City, that Engineer shall have exclusive control of and exclusive right to control the details of the work performed hereunder, and all persons performing same, and shall be liable for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondeat superior shall not apply as between City and Engineer, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating a partnership or joint enterprise between City and Engineer.

XIX. DISCLOSURE

By signing this contract, Engineer acknowledges to City that he/she has made a full disclosure in writing of any existing conflicts of interest or potential conflicts of interest, including personal financial interests, direct or indirect, in property abutting the proposed project and business relationships with abutting property owners. Engineer further agrees that he shall make disclosure in writing of any conflicts of interests which develop subsequent to the signing of this contract and prior to final payment under the contract.

XX. VENUE

The parties to this contract agree and covenant that this contract shall be enforceable in Burleson, Texas; and that if legal action is necessary to enforce this contract, exclusive venue shall lie in Johnson County, Texas.

XXI. ENTIRE AGREEMENT

This contract embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporary agreements between the parties relating to matters herein; and except as otherwise provided herein, cannot be modified without written agreement of the parties.

XXII. APPLICABLE LAW

This contract is entered into subject to the Charter and ordinances of City, as they may be amended from time to time, and is subject to and is to be construed, governed, and enforced under all applicable State of Texas and federal laws. Situs of this contract is agreed to be Johnson County, Texas, for all purposes, including performance and execution.

XXIII. HEADINGS

The headings of this contract are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

XXIV. REMEDIES

No right or remedygranted herein or reserved to the parties is exclusive of any other right or remedyherein by law or equity provided or permitted; but, each shall be cumulative of every other right or remedygiven hereunder. No covenant or condition of this contract may be waived without consent of the parties. Forbearance or indulgence by either party shall not constitute a waiver of any covenant or condition to be performed pursuant to this contract.

XXV. EQUAL EMPLOYMENT OPPORTUNITY

Engineer shall not discriminate against any employee or applicant for employment because of race, age, color, religion, sex, ancestry, national origin, place of birth or disability. Engineer shall take action to ensure that applicants are employed and treated without regard to their race, age, color, religion, sex, ancestry, national origin, place of birth or disability. This action shall include, but not be limited to: employment, promotion, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection of training, including apprenticeship.

XXVI. CONSTRUCTION OF CONTRACT

Both parties have participated fullyin the review and revision of this contract. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this contract.

XXVII. NOTICES

All notices, communications, and reports required or permitted under this contract shall be personally delivered or mailed to the respective parties by depositing same in the United States mail, postage prepaid, at the addresses shown below, unless and until either party is otherwise notified in writing by the other party, at the following addresses. Mailed notices shall be deemed communicated as of five (5) days after mailing regular mail.

if intended for City, to:

Paul Mitchell, P.E.
Assistant Director of Public Works, Capital Improvements
City of Burleson
225 West Renfro Street
Burleson, T exas 76028
Phone: 817.426.9610
E-mail: pmitchell@burlesontx.com

A. If intended for Engineer, to:

Mrs. Dana Shumard
Project Manager
Kimley-Horn and Associates, Inc.
801 Cherry Street, Unit 11
Suite 1300
Fort Worth, Texas 76102
817-335-6511 (phone)
Dana.Shumard@kimley-horn.com

IN WITNESS WHEREOF, the parties enter into this contract for the ___ on the date first written above.

| WITNESS: | ENGINEER: |
|--|---|
| BY: Pare Shunard | BY: Leath Amoul |
| <u>Dana Shumard, P.E.</u> Printed or Typed Name | Scott R. Arnold, P.E. Printed or Typed Name |
| Project Manager Printed or Typed Title | Vice President Printed or Typed Title |
| | 56-0885615 Tax Identification No. |
| ATTEST: | CITY OF BURLESON, TEXAS |
| BY: AMANDA McCRORY CITY SECRETARY | BY: BRYAN LANGLEY CITY MANAGER |

IN WITNESS WHEREOF, the parties enter into this contract for the ____ on the date first written above. WITNESS: **ENGINEER:** BY: BY: Dana Shumard, P.E. Scott R. Amold, P.E. Printed or Typed Name Printed or Typed Name Project Manager Vice President Printed or Typed Title Printed or Typed Title 56-0885615 Tax Identification No. ATTEST CITY OF BURLESON, TEXA BY: BY: BRYAN LANGL AMANDA MECRORYCAMPOS

CITY SECRETARY

| THE STATE OF TEXAS | § | |
|--|---|---|
| COUNTY OF <u>Dallas</u> | § | ENGINEER ACKNOWLEDGMENT |
| personally appeared Scott I of proved to me through his dr federal or state government person whose name is subsexecuted same for the purp | R. Arnold, who is known to me of (name of person identi- river's license (description of ide- t containing the picture and sign scribed to the foregoing instrument coses and consideration therein HAND AND SEAL OF OFFICE | |
| Notary Public In and For The State of Tex | MIRIAM CASTILLEJA Notary Public, State of Texas Comm, Expires 03-13-2021 Notary ID 131041344 | Notary Public In and For the State of Texas |
| My Commission Expires: 03 | 3-13-2021 | Miriam Castilleja Notary's Printed Name |
| THE STATE OF TEXAS | § | |
| COUNTY OF JOHNSON | § | CITY ACKNOWLEDGEMENT |
| name is subscribed to the fo and as the act of the City of | , knovergoing instrument, and acknov Burleson, Texas, a Texas munic | Public in and for the State of Texas, on this day wn to me to be a person and officer whose vledged to me that he/she executed same for cipal corporation, and poses and consideration therein expressed. |
| GIVEN UNDER MY F | HAND AND SEAL OF OFFICE this | the,20 |
| My Commission Expires: | | Notary Public In and For The State of Texas |
| | | Notary's Printed Name |

| THE | STAT | EOF' | TEXAS | |
|-----|------|------|-------|--|
|-----|------|------|-------|--|

ENGINEER ACKNOWLEDGMENT

COUNTYOF JOHNSON

| personally appeared (narwho was proved to me through document issued by the federal or state governmacknowledging person) to be the person whose r | a Notary Public in and for the State of Texas, on this day, who is known to me or who was proved to me on me of person identifying the acknowledging person) or (description of identity card or other tent containing the picture and signature of the name is subscribed to the foregoing instrument, and for the purposes and consideration therein expressed. F OFFICE this the day |
|--|--|
| rough and and the the sale of texas | |
| | Notary Public In and For the State of Texas |
| My Commission Expires: | Notary's Printed Name |
| THESTATEOFTEXAS § | e. |
| COUNTYOF JOHNSON § | <u>CITY ACKNOWLEDGEMENT</u> |
| name is subscribed to the foregoing instrument, are and as the act of the City of Burleson, Texas, a Te | for the purposes and consideration therein expressed. |
| My Commission Expires: $9/19/21$ | Notary Public In and For The State of Texas Notary 's Printed Name |
| JESSE ELIZONDO Notary Public, State of Texas Comm. Expires 09-19-2021 Notary ID 129548426 | |

CERTIFICATE OF INTERESTED PARTIES

FORM **1295**

| | | | | | 1 of 1 | | |
|-----|--|---|------------|-------------------------------------|----------------|--|--|
| | Complete Nos. 1 - 4 and 6 if there are interested parties. | | | OFFICE USE | | | |
| | Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties. | | | CERTIFICATION OF FILING | | | |
| 1 | . Name of business entity filing form, and the city, state and country of the business entity's place of business. | | | Certificate Number: 2023-1009961 | | | |
| li | Kimley-Horn and Associates, Inc. | | | | | | |
| 2 | Dallas, TX United States Name of governmental entity or state agency that is a party to the | o contract for which the form is | | Date Filed: 04/20/2023 | | | |
| 2 | being filed. | e contract for which the form is | | | | | |
| | City of Burleson, Texas | | Date | Date Acknowledged: | | | |
| 3 | Provide the identification number used by the governmental enti- description of the services, goods, or other property to be provided | ty or state agency to track or identified under the contract. | y the c | ontract, and prov | vide a | | |
| | 042023 SH 174 FROM WICKER HILL TO HULEN | | | | | | |
| 4 | | | | Nature of inte | | | |
| ľ | Name of Interested Party | City, State, Country (place of business | | (check an | Intermediary | | |
| Co | ook, Richard N | Dallas, TX United States | | X | | | |
| Fla | anagan, Tammy | Dallas, TX United States | | Х | | | |
| Le | fton, Steve | Dallas, TX United States | | X | | | |
| Mo | Entee, David L | Dallas, TX United States | | Х | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| 5 | Check only if there is NO Interested Party. | | | | | | |
| 6 | UNSWORN DECLARATION | | | | A-1 | | |
| | My name is SARAH MEZA | , and my date o | f birth is | 499 | | | |
| | My address is | DALLAS | TX, | 75240 | . US | | |
| | (street) | (city) | state) | (zip code) | (country) | | |
| | I declare under penalty of perjury that the foregoing is true and correct. | | | | | | |
| | Executed in DALLASCountry | y, State ofTEXAS, on the | 20TH | day of APRIL | , 20 <u>23</u> | | |
| | | Sol N | W | (month) | (year) | | |
| | | | | / | | | |
| | Signature of authorized agent of contracting business entity (Declarant) | | | | | | |



City Council Regular Meeting

DEPARTMENT: Public Works

FROM: Errick Thompson, Deputy Director of Public Works - Engineering

MEETING: May 1, 2023

SUBJECT:

Consider approval of a resolution authorizing an application for TxDOT's 2023 Transportation Alternatives (TA) Call for Projects for a Citywide project to complete the 10-mile pedestrian and bicycle loop with City of Burleson matching contributions not to exceed \$3,200,000 (Staff Presenter: Errick Thompson, Deputy Director of Public Works - Engineering)

SUMMARY:

The scope of this project will complete 10-mile loop bicycle and trail route and adjacent sidewalks listed on City's Mobility Plan as one single project. The project will consist of 20,545 LF of 10-foot wide shared use paths and 24,225 LF of five-foot wide sidewalk. When completed, the 10-mile loop will provide safe and convenient access to City attractions, schools, employers, and shopping centers for bicyclists and pedestrians.

The City submitted a preliminary application for this project in response to TxDOT's 2023 Transportation Alternatives (TA) call for projects in January 2023, under the large scale active transportation infrastructure category. This call includes a total of \$250 Million in funding available for FY 22-25 for bicycle and pedestrian projects. In March 2023, staff was notified that the project was eligible to continue to the next phase on the competitive grant process and submit a detailed application by June 5, 2023.

The City's application will include 80% state funding of design, right-of-way (easement) acquisition and construction with a 20% local match. The final selection of projects is anticipated to occur October 2023. If awarded, the project would complete 10-Mile Loop bicycle and trail route and 80% of the Short-Term Pedestrian Projects with the currently planned City funding, resulting in approximately \$16M in pedestrian, bicycle and trail facilities at a cost of \$3.2M in City funds. Staff is recommending utilizing the \$1,977,697 in GO Bond funds identified for sidewalk, plus additional capital funding, if the project is awarded.

The project schedule, if selected, the anticipated schedule includes beginning procurement of design in fall of 2023, completing design in fall 2024, and completing construction in spring 2026.

OPTIONS:

- 1) Approve the resolution as presented
- 2) Deny the resolution

RECOMMENDATION:

Approve the resolution as presented

PRIOR ACTION/INPUT (Council, Boards, Citizens):

N/A

FISCAL IMPACT:

Project #: ST2260

Fund Name: GO Street & Drainage Bond

Amount: \$3,200,000.00

STAFF CONTACT:

Errick Thompson
Deputy Director of Public Works - Engineering ethompson@burlesontx.com
817-426-9610

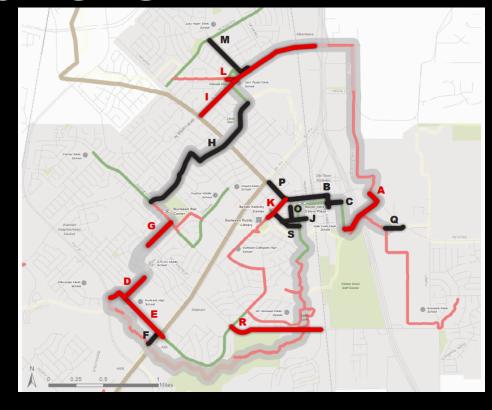
TxDOT Transportation Alternatives Call for Projects



TXDOT TA CALL FOR PROJECTS

- Total \$250 Million available for FY 22-25 for bicycle and pedestrian projects
- Project would complete 10-mile loop bicycle and trail route and adjacent sidewalks in the Mobility Plan as a single project
- A Preliminary Application was submitted to TxDOT on 1/27 and has been selected to continue to the next round
- The application does not commit funds, Council approval will still be required for Design & Construction contracts
- Grant would fund 80% of total project cost with City funding the remaining 20%

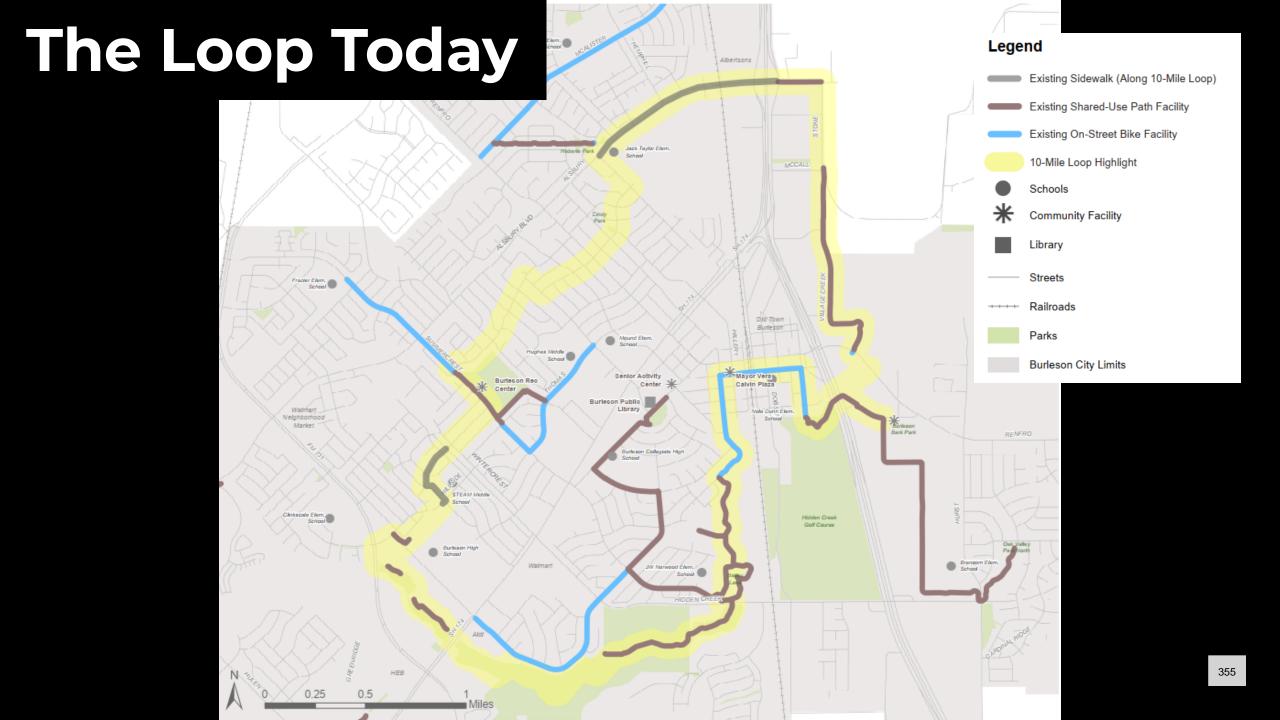
Total City contribution, including design, acquisitions, and construction, not to exceed \$3.2 million

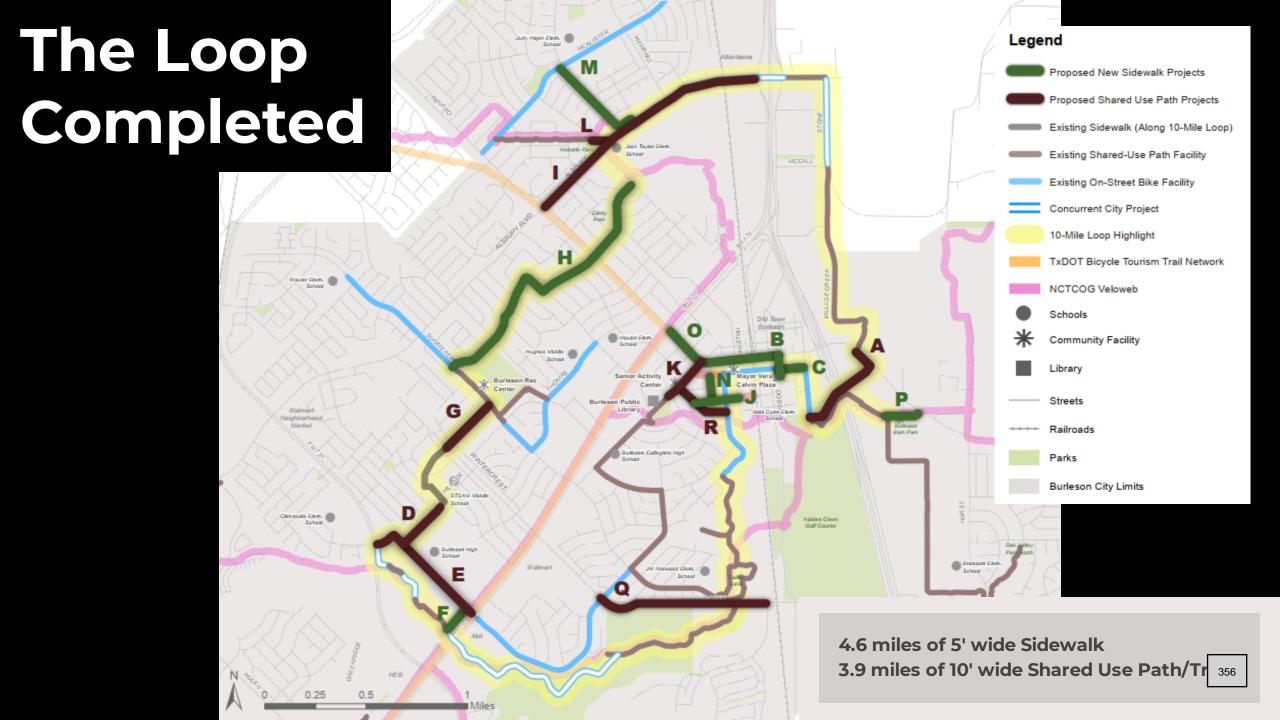


Target Project
City Contribution

\$16 Million 20% Match (\$3.2M)

Preliminary Application Due Notification of Eligibility Detailed Application Due Final Selection January 2023
March 2023
June 2023
October 202





SIDEWALKS

Screening Criteria for sidewalk improvements

IDENTIFIED SIDEWALK NEEDS

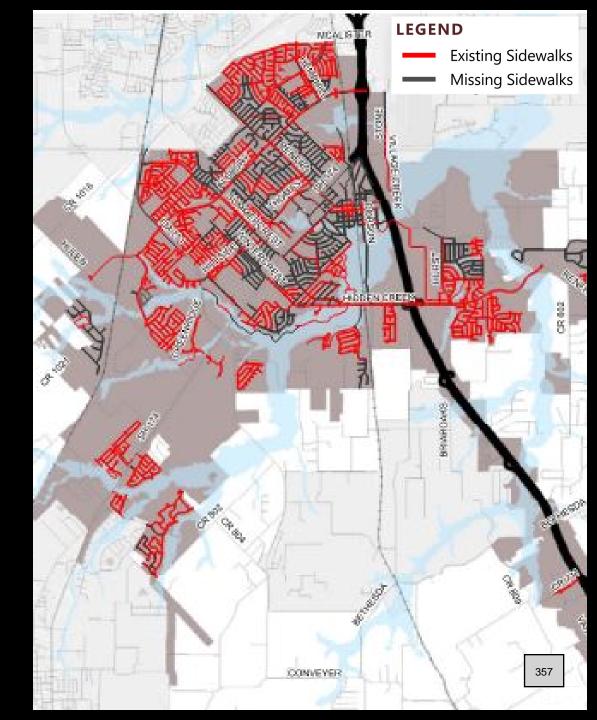
- Neighborhoods without sidewalks
- Approximately 121 miles of sidewalk needs identified
- Estimated cost to complete all missing sidewalk is \$160,000,000 (includes all construction costs sidewalk, ADA ramps, driveway adjustments, mobilization, contingency)

PEDESTRIAN SAFETY

• High pedestrian use areas where sidewalk connectivity did not exist

MAJOR CONNECTIONS TO DESTINATIONS

- Schools coordination with school districts to determine where kids are walking from will need to occur
- Community Facilities BRiCk, existing parks, trails, activity centers
- Old Town
- Employment Centers commercial corridors considered important to connect to adjacent neighborhoods
- Shopping/Activity destinations



SIDEWALKS

Prioritization

SHORT - TERM

- Recommended to be completed in the next 1 to 5 years
- Pedestrian Safety
- Provide a "spine linkage" for key missing connections from neighborhood to neighborhood, schools, community facilities, etc. These are longer sections of missing sidewalk that will provide a connection short term until smaller sections of sidewalk are filled in over time completing the network in the neighborhood
- Identified as critical for the overall improvement that would positively affect surrounding neighborhoods

MID-TERM

- Recommended to be completed in the next 5 to 10 years
- Missing sections in sidewalk network begin to be filled in to create more connections between neighborhoods and destinations. These sections begin to fill in the network in neighborhood by connection more pedestrians to the "spine linkage" constructed in the short-term projects

LONG-TERM

- Recommended to be completed in the next 20 years
- Remaining missing sections within the sidewalk network continue to be constructed ultimately providing a complete overall network that is interconnected



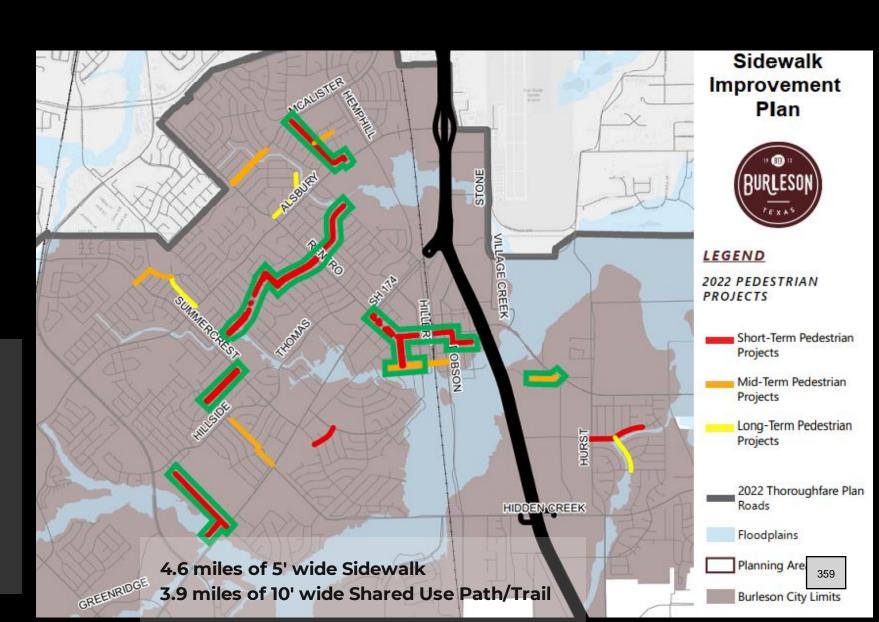
TXDOT TA GRANT'S IMPACT ON MOBILITY PLAN

This grant would complete the majority of our short-term and some mid-term pedestrian projects

- 9 of the 12 Short-Term Pedestrian Projects would be completed with this grant
 - 1 of the 3 remaining projects is within the GO Bond Program (FM1902) for FY27 completion
- 2 of the 6 Mid-Term Pedestrian Projects would be completed with this grant

Goal: Complete 10-Mile Loop bicycle and trail route and 80% of the Short -Term Pedestrian Projects with the currently planned City funding

Result: \$15.7 M worth of pedestrian, bicycle and trail facilities for \$3.2 M of City funds.



CITY'S 20% CONTRIBUTION FUNDING

SIDEWALK PROGRAM

GO Bond

\$1,266,946 over 5 years for new sidewalk

Locations TBD by Council

FY23-27

RENFRO PEDESTRIAN IMPROVEMENT

TIF Fund

\$192,497

FY23-24

 ELK DR, HILLSIDE DR, & FM 931 INTERSECTION AND SIDEWALK IMPROVEMENTS

GO Bond

Total \$1,036,509

(50% for intersection improvements, therefore, sidewalk portion \$518,254)

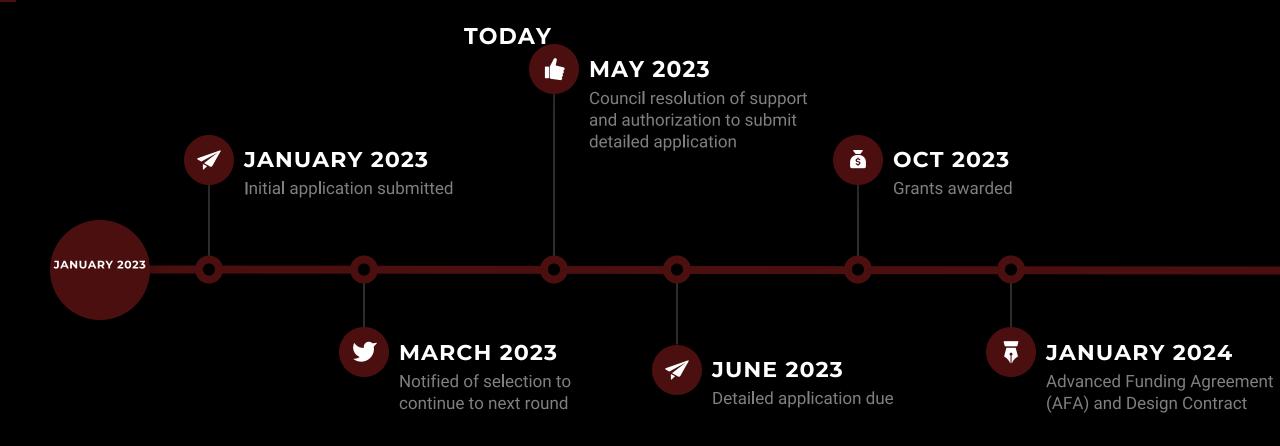
FY25-26

TOTAL EXISTING FUNDING \$1,977,697

ADDITIONAL \$1,222,303 FOR THE BALANCE OF THE 20% MATCH TO BE CONSIDERED BY COUNCIL IN THE 5-YEAR CIP UPDATE THIS SUMMER



GRANT APPLICATION TIMELINE





ANTICIPATED PROJECT TIMELINE





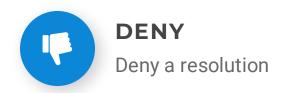
OPTIONS

RECOMMENDED



APPROVE

Approve a resolution as presented





RESOLUTION

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BURLESON, TEXAS, SUPPORTING THE CITY OF BURLESON, TEXAS'S APPLICATION TO THE TEXAS DEPARTMENT OF TRANSPORTATION'S 2023 TRANSPORTATION ALTERNATIVES SETASIDE (TA) CALL FOR PROJECTS

WHEREAS, the City of Burleson, Texas ("City"), is a home rule city acing under its charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Local Government Code; and

WHEREAS, the Texas Department of Transportation issued a call for projects in December 2022 for communities to apply for funding assistance through the Transportation Alternatives Set-Aside (TA) Program; and

WHEREAS, the TA funds may be used for development of preliminary engineering (plans, specifications, and estimates and environmental documentation) and construction of pedestrian and/or bicycle infrastructure. The TA funds require a local match, comprised of cash or Transportation Development Credits (TDCs), if eligible. The City would be responsible for all non-reimbursable costs and 100% of overruns, if any, for TA funds; and

WHEREAS, a location map of the Project is attached hereto as Exhibit "A" and incorporated herein; and

WHEREAS, the estimated the cost of the project is \$15.7 million, and the OPCC is attached hereto as Exhibit "B" and incorporated herein; and

WHEREAS, if the Project is selected through the TA Program, it is understood the City would pay for twenty percent (20%) of the approved Project costs, not to exceed \$3.2 million. The TA Program would pay for the remaining eighty percent (80%) of the approved Project costs; and

WHEREAS, the City may fund the Project as provided in the Capital Improvement Plan.

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

Section 1.

The City supports funding this project as described in the 2023 TA Detailed Application (including the preliminary engineering budget, if any, construction budget, the department's direct state cost for oversight, and the required local match, if any) and is willing to commit to the project's development, implementation, construction, maintenance, management, and financing. The City is willing and able to enter into an agreement with the department by resolution or ordinance, should the project be selected for funding.

Section 2.

| | | ely from and after its passage. LVED by the City Council of the City of Burleson, |
|-------------------|--------------|--|
| · · | day of | |
| | | |
| | | Chris Fletcher, Mayor City of Burleson, Texas |
| ATTEST: | | APPROVED AS TO LEGAL FORM: |
| | | |
| Amanda Campos, Ci | ty Secretary | E. Allen Taylor, Jr., City Attorney |

Proposed Active Transportation Projects



Legend

Proposed New Sidewalk Projects

Proposed Shared Use Path Projects

Existing Sidewalk (Along 10-Mile Loop)

Existing Shared-Use Path Facility

Existing On-Street Bike Facility

Concurrent City Project

10-Mile Loop Highlight

TxDOT Bicycle Tourism Trail Network

NCTCOG Veloweb

Schools

* Community Facility

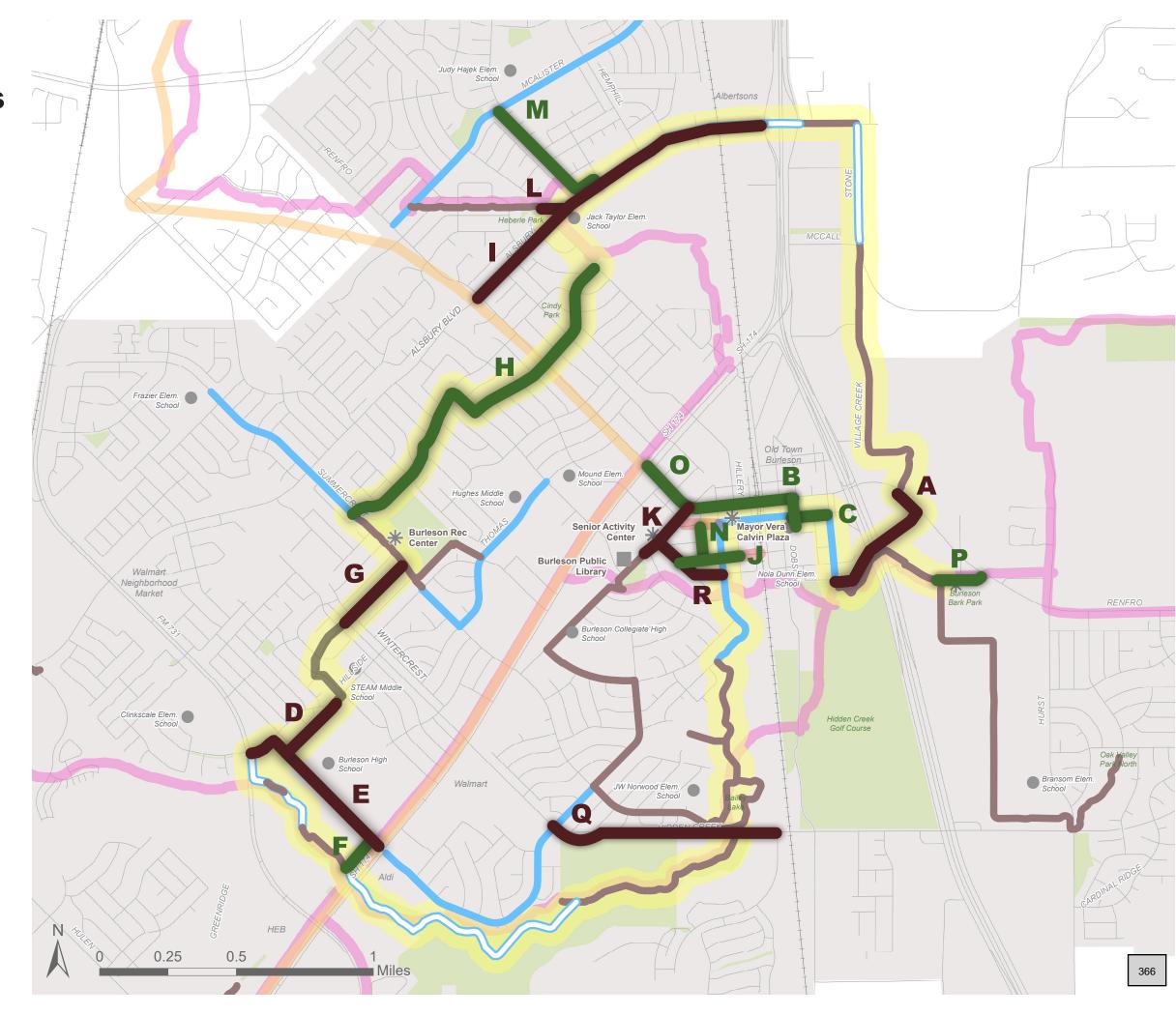
Library

Streets

----- Railroads

Parks

Burleson City Limits



Conceptual Level Costs - City Fund Engineering, Environmental and ROW

| | , | | Active Transportation Pr | oject to Support the Prop | oosed 10-Mile Loop | | | | | | |
|---------|---|----------------------------|--------------------------|---------------------------|-------------------------------|-------------|-------------------|--------------------|-------------------|--------------------------|------------|
| Segment | Description | Туре | Mobility Plan Ref | From | То | Length (LF) | Construction Cost | Environmental (1%) | Engineering (19%) | ROW/Easements Needed? | |
| A | Village Creek Trail Extension - Shared Use Path | Shared Use Path | Bicycle & Trail - B | Village Creek Pkwy | Ex. Trail | 3,200 | \$ 1,170,000.00 | \$ 11,700.00 | \$ 222,300.00 | Yes | |
| В | Clark Street Sidewalk | Sidewalk one side | Short Term Ped - D | Bufford | Renfro | 560 | \$ 220,000.00 | \$ 2,200.00 | \$ 41,800.00 | | |
| 3 | Ellison Street Sidewalk | Sidewalk | Short Term Ped - E | Clark | Scott | 660 | \$ 190,000.00 | \$ 1,900.00 | \$ 36,100.00 | | |
| D | Shannon Creek Trail Extension (North) | Shared Use Path | Bicycle & Trail - C | Hillside and Linda Dr | Shannon Creek Trail Ex. South | 1,500 | \$ 500,000.00 | \$ 5,000.00 | \$ 95,000.00 | Yes | |
| E | Elk and Hillside Bond Improvements | Shared Use Path/Sidewalk | Short Term Ped - K | John Jones/FM 731 | SH 174 (Wilshire) | 2,700 | \$ 830,000.00 | \$ 8,300.00 | \$ 157,700.00 | Yes | |
| F | Elk Drive Connection to Village Creek Trl. | Sidewalk | Short Term Ped - C | Along private drive bet | ween Sonic and Gas Station. | 700 | \$ 160,000.00 | \$ 1,600.00 | \$ 30,400.00 | Yes | |
| G | Vaughn Drive | Sidewalk | Short Term Ped - H | McNarin | Summercrest | 3,100 | \$ 650,000.00 | \$ 6,500.00 | \$ 123,500.00 | | |
| 1 | Rand, Newton and Cindy - Sidewalk gap | Sidewalk and on street | Short Term Ped - B | Summercrest | Douglas | 10,100 | \$ 1,720,000.00 | \$ 17,200.00 | \$ 326,800.00 | | |
| | Alsbury Boulevard | Shared Use Path | Bicycle and Trail - I | Renfro | IH 35W | 6,500 | \$ 2,730,000.00 | \$ 27,300.00 | \$ 518,700.00 | Yes | |
| J | Eldred Street | Sidewak on one side | Mid Term Ped - B | Tarrant | S. Wilson | 1,100 | \$ 370,000.00 | \$ 3,700.00 | \$ 70,300.00 | | |
| K | Johnson Avenue | Shared Use Path | Bicycle & Trail - F | Newton | Renfro | 1,200 | \$ 480,000.00 | \$ 4,800.00 | \$ 91,200.00 | | |
| _ | Heberle Park Trail | Shared Use Path | Bicycle & Trail - E | James Cir | Alsbury | 500 | \$ 170,000.00 | \$ 1,700.00 | \$ 32,300.00 | | |
| M | Park Meadow Lane Sidewalk | Sidewalk | Short Term Ped - A | McAlister | Alsbury | 2,700 | \$ 560,000.00 | \$ 5,600.00 | \$ 106,400.00 | | |
| V | Bransom Street Sidewalk | Sidewalk on East Side | Short Term Ped - F | Eldred | Ellison | 650 | \$ 330,000.00 | \$ 3,300.00 | \$ 62,700.00 | | |
|) | Renfro Street Sidewalks | Sidewalk | Short Term Ped - J | SH 174 | Clark | 2,100 | \$ 690,000.00 | \$ 6,900.00 | \$ 131,100.00 | | |
|) | Memorial Plaza | Sidewalk | Mid Term Ped - C | Cemetery | Renfro/FM 3391 | 800 | \$ 250,000.00 | \$ 2,500.00 | \$ 47,500.00 | | |
| Q | Hidden Creek Parkway | Shared Use Path South Side | | Irene | Hidden Vistas Blvd | 5,000 | \$ 1,020,000.00 | \$ 10,200.00 | \$ 193,800.00 | | |
| R | S. Tarrant/Miller | Shared Use Path One Side | Bicycle & Trail - F | SW Johnson | Warren | 1,700 | \$ 600,000.00 | \$ 6,000.00 | \$ 114,000.00 | | 20% City |
| | • | • | | | Total Cost | 44,770 | \$ 12,640,000.00 | \$ 126,400.00 | \$ 2,401,600.00 | \$ 500,000.00 | \$ 3,133,6 |

| Summary | Length (LF) | Construction Cost | Environmental (1%) | Engineering (19%) | ROW | Total |
|---------------------------|-------------|-------------------|--------------------|-------------------|---------------|-----------------|
| Total 5' Sidewalk | 24,225 | \$ 5,679,500.00 | \$ 56,795.00 | \$ 1,079,105.00 | \$ 50,000.00 | \$ 6,865,400.00 |
| Total 10' Shared Use Path | 20,545 | \$ 6,960,500.00 | \$ 69,605.00 | \$ 1,322,495.00 | \$ 450,000.00 | \$ 8,802,600.00 |
| Grand Total | 44,770 | 12,640,000 | 126,400 | 2,401,600 | 500,000 | \$15,668,000.00 |



May 1, 2023

Texas Department of Transportation

Re: TxDOT 2023 Transportation Alternatives Program - Call for Projects

Dear Selection Committee,

The City of Burleson is seeking funding assistance from the Texas Department of Transportation (TxDOT) through the TxDOT 2023 Transportation Alternatives Program - Call for Projects for the following project:

Active Transportation Project to Support the Proposed 10-Mile Loop

TxDOT Project ID: L_3_FTW_Burleson-1_10MileLoop

With significant growth in the area, this project provides connections to various important areas of interest such as schools, community parks, and economic centers. Combined with Burleson's bond program currently in process, we feel this project is an excellent opportunity to combine funding to meet the goals of your program.

We appreciate the opportunity to submit for partnership on important transportation improvement projects in the City of Burleson. The City is looking forward to working with you to promote mobility and increased alternative transportation access to area residents and visitors.

Thank you for your consideration.

Sincerely,

Mr. Chris Fletcher Mayor City of Burleson



City Council Regular Meeting

DEPARTMENT: Public Works

FROM: Eric Oscarson, Director of Public Works

MEETING: May 1, 2023

SUBJECT:

Consider approval of an ordinance granting a franchise to Waste Connections Lone Star, Inc. for residential solid waste and recycling collection services in the City, authorizing an amendment to an existing solid waste franchise agreement with Waste Connections Lone Star, Inc. by amending the renewal date and extending the term five years pursuant to renewal terms under the current contract in the amount of \$23,731,155.34, and finding that this ordinance may be considered and approved at only one meeting of the City Council. (First and Final Reading) (Staff Presenter - Eric Oscarson, Director of Public Works)

SUMMARY:

The City of Burleson currently has a contract with Waste Connections Long Star, Inc. for solid waste and recycling collection services. The contract was approved in 2019 for a (5) Five Year term with the option to renew in (5) Five Year Terms. Due to the nature of the industry, lead time on new solid waste contracts is 18-24 months. The process includes bidding the contract, the purchase of new solid waste trucks, and a transition plan. A decision to renew the contract must be made now due to the long lead time.

In a survey completed by the Customer Services Department in 2022, Solid Waste Services had a 92% overall Satisfaction rating. Staff has a good relationship with Waste Connections and citizens are happy with the current service they are receiving. Staff would like to renew the current contract with Waste Connections.

The contract allows a price increase to be considered by the City no more than once per year for a proposed base rate adjustment to be effective in the month of October. Service Provider must receive approval from the City for such Base Rate increases, which approval shall not be unreasonably withheld. The overall cost of the contract will be based on the yearly CPI increases. For the terms of this renewal, we assumed Years 1 & 2 with a 2% growth rate and a 6% CPI increase rate. In Years 3, 4, & 5 we assumed a 2% growth rate and a 5% CPI increase rate. The final year of the renewal will be 18 months to align the contract to our Fiscal Year.

| | Solid Waste | Environmental | Total | |
|---------|------------------|-----------------|------------------|--|
| Year 1 | \$ 3,064,752.72 | \$ 527,149.08 | \$ 3,591,901.80 | |
| Year 2 | \$ 3,309,932.94 | \$ 569,321.01 | \$ 3,879,253.94 | |
| Year 3 | \$ 3,541,628.24 | \$ 609,173.48 | \$ 4,150,801.72 | |
| Year 4 | \$ 3,789,542.22 | \$ 651,815.62 | \$ 4,441,357.84 | |
| Year 5* | \$ 6,224,133.62 | \$ 1,443,706.42 | \$ 7,667,840.04 | |
| | \$ 19,929,989.74 | \$ 3,801,165.60 | \$ 23,731,155.34 | |

Generally, ordinances considered by City Council must be approved at two separate meetings; however, Section 2-4 of the Code of Ordinances lists certain types ordinances that the City Council may approve at only one meeting. That section of the Code of Ordinance specifies that ordinances concerning a franchise may be approved at only one meeting. Since the proposed ordinance concerns the City's solid waste franchise, it may be considered at only one meeting.

OPTIONS:

- Approve an ordinance granting a franchise to Waste Connections Lone Star, Inc. for
 residential solid waste and recycling collection services in the City and authorizing an
 amendment to an existing solid waste franchise agreement with Waste Connections
 Lone Star, Inc. by amending the renewal date and extending the term five years
 pursuant to renewal terms under the current contract in the amount of \$23,731,155.34.
- 2. Deny an ordinance granting a franchise to Waste Connections Lone Star, Inc. for residential solid waste and recycling collection services in the City and authorizing an amendment to an existing solid waste franchise agreement with Waste Connections Lone Star, Inc. by amending the renewal date and extending the term five years pursuant to renewal terms under the current contract in the amount of \$23,731,155.34.

RECOMMENDATION:

Approve an ordinance granting a franchise to Waste Connections Lone Star, Inc. for residential solid waste and recycling collection services in the City and authorizing an amendment to an existing solid waste franchise agreement with Waste Connections Lone Star, Inc. by amending the renewal date and extending the term five years pursuant to renewal terms under the current contract in the amount of \$23,731,155.34.

PRIOR ACTION/INPUT (Council, Boards, Citizens):

None.

STAFF CONTACT:

Eric Oscarson
Director of Public Works
eoscarson@burlesontx.com
817-426-9837



SOLID WASTE & RECYCLING CONTRACT

BACKGROUND



SOLID WASTE AND RECYCLING

- Prior to 2009 City completed Waste Collections in house.
- June 2009 Contracted out Solid Waste and Recycling Services.

✓ CURRENT CONTRACT

- June 2019 Current Contract signed with Waste Connections.
- May 2024 Current Contract ends.
- Option to extend contract at 5 year terms

✓ INDUSTRY

• **Lead Time** - The bidding processes and lead time needed for a new Solid Waste contract is about 18-24 months.

RATES AND CHARGES

RATES

 Collection Charges - Charges for Solid Waste and Recycling are billed to residents in their Water bill. The City collects the funds and passes it through to Waste Collections.

FEES

• Per Ordinance B-772-07(B0513), the City charges for collection, administrative, and franchise fees. These fees are set during the budget process.





CURRENT CONTRACT DETAILS

SOLID WASTE

- Bags or Cart
- 2 X Weekly Service

RECYCLE

- 65-Gallon Carts
- 1 X Weekly Service

BRUSH / YARD WASTE

- 1 X Weekly on 2nd Day
- Up to 3 Cubic Yards

BULK ITEMS

- 1 X Monthly
- Set out Monday and picked up by Friday

SMALL COMMERCIAL OPTIONS

- 10 Bags or 1 Cart
- 20 Bags or 2 Carts
- 2 X Weekly Service

CITIZEN SURVEY

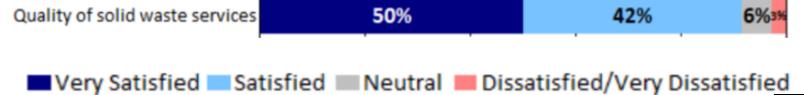
SURVEY

A Citizen Survey was completed by Customer Service Department in 2022.



2022 Importance-Satisfaction Rating Burleson, Texas Major City Services

| Category of Service | Satifaction % |
|--|---------------|
| Overall Solid Waste Services | 92% |
| Quality of city bulk trash/leaf/brush collection | 88% |
| Quality of curbside trash/garbage collection | 92% |
| Quality of curbside recycling collection | 92% |





CONTRACT EXTENSION

TERM

Extend contract through September 2029

RESIDENTIAL RATES

- October 2023 6% or CPI Increase, whichever is greater
- October 2024 6% or CPI Increase, whichever is greater
- October 2025-2028 CPI Increase

COMMERCIAL

October 2023-2028 - CPI Increase

ESTIMATED CONTRACT COSTS

| | Solid Waste | Recycle | Total |
|---------|-----------------|----------------|-----------------|
| Year 1 | \$3,064,752.72 | \$527,149.08 | \$3,591,901.80 |
| Year 2 | \$3,309,932.94 | \$569,321.01 | \$3,879,253.94 |
| Year 3 | \$3,541,628.24 | \$609,173.48 | \$4,150,801.72 |
| Year 4 | \$3,789,542.22 | \$651,815.62 | \$4,441,357.84 |
| Year 5* | \$6,224,133.62 | \$1,443,706.42 | \$7,667,840.04 |
| Total | \$19,929,989.74 | \$3,801,165.60 | \$23,731,155.34 |

YEAR 1 & 2

2% Customer Growth 6% CPI Increase

YEAR 3, 4, & 5

2% Customer Growth 5% CPI Increase

^{*}Year 5 is 18 Months to get contract to align with our Fiscal Year

ACTION



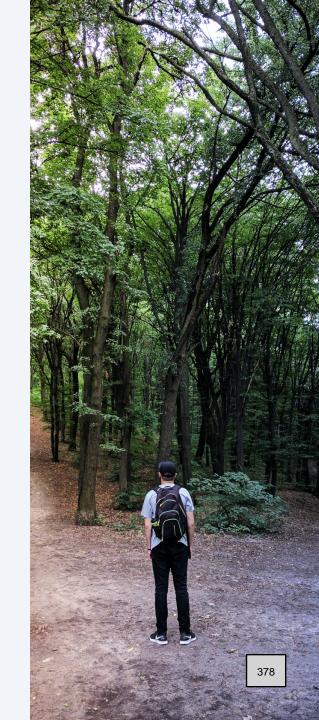
RECOMMEND

• Approve an ordinance granting a franchise to Waste Connections Lone Star, Inc. for residential solid waste and recycling collection services in the City, authorizing an amendment to an existing solid waste franchise agreement with Waste Connections Lone Star, Inc. by amending the renewal date and extending the term five years pursuant to renewal terms under the current contract in the amount of \$23,731,155.34, and finding that this ordinance may be considered and approved at only one meeting of the City Council.



DENY

• Deny an ordinance granting a franchise to Waste Connections Lone Star, Inc. for residential solid waste and recycling collection services in the City, authorizing an amendment to an existing solid waste franchise agreement with Waste Connections Lone Star, Inc. by amending the renewal date and extending the term five years pursuant to renewal terms under the current contract in the amount of \$23,731,155.34, and finding that this ordinance may be considered and approved at only one meeting of the City Council.





ORDINANCE

AN ORDINANCE OF THE CITY OF BURLESON, TEXAS, APPROVING A FRANCHISE FOR RESIDENTIAL SOLID WASTE AND RECYCLING COLLECTION SERVICES IN THE CITY OF BURLESON, TEXAS TO **CONNECTIONS** LONE STAR, INC.; **PRESCRIBING** GENERALLY FOR THE OPERATION SUCH OF **SERVICES:** APPROVING AN AMENDMENT TO THE EXCLUSIVE FRANCHISE AGREEMENT WITH WASTE CONNECTIONS LONE STAR, INC. FOR THE COLLECTION, HAULING, AND DISPOSAL OF MUNICIPAL SOLID WASTE; FINDING THAT THIS ORDINANCE MAY BE CONSIDERED AND APPROVED \mathbf{AT} ONLY ONE MEETING; INCORPORATING THE RECITALS INTO THE BODY OF THE ORDINANCE; FINDING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED IS OPEN TO THE PUBLIC; AND, PROVIDING FOR ORDINANCES IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Burleson, Texas, is a home rule city acting under its charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Local Government Code; and

WHEREAS, it is in the public interest to ensure solid waste and recycling services are provided to the citizens of the City; and

WHEREAS, the City has selected Waste Connections as the best provider for said services; and

WHEREAS, on May 20, 2020, the City granted Waste Connections Lone Star, Inc. ("Waste Connections") the exclusive franchise to collect, haul, and dispose of municipal solid waste from residential units and non-residential units requiring manual collection; and

WHEREAS, on May 20, 2020, the City and Waste Connections entered into an exclusive franchise agreement for such for solid waste collection (the "Original Agreement"); and

WHEREAS, the City and Waste Connections desire to amend the Original Agreement to, among other things, amend the renewal date and extend the term of the Original Agreement, a copy of the amended Original Agreement is attached hereto as Exhibit "A" (the "Agreement"); and

WHEREAS, the City Council has determined that granting of a franchise to Waste Connections will assist in meeting the solid waste and recycling needs of the community; and

WHEREAS, the City Council may consider and approve certain ordinances or ordinance amendments at only one meeting in accordance with Section 2-4 of the Code of Ordinances of the City of Burleson; and

WHEREAS, the City Council finds and determines that this ordinance may be considered and approved in only one meeting because the provisions of this ordinance meet the requirements set forth in Section 2-4 of the Code of Ordinances, is not considered as part of the consent agenda, and concerns the granting of a franchise; and

WHEREAS, the City Council hereby finds and determines that entering into the Agreement and granting a franchise on the terms set forth herein is in the public interest and in the interest of the City and its residents; and

WHEREAS, the City Council hereby finds and determines that entering into the Agreement and granting a franchise on the terms set forth herein is in furtherance of the public health, safety, welfare, morals, and general welfare.

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

Section 1.

Waste Connections shall be the exclusive provider to collect, haul, and dispose of municipal solid waste from residential units and non-residential units requiring manual collection inside the corporate city limits of the City of Burleson, Texas, as set forth in the Agreement and is bound by all of the obligations of the Agreement, attached hereto as Exhibit "A" and incorporated herein by reference as though fully transcribed herein for all purposes. This franchise shall automatically terminate upon the termination of the Agreement.

Section 2.

The City Manager is authorized to execute on behalf of the City the Agreement between the City and Waste Connections, substantially in the form attached as Exhibit "A".

Section 3.

The findings set forth above in the recitals of this ordinance are incorporated into the body of this ordinance as if fully set forth herein.

Section 4.

All ordinances in conflict with the provisions of this ordinance are hereby repealed and all other ordinances of the City not in conflict with the provisions of this ordinance shall remain in full force and effect.

Section 5.

The terms and provisions of this ordinance shall be deemed to be severable and that if any section, subsection, sentence, clause, or phrase of this ordinance shall be declared to be invalid or unconstitutional, the same shall not affect the validity of any other section, subsection, sentence,

clause, or phrase of this ordinance and the remainder of such ordinance shall continue in full force and effect the same as if such invalid or unconstitutional provision had never been a part hereof.

Section 6.

It is hereby officially found and determined that the meeting at which this ordinance is passed is open to the public and that public notice of the time, place, and purpose of said meeting was given as required by law.

Section 7.

| This ordinance s | shall become | effective | immediatel | ly upon i | ts passage | and pub | olication as | required |
|------------------|--------------|-----------|------------|-----------|------------|---------|--------------|----------|
| by law. | | | | | | | | |

| First and Final Reading: the _ | day of | , 20 |
|--------------------------------|----------------------------------|------|
| PASSED AND APPROVED this | day of | , 20 |
| | Mayor City of Burleson, Texas | |
| ATTEST: | APPROVED AS TO FOR | RM: |
| City Secretary | City Attorney | |

FIRST AMENDMENT TO

EXCLUSIVE FRANCHISE AGREEMENT FOR THE COLLECTION, HAULING, AND DISPOSAL OF MUNICIPAL SOLID WASTE IN THE CITY OF BURLESON, TEXAS BETWEEN THE CITY OF BURLESON AND WASTE CONNECTIONS LONE STAR, INC.

This First Amendment to Exclusive Franchise Agreement for the Collection, Hauling, and Disposal of Municipal Solid Waste in the City of Burleson, Texas ("<u>Amendment</u>") is made and entered into by and between the City of Burleson, a Texas home rule municipal corporation in the Counties of Johnson and Tarrant ("<u>City</u>") acting by and through its duly-authorized City Manager, and Waste Connections Lone Star, Inc., ("<u>Service Provider</u>"), a Texas corporation, acting by and through its duly-authorized corporate officer.

RECITALS:

WHEREAS, on or about May 20, 2019, the City and Service Provider entered into that Exclusive Franchise Agreement for the Collection, Hauling, and Disposal of Municipal Solid Waste in the City of Burleson, Texas (the "Agreement" as attached hereto as Exhibit A); and

WHEREAS, the parties desire to amend the Agreement by revising it to read as set forth below, with all other terms to remain unchanged;

NOW THEREFORE, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. <u>Section 11 titled "Term of the Agreement"</u> is hereby amended and replaced to read as follows:

The term of this Agreement shall commence on June 1, 2019, and conclude on September 30, 2029 (the "<u>Initial Term</u>"). The City and Service Provider may, upon mutual consent, extend the Agreement for additional five (5) year terms (the "<u>Renewal Terms</u>"). To enter into a Renewal Term, the City and Service Provider shall agree in writing no later than 180 calendar days prior to the expiration of the current term of their mutual consent to enter into a Renewal Term. If the Agreement is not renewed, the Agreement is terminated at the end of the current term.

- 2. <u>Section 9 titled "Rate Adjustment"</u> is hereby amended by adding subsections (D) and (E) to the Section without replacing any of the Section in the Agreement:
 - D. <u>Minimum Residential Base Rate Adjustment for Contract Year 10/1/23-9/30/24</u>. For the contract year October 1, 2023, through September 30, 2024, the Service Provider may request a Base Rate adjustment pursuant to Section 9(A) for the Base Rate for Residential Unit Services Solid Waste collection using either (i) the method provided in Section 9(A) or (ii) SIXTEEN AND 30/100S DOLLARS (\$16.30) per month for each Residential Unit for

twice per week Solid Waste collection. Additionally, for the contract year October 1, 2023, through September 30, 2024, the Service Provider may request a Base Rate adjustment pursuant to Section 9(A) for the Base Rate for Residential Unit Services Recycling collection using either (i) the method provided in Section 9(A) or (ii) THREE AND 03/100S DOLLARS (\$3.03) per month for each Residential Unit for once per week Recycling collection. The Service Provider shall request the Base Rate adjustments pursuant the terms of Section 9(A).

E. <u>Minimum Residential Base Rate Adjustment for Contract Year 10/1/24-9/30/25</u>. For the contract year October 1, 2024, through September 30, 2025, the Service Provider may request a Base Rate adjustment pursuant to Section 9(A) for the Base Rate for Residential Unit Services Solid Waste collection using either (i) the method provided in Section 9(A) or (ii) SEVENTEEN AND 28/100S DOLLARS (\$17.28) per month for each Residential Unit for twice per week Solid Waste collection. Additionally, for the contract year October 1, 2024, through September 30, 2025, the Service Provider may request a Base Rate adjustment pursuant to Section 9(A) for the Base Rate for Residential Unit Services Recycling collection using either (i) the method provided in Section 9(A) or (ii) THREE DOLLARS AND 21/100S DOLLARS (\$3.21) per month for each Residential Unit for once per week Recycling collection. The Service Provider shall request the Base Rate adjustments pursuant the terms of Section 9(A).

3. <u>Section 27 titled "Indemnity"</u> is hereby amended and replaced to read as follows:

TO THE MAXIMUM EXTENT PERMITTED BY LAW, SERVICE PROVIDER HEREBY AGREES AND CONSENTS FOR ITSELF. INDIVIDUALLY, AND ON BEHALF OF THE BUSINESS ENTITY REPRESENTED, TO FULLY AND UNCONDITIONALLY RELEASE, INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY OF BURLESON, TEXAS, INCLUDING ITS OFFICERS, AGENTS AND EMPLOYEES, AND TO DEFEND AND HOLD IT HARMLESS FROM AND AGAINST ANY AND ALL COSTS, EXPENSES, REASONABLE ATTORNEY FEES, CLAIMS, SUITS, DEMANDS, LOSSES, LIABILITY FOR INJURIES TO REAL OR PERSONAL PROPERTY AND INJURIES TO PERSONS INCLUDING DEATH, INCLUDING SERVICE PROVIDER'S EMPLOYEES, AFFILIATES, REPRESENTATIVES, PARTNERS. AGENTS, OR THOSE WORKING ON SERVICE PROVIDER'S BEHALF, FROM ANY AND ALL OTHER COSTS. EXPENSES, REASONABLE ATTORNEY FEES, CLAIMS, SUITS, DEMANDS, LOSSES OR LIABILITIES OF ANY AND EVERY NATURE WHATSOEVER TO THE EXTENT CAUSED BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF SERVICE PROVIDER, ITS OFFICERS, AGENTS OR EMPLOYEES, SAVE AND EXCEPT TO THE EXTENT SUCH ARE CAUSED BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE CITY. THIS PROVISION SHALL APPLY TO ALL IMPUTED OR ACTUAL JOINT ENTERPRISE AND JOINT VENTURE LIABILITY, IF ANY. The Service Provider agrees to protect the

City from claims involving infringements of patents and/or copyrights.

4. Section 29 titled "Termination" is hereby amended and replaced to read as follows:

In the event of a failure by either Party to perform any material provision of this Agreement, the complaining party shall give written notice of such breach to the breaching party along with at least thirty (30) days to correct such breach (the "Cure Period"). In the event the breaching party has not adequately corrected such breach in accordance with this Agreement, a hearing shall be held before the City Council. Upon completion of the Cure Period and the public hearing, the complaining party may terminate this Agreement and shall notify the breaching party in writing of such termination action. At such time, City shall pay Service Provider only all charges and fees for the services performed on or before such termination date. Following any such termination and the final payment from the City to Service Provider, neither party shall have any further obligation under this Agreement other than for claims for personal injuries or property damage as expressly provided in this Agreement and arising prior to such termination date.

5. <u>Section 37 titled "Miscellaneous Provisions"</u> is hereby amended by adding subsections (H), (I), (J), (K), (L), and (M) to the Section without replacing any of the Section in the Agreement:

- (H) Public Information. Service Provider acknowledges that City is obligated to strictly comply with the Public Information Act, Chapter 552, Texas Government Code, in responding to any request for public information pertaining to this Agreement, as well as any other disclosure of information required by applicable Texas law. The City's compliance with the Texas Public Information Act shall not violate the Agreement. Upon City's written request, Service Provider will promptly provide specified contracting information exchanged or created under this Agreement for or on behalf of City. The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Agreement and the Service Provider agrees that the Agreement can be terminated if the Service Provider knowingly or intentionally fails to comply with a requirement of that subchapter.
- (I) Conflicts Of Interest. By executing this Agreement, Service Provider and each person signing on behalf of Service Provider certifies, and in the case of a sole proprietorship, partnership or corporation, each party thereto certifies as to its own organization, that to the best of their knowledge and belief, no member of City Council, city manager, deputy city manager, city secretary, department heads, or deputy department heads of the City has direct or indirect financial interest in the award of this Agreement, or in the services to which this Agreement relates, or in any of the profits, real or potential, thereof, in violation of Section 132 of the Home Rule Charter of the City.
- (J) Anti-Boycotting Provisions. Service Provider acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
 - i. Pursuant to Section 2271.002 of the Texas Government Code, Service Provider certifies that either (i) it meets an exemption criterion under Section 2271.002; or (ii) it does not boycott Israel and will not boycott Israel

- during the term of the Agreement. Service Provider acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
- ii. Pursuant to SB 13, 87th Texas Legislature, Service Provider certifies that either (i) it meets an exemption criterion under SB 13, 87th Texas Legislature; or (ii) it does not boycott energy companies, as defined in Section 1 of SB 13, 87th Texas Legislature, and will not boycott energy companies during the term of the Agreement. Service Provider acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
- iii. Pursuant to SB 19, 87th Texas Legislature, Service Provider certifies that either (i) it meets an exemption criterion under SB 19, 87th Texas Legislature; or (ii) it does not discriminate against a firearm entity or firearm trade association, as defined in Section 1 of SB 19, 87th Texas Legislature, and will not discriminate against a firearm entity or firearm trade association during the term of the Agreement. Service Provider acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
- (K) Service Provider Certification Regarding Business With Certain Countries And Organizations. Pursuant to Subchapter F, Chapter 2252, Texas Government Code, Service Provider certifies Service Provider (1) is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Service Provider acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
- (L) Survival. Those obligations and representations under this Agreement which by their very nature should survive termination of this Agreement, shall survive termination of this Agreement.
- (M) Counterparts; PDF Signatures. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Any pdf-format or other electronic transmission of any signature of a signatory shall be deemed an original and shall bind such signatory.
- 6. **Effect of Amendment.** All other terms and conditions of the Agreement, with the exception of the terms modified by this Amendment, shall remain in full force and effect.

[Signature Pages to Follow.]

THE CITY OF BURLESON, a Texas municipal corporation

| | | By: | | | - 0 |
|------------------------------|----------------------|--|-------------|--------|----------------|
| | | Name: | | | ē |
| | | Title: | | | _ |
| | | Date: | | | |
| STATE OF TEX COUNTY OF JO | | | | | |
| | strument was ackn | nowledged before a be | ore me on | , , | 2023 by |
| Burleson, on beh | alf of said City. | | | | |
| [Notary Seal] | | | | | |
| | \overline{N} | otary Public, Sta | te of Texas | | |
| <u>APPROVED AS</u> | TO FORM: | | | | |
| City Attorney or | Denuty City Attorney | | | | |

WASTE CONNECTIONS LONE STAR, INC., a Texas corporation

By:

Name: Research Nielsent

Title: Region Vice President

Date: April 25, 2023

STATE OF TEXAS

COUNTY OF Motory Public, State of Texas

Connections Lone Star, Inc., on behalf of said Waste Connections Lone Star, Inc.

Notary Public, State of Texas

Comm. Expires 12-11-2023

Notary ID 132280495

Exhibit "A"

Agreement

EXCLUSIVE FRANCHISE AGREEMENT FOR THE COLLECTION, HAULING AND DISPOSAL OF MUNICIPAL SOLID WASTE IN THE CITY OF BURLESON, TEXAS

June 1, 2019

EXCLUSIVE FRANCHISE AGREEMENT FOR THE COLLECTION, HAULING AND DISPOSAL OF MUNICIPAL SOLID WASTE AND RECYCLING IN THE CITY OF BURLESON, TEXAS

STATE OF TEXAS

COUNTIES OF JOHNSON AND TARRANT

THIS EXCLUSIVE FRANCHISE AGREEMENT (this "Agreement") is made and entered into as of _________, 2019, to be effective on June 1, 2019 (the "Effective Date"), by and between Waste Connections Lone Star, Inc., a Texas Corporation (the "Service Provider"), and the City of Burleson, Texas (the "City").

WHEREAS, the City, subject to the terms and conditions set forth herein and the ordinances and regulations of the City, desires to grant to the Service Provider the exclusive franchise, license and privilege to collect, haul and dispose of Municipal Solid Waste and Recycling (as such terms are defined herein) within the City's corporate limits.

NOW, THEREFORE, in consideration of the premises and the mutual promises, covenants and agreements set forth herein, the Service Provider and the City hereby agree as follows:

SECTION 1. DEFINED TERMS.

The following terms, as used herein, will be defined as follows:

Bag - Plastic sacks, secured at the top, designed to store refuse with sufficient wall strength to maintain physical integrity when lifted by the top. Total weight of a bag and its contents shall not exceed 35 lbs.

<u>Bulky Item</u> - Furniture, freezers, refrigerators, stoves, water heaters, air conditioning units, heating units and any other appliances or other items of like kind or size.

Bundles - Items not measuring in excess of either forty-eight (48) inches in length or fifty (50) pounds in weight and which are securely fastened together.

Business Day - Any day that is not a Saturday, a Sunday or other day on which banks are required or authorized by law to be closed in the City.

<u>Commercial Unit</u> - Any non-manufacturing commercial facility that generates and accumulates Municipal Solid Waste or Construction and Demolition Waste during, or as a result of, its business, including, but not limited to, restaurants, stores and warehouses.

Construction and Demolition Waste - Solid Waste resulting from construction or demolition activities or that is directly or indirectly the by-product of such activities, including, but not limited to, cartons, concrete, excelsior, gypsum board, metal, paper, plastic, rubber and wood products. Construction and Demolition Waste does not include Hazardous Waste, Municipal Solid Waste or

Bulky Items.

Container -- Any Disposable Container, Reusable Container, or Recycling Container.

<u>Disposable Container</u> - Any box, carton or other container intended by the Residential and or Non-Residential Unit for the disposal of Municipal Solid Waste. Total weight of a Disposable Container and its contents shall not exceed 35 lbs.

Handicapped Residential Unit - Any residential dwelling that is inhabited by persons, all of whom are physically handicapped to the extent that they are unable to place Municipal Solid Waste and/or Recycling at the curbside, and that generates and accumulates Municipal Solid Waste. The Service Provider shall provide front door service to Residential Units which qualify for medical/other necessity as determined by the City. Service Provider cannot enter or be responsible for entering garages or behind enclosed fences.

Hazardous Waste - Waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency (EPA) under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, or so classified by any federal or State of Texas statute, rule, order or regulation.

Holidays - The following days:

- (1) New Year's Day (January 1st)
- (2) Thanksgiving Day
- (3) Christmas Day (December 25th).

Landfill - Any facility or area of land receiving Municipal Solid Waste or Construction and Demolition Waste and operating under the regulation and authority of the Texas Commission on Environmental Quality ("TCEQ") within the State of Texas, or the appropriate governing agency for landfills located outside the State of Texas.

<u>Municipal Solid Waste</u> - Solid Waste resulting from or incidental to municipal, community, commercial, institutional or recreational activities, or manufacturing, mining, or agricultural operations. Municipal Solid Waste does not include Construction and Demolition Waste or Hazardous Waste.

Non-Residential Unit - Any manually collected location within the corporate limits of the City that is not a Residential Unit requiring either a minor (10 bags per collection) or major (20 bags per collection) collection by the Service Provider.

Recycling – Materials including paper, cardboard, plastics 1-5 & 7, glass, and aluminum, tin and steel food containers. See Solid Waste and Recycling brochure for more specifics. Service Provider reserves the right, from time to time, to add to or delete items from the above list with agreement by the City, for which no secondary market continues to exist or may be created after proper notice to the City. The Service Provider has no control on market values of items collected and represents no assurance of the future viability of secondary markets.

Recycling Container - Container used for Residential Recycling collection. Container must be

64-gallon Toter brand cart or approved equivalent.

Residential Unit - A dwelling within the corporate limits of the City occupied by a person or group of persons comprising not more than four (4) families. A Residential Unit shall be deemed occupied when either water or domestic light and power services are being supplied thereto. A condominium dwelling, whether of a single or multi-level construction, consisting of four (4) or fewer contiguous or separate single family dwelling units, shall be treated as a Residential Unit, except that each single family dwelling within any such Residential Unit shall be billed separately as a Residential Unit. Any triplex or quadplex residential units have the option of standard minor/major hand collection from the Service Provider or securing a container from an approved commercial provider, including the Service Provider, providing the triplex and above property has the space for such a container.

Reusable Container – Any trash can intended by the Residential Unit for reuse in disposal of Municipal Solid Waste. The container shall be no more than 96 gallons in size, and all waste placed therein must be in bags and tied off. Container must not be overfilled preventing the lid from closing fully.

Solid Waste - As defined by the EPA under 40 C.F.R. § 261.2(a)(1) or by the State of Texas under the Solid Waste Disposal Act § 361.003(38) of the Texas Health and Safety Code, whether such waste is mixed with or constitutes recyclable materials.

Yard Waste -- Grass, grass clippings and leaves that have been collected in Bags and result from general yard cleanup.

SECTION 2. EXCLUSIVE FRANCHISE GRANT.

The City hereby grants to the Service Provider, in accordance with the City's ordinances and regulations governing the collection, hauling and disposal of Municipal Solid Waste, the exclusive franchise, license and privilege to collect, haul and dispose of Municipal Solid Waste from Non-Residential Units requiring manual collection and Residential Units over, upon, along and across the City's present and future streets, alleys, bridges and public properties, excluding third party recycling and solid waste collection in privately gated communities unless an agreement between the private community and the City is in effect, adding the community to the exclusive franchise. In order to maintain the exclusive franchise in favor of the Service Provider contained herein, the City shall take any and all appropriate legal action against any company, customer or third party infringing upon the exclusive rights of the Service Provider. In the event that the City fails to pursue appropriate legal action in order to remedy an infringement on the Service Provider's exclusive-franchise rights, the Service Provider may retain a subrogation right from the City against any and all violations of the exclusive-franchise grant described herein and shall be entitled to any and all actual and consequential damages.

SECTION 3. OPERATIONS.

A. <u>Municipal Solid Waste Scope of Operations</u>. It is expressly understood and agreed that the Service Provider will collect, haul and dispose of all Municipal Solid Waste in a Landfill paid for by Service Provider (all as provided herein) (i) generated and accumulated by Non-Residential

Units requiring manual collection and Residential Units, and (ii) placed within Bags and/or Disposable or Reusable Containers by those Residential Units and Non-Residential Units receiving the services of the Service Provider (or otherwise generated and accumulated in the manner herein provided by those Residential and Non-Residential Units), all within the City's corporate limits, including any territories annexed by the City during the term of this Agreement (the "MSW Services") in accordance with Texas State Law.

B. Municipal Recycling Scope of Operations. It is expressly understood and agreed that the Service Provider will collect, haul and dispose of all Municipal Recycling in a Material Recycling Facility paid for by Service Provider (all as provided herein) (i) generated and accumulated by Residential Units, and (ii) placed within Reusable Containers provided and delivered by Service Provider for initial distribution and replacement by those Residential Units receiving the services of the Service Provider (or otherwise generated and accumulated in the manner herein provided by those Residential Units), all within the City's corporate limits, including any territories annexed by the City during the term of this Agreement (the "Recycling Services") in accordance with Texas State Law. The MSW Services and Recycling Services may be collectively referred to herein as the "Services".

Nature of Operations. The City hereby grants to the Service Provider, in accordance with the City's ordinances and regulations governing the collection, hauling and disposal of Municipal Solid Waste and Recycling, the title to all Municipal Solid Waste and Recycling collected, hauled and disposed of by the Service Provider over, upon, along and across the City's present and future streets, alleys, bridges and public properties. All title to and liability for materials excluded from this Agreement shall remain with the generator of such materials.

SECTION 4. COLLECTIONS.

Non-Residential and Residential Units.

- A.1 The Service Provider will collect Municipal Solid Waste from Residential and Non-Residential Units twice per week; <u>provided</u>, that (i) such Municipal Solid Waste is placed in Disposable or Reusable Containers, and (ii) such Disposable or Reusable Containers are placed within five (5) feet of the curbside or right of way adjacent to the Non-Residential and Residential Unit no later than 7:00 a.m. on the scheduled collection day. All Solid Waste must be contained in Disposable containers even when Reusable Containers are used.
- A.2 The Service Provider will collect Recycling from Residential Units once per week; provided that (i) such Recycling is place in the provided Recycling Container, and (ii) such Recycling Container is placed within five (5) feet of the curbside or right of way adjacent to the Residential Unit no later than 7:00 a.m. on the scheduled collection day. Service Provider reserves the right to inspect Recycling put out for collection and to reject Recycling observed to be contaminated with Municipal Solid Waste any other materials excluded from this Agreement. The City acknowledges that: (i) Service Provider has the right, with agreement by City, to determine that there exists no viable secondary market for Recycling or any of its constituent categories of waste; and (ii) if no viable secondary market exists for Recycling or any of its constituent categories of waste, Service Provider may dispose of any such Recycling in any method permitted by law, including but not limited to disposing of such Recycling as Municipal Solid Waste pursuant to the terms hereof.

- B. Excess or Misplaced Municipal Solid Waste. The Service Provider shall only be responsible for collecting, hauling and disposing of Municipal Solid Waste placed inside the Bags or Containers or Recycling placed in Recycling Containers. Municipal Solid Waste or Recycling in excess of the Bag's or Container's limit, or placed outside or adjacent to the Bags or Containers, will not be collected by the Service Provider. However, such excess or misplaced Municipal Solid Waste and Recycling may be collected on occasion and within reason due to Holidays or other extraordinary circumstances as determined by the Service Provider and the City.
- C. <u>Handicapped Residential Units</u>. Notwithstanding anything to the contrary contained herein, the Service Provider agrees to assist Handicapped Residential Units with house-side collection of their Bags and/or Containers; <u>provided</u>, that the Service Provider receives prior written notice from the City of such special need.

SECTION 5. SPECIAL COLLECTIONS AND SERVICES.

- A. <u>Community Events</u>. In addition, the Service Provider will provide, at no cost to the City, one hundred (100) services using six-yard containers to collect Municipal Solid Waste at certain community events in the City; <u>provided</u>, that the City gives the Service Provider reasonable prior written notice of the date of such special event as well as the number of containers that will be required.
- B. Right of Way Brush Collection/Debris Processing. The Service Provider shall accept and process trees and brush associated with drainage and rights-of-way maintenance at the Waste Connections Fort Worth C&D Landfill.
- C. <u>Landfill Vouchers</u>. During the term of this Agreement, Service Provider will allow each Residential Unit to dispose of not more than one (1) ton of Solid Waste free of charge, two (2) times per calendar year at the Landfill commonly referred to as Turkey Creek Landfill, or such other Landfill as Service Provider may designate in its reasonable discretion.

SECTION 6. BULKY ITEMS, BUNDLES, AND YARD WASTE.

A. Large Volume Bulky Items & Bundles. The Service Provider will collect Bulky Items and Bundles from Residential Units once per month on each Residential Unit's scheduled zone collection week; provided, that the Bulky Items or Bundles (A) are placed at the curbside no later than 7:00 a.m. on the Monday of the scheduled collection week, and (B) are reasonably contained. The Service Provider shall only be responsible for collecting, hauling and disposing Bulky Items and Bundles from those Residential Units that have complied with this Section. Additionally, the Service Provider will submit a working list of locations for each collection zone to the City of Burleson Public Works Department via email by 9:00 a.m. Thursday morning and have all items collected by 12:00 p.m. on Friday of the scheduled collection week. In the event a location is not collected by the aforementioned collection deadline, City shall notify the Service Provider of the location of such missed pickup by Friday at 2:00 p.m. If the Service Provider has failed to remedy such missed pickup by 5:00 p.m. on Friday following such notice from the City, City has the option to collect the Bulky Items & Bundles. Recognizing neither Service Provider nor City can quantify the volume to be collected, during the first contract year City will not charge Service Provider a fee for missed collection. Beyond the first contract year, Service Provider and City will agree that

the fee per missed collection shall be: (a) \$1,000 per missed collection location or (b) such other amount mutually agreed upon in writing by the Parties prior to the expiration of the first contract year with said agreement being incorporated into this contract as an amendment. Refrigerators, freezers, dehumidifiers, air-conditioning units, and other appliances containing CFCs (chlorofluorocarbons)/HCFCs (hydrochlorofluorocarbons) will not be collected by the Service Provider unless these items have been certified in writing by a professional technician to have had all such refrigerants removed.

B. Small Volume Bulky Items, Bundles, Limbs, Brush and Yard Waste. The Service Provider shall collect up to 3 cubic yards of Bulky Items, Limbs, Brush, and Yard Waste weekly on the second scheduled collection day of each week for all Residential Units provided, that (i) these items are placed at the curbside no later than 7:00 a.m. on the scheduled collection day and (ii) are reasonably contained.

SECTION 7. TITLE TO EQUIPMENT.

Notwithstanding anything to the contrary contained herein, it is expressly understood and agreed that all equipment including, but not limited to, containers provided by the Service Provider in connection with the Services shall at all times remain the property of the Service Provider.

SECTION 8. RATES AND FEES.

Subject to adjustment, as provided in Section 9 hereof, the rates and fees to be charged and received by the Service Provider are as follows:

- A. Residential Unit Services. For the Services provided to Residential Units under Sections 4.A. and 6 hereof, the Service Provider shall charge (i) \$13.44 per month for each Residential Unit for twice per week Solid Waste collection, plus (ii) \$2.50 per month for each Residential Unit for once per week Recycling collection. These rates apply to all Residential Units that are located within the City's corporate limits and billed by the City or other water and sewer provider for water and sewer services. These rates are inclusive of all Bulky Items, Bundles, Limbs, Brush, and Yard Waste collections.
- B. Non-Residential Unit Services. Non-Residential Units requiring manual collection shall be charged either \$21.17 per month for the collection of a maximum of ten (10) Bags or one (1) 96 gallon cart per collection or \$32.14 per month for the collection of a maximum of twenty (20) Bags or two (2) 96 gallon carts per collection. This will be a twice per week collection service.

SECTION 9. RATE ADJUSTMENT.

A. CPI and Fuel Adjustment. Base Rate adjustments for changes in the (i) CPI (as defined below) and (ii) Fuel Index (as defined below) will be considered by the City no more than once per year during the month of September of each Contract Year beginning at the end of the first year comparing June 2020 with June 2019 for proposed base rate adjustment October 2020 and each year thereafter. Service Provider must receive approval from the City for such Base Rate increases, which approval shall not be unreasonably withheld. Service Provider's request for an

adjustment in the Base Rates for increases in the CPI and the Fuel Index shall be calculated as follows:

Service Provider shall first calculate the percentage of change in the Consumer Price Index for All Urban Consumers (published by the United States Bureau of Labor Statistics (the "Bureau"), Consumer Price Index, U.S. City Average, All Urban Consumers, Garbage and Trash Collection, Not Seasonally Adjusted, Based Period December 1983 = 100) for the nearest available metropolitan area (the "CPI") between the published final June CPI index of the then current year and the published final June CPI index of the immediately preceding year multiplied by 91.00% (the "CPI Component"). In the event the U.S. Department of Labor, Bureau of Labor Statistics ceases to publish the CPI, the parties will agree to substitute another equally authoritative measure of change in the purchasing power of the U.S. dollar as may be then available so as to carry out the intent of this provision.

Current CPI Index – Prior Year CPI Index
Prior Year CPI Index

X 91.00% = CPI Component

Service Provider shall also calculate the percentage of change in the cost of fuel during the prior 12 month period, using the weekly average price of diesel fuel, as determined by reference to the Energy Information Administration of the US Department of Energy ("BIA/DOE")'s Weekly Retail On Highway Diesel Prices for the Gulf Coast, published on the last Monday of each May of the Contract Year ("Fuel Index"). The EIA/DOE currently publishes these prices on their website at the following location:

https://www.eia.gov/opendata/qb.php?sdid=PET.EMD_EPD2D_PTE_R30_DPG.W Service Provider shall calculate the fuel cost adjustment by multiplying 9.00% by the percentage of change in the price of diesel fuel between (i) the average price of diesel fuel from the aforesaid website published for the last Monday of May of the then immediately prior year (the "Initial Fuel Base") and (ii) the average price of diesel fuel from the aforesaid website for the 52 weeks period immediately prior to the last Monday of May of the related contract year (the average being calculated by adding together the weekly fuel price for each of the 52 prior weeks, divided by 52) (the "Current Fuel Base").

Current Fuel Base - Prior Fuel Base
Prior Fuel Base X 9.00% = Fuel Adjustment Component

The CPI Component and the Fuel Adjustment Component shall be (i) added together, and (ii) then multiplied by the then current Base Rate to determine the adjustment in the Base Rate commencing October 1 of the 2020 Contract Year and each year thereafter.

(CPI Component + Fuel Adjustment Component) X Current Base = Base Rate Adjustment Rate

The City shall, within thirty (30) days after Service Provider's request for a Base Rate adjustment, advise Service Provider of its approval of an increase in the Base Rates effective as of October 1 of the then current year, or disapproval of Service Provider's request. If the City fails to render its decision within such thirty (30) day period, the request shall be deemed approved. The City's approval of Service Provider's request for an increase in the Base Rates, as calculated above, shall not be unreasonably withheld. The CPI adjustment shall not occur until the 2nd year of the Agreement.

C. Operating Cost Adjustment. If any new state, federal, or City mandated fees and/or taxes are imposed upon the services provided hereunder, the Service Provider shall notify the City. If the Service Provider desires to pass such fees or taxes through as part of its Base Rates, the Service Provider shall petition the City. The petition shall include documentation of the basis and method of assessment of such fees or taxes and such petition shall be considered by the City and shall not be unreasonably denied.

SECTION 10. EXCLUSIONS.

Notwithstanding anything to the contrary contained herein, this Agreement shall not cover the collection, hauling or disposal of any Hazardous Waste, Construction and Demolition Waste, manure from cow lots, horse stables, pigeon lofts and other related barn or farm type use, animal or human, dead animals, auto parts, used tires, batteries, concrete, dirt, gravel, rock or sand from any Non-Residential or Residential Unit

SECTION 11. TERM OF AGREEMENT.

The term of this Agreement shall be for a period of five (5) years, commencing on June 1, 2019 and concluding on May 30, 2024. At the expiration of each five (5) year term of this Agreement, The City and contractor may, upon mutual consent, extend the contract for an additional five (5) year term. Renewal shall be submitted to Service Provider no later than 180 calendar days prior to the expiration of the contract. If the agreement is not renewed, the contract is terminated at the end of the current contract period.

SECTION 12. ASSIGNMENT.

This Agreement shall not be assigned or sublet by the Service Provider without the prior written consent of the City; provided, however, that the Service Provider may assign this Agreement to an affiliated entity of the Service Provider or to any person or entity succeeding to all or substantially all of the Service Provider's assets (whether by operation of law, merger, consolidation or otherwise) without the City's consent. For purposes hereof, an "affiliated entity" means any entity that directly or indirectly owns more than 50% of the Service Provider, a subsidiary of the Service Provider's parent entity (provided the parent entity owns more than 50% of the voting shares of the subsidiary), a partnership or joint venture in which the Service Provider owns a controlling interest of more than 50%, or a subsidiary entity of the Service Provider in which the Service Provider owns a controlling interest of more than 50%. Service Provider shall provide written notice to the City of any assignment to an affiliated entity when the assignment is made. Any assignment, whether to an affiliated entity or otherwise, shall require the assignee to perform all of the terms and conditions of this Agreement.

{00085789,DOCX,3}

SECTION 13. ENFORCEMENT.

During the term of this Agreement and any extension thereof, the City agrees to adopt and maintain ordinances and revise existing ordinances so as to enable the Service Provider to provide the Services set forth herein. The City shall take any action reasonably necessary to prevent any other solid waste collection company from conducting business in violation of the exclusive franchise granted herein. To the maximum extent allowed by applicable law, the City also hereby grants to the Service Provider the right of ingress and egress from and upon the property of Non-Residential and Residential Units for the purposes of rendering the Services contemplated hereby.

SECTION 14. PROCESSING, BILLING AND FEES.

- A. Monthly Statement. On a monthly basis, the City agrees to bill and collect the rates and fees charged under Section 8 hereto from all Non-Residential, and Residential Units possessing active water meters within the City's corporate limits, as well as from all other Non-Residential and Residential Units requiring the collection, hauling and disposal of Municipal Solid Waste and Recycling (Residential Units only) within the City's corporate limits (the "Monthly Statement"). Thereafter, the City will remit to the Service Provider an amount equal to such Monthly Statement. Such remittance shall be made by the City on or before the 15th day of each month (for the immediately preceding month's service) commencing on June 15, 2019. Along with each monthly remittance, the City shall provide the Service Provider with a report indicating the number and rate of Residential and Non-Residential Units which have been billed for that month. Nothing herein shall prohibit the City from collecting sums in addition to those sums called for herein.
- B. <u>Taxes</u>. In addition to the amounts billed and collected by the City under Section 14.A., the City shall also be responsible for paying any and all sales, use and service taxes assessed or payable in connection with the Services.
- C. <u>Unpaid Rates/Fees; Stop Service</u>. The City shall notify the Service Provider of any Residential or Non-Residential Unit that has not paid for the Services. Upon notification from the City, the Service Provider shall quit providing the Services to any Residential or Non-Residential that has not paid the City.

SECTION 15. SPILLAGE.

It is understood and agreed that the Service Provider shall not be required to clean up, collect or dispose of any loose or spilled Municipal Solid Waste or Recycling not caused by the Service Provider's rendering of the Services, or be required to collect and dispose of any excess Municipal Solid Waste or Recycling placed outside of the Bags or Containers by any Non-Residential or Residential Unit. The Service Provider shall report the location of such conditions to the City so that the City can issue proper notice to the owner or occupant of the Non-Residential or Residential Unit instructing the owner or occupant to properly contain such Municipal Solid Waste.

SECTION 16. NON-COLLECTION NOTICE AND FOLLOW-UP.

A. <u>Notice from the Service Provider</u>. It is specifically understood and agreed that where the owner or occupant of a Non-Residential or Residential Unit fails to timely place Bags or Disposable Containers as directed in Section 4 hereof, or is otherwise in violation of the City's ordinances and

regulations, the Service Provider's reasonable rules adopted hereunder or the provisions of this Agreement relating to the nature, volume or weight of Municipal Solid Waste to be removed, the Service Provider may refrain from collecting all or a portion of such Municipal Solid Waste and will notify the City within eight (8) hours thereafter of the reason for such non-collection. The Service Provider will also provide written notice to the Non-Residential or Residential Unit of the reason for such non-collection, unless such non-collection is the result of the Non-Residential or Residential Unit's failure to timely place the Bags, Disposable/Reusable Containers, Yard Waste, Bulky Items or Bundles out for collection. Such written notice shall be attached to the uncollected Municipal Solid Waste, shall indicate the nature of the violation and shall indicate the correction required in order that such Municipal Solid Waste may be collected.

B. Notice from a Non-Residential or Residential Unit. Any missed collection, regardless of the reason must be picked up on the same day. Any missed collection called into the City after 5:00 p.m. on collection day must be collected prior to 10:00 a.m. the following business day. If the Service Provider fails to make the collection by 10:00 a.m. the next business day, then the City will make the collection and charge the Service Provider \$50 for each missed location.

SECTION 17. CONTRACT ADMINISTRATOR.

The Contract Administrator (as defined herein) will serve as sole liaison between the City Council & affected City Departments and the Service Provider. The Contract Administrator will be designated the responsibility to ensure compliance with contract requirements, such as but not limited to, acceptance, inspection and delivery. The Contract Administrator for this Agreement is the Director of Public Works or his/her designee.

SECTION 18. QUALITY OF PERFORMANCE AND LIQUIDATED DAMAGES.

All complaints received by the Director of Public Works or his/her designee, and reported to the Service Provider shall be promptly resolved pursuant to Section 16 of this Agreement. Service Provider's failure to remedy any verified complaint as a result of Service Provider's failure to perform its obligations hereunder shall be considered a breach of this Agreement, subject to all applicable notice and cure permit. In lieu of termination, the City may, but is not required to, assess Service Provider the following amounts as liquidated damages, which assessments, if any, shall be separately invoiced to Service Provider for payment:

- a) Failure to clean up Municipal Solid Waste spilled by Service Provider within two (2) business days after written notice to Service Provider each verified incident: \$50,00.
- b) Failure or neglect to collect Municipal Solid Waste from any Non-Residential or Residential Units at those times as required by this Agreement within one (1) business day of written notice thereof - each failure or repeated instance at same location: \$50.00.

c) Failure or neglect to correct chronic, recurring and repeated problems in either category a. or b. above (chronic, recurring and repeated shall mean three or more similar incidents at the same location within a three (3) month period) - each instance: \$200.00.

The parties agree that liquidated damages are not penalties, but represent a fair measure of damages which will be incurred by the City in the event of any of the above described specific defaults by the Service Provider. The claim for and the collection of such liquidated damages shall not affect the right of the City to claim and collect damages in excess of said liquidated damages if greater damages than those set forth above are actually incurred, nor shall the right of the City to claim and collect damages for non-performance on the part of the Service Provider relating to matters not specifically set forth in this section be waived.

For the purpose of this Section, the Contract Administrator may deduct any charges from payments due or to become due to the Service Provider. The Contract Administrator may assess charges pursuant to this Section on a monthly basis in connection with this proposal and shall at the end of each month during the term of this proposal notify the Service Provider in writing of the administrative charges assessed and the basis for each assessment. In the event the Service Provider wishes to contest such assessment he shall, within five (5) days after receiving such monthly notice, request in writing an opportunity to be heard by the Director of Public Works and present its defense to such assessment.

The Director of Public Works shall notify the Service Provider in writing of any action taken with respect to Service Provider's claims. The decision of the Director of Public Works or his/her designee shall be final.

SECTION 19. HOURS OF SERVICE.

For all the Services provided hereunder, the Service Provider's hours of service shall be between 7:00 a.m. to 6:00 p.m., Monday through Friday. The Service Provider will contact the Contract Administrator if there will be a delay in collections of any Solid Waste, Recycling or Bulky Items and Brush due to weather or equipment failures. The Service Provider will not be required to provide service on weekends or Holidays except during natural disasters or emergencies, and may, at its sole discretion, observe Holidays during the term of this Agreement; provided, however, that the Service Provider shall provide such services on the next scheduled collection day.

SECTION 20. CUSTOMER SERVICE & PUBLIC INFORMATION PROGRAMS.

The City agrees to field all inquiries and complaints from Residential Units relating to the collection, hauling and disposal of Municipal Solid Waste. The Service Provider and the City agree to cooperate with each other in the response to any such inquiries and the resolution of any such complaints. Service Provider will provide City with live, view only access to Provider's GPS truck tracking map including approved collection routes. Reports of missed collections will be reported to the Service Provider within one hour of receiving a complaint via email and/or phone call. Service Provider will acknowledge City communication, providing planned resolution to the issue within one (1) hour of City's original communication. The Service Provider will provide contact information to City as requested.

While the City is primarily responsible for distributing information on the program, Service Provider must assist the City in explaining the changes anticipated in the collection program. The public information program should emphasize means to reduce waste generation, how to safely and properly set-out waste for collection and what types of waste are acceptable and unacceptable for disposal. The use of existing information is encouraged as a means of reducing overall program costs.

SECTION 21. COMPLIANCE WITH APPLICABLE LAWS.

The Service Provider shall comply with all applicable federal and state laws regarding the collection, hauling and disposal of Municipal Solid Waste, Construction and Demolition Waste, and Recycling including existing and future laws that may be enacted, as well as any regulations reasonably passed by the City that are not in derogation of this Agreement. Nothing in this Agreement shall be construed in any manner to abridge the City's right to pass or enforce necessary police and health regulations for the reasonable protection of its inhabitants. The City shall have the right to make reasonable inspections of the Service Provider in order to insure compliance with this Section 21.

SECTION 22. VEHICLES AND EQUIPMENT.

Vehicles used by the Service Provider for the collection, hauling and disposal of Municipal Solid Waste and Construction, Demolition Waste, and Recycling shall be protected at all times while in transit to prevent the blowing or scattering of Municipal Solid Waste onto the City's public streets, or properties adjacent thereto, and such vehicles shall be clearly marked with the Service Provider's name, telephone number and unit number in letters and numbers not less than two (2) inches in height. All collection vehicles used by the Service Provider shall be washed and deodorized once per week. The Service Provider will provide Municipal Solid Waste collection for all customers using properly operating, well maintained, leak proof equipment. All liquid spills shall be contained and cleaned up in accordance with the City of Burleson Stormwater Management Program. All collection vehicles used by the Service Provider under this Agreement shall not exceed thirty (30) cubic yards in capacity.

The City may inspect the Service Provider's vehicles at any time to ensure compliance of equipment with this Agreement and if found non-compliant may require that the equipment be removed from City service and replaced prior to the next scheduled service with a different vehicle or the deficiencies corrected to the reasonable satisfaction of the City.

SECTION 23. <u>DUE CARE</u>.

The Service Provider shall exercise due care and caution in providing the Services so that the City's public and private property, including streets and parking areas, will be protected and preserved. Due to the street size variations in the City, the Service Provider shall provide equipment that will accommodate such public streets and alleys. Special collections shall be made using appropriate equipment. Damage caused by a negligent or willful act or omission of the Service Provider shall promptly be repaired or replaced at the Service Provider's expense. Service Provider shall not weave from curb to curb, drive in the middle of the road, or apply severe braking during routes through residential streets to prevent damage to infrastructure and for safety reasons. Service Provider will train drivers to protect City streets and not make sudden braking stops that will [00085789.DOCX.3]

damage street surfaces.

The parties acknowledge and agree that the Service Provider shall not be responsible for damage to any private pavement or accompanying sub-surface of any route reasonably necessary to perform the Services herein contracted and that the Non-Residential or Residential Unit assumes all liabilities for damage to pavement or road surface.

SECTION 24. PERSONNEL AND PERFORMANCE STANDARDS.

The Service Provider shall not deny employment to any person on the basis of race, creed or religion, and will insure that all federal and state laws pertaining to salaries, wages and operating requirements are met or exceeded. The Service Provider, its agents, servants and employees shall perform the Services in a courteous, competent and professional manner. During the term of this Agreement and any extension thereof, the Service Provider shall be responsible for the actions of its agents, servants and employees while such agents, servants and employees are acting within the scope of their employment or agency.

Service Provider shall provide the City a telephone number by which the Service Provider can be contacted for after-hours emergencies.

Service Provider shall consistently and continually establish and maintain an authorized Managing Agent and shall designate, in writing, to the City Manager the name, telephone number, and address of such agent upon whom all notices shall be served by the City and to whom complaints may be directed.

Service Provider shall assign one supervisory level employee to oversee Service Provider's operations in the City. Service Provider agrees that if the supervisory level employee normally assigned to the City is scheduled off work then Service Provider will assign a substitute supervisory employee who will have the same responsibilities as the regularly assigned supervisory employee. The City Manager, or his designee, will be given the name and contact information of the supervisor so assigned and will have the right to contact the supervisor directly should the need arise. The supervisor assigned to the City will be available to respond within two hours to issues that may arise.

Service Provider shall employ sufficient numbers of employees to meet its obligations under this Contract and employ only superintendents, supervisors, and workers who are careful, competent and fully qualified to perform the duties or tasks assigned to them and shall secure the summary dismissal of any person or persons employed by Service Provider in or about or on the work who shall misconduct themselves or be incompetent, disrespectful, intemperate, dishonest, or otherwise objectionable or neglectful in the proper performance of their duties or who shall neglect or refuse to comply with or carry out the directions of Service Provider. All workers shall have sufficient skill, ability, and experience to properly perform the work assigned to them and operate any equipment necessary to properly carry out the performance of their assigned duties. Service Provider shall perform driving record checks of all of Service Provider's drivers working within the City with said checks to be updated every twelve (12) months or as frequently as required by State or Federal Department of Transportation Regulations.

All field employees shall pass a drug test and criminal background check, as administered by the Service Provider, prior to working in the City. Service Provider shall not assign an employee to work within the City who has been either charged or convicted of a sexual act against a child. Service Provider shall remove any field employee not meeting this standard from working within the City and promptly advise the City of such occurrence.

Service Provider shall make collections with a minimum of noise and disturbance to the householder. This work shall be done in a sanitary manner. Any refuse or trash spilled by Service Provider shall be picked up immediately by the Service Provider's employees.

SECTION 25. INSURANCE COVERAGE.

Pursuant to this Agreement, the Service Provider shall carry the following types of insurance in an amount equal to or exceeding the limits specified below:

| | Type | Amount |
|----|--|--|
| 1. | Worker's Compensation - and | Statutory Limits |
| | Employer's Liability | \$300,000 per occurrence |
| 2. | Commercial (Public Liability), | Bodily Injury: |
| | including but not limited to: | \$1,000,000 per person |
| | | \$2,000,000 per occurrence |
| | A. Premises/Operations | |
| | B. Independent Service Providers | |
| | C. Personal Injury | Property Damage: |
| | D. Products/Complete Operations | \$1,000,000 per occurrence |
| | E. Contractual Liability (insuring | • |
| | above indemnity provisions) with general aggregate | of \$2,000,000 |
| 3. | Business (Commercial) Automobile Policy: | Combined Single Limit/ \$1,000,000.00 |
| | Example 1 viloj. | Ψ.,000,000,00 |

To the extent permitted by law, any or all of the insurance coverage required by this Section 26 may be provided under a plan(s) of self-insurance, including coverage provided by the Service Provider's parent corporation. The Service Provider shall furnish the City with a certificate of insurance verifying the insurance coverage required by this Section 26.

Insurance required herein shall be issued by a company or companies of sound and adequate financial responsibility, with a Best rating of no less than A-:VII, and authorized to do business in the State of Texas. All policies shall be subject to examination and approval by the City Attorney's office for their adequacy as to form, content, form of protection, and providing company. Insurance required by this Agreement for the City as additional insured shall be primary insurance and not contributing with any other insurance available to City, under any third party liability policy to the extent of Service Provider's liabilities assumed hereunder.

The Service Provider further agrees that with respect to the above required insurances, the City shall:

- Be named as additional insured/or an insured, on all required insurance except workers' compensation.
- Be provided with a waiver of subrogation, in favor of the City on all required insurance.
- Be provided with an unconditional 30 days advance written notice of cancellation or material change.

New certificates or copies of the policies shall be furnished prior to the expiration date of any prior certificate.

Additional Worker's Compensation Insurance Requirements:

Definitions:

Certificate of coverage ("certificate") A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, TWCC-84), showing statutory Worker's Compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project. Duration of the project - includes the time from the beginning of the work on the project until the Service Providers'/person's work on the project has been completed and accepted by the governmental entity.

Persons providing services on the project (subcontractor in 406.096) - includes all persons or entities performing all or part of the services the Service Provider has undertaken to perform on the project, regardless of whether that person contracted directly with the Service Provider and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, and employees of any such entity or employees of any entity, which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage contractors, office supply deliveries, and delivery of portable toilets.

The Service Provider shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements which meets the statutory requirements of Texas Labor Code, Section 401.011 (44) for all employees of the Service Provider providing services on the project, for the duration of the project.

SECTION 26, PERFORMANCE BOND.

The Service Provider is required to furnish a performance bond for \$250,000, and conditioned upon the faithful performance of the Agreement. The bond will have to be renewed annually for the duration of the Agreement and will vary depending on the total contract price each year.

SECTION 27. INDEMNITY.

The Service Provider agrees to indemnify and hold harmless the City and its agents, directors, {00085789.DOCX.3}

employees, officers and servants from and against any and all suits, actions, legal proceedings, claims, demands, damages, costs, liabilities, losses or expenses (including, but not limited to, reasonable attorneys' fees) caused by a willful or negligent act or omission of the Service Provider, its officers and employees. However, the Service Provider shall not be liable for any legal proceedings, claims, demands, damages, costs, expenses and attorneys' fees caused by a willful or negligent act or omission of the City, its agents, directors, employees, officers and servants. The Service Provider agrees to protect the City from claims involving infringements of patents and/or copyrights.

SECTION 28. SAVINGS PROVISION.

In the event that any term or provision of this Agreement shall be determined by a court of competent jurisdiction to be invalid or unenforceable, this Agreement shall, to the extent reasonably possible, remain in force as to the balance of its terms and provisions as if such invalid term or provision were not a part hereof.

SECTION 29. TERMINATION.

Any failure by either party or its successors and assigns to observe the terms and conditions of this Agreement shall, if continuing or persisting without remedy for more than ten (10) days after the receipt of due written notice from the other party, constitute grounds for forfeiture and immediate termination of all the defaulting party's rights under this Agreement, and all such rights shall become null and void.

SECTION 30. FORCE MAJEURE.

The performance of this Agreement may be suspended and the obligations hereunder excused in the event and during the period that such performance is prevented by a cause or causes beyond reasonable control of such party. The performance of this Agreement will be suspended and the obligations hereunder excused only until the condition preventing performance is remedied. Such conditions shall include, but not be limited to, acts of God, acts of war, accident, explosion, fire, flood, riot, sabotage, acts of terrorists, unusually severe weather, lack of adequate fuel, or judicial or governmental laws or regulations. A strike by the Service Provider's (or subcontractor's) labor force or labor dispute between the Service Provider and its labor force or subcontractors shall not be considered a Force Majeure.

SECTION 31. NATURAL DISASTERS.

Storms and Other Disasters - The work under the Agreement does not include the collection and disposal of any increased volume resulting from a flood, hurricane or other act of God over which the Service Provider has no control. In the event of such a flood, hurricane or other act of God, the Service Provider and the City may negotiate an agreement for payment to be made to the Service Provider subject to FEMA rates. Further, the City shall grant the Service Provider variances in routes and schedules as deemed necessary by the Service Provider and City as part of any said agreement.

In the event of any agreement and in the case of any natural disaster, fire, or emergency incident declared by the Mayor as a city-wide emergency, the Service Provider will respond immediately by directly assisting the City in the planning and execution of the clean up and/or mitigation phase for the recovery. The Service Provider will assure that all work performed by their employees, Service Provider's employees and necessary clean up equipment is charged at or below the allowable rates specified by the Federal Emergency Management Agency (FEMA). The Service Provider further agrees to provide documentation of the costs involved in the disaster mitigation in a form acceptable to FEMA for reimbursement.

SECTION 32. GOVERNING LAW.

This Agreement shall be governed in all respects, including as to validity, interpretation and effect, by the internal laws of the State of Texas, without giving effect to the conflict of laws rules thereof. The parties hereby irrevocably submit to the jurisdiction of the courts of the State of Texas and the Federal courts of the United States located in the State of Texas, solely in respect of the interpretation and enforcement of the provisions of this Agreement, and hereby waive, and agree not to assert, as a defense in any action, suit or proceeding for the interpretation or enforcement hereof, that it is not subject thereto or that such action, suit or proceeding may not be brought or is not maintainable in said courts or that the venue thereof may not be appropriate or that this Agreement may be enforced in or by said courts, and the parties hereto irrevocably agree that all claims with respect to such action or proceeding shall be heard and determined in such a Texas State or Federal court. The parties hereby consent to and grant any such court jurisdiction over the person of such parties and over the subject matter of any such dispute and agree that mailing of process or other papers in connection with any such action or proceeding to the addresses of the parties listed below, or in such other manner as may be permitted by law, permitted by law, shall be valid and sufficient service thereof.

SECTION 33. ATTORNEYS' FEES.

The prevailing party in any dispute between the parties arising out of the interpretation, application or enforcement of any provision hereof shall be entitled to recover all of its reasonable attorneys' fees and costs whether suit be filed or not, including without limitation costs and attorneys' fees related to or arising out of any trial or appellate proceedings.

SECTION 34. REMEDIES.

Pursuit of the remedies available to the parties under the Uniform Commercial Code shall not preclude pursuit of any other remedies provided in this Agreement or any other remedies provided by law, nor shall pursuit of any remedy provided in this Agreement constitute a waiver of any amount or performance due from the Service Provider under this Agreement or of any damages accruing by reason of the violation of its term, provisions and covenants. No waiver of any violations shall be deemed or construed to constitute a waiver of any other violation or other breach of any the terms, provisions and covenants contained in this Agreement, and forbearance to enforce one or more of the remedies as provided on an event of default shall not be deemed or construed to constitute a waiver of such default or of any other remedy provided for in this Agreement.

SECTION 35. CONTRACT SERVICES

Service Provider hereby covenants and agrees to diligently and faithfully perform the public service and work of collecting and disposing of all refuse of Residential and Non-Residential Units to which it provides service, as provided herein, with the City. These services shall include the furnishing of all labor, tools, vehicles, equipment, materials, landfills, insurance, performance bonds, supervision and all other items necessary to the performance of such work and shall be carried out in the manner, at the times, and in the locations and at the prices specified in the this Agreement, and shall be subject to inspection and approval of the City Manager, or his designee.

Service Provider shall provide evidence indicating that it has the right to use a landfill site for the purpose of this Agreement for the entire period of this Agreement and any agreed extensions thereto.

SECTION 36. REVIEW OF PERFORMANCE

The City may conduct an annual performance review, on or about the anniversary date of this Agreement, to review the previous twelve months performance. City staff shall present a summary regarding the handling and status of complaints received during the previous twelve months. The Service Provider shall be provided an opportunity to present information as well concerning the handling status of complaints or other service issues.

SECTION 37. MISCELLANEOUS PROVISIONS

- A. Relationship of Parties. Service Provider shall operate hereunder as an independent contractor and shall be solely responsible for the acts and omissions of its officers, agents, and employees. The doctrine of respondent superior shall not apply as between the City and the Service Provider. Nothing herein shall be construed as creating a partnership or joint venture between the City and the Service Provider, its officers, agents, and employees.
- B. Entirety of Agreement. This Agreement and all attachments incorporated herein by reference constitute the entire agreement between the parties concerning the subject matter hereof, and any prior or contemporaneous oral or written agreements which purport to vary from the terms hereof shall be void.
- C. Amendment of Agreement. This Agreement may not be altered, waived, or otherwise modified, except where done in writing, and signed by both parties.
- D. Notices: All notices required herein shall be sent to the respective parties by certified mail, return receipt requested, at the following addresses:

To Service Provider:

Waste Connections Lone Star, Inc.

4001 Old Denton Rd. Haltom City, TX 76117

With a copy to:

Waste Connections US, Inc. 3 Waterway Square Place The Woodlands, Texas 77380 Attn: Legal Department

To the City:

City of Burleson Attn: City Manager 141 West Renfro Burleson, Texas 76028-4261

City of Burleson Attn: Public Works Director 141 West Renfro Burleson, Texas 76028-4261

- E. No Surrender of Governmental Powers. Nothing in this Agreement shall be construed to surrender any of the government powers of the City of Burleson.
- F. No Waiver of Governmental Immunity. Notwithstanding anything in this Agreement or any exhibit to the contrary, nothing contained in this Agreement shall be construed as a waiver of City's governmental immunity, or of any damage caps or limitations imposed by law, or any other legal protections granted to City by law, except to the extent expressly provided or necessarily implied herein. In the event of a conflict between this provision and any other provision in this Agreement or any exhibit, the terms of this provision shall govern.
- G. Termination Due to Lack of Appropriations. Notwithstanding anything in this Agreement or any exhibit to the contrary, if City should not appropriate or otherwise receive funds sufficient to purchase, lease, operate, or maintain the services set forth in this Agreement, City may unilaterally terminate this Agreement effective on the final day of the fiscal year through which City has funding. City shall not activate this clause for its convenience or to circumvent the requirements of this Agreement, but only as an emergency fiscal measure during a substantial fiscal crisis, which affects generally its governmental operations. City will make every effort to give Provider at least thirty (30) days written notice prior to a termination for lack of appropriations. In the event of termination due to a lack of appropriations, City will pay Provider for all fees and expenses related to the services City has received, or Service Provider has incurred or delivered, prior to the effective date of termination. In the event of a conflict between this provision and any other provision in this Agreement or any exhibit, the terms of this provision shall govern.

[Signature Page to Follow]

SECTION 39. ACCEPTANCE.

PASSED AND APPROVED BY THE CITY OF BURLESON CITY COUNCIL AT THE COUNCIL MEETING AT A TIME AND PLACE IN COMPLETE CONFORMITY WITH THE OPEN MEETING LAWS OF THE STATE OF TEXAS AND ALL OTHER APPLICABLE LAWS THIS **20** DAY OF **May**, 2019.

WASTE CONNECTIONS LONE STAR, INC.

CITY OF BURLESON, TEXAS

By: White GILL TE Name: FORENT A. NIETSENTE Its: FEGION VICE PRESIDENT

Name: Obryan Changley Its: Oty Many

ATTEST:

Name: ADDE COTOLO Its: DEPONY CITY SECRETARY

EXCLUSIVE FRANCHISE AGREEMENT FOR THE COLLECTION, HAULING AND DISPOSAL OF MUNICIPAL SOLID WASTE IN THE CITY OF BURLESON, TEXAS

June 1, 2019

EXCLUSIVE FRANCHISE AGREEMENT FOR THE COLLECTION, HAULING AND DISPOSAL OF MUNICIPAL SOLID WASTE AND RECYCLING IN THE CITY OF BURLESON, TEXAS

STATE OF TEXAS

COUNTIES OF JOHNSON AND TARRANT

THIS EXCLUSIVE FRANCHISE AGREEMENT (this "Agreement") is made and entered into as of ________, 2019, to be effective on June 1, 2019 (the "Effective Date"), by and between Waste Connections Lone Star, Inc., a Texas Corporation (the "Service Provider"), and the City of Burleson, Texas (the "City").

WHEREAS, the City, subject to the terms and conditions set forth herein and the ordinances and regulations of the City, desires to grant to the Service Provider the exclusive franchise, license and privilege to collect, haul and dispose of Municipal Solid Waste and Recycling (as such terms are defined herein) within the City's corporate limits.

NOW, THEREFORE, in consideration of the premises and the mutual promises, covenants and agreements set forth herein, the Service Provider and the City hereby agree as follows:

SECTION 1. DEFINED TERMS.

The following terms, as used herein, will be defined as follows:

Bag - Plastic sacks, secured at the top, designed to store refuse with sufficient wall strength to maintain physical integrity when lifted by the top. Total weight of a bag and its contents shall not exceed 35 lbs.

Bulky Item - Furniture, freezers, refrigerators, stoves, water heaters, air conditioning units, heating units and any other appliances or other items of like kind or size.

<u>Bundles</u> - Items not measuring in excess of either forty-eight (48) inches in length or fifty (50) pounds in weight and which are securely fastened together.

Business Day - Any day that is not a Saturday, a Sunday or other day on which banks are required or authorized by law to be closed in the City.

<u>Commercial Unit</u> - Any non-manufacturing commercial facility that generates and accumulates Municipal Solid Waste or Construction and Demolition Waste during, or as a result of, its business, including, but not limited to, restaurants, stores and warehouses.

<u>Construction and Demolition Waste</u> - Solid Waste resulting from construction or demolition activities or that is directly or indirectly the by-product of such activities, including, but not limited to, cartons, concrete, excelsior, gypsum board, metal, paper, plastic, rubber and wood products. Construction and Demolition Waste does not include Hazardous Waste, Municipal Solid Waste or

Bulky Items.

Container – Any Disposable Container, Reusable Container, or Recycling Container.

<u>Disposable Container</u> - Any box, carton or other container intended by the Residential and or Non-Residential Unit for the disposal of Municipal Solid Waste. Total weight of a Disposable Container and its contents shall not exceed 35 lbs.

<u>Handicapped Residential Unit</u> - Any residential dwelling that is inhabited by persons, all of whom are physically handicapped to the extent that they are unable to place Municipal Solid Waste and/or Recycling at the curbside, and that generates and accumulates Municipal Solid Waste. The Service Provider shall provide front door service to Residential Units which qualify for medical/other necessity as determined by the City. Service Provider cannot enter or be responsible for entering garages or behind enclosed fences.

<u>Hazardous Waste</u> - Waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency (EPA) under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, or so classified by any federal or State of Texas statute, rule, order or regulation.

Holidays - The following days:

- (1) New Year's Day (January 1st)
- (2) Thanksgiving Day
- (3) Christmas Day (December 25th).

Landfill - Any facility or area of land receiving Municipal Solid Waste or Construction and Demolition Waste and operating under the regulation and authority of the Texas Commission on Environmental Quality ("TCEQ") within the State of Texas, or the appropriate governing agency for landfills located outside the State of Texas.

<u>Municipal Solid Waste</u> - Solid Waste resulting from or incidental to municipal, community, commercial, institutional or recreational activities, or manufacturing, mining, or agricultural operations. Municipal Solid Waste does not include Construction and Demolition Waste or Hazardous Waste.

Non-Residential Unit - Any manually collected location within the corporate limits of the City that is not a Residential Unit requiring either a minor (10 bags per collection) or major (20 bags per collection) collection by the Service Provider.

Recycling – Materials including paper, cardboard, plastics 1-5 & 7, glass, and aluminum, tin and steel food containers. See Solid Waste and Recycling brochure for more specifics. Service Provider reserves the right, from time to time, to add to or delete items from the above list with agreement by the City, for which no secondary market continues to exist or may be created after proper notice to the City. The Service Provider has no control on market values of items collected and represents no assurance of the future viability of secondary markets.

Recycling Container - Container used for Residential Recycling collection. Container must be

64-gallon Toter brand cart or approved equivalent.

Residential Unit - A dwelling within the corporate limits of the City occupied by a person or group of persons comprising not more than four (4) families. A Residential Unit shall be deemed occupied when either water or domestic light and power services are being supplied thereto. A condominium dwelling, whether of a single or multi-level construction, consisting of four (4) or fewer contiguous or separate single family dwelling units, shall be treated as a Residential Unit, except that each single family dwelling within any such Residential Unit shall be billed separately as a Residential Unit. Any triplex or quadplex residential units have the option of standard minor/major hand collection from the Service Provider or securing a container from an approved commercial provider, including the Service Provider, providing the triplex and above property has the space for such a container.

<u>Reusable Container</u> — Any trash can intended by the Residential Unit for reuse in disposal of Municipal Solid Waste. The container shall be no more than 96 gallons in size, and all waste placed therein must be in bags and tied off. Container must not be overfilled preventing the lid from closing fully.

<u>Solid Waste</u> - As defined by the EPA under 40 C.F.R. § 261.2(a)(1) or by the State of Texas under the Solid Waste Disposal Act § 361.003(38) of the Texas Health and Safety Code, whether such waste is mixed with or constitutes recyclable materials.

<u>Yard Waste</u> – Grass, grass clippings and leaves that have been collected in Bags and result from general yard cleanup.

SECTION 2. EXCLUSIVE FRANCHISE GRANT.

The City hereby grants to the Service Provider, in accordance with the City's ordinances and regulations governing the collection, hauling and disposal of Municipal Solid Waste, the exclusive franchise, license and privilege to collect, haul and dispose of Municipal Solid Waste from Non-Residential Units requiring manual collection and Residential Units over, upon, along and across the City's present and future streets, alleys, bridges and public properties, excluding third party recycling and solid waste collection in privately gated communities unless an agreement between the private community and the City is in effect, adding the community to the exclusive franchise. In order to maintain the exclusive franchise in favor of the Service Provider contained herein, the City shall take any and all appropriate legal action against any company, customer or third party infringing upon the exclusive rights of the Service Provider. In the event that the City fails to pursue appropriate legal action in order to remedy an infringement on the Service Provider's exclusive-franchise rights, the Service Provider may retain a subrogation right from the City against any and all violations of the exclusive-franchise grant described herein and shall be entitled to any and all actual and consequential damages.

SECTION 3. OPERATIONS.

A. <u>Municipal Solid Waste Scope of Operations</u>. It is expressly understood and agreed that the Service Provider will collect, haul and dispose of all Municipal Solid Waste in a Landfill paid for by Service Provider (all as provided herein) (i) generated and accumulated by Non-Residential

Units requiring manual collection and Residential Units, and (ii) placed within Bags and/or Disposable or Reusable Containers by those Residential Units and Non-Residential Units receiving the services of the Service Provider (or otherwise generated and accumulated in the manner herein provided by those Residential and Non-Residential Units), all within the City's corporate limits, including any territories annexed by the City during the term of this Agreement (the "MSW Services") in accordance with Texas State Law.

B. <u>Municipal Recycling Scope of Operations</u>. It is expressly understood and agreed that the Service Provider will collect, haul and dispose of all Municipal Recycling in a Material Recycling Facility paid for by Service Provider (all as provided herein) (i) generated and accumulated by Residential Units, and (ii) placed within Reusable Containers provided and delivered by Service Provider for initial distribution and replacement by those Residential Units receiving the services of the Service Provider (or otherwise generated and accumulated in the manner herein provided by those Residential Units), all within the City's corporate limits, including any territories annexed by the City during the term of this Agreement (the "Recycling Services") in accordance with Texas State Law. The MSW Services and Recycling Services may be collectively referred to herein as the "Services".

<u>Nature of Operations</u>. The City hereby grants to the Service Provider, in accordance with the City's ordinances and regulations governing the collection, hauling and disposal of Municipal Solid Waste and Recycling, the title to all Municipal Solid Waste and Recycling collected, hauled and disposed of by the Service Provider over, upon, along and across the City's present and future streets, alleys, bridges and public properties. All title to and liability for materials excluded from this Agreement shall remain with the generator of such materials.

SECTION 4. COLLECTIONS.

- Non-Residential and Residential Units.
 - A.1 The Service Provider will collect Municipal Solid Waste from Residential and Non-Residential Units twice per week; <u>provided</u>, that (i) such Municipal Solid Waste is placed in Disposable or Reusable Containers, and (ii) such Disposable or Reusable Containers are placed within five (5) feet of the curbside or right of way adjacent to the Non-Residential and Residential Unit no later than 7:00 a.m. on the scheduled collection day. All Solid Waste must be contained in Disposable containers even when Reusable Containers are used.
 - A.2 The Service Provider will collect Recycling from Residential Units once per week; provided that (i) such Recycling is place in the provided Recycling Container, and (ii) such Recycling Container is placed within five (5) feet of the curbside or right of way adjacent to the Residential Unit no later than 7:00 a.m. on the scheduled collection day. Service Provider reserves the right to inspect Recycling put out for collection and to reject Recycling observed to be contaminated with Municipal Solid Waste any other materials excluded from this Agreement. The City acknowledges that: (i) Service Provider has the right, with agreement by City, to determine that there exists no viable secondary market for Recycling or any of its constituent categories of waste; and (ii) if no viable secondary market exists for Recycling or any of its constituent categories of waste, Service Provider may dispose of any such Recycling in any method permitted by law, including but not limited to disposing of such Recycling as Municipal Solid Waste pursuant to the terms hereof.

- B. Excess or Misplaced Municipal Solid Waste. The Service Provider shall only be responsible for collecting, hauling and disposing of Municipal Solid Waste placed inside the Bags or Containers or Recycling placed in Recycling Containers. Municipal Solid Waste or Recycling in excess of the Bag's or Container's limit, or placed outside or adjacent to the Bags or Containers, will not be collected by the Service Provider. However, such excess or misplaced Municipal Solid Waste and Recycling may be collected on occasion and within reason due to Holidays or other extraordinary circumstances as determined by the Service Provider and the City.
- C. <u>Handicapped Residential Units</u>. Notwithstanding anything to the contrary contained herein, the Service Provider agrees to assist Handicapped Residential Units with house-side collection of their Bags and/or Containers; <u>provided</u>, that the Service Provider receives prior written notice from the City of such special need.

SECTION 5. SPECIAL COLLECTIONS AND SERVICES.

- A. <u>Community Events</u>. In addition, the Service Provider will provide, at no cost to the City, one hundred (100) services using six-yard containers to collect Municipal Solid Waste at certain community events in the City; <u>provided</u>, that the City gives the Service Provider reasonable prior written notice of the date of such special event as well as the number of containers that will be required.
- B. Right of Way Brush Collection/Debris Processing. The Service Provider shall accept and process trees and brush associated with drainage and rights-of-way maintenance at the Waste Connections Fort Worth C&D Landfill.
- C. <u>Landfill Vouchers</u>. During the term of this Agreement, Service Provider will allow each Residential Unit to dispose of not more than one (1) ton of Solid Waste free of charge, two (2) times per calendar year at the Landfill commonly referred to as Turkey Creek Landfill, or such other Landfill as Service Provider may designate in its reasonable discretion.

SECTION 6. BULKY ITEMS, BUNDLES, AND YARD WASTE.

A. Large Volume Bulky Items & Bundles. The Service Provider will collect Bulky Items and Bundles from Residential Units once per month on each Residential Unit's scheduled zone collection week; provided, that the Bulky Items or Bundles (A) are placed at the curbside no later than 7:00 a.m. on the Monday of the scheduled collection week, and (B) are reasonably contained. The Service Provider shall only be responsible for collecting, hauling and disposing Bulky Items and Bundles from those Residential Units that have complied with this Section. Additionally, the Service Provider will submit a working list of locations for each collection zone to the City of Burleson Public Works Department via email by 9:00 a.m. Thursday morning and have all items collected by 12:00 p.m. on Friday of the scheduled collection week. In the event a location is not collected by the aforementioned collection deadline, City shall notify the Service Provider of the location of such missed pickup by Friday at 2:00 p.m. If the Service Provider has failed to remedy such missed pickup by 5:00 p.m. on Friday following such notice from the City, City has the option to collect the Bulky Items & Bundles. Recognizing neither Service Provider nor City can quantify the volume to be collected, during the first contract year City will not charge Service Provider a fee for missed collection. Beyond the first contract year, Service Provider and City will agree that

the fee per missed collection shall be: (a) \$1,000 per missed collection location or (b) such other amount mutually agreed upon in writing by the Parties prior to the expiration of the first contract year with said agreement being incorporated into this contract as an amendment. Refrigerators, freezers, dehumidifiers, air-conditioning units, and other appliances containing CFCs (chlorofluorocarbons)/HCFCs (hydrochlorofluorocarbons) will not be collected by the Service Provider unless these items have been certified in writing by a professional technician to have had all such refrigerants removed.

B. <u>Small Volume Bulky Items, Bundles, Limbs, Brush and Yard Waste.</u> The Service Provider shall collect up to 3 cubic yards of Bulky Items, Limbs, Brush, and Yard Waste weekly on the second scheduled collection day of each week for all Residential Units provided, that (i) these items are placed at the curbside no later than 7:00 a.m. on the scheduled collection day and (ii) are reasonably contained.

SECTION 7. TITLE TO EQUIPMENT.

Notwithstanding anything to the contrary contained herein, it is expressly understood and agreed that all equipment including, but not limited to, containers provided by the Service Provider in connection with the Services shall at all times remain the property of the Service Provider.

SECTION 8. RATES AND FEES.

Subject to adjustment, as provided in Section 9 hereof, the rates and fees to be charged and received by the Service Provider are as follows:

- A. Residential Unit Services. For the Services provided to Residential Units under Sections 4.A. and 6 hereof, the Service Provider shall charge (i) \$13.44 per month for each Residential Unit for twice per week Solid Waste collection, plus (ii) \$2.50 per month for each Residential Unit for once per week Recycling collection. These rates apply to all Residential Units that are located within the City's corporate limits and billed by the City or other water and sewer provider for water and sewer services. These rates are inclusive of all Bulky Items, Bundles, Limbs, Brush, and Yard Waste collections.
- B. <u>Non-Residential Unit</u> Services. Non-Residential Units requiring manual collection shall be charged either \$21.17 per month for the collection of a maximum of ten (10) Bags or one (1) 96 gallon cart per collection or \$32.14 per month for the collection of a maximum of twenty (20) Bags or two (2) 96 gallon carts per collection. This will be a twice per week collection service.

SECTION 9. RATE ADJUSTMENT.

A. CPI and Fuel Adjustment. Base Rate adjustments for changes in the (i) CPI (as defined below) and (ii) Fuel Index (as defined below) will be considered by the City no more than once per year during the month of September of each Contract Year beginning at the end of the first year comparing June 2020 with June 2019 for proposed base rate adjustment October 2020 and each year thereafter. Service Provider must receive approval from the City for such Base Rate increases, which approval shall not be unreasonably withheld. Service Provider's request for an

adjustment in the Base Rates for increases in the CPI and the Fuel Index shall be calculated as follows:

Service Provider shall first calculate the percentage of change in the Consumer Price Index for All Urban Consumers (published by the United States Bureau of Labor Statistics (the "Bureau"), Consumer Price Index, U.S. City Average, All Urban Consumers, Garbage and Trash Collection, Not Seasonally Adjusted, Based Period December 1983 = 100) for the nearest available metropolitan area (the "CPI") between the published final June CPI index of the then current year and the published final June CPI index of the immediately preceding year multiplied by 91.00% (the "CPI Component"). In the event the U.S. Department of Labor, Bureau of Labor Statistics ceases to publish the CPI, the parties will agree to substitute another equally authoritative measure of change in the purchasing power of the U.S. dollar as may be then available so as to carry out the intent of this provision.

Current CPI Index – Prior Year CPI Index
Prior Year CPI Index

X 91.00% = CPI Component

Service Provider shall also calculate the percentage of change in the cost of fuel during the prior 12 month period, using the weekly average price of diesel fuel, as determined by reference to the Energy Information Administration of the US Department of Energy ("EIA/DOE")'s Weekly Retail On Highway Diesel Prices for the Gulf Coast, published on the last Monday of each May of the Contract Year ("Fuel Index"). The EIA/DOE currently publishes these prices on their website at the following location:

https://www.eia.gov/opendata/qb.php?sdid=PET.EMD EPD2D PTE R30 DPG.W Service Provider shall calculate the fuel cost adjustment by multiplying 9.00% by the percentage of change in the price of diesel fuel between (i) the average price of diesel fuel from the aforesaid website published for the last Monday of May of the then immediately prior year (the "Initial Fuel Base") and (ii) the average price of diesel fuel from the aforesaid website for the 52 weeks period immediately prior to the last Monday of May of the related contract year (the average being calculated by adding together the weekly fuel price for each of the 52 prior weeks, divided by 52) (the "Current Fuel Base").

Current Fuel Base — Prior Fuel Base
Prior Fuel Base — X 9.00% = Fuel Adjustment Component

The CPI Component and the Fuel Adjustment Component shall be (i) added together, and (ii) then multiplied by the then current Base Rate to determine the adjustment in the Base Rate commencing October 1 of the 2020 Contract Year and each year thereafter.

The City shall, within thirty (30) days after Service Provider's request for a Base Rate adjustment, advise Service Provider of its approval of an increase in the Base Rates effective as of October 1 of the then current year, or disapproval of Service Provider's request. If the City fails to render its decision within such thirty (30) day period, the request shall be deemed approved. The City's approval of Service Provider's request for an increase in the Base Rates, as calculated above, shall not be unreasonably withheld. The CPI adjustment shall not occur until the 2nd year of the Agreement.

C. <u>Operating Cost Adjustment</u>. If any new state, federal, or City mandated fees and/or taxes are imposed upon the services provided hereunder, the Service Provider shall notify the City. If the Service Provider desires to pass such fees or taxes through as part of its Base Rates, the Service Provider shall petition the City. The petition shall include documentation of the basis and method of assessment of such fees or taxes and such petition shall be considered by the City and shall not be unreasonably denied.

SECTION 10. EXCLUSIONS.

Notwithstanding anything to the contrary contained herein, this Agreement shall not cover the collection, hauling or disposal of any Hazardous Waste, Construction and Demolition Waste, manure from cow lots, horse stables, pigeon lofts and other related barn or farm type use, animal or human, dead animals, auto parts, used tires, batteries, concrete, dirt, gravel, rock or sand from any Non-Residential or Residential Unit

SECTION 11. TERM OF AGREEMENT.

The term of this Agreement shall be for a period of five (5) years, commencing on June 1, 2019 and concluding on May 30, 2024. At the expiration of each five (5) year term of this Agreement, The City and contractor may, upon mutual consent, extend the contract for an additional five (5) year term. Renewal shall be submitted to Service Provider no later than 180 calendar days prior to the expiration of the contract. If the agreement is not renewed, the contract is terminated at the end of the current contract period.

SECTION 12. ASSIGNMENT.

This Agreement shall not be assigned or sublet by the Service Provider without the prior written consent of the City; provided, however, that the Service Provider may assign this Agreement to an affiliated entity of the Service Provider or to any person or entity succeeding to all or substantially all of the Service Provider's assets (whether by operation of law, merger, consolidation or otherwise) without the City's consent. For purposes hereof, an "affiliated entity" means any entity that directly or indirectly owns more than 50% of the Service Provider, a subsidiary of the Service Provider's parent entity (provided the parent entity owns more than 50% of the voting shares of the subsidiary), a partnership or joint venture in which the Service Provider owns a controlling interest of more than 50%, or a subsidiary entity of the Service Provider in which the Service Provider owns a controlling interest of more than 50%. Service Provider shall provide written notice to the City of any assignment to an affiliated entity when the assignment is made. Any assignment, whether to an affiliated entity or otherwise, shall require the assignee to perform all of the terms and conditions of this Agreement.

SECTION 13. ENFORCEMENT.

During the term of this Agreement and any extension thereof, the City agrees to adopt and maintain ordinances and revise existing ordinances so as to enable the Service Provider to provide the Services set forth herein. The City shall take any action reasonably necessary to prevent any other solid waste collection company from conducting business in violation of the exclusive franchise granted herein. To the maximum extent allowed by applicable law, the City also hereby grants to the Service Provider the right of ingress and egress from and upon the property of Non-Residential and Residential Units for the purposes of rendering the Services contemplated hereby.

SECTION 14. PROCESSING, BILLING AND FEES.

- A. <u>Monthly Statement</u>. On a monthly basis, the City agrees to bill and collect the rates and fees charged under Section 8 hereto from all Non-Residential, and Residential Units possessing active water meters within the City's corporate limits, as well as from all other Non-Residential and Residential Units requiring the collection, hauling and disposal of Municipal Solid Waste and Recycling (Residential Units only) within the City's corporate limits (the "<u>Monthly Statement</u>"). Thereafter, the City will remit to the Service Provider an amount equal to such Monthly Statement. Such remittance shall be made by the City on or before the 15th day of each month (for the immediately preceding month's service) commencing on June 15, 2019. Along with each monthly remittance, the City shall provide the Service Provider with a report indicating the number and rate of Residential and Non-Residential Units which have been billed for that month. Nothing herein shall prohibit the City from collecting sums in addition to those sums called for herein.
- B. <u>Taxes</u>. In addition to the amounts billed and collected by the City under Section 14.A., the City shall also be responsible for paying any and all sales, use and service taxes assessed or payable in connection with the Services.
- C. <u>Unpaid Rates/Fees</u>; Stop Service. The City shall notify the Service Provider of any Residential or Non-Residential Unit that has not paid for the Services. Upon notification from the City, the Service Provider shall quit providing the Services to any Residential or Non-Residential that has not paid the City.

SECTION 15. SPILLAGE.

It is understood and agreed that the Service Provider shall not be required to clean up, collect or dispose of any loose or spilled Municipal Solid Waste or Recycling not caused by the Service Provider's rendering of the Services, or be required to collect and dispose of any excess Municipal Solid Waste or Recycling placed outside of the Bags or Containers by any Non-Residential or Residential Unit. The Service Provider shall report the location of such conditions to the City so that the City can issue proper notice to the owner or occupant of the Non-Residential or Residential Unit instructing the owner or occupant to properly contain such Municipal Solid Waste.

SECTION 16. NON-COLLECTION NOTICE AND FOLLOW-UP.

A. <u>Notice from the Service Provider</u>. It is specifically understood and agreed that where the owner or occupant of a Non-Residential or Residential Unit fails to timely place Bags or Disposable Containers as directed in Section 4 hereof, or is otherwise in violation of the City's ordinances and

regulations, the Service Provider's reasonable rules adopted hereunder or the provisions of this Agreement relating to the nature, volume or weight of Municipal Solid Waste to be removed, the Service Provider may refrain from collecting all or a portion of such Municipal Solid Waste and will notify the City within eight (8) hours thereafter of the reason for such non-collection. The Service Provider will also provide written notice to the Non-Residential or Residential Unit of the reason for such non-collection, unless such non-collection is the result of the Non-Residential or Residential Unit's failure to timely place the Bags, Disposable/Reusable Containers, Yard Waste, Bulky Items or Bundles out for collection. Such written notice shall be attached to the uncollected Municipal Solid Waste, shall indicate the nature of the violation and shall indicate the correction required in order that such Municipal Solid Waste may be collected.

B. <u>Notice from a Non-Residential or Residential Unit</u>. Any missed collection, regardless of the reason must be picked up on the same day. Any missed collection called into the City after 5:00 p.m. on collection day must be collected prior to 10:00 a.m. the following business day. If the Service Provider fails to make the collection by 10:00 a.m. the next business day, then the City will make the collection and charge the Service Provider \$50 for each missed location.

SECTION 17. CONTRACT ADMINISTRATOR.

The Contract Administrator (as defined herein) will serve as sole liaison between the City Council & affected City Departments and the Service Provider. The Contract Administrator will be designated the responsibility to ensure compliance with contract requirements, such as but not limited to, acceptance, inspection and delivery. The Contract Administrator for this Agreement is the Director of Public Works or his/her designee.

SECTION 18. QUALITY OF PERFORMANCE AND LIQUIDATED DAMAGES.

All complaints received by the Director of Public Works or his/her designee, and reported to the Service Provider shall be promptly resolved pursuant to Section 16 of this Agreement. Service Provider's failure to remedy any verified complaint as a result of Service Provider's failure to perform its obligations hereunder shall be considered a breach of this Agreement, subject to all applicable notice and cure permit. In lieu of termination, the City may, but is not required to, assess Service Provider the following amounts as liquidated damages, which assessments, if any, shall be separately invoiced to Service Provider for payment:

- a) Failure to clean up Municipal Solid Waste spilled by Service Provider within two (2) business days after written notice to Service Provider each verified incident: \$50.00.
- b) Failure or neglect to collect Municipal Solid Waste from any Non-Residential or Residential Units at those times as required by this Agreement within one (1) business day of written notice thereof each failure or repeated instance at same location: \$50.00.

c) Failure or neglect to correct chronic, recurring and repeated problems in either category a. or b. above (chronic, recurring and repeated shall mean three or more similar incidents at the same location within a three (3) month period) - each instance: \$200.00.

The parties agree that liquidated damages are not penalties, but represent a fair measure of damages which will be incurred by the City in the event of any of the above described specific defaults by the Service Provider. The claim for and the collection of such liquidated damages shall not affect the right of the City to claim and collect damages in excess of said liquidated damages if greater damages than those set forth above are actually incurred, nor shall the right of the City to claim and collect damages for non-performance on the part of the Service Provider relating to matters not specifically set forth in this section be waived.

For the purpose of this Section, the Contract Administrator may deduct any charges from payments due or to become due to the Service Provider. The Contract Administrator may assess charges pursuant to this Section on a monthly basis in connection with this proposal and shall at the end of each month during the term of this proposal notify the Service Provider in writing of the administrative charges assessed and the basis for each assessment. In the event the Service Provider wishes to contest such assessment he shall, within five (5) days after receiving such monthly notice, request in writing an opportunity to be heard by the Director of Public Works and present its defense to such assessment.

The Director of Public Works shall notify the Service Provider in writing of any action taken with respect to Service Provider's claims. The decision of the Director of Public Works or his/her designee shall be final.

SECTION 19. HOURS OF SERVICE.

For all the Services provided hereunder, the Service Provider's hours of service shall be between 7:00 a.m. to 6:00 p.m., Monday through Friday. The Service Provider will contact the Contract Administrator if there will be a delay in collections of any Solid Waste, Recycling or Bulky Items and Brush due to weather or equipment failures. The Service Provider will not be required to provide service on weekends or Holidays except during natural disasters or emergencies, and may, at its sole discretion, observe Holidays during the term of this Agreement; provided, however, that the Service Provider shall provide such services on the next scheduled collection day.

SECTION 20. CUSTOMER SERVICE & PUBLIC INFORMATION PROGRAMS.

The City agrees to field all inquiries and complaints from Residential Units relating to the collection, hauling and disposal of Municipal Solid Waste. The Service Provider and the City agree to cooperate with each other in the response to any such inquiries and the resolution of any such complaints. Service Provider will provide City with live, view only access to Provider's GPS truck tracking map including approved collection routes. Reports of missed collections will be reported to the Service Provider within one hour of receiving a complaint via email and/or phone call. Service Provider will acknowledge City communication, providing planned resolution to the issue within one (1) hour of City's original communication. The Service Provider will provide contact information to City as requested.

While the City is primarily responsible for distributing information on the program, Service Provider must assist the City in explaining the changes anticipated in the collection program. The public information program should emphasize means to reduce waste generation, how to safely and properly set-out waste for collection and what types of waste are acceptable and unacceptable for disposal. The use of existing information is encouraged as a means of reducing overall program costs.

SECTION 21. COMPLIANCE WITH APPLICABLE LAWS.

The Service Provider shall comply with all applicable federal and state laws regarding the collection, hauling and disposal of Municipal Solid Waste, Construction and Demolition Waste, and Recycling including existing and future laws that may be enacted, as well as any regulations reasonably passed by the City that are not in derogation of this Agreement. Nothing in this Agreement shall be construed in any manner to abridge the City's right to pass or enforce necessary police and health regulations for the reasonable protection of its inhabitants. The City shall have the right to make reasonable inspections of the Service Provider in order to insure compliance with this Section 21.

SECTION 22. VEHICLES AND EQUIPMENT.

Vehicles used by the Service Provider for the collection, hauling and disposal of Municipal Solid Waste and Construction, Demolition Waste, and Recycling shall be protected at all times while in transit to prevent the blowing or scattering of Municipal Solid Waste onto the City's public streets, or properties adjacent thereto, and such vehicles shall be clearly marked with the Service Provider's name, telephone number and unit number in letters and numbers not less than two (2) inches in height. All collection vehicles used by the Service Provider shall be washed and deodorized once per week. The Service Provider will provide Municipal Solid Waste collection for all customers using properly operating, well maintained, leak proof equipment. All liquid spills shall be contained and cleaned up in accordance with the City of Burleson Stormwater Management Program. All collection vehicles used by the Service Provider under this Agreement shall not exceed thirty (30) cubic yards in capacity.

The City may inspect the Service Provider's vehicles at any time to ensure compliance of equipment with this Agreement and if found non-compliant may require that the equipment be removed from City service and replaced prior to the next scheduled service with a different vehicle or the deficiencies corrected to the reasonable satisfaction of the City.

SECTION 23. DUE CARE.

The Service Provider shall exercise due care and caution in providing the Services so that the City's public and private property, including streets and parking areas, will be protected and preserved. Due to the street size variations in the City, the Service Provider shall provide equipment that will accommodate such public streets and alleys. Special collections shall be made using appropriate equipment. Damage caused by a negligent or willful act or omission of the Service Provider shall promptly be repaired or replaced at the Service Provider's expense. Service Provider shall not weave from curb to curb, drive in the middle of the road, or apply severe braking during routes through residential streets to prevent damage to infrastructure and for safety reasons. Service Provider will train drivers to protect City streets and not make sudden braking stops that will

damage street surfaces.

The parties acknowledge and agree that the Service Provider shall not be responsible for damage to any private pavement or accompanying sub-surface of any route reasonably necessary to perform the Services herein contracted and that the Non-Residential or Residential Unit assumes all liabilities for damage to pavement or road surface.

SECTION 24. PERSONNEL AND PERFORMANCE STANDARDS.

The Service Provider shall not deny employment to any person on the basis of race, creed or religion, and will insure that all federal and state laws pertaining to salaries, wages and operating requirements are met or exceeded. The Service Provider, its agents, servants and employees shall perform the Services in a courteous, competent and professional manner. During the term of this Agreement and any extension thereof, the Service Provider shall be responsible for the actions of its agents, servants and employees while such agents, servants and employees are acting within the scope of their employment or agency.

Service Provider shall provide the City a telephone number by which the Service Provider can be contacted for after-hours emergencies.

Service Provider shall consistently and continually establish and maintain an authorized Managing Agent and shall designate, in writing, to the City Manager the name, telephone number, and address of such agent upon whom all notices shall be served by the City and to whom complaints may be directed.

Service Provider shall assign one supervisory level employee to oversee Service Provider's operations in the City. Service Provider agrees that if the supervisory level employee normally assigned to the City is scheduled off work then Service Provider will assign a substitute supervisory employee who will have the same responsibilities as the regularly assigned supervisory employee. The City Manager, or his designee, will be given the name and contact information of the supervisor so assigned and will have the right to contact the supervisor directly should the need arise. The supervisor assigned to the City will be available to respond within two hours to issues that may arise.

Service Provider shall employ sufficient numbers of employees to meet its obligations under this Contract and employ only superintendents, supervisors, and workers who are careful, competent and fully qualified to perform the duties or tasks assigned to them and shall secure the summary dismissal of any person or persons employed by Service Provider in or about or on the work who shall misconduct themselves or be incompetent, disrespectful, intemperate, dishonest, or otherwise objectionable or neglectful in the proper performance of their duties or who shall neglect or refuse to comply with or carry out the directions of Service Provider. All workers shall have sufficient skill, ability, and experience to properly perform the work assigned to them and operate any equipment necessary to properly carry out the performance of their assigned duties. Service Provider shall perform driving record checks of all of Service Provider's drivers working within the City with said checks to be updated every twelve (12) months or as frequently as required by State or Federal Department of Transportation Regulations.

All field employees shall pass a drug test and criminal background check, as administered by the Service Provider, prior to working in the City. Service Provider shall not assign an employee to work within the City who has been either charged or convicted of a sexual act against a child. Service Provider shall remove any field employee not meeting this standard from working within the City and promptly advise the City of such occurrence.

Service Provider shall make collections with a minimum of noise and disturbance to the householder. This work shall be done in a sanitary manner. Any refuse or trash spilled by Service Provider shall be picked up immediately by the Service Provider's employees.

SECTION 25. INSURANCE COVERAGE.

3. Business (Commercial)

Automobile Policy:

Pursuant to this Agreement, the Service Provider shall carry the following types of insurance in an amount equal to or exceeding the limits specified below:

| | Type | | Amount |
|----|--|---------|---|
| 1. | Worker's Compensation - and | | Statutory Limits |
| | Employer's Liability | \$300.0 | 00 per occurrence |
| 2. | Commercial (Public Liability), | ψ500,0 | Bodily Injury: |
| | including but not limited to: | \$1,000 | ,000 per person |
| | | \$2,000 | ,000 per occurrence |
| | A. Premises/Operations B. Independent Service Providers C. Personal Injury D. Products/Complete Operations E. Contractual Liability (insuring above indemnity provisions) with general aggregate | • | Property Damage: 0,000 per occurrence \$2,000,000 |
| | | | |

Combined Single Limit/

\$1,000,000.00

To the extent permitted by law, any or all of the insurance coverage required by this Section 26 may be provided under a plan(s) of self-insurance, including coverage provided by the Service Provider's parent corporation. The Service Provider shall furnish the City with a certificate of insurance verifying the insurance coverage required by this Section 26.

Insurance required herein shall be issued by a company or companies of sound and adequate financial responsibility, with a Best rating of no less than A-:VII, and authorized to do business in the State of Texas. All policies shall be subject to examination and approval by the City Attorney's office for their adequacy as to form, content, form of protection, and providing company. Insurance required by this Agreement for the City as additional insured shall be primary insurance and not contributing with any other insurance available to City, under any third party liability policy to the extent of Service Provider's liabilities assumed hereunder.

The Service Provider further agrees that with respect to the above required insurances, the City shall:

- Be named as additional insured/or an insured, on all required insurance except workers' compensation.
- Be provided with a waiver of subrogation, in favor of the City on all required insurance.
- Be provided with an unconditional 30 days advance written notice of cancellation or material change.

New certificates or copies of the policies shall be furnished prior to the expiration date of any prior certificate.

Additional Worker's Compensation Insurance Requirements:

Definitions:

Certificate of coverage ("certificate") A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, TWCC-84), showing statutory Worker's Compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project. Duration of the project - includes the time from the beginning of the work on the project until the Service Providers'/person's work on the project has been completed and accepted by the governmental entity.

Persons providing services on the project (subcontractor in 406.096) - includes all persons or entities performing all or part of the services the Service Provider has undertaken to perform on the project, regardless of whether that person contracted directly with the Service Provider and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, and employees of any such entity or employees of any entity, which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage contractors, office supply deliveries, and delivery of portable toilets.

The Service Provider shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements which meets the statutory requirements of Texas Labor Code, Section 401.011 (44) for all employees of the Service Provider providing services on the project, for the duration of the project.

SECTION 26. PERFORMANCE BOND.

The Service Provider is required to furnish a performance bond for \$250,000, and conditioned upon the faithful performance of the Agreement. The bond will have to be renewed annually for the duration of the Agreement and will vary depending on the total contract price each year.

SECTION 27. INDEMNITY.

The Service Provider agrees to indemnify and hold harmless the City and its agents, directors,

employees, officers and servants from and against any and all suits, actions, legal proceedings, claims, demands, damages, costs, liabilities, losses or expenses (including, but not limited to, reasonable attorneys' fees) caused by a willful or negligent act or omission of the Service Provider, its officers and employees. However, the Service Provider shall not be liable for any legal proceedings, claims, demands, damages, costs, expenses and attorneys' fees caused by a willful or negligent act or omission of the City, its agents, directors, employees, officers and servants. The Service Provider agrees to protect the City from claims involving infringements of patents and/or copyrights.

SECTION 28. SAVINGS PROVISION.

In the event that any term or provision of this Agreement shall be determined by a court of competent jurisdiction to be invalid or unenforceable, this Agreement shall, to the extent reasonably possible, remain in force as to the balance of its terms and provisions as if such invalid term or provision were not a part hereof.

SECTION 29. TERMINATION.

Any failure by either party or its successors and assigns to observe the terms and conditions of this Agreement shall, if continuing or persisting without remedy for more than ten (10) days after the receipt of due written notice from the other party, constitute grounds for forfeiture and immediate termination of all the defaulting party's rights under this Agreement, and all such rights shall become null and void.

SECTION 30. FORCE MAJEURE.

The performance of this Agreement may be suspended and the obligations hereunder excused in the event and during the period that such performance is prevented by a cause or causes beyond reasonable control of such party. The performance of this Agreement will be suspended and the obligations hereunder excused only until the condition preventing performance is remedied. Such conditions shall include, but not be limited to, acts of God, acts of war, accident, explosion, fire, flood, riot, sabotage, acts of terrorists, unusually severe weather, lack of adequate fuel, or judicial or governmental laws or regulations. A strike by the Service Provider's (or subcontractor's) labor force or labor dispute between the Service Provider and its labor force or subcontractors shall not be considered a Force Majeure act. The lack of funds shall not be considered a Force Majeure.

SECTION 31. NATURAL DISASTERS.

Storms and Other Disasters - The work under the Agreement does not include the collection and disposal of any increased volume resulting from a flood, hurricane or other act of God over which the Service Provider has no control. In the event of such a flood, hurricane or other act of God, the Service Provider and the City may negotiate an agreement for payment to be made to the Service Provider subject to FEMA rates. Further, the City shall grant the Service Provider variances in routes and schedules as deemed necessary by the Service Provider and City as part of any said agreement.

In the event of any agreement and in the case of any natural disaster, fire, or emergency incident declared by the Mayor as a city-wide emergency, the Service Provider will respond immediately by directly assisting the City in the planning and execution of the clean up and/or mitigation phase for the recovery. The Service Provider will assure that all work performed by their employees, Service Provider's employees and necessary clean up equipment is charged at or below the allowable rates specified by the Federal Emergency Management Agency (FEMA). The Service Provider further agrees to provide documentation of the costs involved in the disaster mitigation in a form acceptable to FEMA for reimbursement.

SECTION 32. GOVERNING LAW.

This Agreement shall be governed in all respects, including as to validity, interpretation and effect, by the internal laws of the State of Texas, without giving effect to the conflict of laws rules thereof. The parties hereby irrevocably submit to the jurisdiction of the courts of the State of Texas and the Federal courts of the United States located in the State of Texas, solely in respect of the interpretation and enforcement of the provisions of this Agreement, and hereby waive, and agree not to assert, as a defense in any action, suit or proceeding for the interpretation or enforcement hereof, that it is not subject thereto or that such action, suit or proceeding may not be brought or is not maintainable in said courts or that the venue thereof may not be appropriate or that this Agreement may be enforced in or by said courts, and the parties hereto irrevocably agree that all claims with respect to such action or proceeding shall be heard and determined in such a Texas State or Federal court. The parties hereby consent to and grant any such court jurisdiction over the person of such parties and over the subject matter of any such dispute and agree that mailing of process or other papers in connection with any such action or proceeding to the addresses of the parties listed below, or in such other manner as may be permitted by law, permitted by law, shall be valid and sufficient service thereof.

SECTION 33. ATTORNEYS' FEES.

The prevailing party in any dispute between the parties arising out of the interpretation, application or enforcement of any provision hereof shall be entitled to recover all of its reasonable attorneys' fees and costs whether suit be filed or not, including without limitation costs and attorneys' fees related to or arising out of any trial or appellate proceedings.

SECTION 34. REMEDIES.

Pursuit of the remedies available to the parties under the Uniform Commercial Code shall not preclude pursuit of any other remedies provided in this Agreement or any other remedies provided by law, nor shall pursuit of any remedy provided in this Agreement constitute a waiver of any amount or performance due from the Service Provider under this Agreement or of any damages accruing by reason of the violation of its term, provisions and covenants. No waiver of any violations shall be deemed or construed to constitute a waiver of any other violation or other breach of any the terms, provisions and covenants contained in this Agreement, and forbearance to enforce one or more of the remedies as provided on an event of default shall not be deemed or construed to constitute a waiver of such default or of any other remedy provided for in this Agreement.

SECTION 35. CONTRACT SERVICES

Service Provider hereby covenants and agrees to diligently and faithfully perform the public service and work of collecting and disposing of all refuse of Residential and Non-Residential Units to which it provides service, as provided herein, with the City. These services shall include the furnishing of all labor, tools, vehicles, equipment, materials, landfills, insurance, performance bonds, supervision and all other items necessary to the performance of such work and shall be carried out in the manner, at the times, and in the locations and at the prices specified in the this Agreement, and shall be subject to inspection and approval of the City Manager, or his designee.

Service Provider shall provide evidence indicating that it has the right to use a landfill site for the purpose of this Agreement for the entire period of this Agreement and any agreed extensions thereto.

SECTION 36. REVIEW OF PERFORMANCE

The City may conduct an annual performance review, on or about the anniversary date of this Agreement, to review the previous twelve months performance. City staff shall present a summary regarding the handling and status of complaints received during the previous twelve months. The Service Provider shall be provided an opportunity to present information as well concerning the handling status of complaints or other service issues.

SECTION 37. MISCELLANEOUS PROVISIONS

- A. Relationship of Parties. Service Provider shall operate hereunder as an independent contractor and shall be solely responsible for the acts and omissions of its officers, agents, and employees. The doctrine of respondent superior shall not apply as between the City and the Service Provider. Nothing herein shall be construed as creating a partnership or joint venture between the City and the Service Provider, its officers, agents, and employees.
- B. Entirety of Agreement. This Agreement and all attachments incorporated herein by reference constitute the entire agreement between the parties concerning the subject matter hereof, and any prior or contemporaneous oral or written agreements which purport to vary from the terms hereof shall be void.
- C. Amendment of Agreement. This Agreement may not be altered, waived, or otherwise modified, except where done in writing, and signed by both parties.
- D. Notices: All notices required herein shall be sent to the respective parties by certified mail, return receipt requested, at the following addresses:

To Service Provider: Waste Connections Lone Star, Inc.

4001 Old Denton Rd. Haltom City, TX 76117

With a copy to: Waste Connections US, Inc.

3 Waterway Square Place The Woodlands, Texas 77380 Attn: Legal Department To the City:

City of Burleson Attn: City Manager 141 West Renfro

Burleson, Texas 76028-4261

City of Burleson

Attn: Public Works Director

141 West Renfro

Burleson, Texas 76028-4261

- E. No Surrender of Governmental Powers. Nothing in this Agreement shall be construed to surrender any of the government powers of the City of Burleson.
- F. No Waiver of Governmental Immunity. Notwithstanding anything in this Agreement or any exhibit to the contrary, nothing contained in this Agreement shall be construed as a waiver of City's governmental immunity, or of any damage caps or limitations imposed by law, or any other legal protections granted to City by law, except to the extent expressly provided or necessarily implied herein. In the event of a conflict between this provision and any other provision in this Agreement or any exhibit, the terms of this provision shall govern.
- G. Termination Due to Lack of Appropriations. Notwithstanding anything in this Agreement or any exhibit to the contrary, if City should not appropriate or otherwise receive funds sufficient to purchase, lease, operate, or maintain the services set forth in this Agreement, City may unilaterally terminate this Agreement effective on the final day of the fiscal year through which City has funding. City shall not activate this clause for its convenience or to circumvent the requirements of this Agreement, but only as an emergency fiscal measure during a substantial fiscal crisis, which affects generally its governmental operations. City will make every effort to give Provider at least thirty (30) days written notice prior to a termination for lack of appropriations. In the event of termination due to a lack of appropriations, City will pay Provider for all fees and expenses related to the services City has received, or Service Provider has incurred or delivered, prior to the effective date of termination. In the event of a conflict between this provision and any other provision in this Agreement or any exhibit, the terms of this provision shall govern.

[Signature Page to Follow]

SECTION 39. ACCEPTANCE.

PASSED AND APPROVED BY THE CITY OF BURLESON CITY COUNCIL AT THE COUNCIL MEETING AT A TIME AND PLACE IN COMPLETE CONFORMITY WITH THE OPEN MEETING LAWS OF THE STATE OF TEXAS AND ALL OTHER APPLICABLE LAWS THIS 20 DAY OF May ____, 2019.

WASTE CONNECTIONS LONE STAR, INC.

Name: REGUION VICE PRESIDEN! CITY OF BURLESON, TEXAS

Name:

ATTEST:

CSO#1033-05-2019 Consider a minute order approving a contract amendment to the Exclusive Franchise Agreement for the Collection, Hauling, and Disposal of Municipal Solid Waste in the City of Burleson.

Motion was made by Stuart Gillaspie and seconded by Todd K. Hulsey to approve.

Motion passed 7-0.

City Council Regular Meeting

6.B.

TO: Honorable Mayor Shetter and members of the Burleson City Council

FROM: Aaron Russell, Director of Public Works

DATE: 05/20/2019

SUBJECT: Consider a minute order approving a contract amendment to the Exclusive Franchise Agreement for the Collection, Hauling, and Disposal of Municipal Solid Waste in the City

of Burleson. (Staff Presenter: Aaron Russell, Public Works Director)

Council Action Requested:

Approve a minute order for a contract amendment to the Exclusive Franchise Agreement for the Collection, Hauling, and Disposal of Municipal Solid Waste in the City of Burleson.

collection service. There were three primary issues staff proposed to address.

- Solid Waste and Recycling containers
- Brush and Bulky Waste collection
- Operation of the Mulch & Recycling Center

The plan presented to the Council included the following steps.

- 1. Community Outreach At the March 23, 2018 meeting of the Infrastructure and Development Committee, city staff provided a presentation regarding a solid waste update implementation plan. The primary issue discussed was a community outreach plan. The committee members expressed support of the plan as presented. A summary of the Infrastructure and Development Committee discussions was provided to the City Council at the April 2, 2018 City Council meeting. The plan presented included the following:
 - Input solicitation
 - Utility Bills
 - Newsletter
 - City Website
 - Social Media
 - Six Town Hall style meetings with the public including a virtual meeting on Facebook
 - Online Survey (Paper version available as well)
- 2. Brush & Bulky Items collection At the June 26, 2018 meeting of the Infrastructure and Development Committee, city staff provided a presentation regarding the results of the solid waste service survey regarding brush and bulky item collection. The primary issue discussed was alternatives for brush and bulky item collection. The committee members expressed support of the plan as presented. The plan presented included the following:
 - Retain current monthly collection of large volume
 - Addition of weekly collection of volumes under 3 cubic yards
 - Closure of the Mulch & Recycling site
- 3. Garbage & Recycling Collection and Procurement Strategy At the July 24, 2018 meeting of the Infrastructure and Development Committee, city staff provided a presentation regarding the results of the solid waste service survey regarding garbage and recycling carts. The primary issues discussed were alternatives solid waste and recycling containers and procurement options for solid waste and recycling services. The committee members expressed support

the plan as presented. The committee members provided feedback that included changing the recycling container to a 65-gallon cart while leaving the garbage collection service as it currently is. Additionally, the committee directed staff to pursue an amendment to the current contract instead of issuing a Request for Proposals. A summary of the Infrastructure and Development Committee discussions was provided to the City Council at the August 6, 2018 City Council meeting.

4. Exclusive franchise for commercial collection - At the February 18, 2019 meeting of the Infrastructure and Development Committee, city staff provided a presentation regarding the results of the benefit analysis of an exclusive franchise agreement for commercial solid waste service. The primary issue discussed was the rate impacts of an exclusive franchise agreement for commercial solid waste collection. The committee members provided feedback in opposition to moving forward with an exclusive franchise for commercial solid waste collection.

Following the presentation of feedback from the community, service analysis by staff, and service comparisons with similar cities in the DFW metroplex, staff recommended a service plan to City Council and incorporated those elements into the proposed agreement. The primary contract updates are itemized below.

- Holidays
 - Reduced to New Year's Day, Thanksgiving Day, and Christmas Day
- Garbage Carts
 - Residents will be allowed to set out their own cart containing garbage
 - Maximum size 96 gallons
 - All garbage in the cart must be bagged.
- Landfill Access
 - Each account is afforded two free trips to the Turkey Peak landfill per year.
 - Maximum of one ton per trip
- Recycling Collection
 - Incorporates recycling collection in this contract
- Recycling Items
 - Service provider may add or delete items from the list of recyclable materials with approval by the City.
- Recycling Container
 - 64 Gallon Toter brand cart or approved equivalent
 - Owned and maintained by the Service Provider
- Small Bulk Collection
 - Adds weekly collection of bulky items under 3 cubic yards
- Large Bulk Collection
 - Collection by 12:00 pm on Friday
 - \$1,000 per missed collection not remedied by 5:00 pm on Friday after 1st year
- Contract Term
 - 5 year agreement
 - Contract renewal has been changed to require action to renew. The current contract requires action to terminate.
- Live view of Service Provider's truck GPS tracking map
- Contracted Residential Collection Rates
 - The contract rate for residential collection is proposed to decrease by \$0.55 per month or 3.34%. This new rate includes converting the recycling containers from 18-gallon bins to 64-gallon carts. In addition to the decrease in the contracted rate, operational changes provide for the closure of the City's mulch and recycling site. The operation of this site equates to \$1.69 per month for each customer. When incorporating the savings associated with closing the mulch and recycling site and assuming the current franchise

fee, the cost of solid waste and recycling collection is reduced by \$2.24 per month or 11.67%. All elements of the rate including internal charges are itemized below.

| CATEGORY | CURRENT RATE | PROPOSED RATE | RATE CHANGE |
|---------------------------|-----------------|------------------|----------------|
| Admin & Overhead | \$1.67 | \$0.50 | -\$1.17 |
| Grinder Services | \$0.52 | \$0.00 | -\$0.52 |
| Franchise Fee | \$0.52 | \$0.52 | \$0.00 |
| Solid Waste Collection | \$13.91 | \$13.44 | -\$0.47 |
| Recycling Collection | \$2.58 | \$2.50 | -\$0.08 |
| Total | \$19.20 | \$16.96 | -\$2.24 |

- Contracted Non-Residential Rates
 - The contract rate for Minor non-residential collection is proposed to decrease by \$0.34 or 1.58%. The contract rate for Major non-residential collection is proposed to increase by \$0.63 or 2%. All elements of the non-residential rates including internal charges are itemized below.

MINOR NON-RESIDENTIAL COLLECTION

| CATEGORY | CURRENT RATE | PROPOSED RATE | RATE CHANGE |
|---------------------------|-----------------|------------------|----------------|
| Admin & Overhead | \$1.95 | \$1.95 | \$0.00 |
| Franchise Fee | \$0.54 | \$0.54 | \$0.00 |
| Solid Waste Collection | \$21.51 | \$21.17 | -\$0.34 |
| Total | \$24.00 | \$23.66 | -\$0.34 |

MAJOR NON-RESIDENTIAL COLLECTION

| CATEGORY | CURRENT RATE | PROPOSED RATE | RATE CHANGE |
|------------------------|--------------|---------------|-------------|
| Admin & Overhead | \$1.95 | \$1.95 | \$0.00 |
| Franchise Fee | \$0.54 | \$0.54 | \$0.00 |
| Solid Waste Collection | \$31.51 | \$32.14 | +\$0.63 |
| Total | \$34.00 | \$34.63 | +\$0.63 |

Board/Citizen Input:

- 1. Survey
- 2. Town Hall Meetings
 - Senior Center
 - Library
 - · City Hall
 - Bransom Elementary
 - Hajek Elementary
 - Facebook (virtual)

Fiscal Impact

Budgeted Y/N: Y

Fund Name: Solid Waste

Full Account #s: 404-4013-441.90-04

Amount:

Project (if applicable): Financial Considerations:

Purchase Order previously approved.

Budgeted Y/N: Y

Fund Name: Solid Waste

Full Account #s: 404-4013-441.90-08

Amount:

Project (if applicable): Financial Considerations:

Purchase Order previously approved.

Attachments

Presentation Contract (clean version) Contract (redline) 1295 Form

Staff Contact:

Aaron Russell, P.E. Director of Public Works 817-426-9837 arussell@burlesontx.com

Submitted for City Manager's Office by: Robert Ranc

CERTIFICATE OF INTERESTED PARTIES

FORM **1295**

1 of 1

| | | | | | 1011 | |
|---|---|---|---------------------------------------|-------------------------------------|-----------|--|
| | Complete Nos. 1 - 4 and 6 if there are interested parties. Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties. | OFFICE USE ONLY CERTIFICATION OF FILING | | | | |
| 1 | Name of business entity filing form, and the city, state and country of the business entity's place of business. | | | Certificate Number: 2023-1012085 | | |
| | Waste Connections Lone Star, inc. | | 2020 1 | 312003 | | |
| | Haltom City, TX United States | | Date Fil | ed: | | |
| 2 | Name of governmental entity or state agency that is a party to the cor | ntract for which the form is | 04/25/2023 | | | |
| | being filed. | | | | | |
| | City of Burleson | | Date Ac | knowledged: | | |
| 3 | Provide the identification number used by the governmental entity or description of the services, goods, or other property to be provided u | | the cont | ract, and prov | ide a | |
| | First Amendment Exclusive Franchise agreement for the Collection, Hauling, and Di | sposal of Municipal Solid Wast | е | | | |
| 4 | Name of Interested Party City | y, State, Country (place of busine | Nature of interest (check applicable) | | | |
| | , | ,,,, (, | Controlling Intermediary | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| 5 | Check only if there is NO Interested Party. | | | | | |
| 5 | UNSWORN DECLARATION | | | | | |
| | My name is Akel Moreno | and my date of b | oirth is | | <u> </u> | |
| | My address is 8044 Geranium LD (street) | Fort Worth (sta | ite) | 76117 (zip code) | (country) | |
| | I declare under penalty of perjury that the foregoing is true and correct. | | | | | |
| | Executed in | | | | | |
| | (month) (year) | | | | | |
| | Signature of authorized agent of contracting business entity | | | | | |
| | | (Declarant) | | | , | |



City Council Regular Meeting

DEPARTMENT: Fire

FROM: Josh Jacobs, Assistant Chief

MEETING: May 1, 2022

SUBJECT:

Consider approval of a contract with Siddons Martin Emergency Group to purchase two Pierce-Custom Velocity PUC engines, and communication components through a cooperative purchasing agreement with Houston Galveston Area Council in the amount not to exceed \$2,600,000. (Staff Presenter: Josh Jacobs, Assistant Chief)

SUMMARY:

The purpose of this discussion is to provide the City Council with the appropriate documents and specifications for review. Staff is requesting Council to consider approving two Pierce Velocity PUC apparatus as well as additional critical equipment that is necessary to provide both Fire and EMS services. For example some of the necessary critical equipment that is needed upon delivery includes, a cardiac monitor, Lucas compression device, full ensemble of rescue tools, radios, supply and attack hose, ladders, etc. The delivery timeframe from the time of order is projected by Siddons Martin to be 27-28 months. However, as mentioned in the presentation, based on current supply chain delays and feedback from vendors, staff anticipates the delivery date could be up to 36 months. The new apparatus will serve as frontline units and will replace the current reserve apparatus that are reaching end of life service and are becoming less dependable when needed. Upon delivery of the new apparatus the current frontline Pumpers will serve as reserve apparatus and the current reserve apparatus will be removed from the fleet.

OPTIONS:

- Approve as presented
- 2) Approve with changes
- 3) Deny

RECOMMENDATION:

Staff recommends approval of purchase

PRIOR ACTION/INPUT (Council, Boards, Citizens):

N/A

FISCAL IMPACT:

Explain fiscal impact if any

STAFF CONTACT:

Josh Jacobs Assistant Chief <u>jiacobs@burlesontx.com</u> 817-426-9172





Burleson Fire/EMS Apparatus Replacement Discussion

May 1st, 2023





Objectives

- Historical Background
- Current status
- Plan for success
- Present an action item for consideration





Historically

Engine

- 20 Year Lifespan
- Cost of engine purchased in 2019 \$780,000
- Delivery approximately 12 months from order

Challenges and Causation

Challenges

 We have experienced a rise in both frequency and length of Out-of-Service events

Causation

- Burleson Fire/EMS has a significant increase in call volume
- Supply chain issues for parts
- Complexity of fire apparatus











Same Engine Today

Engine

- \$1,025,981 per engine (32% increase since 2019)
- 26-27 month proposed delivery timeframe



Staff Adjustments

- Meetings with Finance, Public Works and CMO were conducted and mutually agreed upon that lifespan of our large apparatus trucks need to be moved from 20 years to 16
- Staff is unified with moving forward with an 8 year frontline/8 year reserve on large apparatus (16 year lifespan) in order to enhance continuous service of our primary trucks.









Required Equipment

\$240,000 for Fire, EMS and radio equipment per engine.

- Hose
- Nozzles
- Rescue Tools
- Power Tools
- LUCAS Device
- Heart Monitor
- Radios
- Cradle Points & IPADs



| Apparatus | 20 Year Timeline | Proposed Timeline |
|--------------|---------------------|------------------------|
| Engine - 194 | 2027 | August 2025-April 2026 |
| Engine - 528 | 2029 | August 2025-April 2026 |

Replacement Timeline Adjustment





Cost/Savings

Two Engines and critical fire and EMS equipment

- Total not to exceed \$2,600,000
 - Opportunity for savings approx. \$223,000
 - EPA standards change in 2027 (\$70,000/engine \$140,000 total)
 - Quarterly price increases (1.25% minimum, next one due Aug 1st)
- Funding for the trucks are not due at the time the order is placed.
 - Staff is completing a funding analysis to determine how the total funding will be appropriated and anticipates having this completed by the time fund presentations are provided to council.











Summary

- Engines historically operated/funded on 20 year timeline
 - Staff recommends 8/8 16 year total
- Prices have been averaging 6% or higher annual increases
 - These are being assessed quarterly
- Longer lead times on orders
 - We are projecting 32-36 months
- Current reserves OOS more frequently and for longer periods
 - Apparatus more complex, parts difficult to source
- Move forward with apparatus as a project
 - Staff recommendation to ensure we have functional and serviceable equipment.





Council Action Requested

Option 1

 Approve an amount not to exceed \$2,600,000 for the purchase of two new Pierce Velocity Pumpers and required Fire, EMS, and radio equipment.

Option 2

- Deny purchase of Pierce Velocity pumpers and required Fire, EMS and radio equipment.
- Staff's recommendation is approval of Option 1



Conclusion

QUESTIONS?

Siddons Martin Emergency Group, LLC 3500 Shelby Lane Denton, TX 76207 GDN P115891 TXDOT MVD No. A115890

April 20, 2023

Bryan Langley, City Manager CITY OF BURLESON 141 W RENFRO ST BURLESON, TX 76028



Proposal For: 2023 Burleson Pumper

Siddons-Martin Emergency Group, LLC is pleased to provide the following proposal to the CITY OF BURLESON. Unit will comply with all specifications attached and made a part of this proposal. Total price includes delivery FOB CITY OF BURLESON and training on operation and use of the apparatus.

Description Amount

Qty. 2 - 733 - Pierce-Custom Velocity Pumper, PUC (Unit Price - \$1,024,981.00)
Delivery within 27-28 months of order date
QUOTE # - SMEG-0005514-4

Vehicle Price \$2,049,962.00

733 - UNIT TOTAL \$2,049,962.00

SUB TOTAL \$2,049,962.00 HGAC FS12-19 (FIRE) \$2,000.00

TOTAL \$2,051,962.00

Price guaranteed until 5/2/2023

Additional: 'NOTE: Due to global supply chain constraints, any delivery date contained herein is a good faith estimate as of the date of this order/contract, and merely an approximation based on current information. Delivery updates will be made available, and a final firm delivery date will be provided as soon as possible.'

Taxes: Tax is not included in this proposal. In the event that the purchasing organization is not exempt from sales tax or any other applicable taxes and/or the proposed apparatus does not qualify for exempt status, it is the duty of the purchasing organization to pay any and all taxes due. Balance of sale price is due upon acceptance of the apparatus at the factory.

Late Fee: A late fee of .033% of the sale price will be charged per day for overdue payments beginning ten (10) days after the payment is due for the first 30 days. The late fee increases to .044% per day until the payment is received. In the event a prepayment is received after the due date, the discount will be reduced by the same percentages above increasing the cost of the apparatus.

Cancellation: In the event this proposal is accepted and a purchase order is issued then cancelled or terminated by Customer before completion, Siddons-Martin Emergency Group may charge a cancellation fee. The following charge schedule based on costs incurred may be applied:

- (A) 10% of the Purchase Price after order is accepted and entered by Manufacturer;
- (B) 20% of the Purchase Price after completion of the approval drawings;
- (C) 30% of the Purchase Price upon any material requisition.

The cancellation fee will increase accordingly as costs are incurred as the order progresses through engineering and into manufacturing. Siddons-Martin Emergency Group endeavors to mitigate any such costs through the sale of such product to another purchaser; however, the customer shall remain liable for the difference between the purchase price and, if applicable, the sale price obtained by Siddons-Martin Emergency Group upon sale of the product to another purchaser, plus any costs incurred by Siddons-Martin to conduct such sale.

Acceptance: In an effort to ensure the above stated terms and conditions are understood and adhered to, Siddons-Martin Emergency Group, LLC requires an authorized individual from the purchasing organization sign and date this proposal and include it with any purchase order. Upon signing of this proposal, the terms and conditions stated herein will be considered binding and accepted by the Customer. The terms and acceptance of this proposal will be governed by the laws of the state of Texas. No additional terms or conditions will be binding upon Siddons-Martin Emergency Group, LLC unless agreed to in writing and signed by a duly authorized officer of Siddons-Martin Emergency Group, LLC.

| Sincerely, | | | | |
|----------------------------------|---|--------------------|------------------|-----------|
| Brian Peters | | | | |
| Brian Peters | | | | |
| I,agree to the terms of this pro | , the authorized representa oposal and the specification | BURLESON, agree to | purchase the pro | posed and |
| Signature & Date | | | | |

CERTIFICATE OF INTERESTED PARTIES

FORM **1295**

1 of 1

| | | | | | | 1011 |
|--|----------------|----------------------|----------------------------------|---|-----------------|----------------|
| Complete Nos. 1 - 4 and 6 if there are interested parties. Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties. | | | | OFFICE USE ONLY CERTIFICATION OF FILING | | |
| Name of business entity filing form, and the city, state and country of the business entity's place of business. | | | Certificate Number: 2023-1010936 | | | |
| Siddons Martin Emergency Group, LLC | | | 2023-10 | J_U3JU | | |
| Houston, TX United States | | | | Date Fil | ed: | |
| Name of governmental entity or state agency that is | a party to the | contract for which | the form is | 04/24/2 | | |
| being filed. | ,, to the | winoil | | | | |
| City of Burleson | | | | Date Acknowledged: | | |
| Provide the identification number used by the govern description of the services, goods, or other property | | | | the cont | tract, and prov | ide a |
| #733 Two (2) Pumpers | | | | | | |
| | | | | | Nature of | interest |
| Name of Interested Party | | City, State, Country | y (place of busin | · - | (check ap | |
| | | | | | Controlling | Intermediary |
| Siddons Martin Holding, Inc. | | Houston, TX Unit | ted States | ; | X | |
| | | | | | | |
| | | | | $_ \top$ | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| 6 Check only if there is NO Interested Party. | | | | | | |
| UNSWORN DECLARATION | | | | | | |
| My name isKathryn Williams | | | , and my date of | birth is | | |
| My address is | | Houston | , | ΓX, | 77073 | USA |
| (street) | | (city) | (S) | tate) | (zip code) | (country) |
| I declare under penalty of perjury that the foregoing is tru | | Texas | | 24th | April | 23 |
| Executed in Harris | County, | State of | , on the _. | <u>-</u> "¹day | of(month) | , 20 (year) |
| | V SA | line | · . | | | |
| | ~~~ | Signature of author | ized agent of con | tracting b | usiness entity | |



City Council Special Meeting

DEPARTMENT: Public Works

FROM: Errick Thompson, Deputy Director of Public Works

MEETING: May 1, 2023

SUBJECT:

Consider approval of a professional services contract with Komatsu/Rangel, Inc. dba Komatsu Architecture for design of the Burleson Fire Station 1 Renovation project in the amount of \$219,831. (Staff Presenters: Errick Thompson, Deputy Director of Public Works, K.T. Freeman, Fire Chief)

SUMMARY:

The current Five-year Capital Improvement Program (CIP) budget includes \$2m to renovate Fire Station One located at 828 SW Alsbury Boulevard. Between October 2022 and March 2023, Komatsu Architects conducted a programming study that resulted in a refined scope for the renovation project. The study documented and then prioritized renovation wish list items through workshops with station personnel, Fire Department leadership, Public Works, and the City Manager's Office.

Firefighters and paramedics from each shift at the station were involved and provided critical review and input on several conceptual layouts in order to determine the final recommended project program.

The result of the programming study is a proposed project that significantly enhances the operation, comfort, and efficiency of the firehouse portion of the station. The proposed project includes nine individual dorm rooms for shift personnel (compared to the existing three double-bunk dorm rooms), five individual restroom/showers (compared to the single existing multi-stall restroom/shower room for men and single-user women's restroom/shower room). The project updates the kitchen and pantries, dayroom, laundry room, medical storage room, indoor workout area, and patio area. In addition, the renovation includes a storm shelter.

The proposed project's total estimated cost is \$2.5m including design and construction. The additional \$500,000 would be considered this summer as the five-year CIP is updated.

Full design is anticipated to be completed in October 2023. Construction is anticipated to begin in January 2024 and be completed in July 2024.

OPTIONS:

- 1) Approve a professional services contract as presented
- 2) Do not approve a professional services contract

RECOMMENDATION:

Approve a professional services contract with Komatsu/Rangel, Inc. dba Komatsu Architecture for design of the Burleson Fire Station 1 Renovation project in the amount of \$219,831.

PRIOR ACTION/INPUT (Council, Boards, Citizens):

N/A

FISCAL IMPACT:

Project # FA2302 Amount: \$219,831

Funding Source: CO – Reimbursement Resolution October 2022

STAFF CONTACT:

Errick Thompson
Deputy Director of Public Works
ethompson@burlesontx.com
817-426-9610

FIRE STATION #1 RENOVATION PROFESSIONAL SERVICES AGREEMENT

City Council May 1, 2023



BRIEF PROJECT BACKGROUND



\$2M IS BUDGETED IN THE CURRENT 5-YEAR CIP FOR ADDRESSING RENOVATION NEEDS AT FIRE STATION #1 SUCH AS:

- Providing dedicated, conditioned workout space
- Adding restroom / shower facilities
- Converting double dorm rooms to singles
- Expanding to accomodate additional staffing
- Adding storm shelter
- Enhancing fire suppression
- Expanding medical storage and report writing spaces
- Reconfiguring under-utilized administrative space to more productive use



PROGRAMMING EFFORT

Komatsu Architects were hired in September 2022 to conduct a programming study for the project

PROGRAMMING STUDY WAS COMMISSIONED TO:

- DOCUMENT AND PRIORITIZE NEEDS
- DEVELOP CONCEPTUAL DESIGN AND CORRESPONDING COST ESTIMATES

THE STUDY INCLUDED A SERIES OF WORKSHOPS WITH STAFF (INCLUDING STATION PERSONNEL)

- EARLY WORKSHOPS GATHERED INFORMATION
- LATER WORKSHOPS REVIEWED VARIOUS OPTIONS AND DEVELOPED THE FINAL RECOMMENDED PROJECT SCOPE

As a result of the programming study, the recommended project focuses on the firehouse side of the station as the current priority.



EXISTING AND PROPOSED FIREHOUSE

Example comparisons of existing and proposed space include:



| | Existing | Proposed |
|-----------------------------|--------------------------------------|---------------------------------|
| Workout Space | Improvised area within apparatus bay | Dedicated, conditioned space |
| Two-bunk Dorm Rooms | 6 | 0 |
| Single-bunk Dorm Rooms | 0 | 9 |
| Officer Suites | 1 | 3 |
| Showers / Toilets / Urinals | 3/3/2 | 5/6/0 |
| Storm Shelter | No | Yes |
| Washer / Dryer | 1 each | 2 each |



EXISTING PHOTOS



EXISTING PHOTOS:

Workout area (within 5th apparatus bay and subject to exhaust fumes)







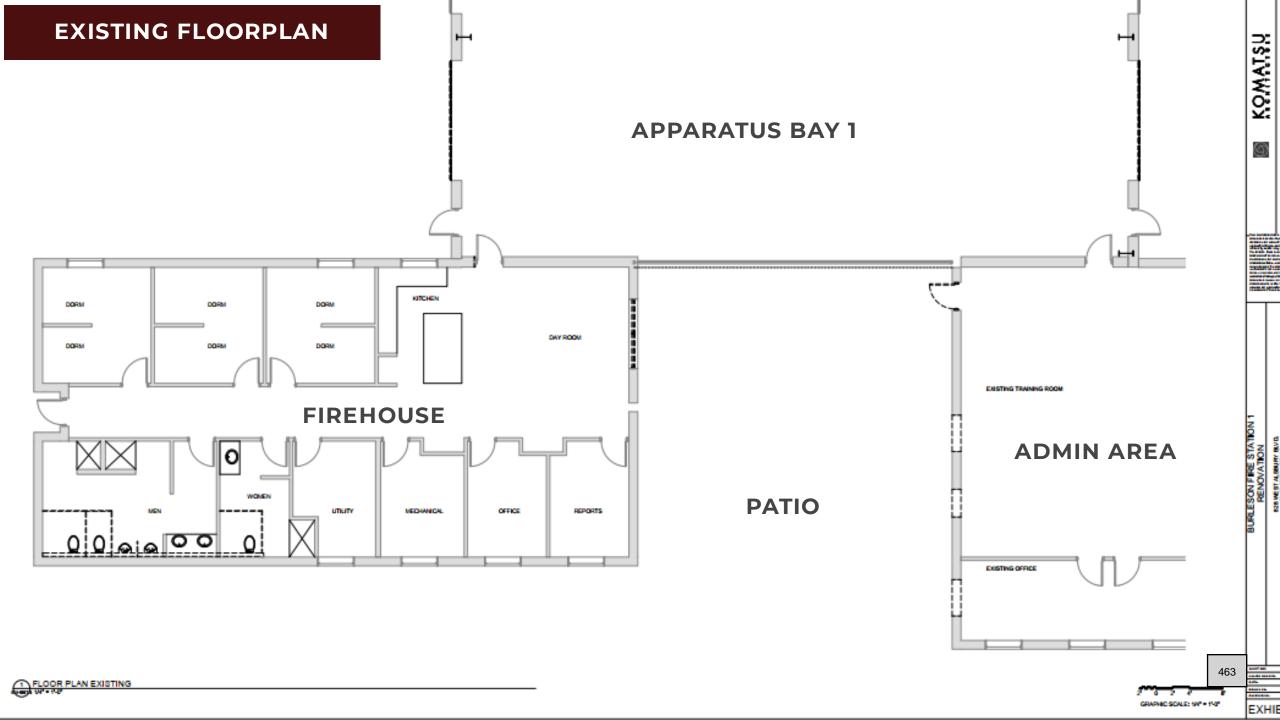


EXISTING PHOTOS

Kitchen and report writing office area

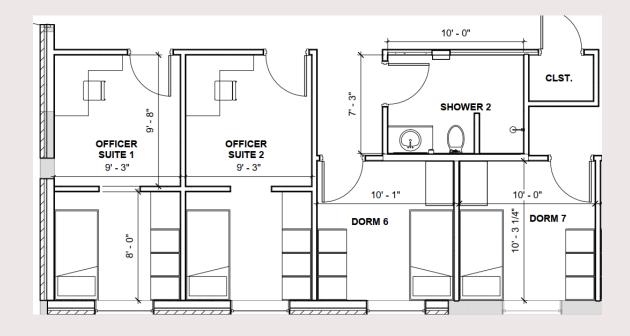




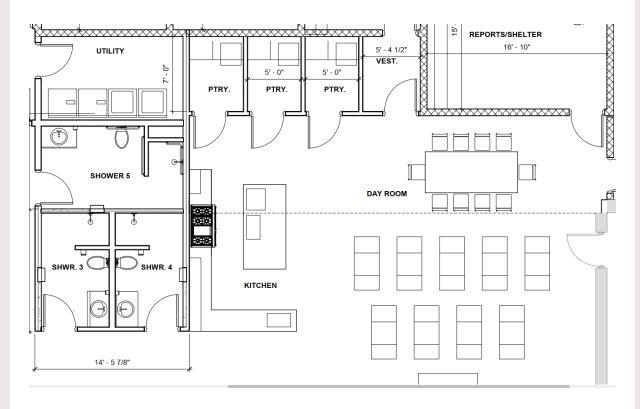


PROPOSED FLOORPLAN KOMATSU EXISTING TRAINING ROOM **回**0 **a**0

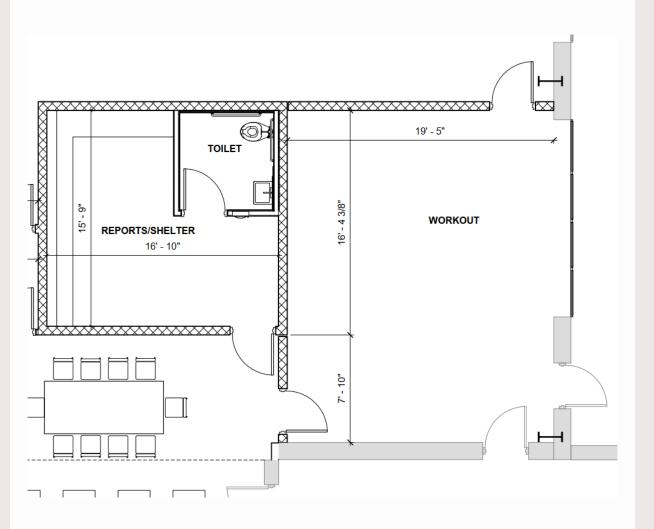
TYPICAL PROPOSED DORM / SHOWER ROOMS



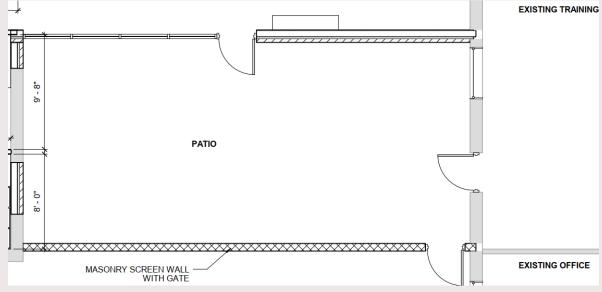
PROPOSED KITCHEN / UTLITY / DAY ROOMS



PROPOSED STORM SHELTER AND WORKOUTSPACE (EXPANSION INTO BAY)



PROPOSED PATIO ENHANCEMENT



PROJECT BUDGET

\$2m was allocated in the current Capital Improvement Program Budget for renovation of the station. Based on the recommended project scope, the estimated cost of the project is \$2.5m and the additional \$500k will be considered as part of the pending update to the Five-year Capital Improvement Program.

• DESIGN - \$358,000

\$25k for programming effort (previously executed)

\$220k architectural services (this item)

\$113k survey, geotechnical investigation, 3rd-party review of storm shelter, project management

• **CONSTRUCTION** - \$2,142,235

Includes 5% owner contingency

Logisitics and arrangements for maintaining a functioning station during construction to be finalized as design evolves - likely to entail phased construction, temporary dormitories in under-utilized conference space in the Admin wing, and short-term rental of kitchen/shower trailers



PROJECT SCHEDULE

PROGRAMMING STUDY OCTOBER 2022 -MARCH 2023 DESIGN CONTRACT AWARD MAY 2023

FULL DESIGN COMPLETE OCTOBER 2023 CONSTRUCTION ANTICIPATED JANUARY -JULY 2024



OPTIONS AND RECOMMENDATION



APPROVE

Authorize a professional services contract with Komatsu/Rangel dba Komatsu Architects in the amount of \$219,831 for design of the Fire Station #1 Renovation Project

RECOMMENDATION



DENY

Deny a professional services contract with Komatsu/Rangel dba Komatsu Architects in the amount of \$219,831 for design of the Fire Station #1 Renovation Project



DISCUSSION / QUESTIONS?



PROFESSIONAL SERVICES AGREEMENT

This **PROFESSIONAL SERVICES AGREEMENT** ("Agreement") is made and entered into by and between the **CITY OF BURLESON** (the "City"), a home rule municipal corporation situated in portions of Tarrant and Johnson Counties, Texas and Komatsu/Rangel, Inc. dba Komatsu Architecture ("Consultant").

1. SCOPE OF SERVICES.

Attached hereto and incorporated for all purposes incident to this Agreement is **Attachment A** more specifically describing the services to be provided hereunder.

2. TERM.

This Agreement shall commence upon execution by the parties (the "Effective Date") and terminate upon completion of the work specified in the scope of services unless terminated earlier in accordance with the provisions of this Agreement. Those obligations concerning warranties and representations which by their nature should survive termination of this Agreement, shall survive termination of this Agreement, including Articles 5, 6, 8, 12, 14-17, and 25-26.

3. <u>COMPENSATION.</u>

This is a fixed-price contract. The City shall pay Consultant an amount not to exceed Two Hundred Nineteen Thousand Eight Hundred Thirty One Dollars and 0 /100 in accordance with the fee schedule incorporated herein as **Attachment A**, and subject to the other terms and conditions of this Agreement, in exchange for

completion of all tasks and delivery of all services listed in Attachment A, Scope of Work. In the event of partial performance the City shall pay Consultant for only the itemized tasks completed and delivered. Consultant shall not perform any additional services for the City not specified by this Agreement unless the City requests and approves in writing the additional services and costs for such services. The City shall not be liable for any additional expenses of Consultant not specified by this Agreement unless the City first duly approves such expenses in a contract amendment executed by the City Manager or the City Manager's designee.

The Consultant shall submit monthly payment invoices to the City. Invoices shall contain a detailed breakdown to include: task or deliverables to the City and date provided for the billing period, the amount billed for each task or deliverable, and the total amount due.

Payment for services rendered shall be due within thirty (30) days of the uncontested performance of the particular services so ordered and receipt by City of Consultant's invoice for payment of same. In the event of a disputed or contested billing, only that portion so contested may be withheld from payment, and the undisputed portion will be paid. No interest will accrue on any contested portion of the billing until mutually resolved. City will exercise reasonableness in contesting any billing or portion thereof.

4. TERMINATION.

Professional Services Agreement Page 1

4.1. Written Notice.

The City or Consultant may terminate this Agreement at any time and for any reason by providing the other party with 30 days written notice of termination.

4.2 <u>Non-appropriation of Funds.</u>

In the event no funds or insufficient funds are appropriated by the City in any fiscal period for any payments due hereunder, City will notify Consultant of such occurrence and this Agreement shall terminate on the last day of the fiscal period for which appropriations were received without penalty or expense to the City of any kind whatsoever, except as to the portions of the payments herein agreed upon for which funds shall have been appropriated.

4.3 <u>Duties and Obligations of the Parties.</u>

In the event that this Agreement is terminated prior to the end of the term of this agreement as provided in Article 2, the City shall pay Consultant for services actually rendered or consultant shall reimburse the City for services paid for but not actually rendered, up to the date of notice of termination.

5. DISCLOSURE OF CONFLICTS AND CONFIDENTIAL INFORMATION.

Consultant hereby warrants to the City that Consultant has made full disclosure in writing of any existing or potential conflicts of interest related to Consultant's services under this Agreement. In the event that any conflicts of interest arise after the Effective Date of this Agreement, Consultant hereby agrees immediately to make full disclosure to the City in writing. Consultant, for itself and its officers, agents and employees, further agrees that it shall treat all information provided to it by the City as confidential and shall not disclose any such information to a third party without the prior written approval of the City. Consultant shall store and maintain City information in a secure manner and shall not allow unauthorized users to access, modify, delete or otherwise corrupt City Information in any way. Consultant shall notify the City immediately if the security or integrity of any City information has been compromised or is believed to have been compromised.

6. RIGHT TO AUDIT.

Consultant agrees that the City shall, until the expiration of three (3) years after final payment under this contract, have access to and the right to examine at reasonable times any directly pertinent books, documents, papers and records of the consultant involving transactions relating to this Contract at no additional cost to the City. Consultant agrees that the City shall have access during normal working hours to all necessary Consultant facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. The City shall give Consultant reasonable advance notice of intended audits.

Consultant further agrees to include in all its subcontractor agreements hereunder a Professional Services Agreement

Page 2

und red

provision to the effect that the subcontractor agrees that the City shall, until expiration of three (3) years after final payment of the subcontract, have access to and the right to examine at reasonable times any directly pertinent books, documents, papers and records of such subcontractor involving transactions related to the subcontract, and further that City shall have access during normal working hours to all subcontractor facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this paragraph. City shall give subcontractor reasonable notice of intended audits.

7. INDEPENDENT CONTRACTOR.

It is expressly understood and agreed that Consultant shall operate as an independent contractor as to all rights and privileges granted herein, and not as agent, representative or employee of the City. Subject to and in accordance with the conditions and provisions of this Agreement, Consultant shall have the exclusive right to control the details of its operations and activities and be solely responsible for the acts and omissions of its officers, agents, servants, employees, contractors, and subcontractors. Consultant acknowledges that the doctrine of respondeat superior shall not apply as between the City, its officers, agents, servants and employees, and Consultant, its officers, agents, employees, servants, contractors, and subcontractors. Consultant further agrees that nothing herein shall be construed as the creation of a partnership or joint enterprise between City and Consultant.

8. CHARACTER OF SERVICES AND INDEMNIFICATION.

8.1 Character of Services.

Consultant shall perform as an independent contractor all services under this Agreement with the professional skill and care ordinarily provided by competent architects, engineers, or landscape architects practicing under the same or similar circumstances and professional license. Further, Consultant shall perform as an independent contractor all services under this Agreement as expeditiously as possible as is prudent considering the ordinary professional skill and care of a competent engineer or architect. Provided, however, if this is a construction contract for architectural or engineering services or a contract related to the construction or repair of an improvement to real property that contains architectural or engineering services as a component part, the architectural or engineering services must be performed with the professional skill and care ordinarily provided by competent architects or engineers practicing under the same or similar circumstances and professional license. Consultant shall provide professional services necessary for the work described in Attachment "A," and incorporated herein and made a part hereof as if written word for word; provided, however, that in case of conflict in the language of Attachment "A" the terms and conditions of this Agreement shall be final and binding upon both parties hereto.

8.2 Indemnification.

CONSULTANT DOES HEREBY COVENANT AND CONTRACT TO INDEMNIFY AND HOLD HARMLESS CITY AND ALL OF ITS OFFICIALS, OFFICERS, AGENTS, EMPLOYEES AND INVITEES, IN BOTH THEIR PUBLIC AND

Professional Services Agreement Page 3

Undated

PRIVATE CAPACITIES, FROM ANY AND ALL LIABILITY, CLAIMS, SUITS, DEMANDS OR CAUSES OF ACTION, INCLUDING REASONABLE ATTORNEY FEES OF LITIGATION AND/OR SETTLEMENT, THAT MAY ARISE BY REASON OF DEATH OF OR INJURY TO PERSONS OR DAMAGE TO OR LOSS OF USE OF PROPERTY OCCASIONED BY ANY WRONGFUL INTENTIONAL ACT OR OMISSION OF CONSULTANT AS WELL AS ANY NEGLIGENT OMISSION, ACT OR ERROR OF CONSULTANT, ITS OFFICIALS, OFFICERS, AGENTS, EMPLOYEES AND INVITEES, OR OTHER PERSONS FOR WHOM CONSULTANT IS LEGALLY LIABLE WITH REGARD TO THE PERFORMANCE OF THIS AGREEMENT, WHETHER SAID NEGLIGENCE IS SOLE NEGLIGENCE, CONTRACTUAL COMPARATIVE NEGLIGENCE, CONCURRENT NEGLIGENCE OR ANY OTHER FORM OF NEGLIGENCE. IN THE EVENT OF JOINT OR CONCURRENT NEGLIGENCE OF CONSULTANT AND CITY, RESPONSIBILITY, IF ANY, SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. NOTHING IN THIS PARAGRAPH IS INTENDED TO WAIVE ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW OR WAIVE ANY DEFENSES OF CONSULTANT OR CITY UNDER TEXAS LAW. THIS PARAGRAPH SHALL NOT BE CONSTRUED FOR THE BENEFIT OF ANY THIRD PARTY, NOR DOES IT CREATE OR GRANT ANY RIGHT OR CAUSE OF ACTION IN FAVOR OF ANY THIRD PARTY AGAINST CITY OR CONSULTANT.

CONSULTANT WARRANTS THAT NO MUSIC, LITERARY OR ARTISTIC WORK OR OTHER PROPERTY PROTECTED BY COPYRIGHT WILL BE REPRODUCED OR USED, NOR WILL THE NAME OF ANY ENTITY PROTECTED BY TRADEMARK BE REPRODUCED OR USED BY CONSULTANT UNLESS CONSULTANT HAS OBTAINED WRITTEN PERMISSION FROM THE COPYRIGHT OR TRADEMARK HOLDER AS REQUIRED BY LAW, SUBJECT ALSO TO CITY'S CONSENT. CONSULTANT COVENANTS TO COMPLY STRICTLY WITH ALL LAWS RESPECTING COPYRIGHTS, ROYALTIES, AND TRADEMARKS AND WARRANTS THAT IT WILL NOT INFRINGE ANY RELATED STATUTORY, COMMON LAW OR OTHER RIGHT OF ANY PERSON OR ENTITY IN PERFORMING THIS AGREEMENT. CONSULTANT WILL INDEMNIFY AND HOLD CITY AND ITS OFFICERS, AGENTS AND EMPLOYEES HARMLESS FROM ALL CLAIMS, LOSSES AND DAMAGES (INCLUDING REASONABLE ATTORNEY'S FEES) WITH RESPECT TO SUCH COPYRIGHT, ROYALTY OR TRADEMARK RIGHTS TO THE EXTENT CAUSED BY CONSULTANT OR FOR WHOM CONSULTANT IS LEGALLY LIABLE.

THE PROVISIONS OF THIS SECTION ARE INTENDED TO ONLY PROVIDE INDEMNIFICATION TO THE EXTENT ALLOWED BY TEXAS LOCAL GOV'T CODE SEC. 271.904 AND SHALL BE CONSTRUED TO THAT EFFECT. THE CONSULTANT AS ALLOWED BY TEXAS LOCAL GOV'T CODE SEC. 271.904 WILL STILL NAME CITY AS ADDITIONAL INSURED IN ITS GENERAL LIABILITY POLICY AND PROVIDE ANY DEFENSE AS ALLOWED BY THE POLICY.

Professional Services Agreement Page 4

Lipidated

ASSIGNMENT AND SUBCONTRACTING. 9.

Consultant shall not assign or subcontract any of its duties, obligations or rights under this Agreement without the prior written consent of the City. If the City grants consent to an assignment, the assignee shall execute a written agreement with the City and the Consultant under which the assignee agrees to be bound by the duties and obligations of Consultant under this Agreement. The Consultant and Assignee shall be jointly liable for all obligations under this Agreement prior to the assignment. If the City grants consent to a subcontract, the subcontractor shall execute a written agreement with the Consultant referencing this Agreement under which the subcontractor shall agree to be bound by the duties and obligations of the Consultant under this Agreement as such duties and obligations may apply. The Consultant shall provide the City with a fully executed copy of any such subcontract.

10. **INSURANCE.**

Consultant shall provide the City with certificate(s) of insurance documenting policies of the following minimum coverage limits that are to be in effect prior to commencement of any work pursuant to this Agreement:

Coverage and Limits 10.1

Commercial General Liability (a) \$1,000,000 Each Occurrence \$1,000,000 Aggregate

(b) Automobile Liability

> Each accident on a combined single limit basis or \$1,000,000 \$250,000 Bodily injury per person Bodily injury per person per occurrence \$500,000

Property damage

\$100,000

Coverage shall be on any vehicle used by the Consultant, its employees, agents, representatives in the course of the providing services under this Agreement. "Any vehicle" shall be any vehicle owned, hired and nonowned.

(c) Worker's Compensation

Statutory limits

Employer's liability

\$100,000 Each accident/occurrence \$100,000 Disease - per each employee

\$500,000 Disease - policy limit

This coverage may be written as follows:

Professional Services Agreement Page 5

Workers' Compensation and Employers' Liability coverage with limits consistent with statutory benefits outlined in the Texas workers' Compensation Act (Art. 8308 – 1.01 et seq. Tex. Rev. Civ. Stat.) and minimum policy limits for Employers' Liability of \$100,000 each accident/occurrence, \$500,000 bodily injury disease policy limit and \$100,000 per disease per employee

(d) Errors & Omissions (Professional Liability):

\$1,000,000 Per Claim and Aggregate

If coverage is written on a claims-made basis, the retroactive date shall be coincident with or prior to the date to the contractual agreement. The certificate of insurance shall state that the coverage is claims-made and include the retroactive date. The insurance shall be maintained for the duration of the contractual agreement and for five (5) years following completion of the services provides under the contractual agreement or for the warranty period, which ever is longer. An annual certificate of insurance submitted to the City shall evidence coverage.

10.2 Certificates.

Certificates of Insurance evidencing that the Consultant has obtained all required insurance shall be delivered to the City prior to Consultant proceeding with any work pursuant to this Agreement. All applicable policies shall be endorsed to name the City as an additional insured thereon, as its interests may appear. The term City shall include its employees, officers, officials, agent, and volunteers in respect to the contracted services. Any failure on the part of the City to request required insurance documentation shall not constitute a waiver of the insurance requirement. The City reserves the right to make reasonable requests or revisions pertaining to the types and limits of that coverage. A minimum of thirty (30) days notice of cancellation or reduction in limits of coverage shall be provided to the City. Ten (10) days notice shall be acceptable in the event of non-payment of premium. Such terms shall be endorsed onto Consultant's insurance policies. Notice shall be sent to the Purchasing Manager, City of Burleson, 141 W. Renfro, Burleson, Texas 76028, with copies to the City Attorney at the same address.

10.3 Additional Insurance Requirements.

The insurance required herein must be provided by an insurer licensed to do business in the State of Texas. The insurance required herein must be provided by an insurer rated by the A.M. Best as "A-" or better or are rated "A" by Standard and Poor's. The insurance required herein shall be in full force and effect at all times during this Agreement.

11. COMPLIANCE WITH LAWS, ORDINANCES, RULES AND REGULATIONS.

Professional Services Agreement Page 6

pilated

Consultant agrees to comply with all applicable federal, state and local laws, ordinances, rules and regulations. If the City notifies Consultant of any violation of such laws, ordinances, rules or regulations, Consultant shall immediately desist from and correct the violation.

12. NON-DISCRIMINATION COVENANT.

Consultant, for itself, its personal representatives, assigns, subcontractors and successors in interest, as part of the consideration herein, agrees that in the performance of Consultant's duties and obligations hereunder, it shall not discriminate in the treatment or employment of any individual or group of individuals on any basis prohibited by law. If any claim arises from an alleged violation of this non-discrimination covenant by Consultant, its personal representatives, assigns, subcontractors or successors in interest, Consultant agrees to assume such liability and to indemnify and defend the City and hold the City harmless from such claim.

13. NOTICES.

Notices required pursuant to the provisions of this Agreement shall be conclusively determined to have been delivered when (1) hand-delivered to the other party, its agents, employees, servants or representatives, (2) delivered by facsimile with electronic confirmation of the transmission, or (3) received by the other party by United States Mail, registered, return receipt requested, addressed as follows:

To CITY:

City of Burleson City Manager's Office Attn: Bryan Langley 141 W. Renfro St. Burleson, TX 76028

To CONSULTANT:

| Komatsu/Rangel, Inc. | dba Koma | atsu Architectur |
|----------------------|----------|------------------|
| 3880 Hulen S | St., Ste | ∋. 300 |
| | | |
| Fort Worth, TX | TX | 76107.00 |

14. GOVERNMENTAL POWERS.

It is understood and agreed that by execution of this Agreement, the City does not waive or surrender any of its governmental powers.

15. NO WAIVER.

The failure of the City or Consultant to insist upon the performance of any term or provision of this Agreement or to exercise any right granted herein shall not constitute a waiver of the City's or Consultant's respective right to insist upon appropriate performance or to assert any such right on any future occasion.

16. GOVERNING LAW / VENUE.

This Agreement shall be construed in accordance with the internal laws of the State of Texas. If any action, whether real or asserted, at law or in equity, is brought on the basis of this Agreement,

Professional Services Agreement

essional Services Agreem

Page 7

Upd (or

venue for such action shall lie in state courts located in Johnson County, Texas or the United States District Court for the Northern District of Texas.

17. SEVERABILITY.

If any provision of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

18. FORCE MAJEURE.

The City and Consultant shall exercise their best efforts to meet their respective duties and obligations as set forth in this Agreement, but shall not be held liable for any delay or omission in performance due to force majeure or other causes beyond their reasonable control (force majeure), including, but not limited to, compliance with any government law, ordinance or regulation, acts of God, acts of the public enemy, fires, strikes, lockouts, natural disasters, wars, riots, material or labor restrictions by any governmental authority, transportation problems and/or any other similar causes.

19. HEADINGS NOT CONTROLLING.

Headings and titles used in this Agreement are for reference purposes only and shall not be deemed a part of this Agreement.

20. REVIEW OF COUNSEL.

The parties acknowledge that each party and its counsel have reviewed and revised this Agreement and that the normal rules of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or exhibits hereto.

21. AMENDMENTS / MODIFICATIONS / EXTENSIONS.

No extension, modification or amendment of this Agreement shall be binding upon a party hereto unless such extension, modification, or amendment is set forth in a written instrument, which is executed by an authorized representative and delivered on behalf of such party.

22. ENTIRETY OF AGREEMENT.

This Agreement, including the schedule of exhibits attached hereto and any documents incorporated herein by reference, contains the entire understanding and agreement between the City and Consultant, their assigns and successors in interest, as to the matters contained herein. Any prior or contemporaneous oral or written agreement is hereby declared null and void to the extent in conflict with any provision of this Agreement.

23. SIGNATURE AUTHORITY.

Professional Services Agreement
Page 8

Collect

The person signing this agreement hereby warrants that he/she has the legal authority to execute this agreement on behalf of the respective party, and that such binding authority has been granted by proper order, resolution, ordinance or other authorization of the entity. The other party is fully entitled to rely on this warranty and representation in entering into this Agreement.

24. NO WAIVER OF GOVERNMENTAL IMMUNITY.

Nothing contained in this Agreement shall be construed as a waiver of City's governmental immunity, or of any damage caps or limitations imposed by law, or any other legal protections granted to City by law, except to the extent expressly provided or necessarily implied herein.

25. MANDATORY OWNERSHIP DISCLOSURE PROVISION.

Consultant shall submit completed Texas Ethics Commission Form 1295 Ownership Disclosure form to City at time of execution of Agreement pursuant to Texas Government Code Section 2252.908.

26. MANDATORY ANTI-ISRAEL BOYCOTT PROVISION.

Consultant acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate:

- i. Pursuant to Section 2271.002 of the Texas Government Code, Consultant certifies that either (i) it meets an exemption criterion under Section 2271.002; or (ii) it does not boycott Israel and will not boycott Israel during the term of the Agreement. Consultant acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
- ii. Pursuant to SB 13, 87th Texas Legislature, Consultant certifies that either (i) it meets an exemption criterion under SB 13, 87th Texas Legislature; or (ii) it does not boycott energy companies, as defined in Section 1 of SB 13, 87th Texas Legislature, and will not boycott energy companies during the term of the Agreement. Consultant acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
- Pursuant to SB 19, 87th Texas Legislature, Consultant certifies that either (i) it meets an exemption criterion under SB 19, 87th Texas Legislature; or (ii) it does not discriminate against a firearm entity or firearm trade association, as defined in Section 1 of SB 19, 87th Texas Legislature, and will not discriminate against a firearm entity or firearm trade association during the term of the Agreement. Consultant acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
- iv. Pursuant to Subchapter F, Chapter 2252, Texas Government Code, Consultant certifies that either (i) it meets an exemption criterion under Subchapter F, Chapter 2252, Texas Government Code; or (ii) is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Vendor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

Professional Services Agreement Page 9

Lindsted

27. NON-EXCLUSIVITY.

Agreement is non-exclusive and City may enter into a separate Agreement with any other person or entity for some or all of the work to be performed under Agreement.

28. NO THIRD-PARTY BENEFICIARIES.

Except as expressly provided herein, nothing herein is intended to confer upon any person other than the parties hereto any rights, benefits or remedies under or because of this Agreement, provided, however, that the described beneficiaries of the indemnity provisions of this Agreement are expressly intended third-party beneficiaries of this Agreement.

29. BASIC SAFEGUARDING OF CONTRACTOR INFORMATION SYSTEMS.

The Consultant shall apply basic safeguarding requirements and procedures to protect the Consultant's information systems whenever the information systems store, process, or transmit any information, not intended for public release, which is provided by or generated for the City. This requirement does not include information provided by the City to the public or simple transactional information, such as that is necessary to process payments. These requirements and procedures shall include, at a minimum, the security control requirements "reflective of actions a prudent business person would employ" which are outlined in the Federal Acquisition Regulations FAR 52.204-21(b) and codified in the Code of Federal Regulations at 48 C.F.R. § 52.204-21(b) (2016).

Consultant shall include the substance of this clause in subcontracts under this contract (including subcontracts for the acquisition of commercial items other than commercially available off-the-shelf items) in which the subcontractor may have City contract information residing in or transiting through its information system.

30. OWNERSHIP OF DOCUMENTS.

All documents and materials prepared by Consultant under the terms of this Agreement are the City's property from the time of preparation. Consultant will deliver copies of the documents and materials to the City or make them available for inspection whenever requested. City has the right to make duplicate copies of such documents or materials for its own file or use for any other such purposes as the City deems necessary and there shall be no additional costs incurred because of such copying or use.

31. COUNTERPARTS; PDF SIGNATURES.

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Any pdf-format or other electronic transmission of any signature of a signatory shall be deemed an original and shall bind such signatory.

Professional Services Agreement Page 10

biddee

The remainder of this page is left intentionally blank

SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Agreement:

| CITY OF BURLESON: | Komatsu/Rangel, Inc. dba Komatsu Architecture |
|---|---|
| D. | By: Karl Komatsu |
| By: | By: JUNE 1 COMPANY |
| Name: | Name: Karl Komatsu |
| Title: | Title: President and Principal in Charge |
| Date: | Date: 04/13/2023 |
| APPROVED AS TO FORM: | • |
| By: | |
| City Attorney, Assistant City Attorney, | |
| or Deputy City Attorney | |

ATTACHMENT A

I. Scope of Services

Professional Services Agreement Page 12

Updated





February 6, 2023

Errick Thompson
Public Works Department Deputy Director
141 W Renfro Street
Burleson, Texas 76028

RE: Basic A/E Fee Proposal for the Remodel and Addition to Fire Station No. 1

Burleson, Texas

Dear Mr. Thompson:

Komatsu Architecture is pleased to provide this fee proposal for Basic Architectural and Engineering Services for the remodel and addition to Fire Station No. 1. We propose the following:

- Provide Basic A/E Services for the remodel of the existing Fire Station.
 Architectural, Civil, Structural, Mechanical, Electrical, and Plumbing.
- Komatsu will draft Standard Form of Agreement Between Owner and Architect AIA B101-2017 for review and signatures.
- One meeting with City and FD staff to discuss final design concept.
- 30% Schematic Deliverables: Cost Estimate, one meeting, PDF set, 1 full size and 1 half size set plans.
- 60% Design Development Deliverables: Cost Estimate, one meeting, PDF set, 1 full size and 1 half size set plans.
- 95% Construction Drawings Deliverables: Cost Estimate, one meeting, PDF set, 1 full size and 1 half size set plans.
- Final Sealed Drawings and Specs Deliverables: PDF set, 1 full size and 1 half size set plans and specs.
- TDLR Registration, Accessibility Review and Inspection.
- 16 architect inspection trips are included during Construction Administration.

This Proposal excludes the following:

- Remodel to the existing Administration wing of the building
- Parking area and site access revisions
- Geotechnical Investigation and Report
- Site Topographic Survey
- Hazardous Material Investigation service
- Furniture selections and specifications
- Third Party peer review for the Tornado Shelter
- Building Permit Printing
- Bid Document Printing for Contractor solicitation
- Material testing during construction.

The following consultants are on the A/E Team:

• MEP: MEPCE

Civil: Carrillo Engineering, LLC

• Structure: AD Perantie, LLC

• Cost Estimation: Riddle & Goodnight Inc.

InSpec Specifications

Fire Station No. 1 Remodel and Addition A/E Fee:

Architect Fee, including expenses \$ 82,513.00
Consultant Fees \$137,319.00
----Total \$219,831.00

If you have any questions regarding this proposal, please let me know. If this proposal meets with your approval, Komatsu is prepared to start to work to meet your schedule and expectations. We appreciate this opportunity to be working with the City of Burleson on this Fire Department project. We look forward to hearing from you.

Sincerely,

Les Edmonds, AIA Komatsu Architecture

Attachments: Hourly breakdown

12 Edmonds

Komatsu Architecture Fee Proposal

Burleson Fire Station No. 1 Remodel and Addition: Basic A/E Service

February 6, 2023 Job No. 2022.151

| | | | | Lahor | and Hourly | , Rates | | | | | |
|---|-----------------|-----------|-------------------|-------------------|---------------|-------------------------------|------------|------------|------------|----|---------|
| | Project Manager | Architect | Technical Support | Interior Designer | Space Planner | Construction Administrator | Position 7 | Position 8 | Position 9 | | |
| | \$175.00 | \$145.00 | \$115.00 | \$130.00 | \$ 75.00 | \$120.00 | \$ - | \$ - | \$ - | | |
| Activity | /hr | /hr | /hr | /hr | /hr | /hr | /hr | /hr | /hr | T | OTAL |
| Architectural | | | | | | | | | | | |
| 30% Schematic Design | 8 | 20 | | | | | | | | \$ | 7,980 |
| 60% Design Development | 16 | 40 | | | | | | | | \$ | 19,640 |
| 100% Constrction Documents | 16 | 80 | | | | | | | | \$ | 28,200 |
| Bidding | 4 | 4 | | | | | | | | \$ | 1,280 |
| Construction Admin., submittals, RFI's, etc. (16 trips) | 8 | 64 | | | | | | | | \$ | 19,880 |
| Project Closeout | 4 | 8 | 12 | | | | | | | \$ | 3,240 |
| | | | | | | | | | | | |
| Hours | 56 | 216 | 340 | | | - | | | | | |
| Expenses | | | | | | | | | | | |
| Design Submittal Reproduction / Delivery | | | | | | | | | | \$ | 1,000 |
| Registered Accessibility Specialist | | | | | | | | | | \$ | 1,293 |
| | | | | | | | | | | | |
| Total Architect Fee | | | | | | | | | | \$ | 82,513 |
| | | | | | | | | | | | |
| Consultants | | | | | | | | | | | |
| Civil | | | | | | | | | | \$ | 24,200 |
| MEP | | | | | | | | | | \$ | 51,013 |
| Structure | | | | | | | | | | \$ | 46,310 |
| Estimating | | | | | | | | | | \$ | 10,846 |
| Specs | | | | | | | | | | \$ | 4,950 |
| Grand Total | | | | | | | | | | \$ | 219,831 |
| | | | | | | | | | | | |

Basis of Proposal

- Refer to cover letter 1.
- 2. 10% Prime overhead cost added to Consultant fees
- 3.
- 4. 5.
- 6.

EVENT SCHEDULE PLANNER 2023

| PROJECT/EVENT | BURLESON FS1 RENOVATION |
|---------------|-------------------------|
| | 13 APRIL 2023 |
| ORGANIZER | RYAN BRANTLEY |

- 1. Schedule is based on City Council approval on May 1, 2023.
- 2. Plan layout is finalized and no client plan changes are planned to be made.

| Project Phase | Starting | Ending | Project Phase | Starting | Ending |
|--------------------|-----------|-----------|------------------------|-----------|-----------|
| Schematic Progress | 2.28.2023 | 4.6.2023 | 90% CD Submittal | 9.8.2023 | 9.8.2023 |
| CONTRACT | 4.6.2023 | 5.1.2023 | 90% GP & Budget Review | 9.11.2023 | 9.15.2023 |
| 30% CD Progress | 5.2.2023 | 6.1.2023 | 100% CD Progress | 9.18.2017 | 9.28.2023 |
| 30% CD Submittal | 6.2.2023 | 6.2.2023 | Final Submittal | 9.29.2023 | 9.29.2023 |
| 30% GP Review | 6.5.2023 | 6.9.2023 | | | |
| 60% CD Progress | 6.12.2023 | 7.27.2023 | | | |
| 60% CD Submittal | 7.28.2023 | 7.28.2023 | | | |
| 60% GP Review | 7.31.2023 | 8.4.2023 | | | |
| 90% CD Progress | 8.7.2023 | 9.7.2023 | | | |

| JA | NUA | ٩RY | | | | | FE | BRU | JAR' | Y | | | | M | ARC | Н | | | | | AF | PRIL | | | | | | M | ΑY | | | | | | Jl | JNE | | | | | |
|-----|--------|-----------|---------------|------|-----------|-------------------|--------------|--------|-------------------------|---------------|--------------|--------------------|--------------|---------|-----------|---------------|---------------|-----|-------------------------|-------------|-------------------|-------------------------|--------------------|--------------------|--------------|---------------|--------------------|---------|---------|---------|-------------------|---------|--------------|--------------|---------|--------------------|---------|---------|---------------|-------------------|-------------|
| S | М | Т | W | Т | F | S | S | М | Т | W | Т | F | S | S | M | Т | W | Т | F | S | S | М | Т | W | Т | F | S | S | М | Т | W | Т | F | S | S | М | Т | W | Т | F | S |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | | | | 1 | 2 | 3 | 4 | | | | 1 | 2 | 3 | 4 | | | | | | | 1 | | 1 | 2 | 3 | 4 | 5 | 6 | | | | | 1 | 2 | 3 |
| 8 | 9 | 10 | 11 | 12 | 13 | 14 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
| 15 | 16 | 17 | 18 | 19 | 20 | 21 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 11 | 12 | 13 | 14 | 15 | 16 | 17 |
| 22 | 23 | 24 | 25 | 26 | 27 | 28 | 19 | 20 | 21 | 22 | 23 | 24 | 25 | 19 | 20 | 21 | 22 | 23 | 24 | 25 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 21 | 22 | 23 | 24 | 25 | 26 | 27 | 18 | 19 | 20 | 21 | 22 | 23 | 24 |
| 29 | 30 | 31 | | | | | 26 | 27 | 28 | | | | | 26 | 27 | 28 | 29 | 30 | 31 | | 23 | 24 | 25 | 26 | 27 | 28 | 29 | 28 | 29 | 30 | 31 | | | | 25 | 26 | 27 | 28 | 29 | 30 | |
| | | | | | | | | | | | | | | | | | | | | | 30 | | | | | | | | | | | | | | | | | | | | |
| JU | ILY | | | | | | ΛI | JGU | ςт | | | | | CE | DTE | EMB | ED | | | | \cap | СТО | DED | | | | | NI/ | OVE | MDE | D | | | | DI | ECE/ | ARE | D | | | |
| | | | | | | | AC | JGU | <i>3</i> I | | | | | 3L | .F 1 L | _//\D | LN | | | | O | -10 | DER | | | | | 140 | JVL | WDL | г | | | | וט | LCL | MDL | r. | | | |
| S | М | Т | W | Т | F | S | S | M | Т | W | Т | F | S | S | M | _/ND | W | Т | F | S | S | M | T | W | Т | F | S | S | M | T | W | Т | F | S | S | M | Т | W | Т | F | S |
| S | M | Т | W | Т | F | S 1 | S | | T 1 | W 2 | T 3 | F 4 | S 5 | S | | | | Т | F 1 | S 2 | S 1 | | T 3 | W 4 | T 5 | F 6 | S 7 | S | M | | W 1 | T 2 | F 3 | S 4 | S | | Т | | Т | F 1 | S 2 |
| 2 | M 3 | T 4 | W 5 | T | F | S 1 8 | 5 | | Т | W 2 9 | T 3 10 | F 4 11 | S 5 12 | S 3 | | | | T 7 | F 1 8 | S 2 9 | S 1 8 | М | Т | W 4 11 | T 5 12 | 1 | S 7 14 | 5 | M 6 | | W 1 8 | T 2 9 | F 3 10 | S 4 11 | S 3 | | T 5 | | 7 | F 1 8 | S 2 9 |
| | | T 4 11 | | - | F 7 14 | S 1 8 15 | S | | T 1 | | | F 4 11 18 | - | S | | Т | W 6 | ' | F 1 8 15 | | S 1 | M 2 | T 3 | W 4 | - | 6 | S 7 14 21 | S | M | Т | W 1 | | | | S | | Т | W | 7 14 | F 1 8 15 | |
| 2 | 3 | T 4 11 18 | 5 | 6 | F 7 14 21 | | S 6 | | T 1 8 | 9 | | 11 | 12 | 3 | M 4 | T 5 | W 6 | ' | F 1 8 15 22 | 9 | S 1 8 | M 2 9 | T 3 10 | W 4 11 | 12 19 | 6 | 21 | S 5 | 6 13 | T 7 | W 1 8 | 9 | 10 | 11 | 3 | | T 5 | W 6 | 7 14 21 | - | 9 |
| 2 9 | 3 10 | 4 11 | 5 12 19 | 6 13 | | 15 | 5 6 13 | M 7 14 | T 1 8 15 22 | 9 16 23 | 10 17 | 11 18 | 12 19 | 3 10 | M 4 11 18 | 5 12 19 | 6 13 20 | 14 | 22 | 9 | S 1 8 15 | M 2 9 16 23 | T 3 10 17 | W 4 11 18 | 12 19 | 6 13 20 | 21 | 5 12 | 6 13 | 7 14 | W 1 8 15 | 9 16 | 10 17 | 11 18 | 3 10 | M 4 11 18 | 5 12 | 6 13 | | 15 | 9 16 |





April 17, 2023

City of Burleson 141 West Renfro Street Burleson, TX 76028

RE: Burleson Fire Station No. 1 Additions and Renovations

To whom it may concern:

Per AIA form B101-2017 Article 6, Komatsu and the City of Burleson agree that the Cost of the Work is estimated to be at \$2,142,235.00 (two million, one hundred forty two thousand, two hundred thirty five and zero hundredths) for the building construction budget.

ARTICLE 6 - COST OF WORK

- § 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Architect; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.
- § 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and shall be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, and the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work, prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials, or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market, or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work, or from any estimate of the Cost of the Work, or evaluation, prepared or agreed to by the Architect.
- § 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding, and price escalation; to determine what materials, equipment, component systems, and types of construction are to be included in the Contract Documents; to recommend reasonable adjustments in the program and scope of the Project; and to include design alternates as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requires a detailed estimate of the Cost of the Work, the Architect shall provide such an estimate, if identified as the Architect's responsibility in Section 4.1.1, as a Supplemental Service.
- § 6.4 If, through no fault of the Architect, the Procurement Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.
- § 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality, or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.
- § 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall
 - .1 give written approval of an increase in the budget for the Cost of the Work;
 - .2 authorize rebidding or renegotiating of the Project within a reasonable time;
 - .3 terminate in accordance with Section 9.5;

- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or,
- .5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. If the Owner requires the Architect to modify the Construction Documents because the lowest bona fide bid or negotiated proposal exceeds the Owner's budget for the Cost of the Work due to market conditions the Architect could not reasonably anticipate, the Owner shall compensate the Architect for the modifications as an Additional Service pursuant to Section 11.3; otherwise the Architect's services for modifying the Construction Documents shall be without additional compensation. In any event, the Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

Owner Budget and Cost Estimates

President, Komatsu Architecture

The Owner recognizes the extraordinary prevailing market conditions in the construction and manufacturing industries, including post-contract date factors such as the recent OPEC oil market manipulations that impact downstream petrochemical products to shipping costs. Traditional cost estimating parameters such as recent or historical pricing data no longer provide a predictable basis for future cost projections. Projects in all construction sectors – institutional, governmental, commercial, and housing are experiencing continued escalation of pricing in materials, labor, and manufactured goods, including supply chain disruptions and non-competitive bid environments due to excess of available work and lack of labor for general and sub-contractor markets at any given time. Recent examples typically have resulted in over-budget costs from 25% to 40% and higher on a national and regional Southwest basis. A third party Construction Cost consultant cannot predict the construction industry's self-protection of any number of factors: interest rate; spot shortages; discontinuance of product production; or market condition escalations and intangible factors such as premiums on smaller or more complicated work (renovation vs new), desirability of the work (easy vs difficult profit opportunities).

This contract reflects that design services based on a bid or budget cost cannot be performed without compensation for professional services rendered, should changes be required to the documents due to potential bid or budget cost overruns. This contractual status references the factors and circumstances not in control of the Architect or its Consultants. The Architect and its Consultants, at the direction of the Owner, will proceed under the Additional Services provisions should the market bid results exceed the Owner's budget, through no fault or control of the Architect-Engineer team.

Sincerely,

4/17/2023

Date

PROSENZWEIG

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 4/13/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER. AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s)

| tine continuate account to include the tine continuate hereof in hea or or | ion ondercomoni(o) | | | | | | | |
|--|---|----------|--|--|--|--|--|--|
| PRODUCER License # 4682 | CONTACT Kristin Jackson | | | | | | | |
| Fort Worth, TX-Hub International Insurance Services 3221 Collinsworth | PHONE (A/C, No, Ext): (817) 820-8164 FAX (A/C, No): (817) | 984-7630 | | | | | | |
| Fort Worth, TX 76107 | E-MAIL ADDRESS: kristin.jackson@hubinternational.com | | | | | | | |
| | INSURER(S) AFFORDING COVERAGE | | | | | | | |
| | INSURER A: Massachusetts Bay Insurance Company | | | | | | | |
| INSURED | INSURER B : Allmerica Financial Benefit Insurance Company | 41840 | | | | | | |
| Komatsu Rangel, Inc. DBA Komatsu Architecture | INSURER C: Hanover Insurance Company | 22292 | | | | | | |
| 3880 Hulen St, Suite #300 | INSURER D : Arch Insurance Company | 11150 | | | | | | |
| Fort Worth, TX 76107 | INSURER E : Federal Insurance Company | | | | | | | |
| | INSURER F: | | | | | | | |
| | | | | | | | | |

COVERAGES CERTIFICATE NUMBER: **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR LTR | TYPE OF INSURANCE | ADDL SUI | BR | POLICY EFF | POLICY EXP (MM/DD/YYYY) | LIMIT | s |
|-------------|--|----------|----------------|------------|----------------------------|--|--------------|
| Α | X COMMERCIAL GENERAL LIABILITY | | | , | | EACH OCCURRENCE | s 1,000,000 |
| | CLAIMS-MADE X OCCUR | | ODK-A589554-09 | 4/1/2023 | 4/1/2024 | DAMAGE TO RENTED PREMISES (Ea occurrence) | \$ 1,000,000 |
| | | | | | | MED EXP (Any one person) | \$ 10,000 |
| | | | | | | PERSONAL & ADV INJURY | \$ 1,000,000 |
| | GEN'L AGGREGATE LIMIT APPLIES PER: | | | | | GENERAL AGGREGATE | \$ 2,000,000 |
| | POLICY X PRO- JECT LOC | | | | | PRODUCTS - COMP/OP AGG | \$ 2,000,000 |
| | OTHER: | | | | | | \$ |
| В | AUTOMOBILE LIABILITY | | | | | COMBINED SINGLE LIMIT (Ea accident) | \$ 1,000,000 |
| | X ANY AUTO | | AWK-A589531-09 | 4/1/2023 | 4/1/2024 | BODILY INJURY (Per person) | \$ |
| | OWNED SCHEDULED AUTOS | | | | | BODILY INJURY (Per accident) | \$ |
| | HIRED NON-OWNED AUTOS ONLY | | | | | PROPERTY DAMAGE (Per accident) | \$ |
| | | | | | | | \$ |
| Α | X UMBRELLA LIAB X OCCUR | | | | | EACH OCCURRENCE | \$ 5,000,000 |
| | EXCESS LIAB CLAIMS-MADE | | ODK-A589554-09 | 4/1/2023 | 4/1/2024 | AGGREGATE | \$ |
| | DED X RETENTION\$ | | | | | Aggregate | \$ 5,000,000 |
| С | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY | | | | | X PER OTH-ER | |
| | ANY PROPRIETOR/PARTNER/EXECUTIVE Y/N | N/A | WHK-A589538-09 | 4/1/2023 | 4/1/2024 | E.L. EACH ACCIDENT | \$ 1,000,000 |
| | (Mandatory in NH) | N/A | | | | E.L. DISEASE - EA EMPLOYEE | \$ 1,000,000 |
| | If yes, describe under DESCRIPTION OF OPERATIONS below | | | | | E.L. DISEASE - POLICY LIMIT | \$ 1,000,000 |
| D | Errors & Omissions | | PAAEP0144001 | 9/6/2022 | 9/6/2023 | per claim | 2,000,000 |
| E | D&O/EPLI/FID/Crime | | 8246-0379 | 10/24/2022 | 10/24/2023 | Max Agg per Cov. | 1,000,000 |
| | | | | | | | |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required) General Liability:

Form #391-1448 08 16 - Avenues Businessowners Deluxe Platinum Architects and Engineers Program Broadening Endorsement: Additional Insured by Contract, Agreement or Permit - Primary and Non-Contributory

Auto Liability:

Form #461-0478 12 12 - Blanket Additional Insured - Primary and Non-Contributory

SEE ATTACHED ACORD 101

| CERTIFICATE HOLDER | CANCELLATION |
|--------------------|--------------|
| | |

City of Burleson 725 SE John Jones Drive Burleson, TX 76028-4296

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

489

LOC #: 1



ADDITIONAL REMARKS SCHEDULE

Page 1 of 1

| ADDITIONA | VE 1/E141/ | |
|--|----------------------|--|
| AGENCY Fort Worth, TX-Hub International Insurance Services | License # 4682 | NAMED INSURED Komatsu Rangel, Inc. DBA Komatsu Architecture 3880 Hulen St, Suite #300 Fort Worth, TX 76107 |
| POLICY NUMBER SEE PAGE 1 | | Fort Worth, TX 76107 |
| CARRIER SEE PAGE 1 | NAIC CODE SEE P 1 | EFFECTIVE DATE: SEE PAGE 1 |
| ADDITIONAL REMARKS | | OLL I MOL I |
| THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO A | CORD FORM, | |
| FORM NUMBER: ACORD 25 FORM TITLE: Certificate of Lia | bility Insurance | |
| written contract to furnish this waiver | | or organization for whom the Named Insured has agreed by |
| RE: Burleson Fire Station #1 Improvements, 828 SW | Alsbury Blvd | , Burleson, TX 76028-4296 |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |



| SE | CTION II - LIABILITY Changes | Limit | Page |
|----|--|---------------------|------|
| 1. | Additional Insured by Contract, Agreement or Permit - Amended | Included | 15 |
| 2. | Additional Insured by Contract, Agreement or Permit - Primary and Non-contributory | included | 15 |
| 3. | Aggregate Limit of Insurance (Per Project) | | 16 |
| 4. | Damage to Premises Rented to You - Revised Limit | \$1,000,000 | 16 |
| 5. | Limits of Insurance - Medical Expenses | \$10,000 per person | 16 |
| 6. | Newly Acquired or Formed Organizations | 180 Days | 17 |
| 7. | Non-Owned Watercraft | 75 Feet | 17 |
| 8. | Who is An Insured - Unnamed Joint Venture | Included | 17 |

II. DEDUCTIBLES

Deductibles are subject to the provisions applicable to the Businessowners Coverage Form except as provided below. We will not pay for covered loss or damage in any one occurrence unless the amount of loss or damage exceeds the applicable Deductible amount. We will then pay the amount of loss or damage in excess of the Deductible up to the applicable Limit of Insurance.

III. COVERED PROPERTY

Scheduled Coverages

1. Accounts Receivable

SECTION I - PROPERTY, A. Coverage, 6. Coverage Extensions, f. Accounts Receivable, paragraphs (2) and (3) are replaced by the following:

- (2) We will pay under this Coverage Extension for loss or damage in any one occurrence at the described premises. The most we will pay is \$250,000 for accounts receivable at the described premises, unless a higher Limit of Insurance for accounts receivable is shown in the Additional Property Coverage Schedule.
- (3) We will pay under this Coverage Extension for loss or damage in any one occurrence not at the described premises. The most we will pay is \$250,000 for accounts receivable not at the described premises.
- 2. Backup or Overflow of a Sewer, Drain or Sump

The following is added to SECTION 1 - PROPERTY, A. Coverage, 5. Additional Coverages:

Backup or Overflow of a Sewer, Drain or Sump

- (1) We will pay for direct physical loss or damage to Covered Property at the described premises, solely caused by or resulting from water or waterborne material carried or moved by water that backs up or overflows or is otherwise discharged from a sewer, drain, sump, sump pump or related equipment. The term drain includes a roof drain and its related fixtures.
- (2) For the purpose of this Additional Coverage only, SECTION I -PROPERTY, B. Exclusions, g. Water, paragraph (3) is deleted.
- (3) Payment under this Additional Coverage is included within the applicable Limit of Insurance for Covered Property at a premises described in the Declarations. This Additional Coverage does not increase the Limits of Insurance.
- (4) Special Sewer Backup Exclusion

We will not pay for:

- (a) Loss or damage from water or other materials that back-up or overflow from any sewer or drain, sump, sump pump or related equipment when it is caused by or results from any "flood", regardless of the proximity of the back-up or overflow to the "flood" condition; or
- (b) Failure to keep a sump pump or its related equipment in proper working condition; or
- (c) Failure to perform routine maintenance or repair necessary to keep a sewer or drain free from obstructions.

3. Brands and Labels

The following is added to SECTION I - PROPERTY, A. Coverage, 6. Coverage Extensions:

Brands and Labels

- (1) If Covered Property that has a brand or label is damaged by a Covered Cause of Loss and we elect to take all or any part of the damaged property at an agreed or appraised value, you may extend the insurance that applies to your Business Personal Property to:
 - (a) Pay expenses you incur to:
 - (i) Remove the brand or label and then relabel the damaged property to comply with any applicable law; or
 - (ii) Label or stamp the damaged property Salvage, if doing so will not physically damage the property.
 - (b) Cover any reduction in the salvage value of the damaged property as a result of the removal of the brand or label.
- (2) Payment under this Extension is included within the Limit of Insurance applicable to your Business Personal Property.
- 4. Business Income Billable Hours Option

The following is added to SECTION I - PROPERTY, A. Coverage, E. Property Loss Conditions, 5. Loss Payment:

Business Income Billable Hours Option

- (1) At your option you may choose to settle a covered Business Income and Extra Expense loss, as described under the Business Income, Extra Expense and Utility Services Additional Coverages, on a billable hours basis. If you choose this settlement method, the billable hours will be verified through review of your historical financial records or based on an average of your billable hourly rate over the past 12 months.
- (2) This loss settlement option is only available to you prior to your submission to us of calculations described under SECTION I PROPERTY, A. Coverage, 5. Additional Coverages, f. Business Income.
- (3) If you choose this option, SECTION 1 -PROPERTY, A. Coverage, 5. Additional Coverages, f. Business Income, paragraph (c) is replaced by the following:
 - (c) Business Income means the:

- (i) Income that would have been generated from billable hours normally charged by you to your clients for services performed by you or your employees if no physical loss or damage occurred;
- (ii) Other income of your business that would have been incurred if no physical loss or damage occurred;
- (iii) Continuing normal operating expenses incurred, including "payroll expenses". However, if your business is not generating any income because you are primarily in research or development or have not yet brought your product to market, your continuing normal operating expenses, including "payroll expenses" will not be offset by the Net Loss; and
- (iv) "Rental Value".

For manufacturing risks, Net Income includes the net sales value of production.

- (4) For any occurrence, the two available methods for adjusting and calculating Business Income and Extra Expense loss may not be combined. When the alternative billable hours approach described above is selected, the maximum coverage under this loss settlement option is \$25,000 on an actual loss sustained basis.
- 5. Business Income and Extra Expense Dependent Properties

The heading for SECTION I - PROPERTY, A. Coverage, 5. Additional Coverages, m. Business Income from Dependent Properties is replaced by the following:

m. Business Income and Extra Expense from Dependent Properties

The following is added to Business Income and Extra Expense from Dependent Properties:

We will pay the necessary Extra Expense you incur due to direct physical loss of or damage to "dependent property" caused by or resulting from a Covered Cause of Loss.

The definition of Extra Expense for this Additional Coverage is replaced by the following:



Extra Expense means necessary expenses you incur during the "period of restoration" for the "dependent property" that you would not have incurred if there had been no direct physical loss or damage to the premises of any "dependent property" caused by or resulting from a Covered Cause of Loss:

- (1) To avoid or minimize the "suspension" of business and to continue "operations"; or
- (2) To minimize the "suspension" of business if you cannot continue "operations".

We will reduce the amount of your Extra Expense loss to the extent you can return "operations" to normal and discontinue such Extra Expense.

- (3) Paragraph (2) of this Additional Coverage is replaced by the following:
 - (2) The most we will pay under this Additional Coverage is \$100,000 per occurrence, regardless of the number of "dependent properties" affected.
- 6. Transit Business Income and Extra Expense

The following is added to SECTION I - PROPERTY, A. Coverage, 5. Additional Coverages:

Transit Business Income and Extra Expense

- (1) We will pay the actual loss of Business Income you sustain and necessary and reasonable Extra Expense you incur caused by direct physical loss of or direct physical damage to Covered Property while "in transit" caused by or resulting from a Covered Cause of Loss.
- (2) SECTION 1 PROPERTY, B. Exclusions, paragraphs 1.b Earth Movement and 1.g Water do not apply to this Additional Coverage:
- (3) The most we will pay for loss in any one occurrence under this Additional Coverage is \$50,000.
- (4) The amount payable under this Additional Coverage is additional insurance.
- 7. Business Income from Websites
 - a. The following is added to SECTION I PROPERTY, A. Coverage, 5. Additional Coverages:

Business Income from Websites

- (1) You may extend this insurance to apply to a "suspension" of "operations" caused by direct physical loss or damage to property that you depend on for "web site and communications services" from a Covered Cause of loss
- (2) We will not pay for any loss of Business Income you incur during the first 12 hours that immediately follows the time when you first discovered the Covered Cause of Loss. This Waiting Period does not apply to Extra Expense.
- (3) The most we will pay for the actual loss of Business Income and necessary and reasonable Extra Expense in any one occurrence under this Additional Coverage is \$50,000 and only for the 7-day period immediately following the Covered Cause of Loss.
- (4) Coverage does not apply to Websites unless there is a duplicate or back-up copy of your Web Page stored at a location that is at least 1,000 feet away from the premises of the vendor that provides "web site and communications services".
- (5) "Web Site and Communication Services" means:
 - (a) Internet access, e-mail, web hosting, value added network services and application software services at the premises of others; or
 - (b) Network and router infrastructure located more than 1,000 feet from the described premises.
- This Additional Coverage is not subject to SECTION I - PROPERTY, C. Limits of Insurance.
- 8. Civil Authority

SECTION 1 - PROPERTY, A. Coverage, 5. Additional Coverages, i. Civil Authority, paragraph (2) is replaced by the following:

- (2) Civil Authority Coverage for Business Income will begin 24 hours after the time of the first action of civil authority that prohibits access to the described premises and will end:
 - (a) Four consecutive weeks after the time of that action; or
 - (b) When your Civil Authority Coverage for Business Income ends;

whichever is later.

9. Computer Equipment

SECTION I - PROPERTY, A. Coverage, 5. Additional Coverages, r. Computer Equipment, paragraph (6) is replaced by the following:

(6) Regardless of the number of insured locations involved, the most we will pay for loss or damage under this Additional Coverage in any one occurrence is the applicable Limit of Insurance for Covered Property at the premises described in the Declarations.

The most we will pay for loss or damage under this Additional Coverage to property described in paragraphs (1) and (2) above in any one occurrence while "in transit" or at a premises other than the described premises is \$100,000.

The most we will pay for loss or damage under this Additional Coverage to property described in paragraphs (1) and (2) above in any one occurrence for property that you newly acquire is \$100,000.

With respect to newly acquired property under this Additional Coverage, coverage will end when any of the following occurs:

- (a) The policy expires;
- (b) 180 days after you acquire the property listed in (1)(a d);
- (c) You report values to us.

The most we will pay for Extra Expense is \$5,000 or the amount shown in the Additional Property Coverage Schedule in any one occurrence.

This Additional Coverage is not subject to SECTION 1 - PROPERTY, C. Limits of Insurance.

10. Computer and Funds Transfer Fraud

SECTION I - PROPERTY, A. Coverage, 5. Additional Coverages, hh. Computer and Funds Transfer Fraud, paragraph (3) is replaced by the following:

(3) The most we will pay per occurrence under this Additional Coverage is \$10,000 unless a higher Limit of Insurance is shown in the Schedule of Amended Limits of Insurance.

11. Consequential Loss to Stock

The following is added to SECTION I - PROPERTY, A. Coverage, 6. Coverage Extensions:

Consequential Loss to Stock

- (1) You may extend the insurance that applies to your Business Personal Property to apply to the reduction in value of the remaining parts of "stock" in process of manufacture that are physically undamaged but are unmarketable as a complete product because of direct physical loss or damage from a Covered Cause of Loss to other parts of covered "stock" in process of manufacture at an insured location.
- (2) Should it be determined that such "stock" retains only a salvage value, we retain the option of paying the full value of the "stock" as agreed within this policy, and taking the damaged property for salvage purposes.
- (3) Payment under this Coverage Extension is included within the applicable Limit of Insurance.

12. Contract Penalties

The following is added to SECTION I - PROPERTY, A. Coverage, 5. Additional Coverages:

Contract Penalties

- (1) We will pay for contract penalties you are required to pay due to your failure to provide your product or service according to contract terms because of direct physical loss or damage by a Covered Cause of Loss to Covered Property.
- (2) The most we will pay for all penalties in any one occurrence is \$25,000.
- (3) The amount payable under this Additional Coverage is additional insurance

13. Denial of Access to Premises

The following is added to SECTION I - PROPERTY, A. Coverage, 5. Additional Coverages:

Denial of Access to Premises

- (1) We will pay for the actual loss of Business Income you sustain and necessary Extra Expense you incur when ingress to or egress from the described premises is prevented, due to direct physical loss of or damage to property that is away from but within 2000 feet of the described premises, caused by or resulting from any Covered Cause of Loss covered under this policy.
- (2) The coverage for Business Income will begin 72 hours after the loss or damage to the premises that causes the denial of access and will apply for



- a period of up to 30 consecutive days after coverage begins.
- (3) The coverage for Extra Expense will begin immediately after the loss or damage to the premises that causes the denial of access and will end:
 - (a) 30 consecutive days after coverage begins; or
 - (b) When your Business Income coverage ends;

whichever is earlier.

(4) The definitions of Business Income and Extra Expense contained in the Business Income Additional Coverage and the Extra Expense Additional Coverage also apply to this Denial of Access to Premises Additional Coverage.

14. Electronic Vandalism

SECTION I - Property, A. Coverage, 5. Additional Coverages, dd. Electronic Vandalism, paragraph (3) is replaced by the following:

(3) The most we will pay for loss of or damage to computer "hardware" or "software" in any one occurrence under this Additional Coverage is \$5,000. The most we pay for all covered losses to computer "hardware" or "software" under this Additional Coverage during each separate 12-month period of this policy is \$100,000.

The most we will pay under this Additional Coverage for all loss or damage sustained in any one policy year, regardless of the number of occurrences of loss or damage or the number of premises, locations or involved. computer systems \$100,000, unless a higher Limit of Insurance is shown in Declarations. If loss payment on the first occurrence does not exhaust this amount, then the balance is available for subsequent loss or damage sustained in, but not after, that policy year. With respect to an occurrence which begins in one policy year and continues or results in additional loss or damage in a subsequent policy year(s), all loss or damage is deemed to be sustained in the policy year in which the occurrence began.

15. Employee Theft Including ERISA Compliance

SECTION I - PROPERTY, A. Coverage, 5. Additional Coverages, p. Employee Theft Including ERISA, paragraph (6), is replaced by the following:

(6) The most we will pay for all loss resulting directly from an occurrence is \$50,000. Regardless of the number of years this policy remains in force or the number of premiums paid, no Limit of Insurance cumulates from year to year.

16. Expediting Expenses

The following is added to SECTION I - PROPERTY, A. Coverage, 5. Additional Coverages:

Expediting Expenses

- (1) When a Covered Cause of Loss occurs to Covered Property, we will pay for the reasonable and necessary additional expenses you incur to:
 - (a) Make temporary repairs;
 - (b) Expedite permanent repair or replacement of damaged property; or
 - (c) Provide training on replacement machines or equipment.
- (2) The most we will pay for loss under this Additional Coverage in any one occurrence is \$25,000.
- (3) The amount payable under this Additional Coverage is additional insurance.

17. Extended Business Income

SECTION I - PROPERTY, A. Coverage, 5. Additional Coverages, f. Business Income, (2) Extended Business Income, (a) Extended Business Income - Other Than Rental Value, paragraph (ii) and (b) Extended Business Income - Rental Value, paragraph (ii) are replaced by the following:

- (a) Extended Business Income Other Than Rental Value
 - (ii) Ends on the earlier of:
 - The date you could restore your operations, with reasonable speed, to the level which would generate the business income amount that would have existed if no direct physical loss or damage had occurred; or
 - 90 consecutive days after the date determined in (2)(a)(i) above.
- (b) Extended Business Income Rental Value
 - (ii) Ends on the earlier of:
 - The date you could restore tenant occupancy, with reasonable speed, to the level which would generate the "Rental Value" that would have

- existed if no direct physical loss or damage had occurred; or
- 90 consecutive days after the date determined in (2)(b)(i) above.

18. Fine Arts

- a. SECTION I PROPERTY, A. Coverage,
 6. Coverage Extensions, x. Fine Arts,
 paragraph (3) is replaced by the following:
 - (3) The most we will pay for loss under this Additional Coverage is \$100,000 per occurrence regardless of the number of locations or buildings involved.
- b. For the purpose of this Additional Coverage, SECTION I - PROPERTY, G. Property Definitions, 21. "Fine Arts" is replaced by the following:
 - 21. "Fine Arts" means architectural models, paintings, etchings, pictures, tapestries, rare art glass, art glass windows, valuable rugs, sculptures, "antique" statuary, furniture. "antique" jewelry, bric-a-brac. porcelains, similar property of rarity, historical value, or artistic merit.

19. Forgery or Alteration

SECTION I - PROPERTY, A. Coverage, 5. Additional Coverages, k. Forgery or Alteration, paragraph (5) is replaced by the following:

(5) The most we will pay for any loss, including legal expenses, under this Additional Coverage is \$50,000.

20. Hired Auto - Physical Damage

The following is added to SECTION I - PROPERTY, A. Coverage, 5. Additional Coverages:

Hired Auto - Physical Damage Coverage

(1) We will pay for loss to an "auto" you or an "employee", at your direction, lease, hire or rent without a driver for a period of 30 days or less for the purpose of conducting customary operations for your business. This does not include any "auto" you lease, hire or rent from any of your "employees" or members of their households.

We will pay for loss to a covered "auto" or its equipment caused by:

(a) Comprehensive coverage

From any cause except:

(i) The covered "auto's" collision with another object; or

- (ii) The covered "auto's" overturn.
- (b) Collision coverage
 - (i) The covered "auto's" collision with another object; or
 - (ii) The covered "auto's" overturn.
- (2) For the purpose of this Additional Coverage only, SECTION I PROPERTY, A. Coverage, 2. Property Not Covered, paragraph a. is replaced by the following:
 - Aircraft, automobiles, motortrucks and other vehicles subject to motor vehicle registration and:
 - (1) Any "auto" as described in paragraph (1) above, while used in any professional or organized racing or demolition contest or stunting activity, or while practicing for such contest or activity;
 - (2) Tapes, records, discs or other similar audio, visual or data electronic devices designed for use with audio, visual or data electronic equipment;
 - (3) Any device designed or used to detect speed measuring equipment such as radar or laser detectors and any jamming apparatus intended to elude or disrupt speed measurement equipment; or
 - (4) Any electronic equipment, without regard to whether this eauipment is permanently installed that receives or transmits audio, visual or data signals and that is not designed solely for the reproduction of sound.
- (3) For the purpose of this Additional Coverage only, SECTION I PROPERTY, B. Exclusions does not apply with the exception of the following exclusions:
 - (a) 1.d. Nuclear Hazard;
 - (b) 1.f. War and Military Action

For the purpose of this Additional Coverage only, the following exclusions are added to SECTION 1 - PROPERTY, B. Exclusions:

 We will not pay for loss to a covered "auto" caused by or resulting from someone causing you to voluntarily part with the "auto" by trick or scheme or under false pretenses; or



- We will not pay for loss caused by or resulting from wear and tear, freezing; mechanical or electrical breakdown; blowouts, punctures or other road damage to tires.
- (4) For the purpose of this Additional Coverage only, the following is added to SECTION I - PROPERTY, C. Limits of Insurance:

Hired Auto Physical Damage Limits of Insurance

The most we will pay for loss to any one covered "auto" is the lesser of:

- The actual cash value of the damaged or stolen property as of the time of loss;
- The cost of repairing or replacing the damaged or stolen property with other property of like kind and quality; or
- c. \$50,000.
- (5) The following is added to SECTION I -PROPERTY, D. Deductibles, paragraph 5.:

Hired Auto - Physical Damage

- (6) For the purpose of this Additional Coverage only, the following is added to SECTION I - PROPERTY, G. Property Definitions:
 - "Auto" means a land motor vehicle, trailer or semitrailer that is subject to motor vehicle registration, or designed for travel on public roads, including any attached machinery or equipment.

The amount payable under this Additional Coverage is additional insurance.

This coverage is excess to any other valid insurance whether collectible or not.

21. Identity Theft Expense Reimbursement

The following is added to SECTION I - PROPERTY, A. Coverage, 5. Additional Coverages:

Identity Theft Expense

(1) We will pay for "expenses" incurred by an "insured person" as a direct result of any one "Identity Theft" first discovered or learned of by such "insured person" during the policy period.

Any act or series of acts committed by one or more persons, or in which such persons are aiding and abetting others against an "insured person", is considered to be one "identity theft" even if a series of acts

- continues into subsequent policy period(s).
- (2) With respect to this Additional Coverage:
 - (a) "Expenses" means:
 - (i) Costs for notarizing affidavits or similar documents attesting to fraud required by financial institutions or similar credit grantors or credit agencies;
 - (ii) Costs of certified mail to law enforcement agencies, credit agencies, financial institutions or similar credit agencies;
 - (iii) Lost income resulting from:
 - Time taken off work to complete fraud affidavits; or
 - Meeting or talking to law enforcement agencies, credit agencies or legal counsel.
 - (iv) Loan application fees for reapplying for a loan or loans when the original application is rejected solely because the lender received incorrect credit information;
 - (v) Reasonable attorney fees to:
 - Defend lawsuits brought against an "insured person" by merchants, financial institutions or their collection agencies;
 - Remove any criminal or civil judgments wrongly entered against an "insured person"; or
 - Challenge the accuracy or completeness of any information in a consumer credit report;
 - (vi) Charges for long distance telephone calls due to "Identity theft" to:
 - Merchants;
 - 2) law enforcement agencies;
 - Financial institutions or other similar credit grantors; or
 - 4) Credit agencies
 - (vii) Reasonable fees for professional financial advice or professional credit advice.

- The most we will pay for "expenses" under paragraph (2) (a) is \$5,000, subject to a maximum of \$200 per day.
- (b) For purposes of this Additional Coverage, "identity theft" means:

The act of knowingly transferring or using, without lawful authority, a means of identification of an "insured person" with the intent to commit, or to aid or abet another to commit, any unlawful activity that constitutes a violation of Federal law or a felony under any applicable state or local law; and

- (c) "Insured person" means:
 - (i) For sole proprietorships: The individual who is the sole proprietor of the Named Insured shown in the Declarations;
 - (ii) For partnerships: Any individual that is a partner of the Named Insured shown in the Declarations;
 - (iii) For corporations or any other type of organization: The Chief Executive Officer, and any individual who has an ownership interest of at least 20% of the Named Insured, shown in the Declarations.
- (3) The following additional exclusions apply to this Additional Coverage:

We will not pay for:

- (a) Expenses incurred due to any fraudulent, dishonest or criminal acts by:
 - (i) An "insured person";
 - (ii) Any person aiding or abetting an "insured person"; or
 - (iii) Any authorized representative of an "insured person";

whether acting alone or in collusion with others; or

- (b) Loss other than "expenses". Account balances which arise out of fraudulent or unauthorized charges would be one example of loss other than "expenses".
- (4) Regardless of the amount of the deductible for Covered Property shown in the Declarations, the most we will deduct from any claim for "expenses" under this Additional Coverage for any one "identity theft" is \$250.

- (5) The most we will pay under this Additional Coverage for all "Expenses" arising out of all "Identity Theft" against an "Insured Person" incurred in any one policy year, regardless of the number of "Identity Thefts" involved, is \$15,000 unless a higher Limit of Insurance is shown in the Declarations.
- (6) In order for coverage to be provided under this Additional coverage, you must send to us, within 60 days after our request, receipts, bills or other records that support your claim for "expenses" under "identity theft" coverage.

22. Interruption of Computer Operations

SECTION I - PROPERTY, A. Coverage, 5. Additional Coverages, ee. Interruption of Computer Operations, paragraph (3) is replaced by the following:

- (3) The most we will pay under this Additional Coverage - Interruption of Computer Operations for all loss sustained and expense incurred in any one policy year, regardless of the number of interruptions or the number of premises, locations or computer systems involved is:
 - (a) \$500,000 unless a higher Limit of Insurance is shown in the Declarations. If loss payment relating to the first interruption does not exhaust this amount, then the balance is available for loss or expense sustained or incurred as a result of subsequent interruptions in that policy year. A balance remaining at the end of a policy year does not increase the amount of insurance in the next policy vear. With respect to interruption which begins in one policy year and continues or results in additional loss expense in a subsequent policy year(s), all loss and expense is deemed to be sustained or incurred in the policy year in which the interruption began.
 - (b) \$25,000 in any one occurrence for interruptions covered under paragraphs (1) and (2) above for loss arising out of a Covered Cause of Loss occurring away from the described premises. This per occurrence limit applies regardless of the number of premises involved.
 - (c) \$50,000 for all losses arising out of interruptions covered under paragraphs (1) and (2) that arise out of a Covered Cause of Loss



occurring away from the described premises during each separate 12 month period of this policy.

23. Marring and Scratching

The following is added to SECTION I - PROPERTY, A. Coverage, 6. Coverage Extensions:

Marring and Scratching

- (1) You may extend the insurance that applies to Business Personal Property to apply to damage caused directly by sudden and accidental marring and scratching of:
 - (a) Your "stock";
 - (b) Your printing plates; or
 - (c) Property of others that is in your care, custody or control.
- (2) This Coverage Extension does not apply to:
 - (a) Property at other than the described premises; or
 - (b) Personal Property in transit.
- (3) Payment under this Coverage Extension is included within Limit of Insurance applicable to your Business Personal Property.

24. Money and Securities

SECTION 1 - PROPERTY, A. Coverage, 5. Additional Coverages, s. Money and Securities, paragraph (5) is replaced by the following:

- (5) The most we will pay for loss in any one occurrence is:
 - (a) \$25,000 or the amount shown in the Additional Property Coverage Schedule Inside the Premises for "money" and "securities" while:
 - (i) In or on the described premises; or
 - (ii) Within a bank or savings institution in the coverage territory; and
 - (b) \$25,000 or the amount shown in the Additional Property Coverage Schedule Outside the Premises for "money" and "securities" while at any other location listed in (1) above and while in the coverage territory.
- 25. Money Orders and Counterfeit Money

SECTION I - PROPERTY, A. Coverage, 5. Additional Coverages, j. Money Orders

- and Counterfeit Money, paragraph (3) is replaced by the following:
- (3) The most we will pay for any loss under this Additional Coverage is \$25,000.
- 26. Newly Acquired or Constructed Property Business Income and Extra Expense

SECTION I - PROPERTY, A. Coverage, 6. Coverage Extensions, a. Newly Acquired or Constructed Property, paragraph (3) is replaced by the following:

(3) Business Income and Extra Expense

You may extend the insurance that applies to Business Income and Extra Expense to apply to property at any location you acquire. The most we will pay for loss or damage under this Extension is \$500,000 at each premises.

- 27. Ordinance or Law Demolition Cost and Increased Cost of Construction
 - SECTION I PROPERTY, A. Coverage, 5. Additional Coverages, I. Ordinance or Law, (5) Loss Payment, paragraph (d) is replaced by the following:
 - (d) The most we will pay for the total of all covered losses for Demolition Cost and Increased Cost of Construction for each building described in the Declarations is \$25,000 or the amount shown in the Additional Property Schedule. If a damaged building(s) is covered under a Blanket Limit of Insurance and the Blanket Limit of Insurance applies to more than one building or item of property, then the most we will under this Additional Coverage, for each building, is \$25,000, or the amount shown in the Additional Property Coverage Schedule.
- 28. Ordinance or Law Increased Period of Restoration
 - a. The following is added to SECTION I PROPERTY, A. Coverage, 5. Additional Coverages, I. Ordinance or Law, paragraph (4) Coverage:
 - If a Covered Cause of Loss occurs to property at the premises described in the Declarations, coverage is extended to include the amount of actual and necessary loss you sustain during the increased period of "suspension" of "operations" caused by or resulting from the enforcement of any ordinance or law that:
 - (a) Regulates the construction or repair of any property;

- (b) Requires the tearing down of parts of any property not damaged by a Covered Cause of Loss; and
- (c) Is in force at the time of loss.

However, coverage is not extended under this endorsement to include loss caused by or resulting from the enforcement of any ordinance or law which requires:

- (d) The demolition, repair, replacement, reconstruction, remodeling or remediation of property due to contamination by "pollutants" or due to the presence, growth, proliferation, spread or any activity of "fungi", wet or dry rot or bacteria; or
- (e) Any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants", "fungi", wet or dry rot or bacteria.
- b. The following is added to SECTION I -PROPERTY, A. Coverage 5. Additional Coverages, I. Ordinance or Law, (5) Loss Payment, paragraph (c):

The most we will pay for loss under Increased Period of Restoration in any one occurrence is \$50,000 for each described building shown in the Declarations or the amount shown in the Additional Property Coverage Schedule. If a damaged building(s) is covered on a blanket Limit of Insurance which applies to more than one building or item of property, then the most we will pay for Increased Period of Restoration for each described building in any one occurrence is \$50,000.

29. Ordinance or Law (Tenant's Improvement Extension)

 a. The following is added to SECTION I -PROPERTY, A. Coverage, 5. Additional Coverages, I. Ordinance or Law, paragraph (4) Coverage:

Coverage provided under paragraphs (a), (b) and (c) above applies to tenant's improvements and betterments but only if a Limit of Insurance is shown in the Declarations for Business Personal Property. Business Personal Property must be insured on a replacement cost basis.

This extension is provisional and excess to any other valid insurance for tenant's improvements and betterments whether collectible or not.

 The following is added to SECTION I -PROPERTY, A. Coverage, 5. Additional Coverages, I. Ordinance or Law, (5) Loss Payment, paragraph (c):

Regardless of the number of locations insured or buildings involved, the most we will pay for any loss to tenant's improvements and betterments under this Additional Coverage in any one occurrence is \$25,000.

30. Outdoor Property

SECTION I - PROPERTY, A. Coverage, 6. Coverage Extensions, c. Outdoor Property, paragraph (3) is replaced by the following:

(3) Regardless of the number of described premises involved, the most we will pay for loss or damage under this Extension, including debris removal expense, is \$25,000, but not more than \$1,000 for any one tree, shrub or plant.

31. Personal Effects

SECTION I - PROPERTY, A. Coverage, 6. Coverage Extensions, d. Personal Effects, paragraph (3) is replaced by the following:

- (3) The most we will pay for loss or damage under this Extension is \$75,000 at each described premises.
- 32. Portable Electronic Devices Coverage Worldwide

The following is added to SECTION 1 - PROPERTY, A. Coverage, 5. Additional Coverages:

Portable Electronic Devices Coverage Worldwide

- (1) We will pay for loss or damage caused by or resulting from a Covered Cause of Loss to portable electronic devices while anywhere in the world, including while "in transit".
- (2) For the purpose of this Additional Coverage, the following is added to SECTION I PROPERTY, G. Property Definitions:

Portable electronic devices includes laptops, tablets, e-readers, smartphones or other lightweight, hand-held or wearable devices capable of storing, retrieving and processing data.

(3) This coverage is provided when the property is owned by you or owned by others when in your or your "employees'" care, custody or control, subject to SECTION I - PROPERTY, E.



- Property Loss Conditions, 5. Loss Payment, paragraph d.(3)(b).
- (4) We will not pay for loss or damage to portable electronic devices when caused by, resulting from, or arising out of "theft" or unexplained loss. when the property is checked baggage with a carrier for transit.
- (5) The provisions for a Business Income loss will be governed by the terms of SECTION I - PROPERTY, A. Coverage, 5. Additional Coverages, f. Business Income except:
 - (a) There is no requirement that a loss occur within 1,000 feet or at the described premises as stated in paragraph (1)(a); and
 - (b) The following are not included under this Additional Coverage:
 - Continuing normal operating expenses incurred, including "payroll expense";
 - (ii) Extended Business Income.
- (6) The provisions for Extra Expense loss will be governed by the terms of SECTION I - PROPERTY, A. Coverage, 5. Additional Coverages, g. Extra Expense except:
 - (a) There is no requirement that a loss occur within 1,000 feet or at the described premises as stated in paragraph g.(1) and g.(2).
- (7) Limitations, item b. does not apply to this Additional Coverage.
- (8) SECTION PROPERTY. Exclusions, 5. Business Income and Extra Expense Exclusions, paragraph (4) does not apply to this Additional Coverage.
- (9) Regardless of the number of lost or damaged portable electronic devices. the most we will pay per occurrence including actual loss of Business Income you sustain and necessary Extra Expense you incur, is \$10,000.
- amount payable under this Additional Coverage is additional insurance.
- 33. Precious Metal Theft Payment Changes

SECTION I - PROPERTY, A. Coverage, 4. Limitations, paragraph c. is replaced by the following:

c. For loss or damage by "theft", the following types of property are covered only up to the limits shown:

- (1) \$10,000 for furs, fur garments and garments trimmed with fur.
- (2) \$10,000 for jewelry, watches, watch movements. jewels. pearls. precious and semi-precious stones. This limit does not apply to jewelry and watches worth \$250 or less per item.
- (3) \$25,000 for bullion, gold, silver, platinum and other precious alloys or metals.

34. Preservation of Property - Expense

The following is added to SECTION I -PROPERTY, A. Coverage, 5. Additional Coverages:

Preservation of Property - Expense

- (1) If it is necessary to move Covered Property from the described premises to preserve it from loss or damage by a Covered Cause of Loss, we will pay your expenses to move or store the Covered Property.
- (2) This coverage applies for 90 days after the property is first moved, but does not extend past the date on which this policy expires.
- (3) The most we will pay under this Additional Coverage is \$25,000.

This Additional Coverage is an additional amount of insurance.

35. Personal Property in Transit

SECTION I - PROPERTY, A. Coverage, 6. Coverage Extensions, i. Personal Property in Transit, paragraph (5) is replaced by the following:

- (5) Payment under this Coverage Extension is included within the Limit of Insurance applicable to your Business Personal Property
- 36. Sales Representative Samples

SECTION I - PROPERTY, 5. Additional Sales Representative у. Samples, paragraph (3) is replaced by the following:

- (3) The most we will pay for any loss or damage under this Additional Coverage is \$25,000.
- 37. Temporary Relocation of Property

The following is added to SECTION 1 -PROPERTY, A. Coverage, 5. Additional Coverages:

Temporary Relocation of Property

391-1448 08 16

- (1) We will pay for loss of or damage to Covered Property from a Covered Cause of Loss while it is away from the described premises, if it is being stored temporarily at a location you do not own, lease or operate while the described premises is being renovated or remodeled.
- (2) This coverage applies for 90 days after the property is first moved, but does not extend past the date on which this policy expires.
- (3) The most we will pay under this Additional Coverage is \$50,000.
- (4) The amount payable under this Additional Coverage is additional insurance.

38. Tenant Signs

SECTION I - PROPERTY, A. Coverage, 5. Additional Coverages, t. Tenant Signs, paragraph (4) is replaced by the following:

- (4) The most we will pay for loss or damage in any one occurrence is the Limit of Insurance for Business Personal Property shown in the Declarations.
- 39. Utility Services (Including Overhead Transmission Lines)
 - a. SECTION I PROPERTY, A. Coverage,
 5. Additional Coverages, bb. Utility
 Services, paragraphs (1) and (2) are replaced by the following:
 - (1) We will pay for loss of or damage to Covered Property caused by an interruption in service to the described premises. The interruption must result from direct physical loss or damage by a Covered Cause of Loss to property not on the described premises that provides the services shown in paragraph (3) below.

The most we will pay for loss in any one occurrence under this Additional Coverage is \$25,000 at each described premises or the Limit of Insurance shown in the Additional Property Coverage Schedule.

(2) We will pay for the actual loss of Business Income you sustain and necessary Extra Expense you incur caused by the interruption of service at the described premises. The interruption must result from direct physical loss or damage by a Covered Cause of Loss to property not on the described premises that provides the services shown in paragraph (3)

below.

We will only pay for loss you sustain after the first 24 hours following the direct physical loss or damage to the property described above.

The most we will pay for loss in any one occurrence under this Additional Coverage is \$25,000 at each described premises or the Limit of Insurance shown in the Additional Property Coverage Schedule.

- SECTION I PROPERTY, A. Coverage,
 Additional Coverages, bb. Utility
 Services, paragraph (4) is deleted.
- 40. Valuable Papers and Records (Other Than Electronic Data)

SECTION I - PROPERTY, A. Coverage, 6. Coverage Extensions, e. Valuable Papers and Records (Other Than Electronic Data), paragraphs (2) and (3) are replaced by the following:

- (2) The most we will pay under this Coverage Extension for loss or damage to "valuable papers and records" in any one occurrence at the described premises is \$100,000.
- (3) The most we will pay under this Coverage Extension for loss or damage to "valuable papers and records" in any one occurrence not at the described premises is \$100,000.

41. Worldwide Property Off Premises

The following is added to SECTION I - PROPERTY, A. Coverage, 6. Coverage Extensions:

Worldwide Property Off-Premises

- (1) You may extend the insurance that applies to your Business Personal Property and Personal Property of Others to apply to that property while it is temporarily outside the coverage territory if it is:
 - (a) Temporarily at a location you do not own, lease or operate;
 - (b) Temporarily on display or exhibit at any fair, trade show or exhibition;
 - (c) Samples of your "stock" in trade in the custody of your sales representatives; or
 - (d) While "in transit" between the described premises and a location described in (a), (b) or (c) above.
- (2) The most we will pay for loss or damage under this Extension is \$50,000.



(3) This Extension provides an additional amount of insurance.

SECTION II - LIABILITY

Paragraphs 2. through 8. amend coverage provided under SECTION II - LIABILITY.

 Additional Insured by Contract, Agreement or Permit - Amended

For purposes of the coverage provided by this endorsement, Coverage 1. Additional Insured by Contract, Agreement or Permit, subparagraph c. (5) of the Businessowners Liability Special Broadening Endorsement is replaced by the following:

This provision does not apply to:

professional liability as architect or engineer arising out of agreement construction activities under which any insured or anyone acting on any insured's behalf provides or provided service, advice, expertise or work. Construction includes, but is not limited to, the conception, design, construct, assembly, development, erection, formation, safety, reconstruct, rehabilitation, repair, or improvement made to real property. Construction also includes hiring, supervision management of any of these activities. However, this exclusion does not apply to liability arising out of an insured's presence at a jobsite that was not caused by professional activities listed in the paragraph.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision. hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" or the offense which caused the "personal and advertising injury" involved professional liability as an architect or engineer arising out of construction agreement or activities under which any insured or anyone acting on any insured's behalf provides or provided service, advice, expertise or work.

- 2. Additional Insured by Contract, Agreement or Permit - Primary and Non-contributory
 - a. The following is added to SECTION III COMMON POLICY CONDITIONS
 (APPLICABLE TO SECTION I PROPERTY
 AND SECTION II LIABILITY), paragraph
 H. Other insurance:

Additional Insured - Primary and

Non-Contributory

If you agree in a written contract, written agreement or permit that the insurance provided to any person or organization included as an Additional Insured under SECTION II - LIABILITY, C. Who is an Insured, is primary and non-contributory, the following applies:

If other valid and collectible insurance is available to the Additional Insured for a loss covered under SECTION II - LIABILITY of this Coverage Part, our obligations are limited as follows:

(1) Primary Insurance

This insurance is primary to other insurance that is available to the Additional Insured which covers the

Additional Insured as a Named Insured. We will not seek contribution from any other insurance available to the Additional Insured except:

- (a) For the sole negligence of the Additional Insured;
- (b) When the Additional Insured is an Additional Insured under another primary liability policy; or
- (c) When b. below applies.

If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in **c.** below.

(2) Excess Insurance

- (a) This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis:
 - (i) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";
 - (ii) That is Fire insurance for premises rented to the Additional Insured or temporarily occupied by the Additional Insured with permission of the owner;
 - (iii) That is insurance purchased by the Additional Insured to cover the Additional Insured's liability as a tenant for "property damage" to premises rented to the Additional Insured or temporarily occupied by the Additional with permission of the owner; or
 - (iv) If the loss arises out of the maintenance or use of aircraft,

"autos" or watercraft to the extent not subject to Exclusion g. of SECTION II - LIABILITY. B. Exclusions, 1. Applicable to Business Liability Coverage.

- (v) That is insurance available to you for your participation in any past or present "unnamed joint venture".
- (vi) That is any insurance you may have that provides coverage for your professional services.
- (b) When this insurance is excess, we will have no duty to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.
- (c) When this insurance is excess over other Insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:
 - (i) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
 - (ii) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

(3) Method of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach, each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first. If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

b. For the purposes of coverage provided under this endorsement, the following definition is added to SECTION II -

LIABILITY, F. Liability and Medical Expense Definitions:

- "Unnamed joint venture" means any joint venture in which you are a member or partner where:
 - Each and every one of your co-ventures in that joint venture is a hair salon.
 - b. That joint venture is not.

3. Aggregate Limit of Insurance (Per Project)

 For purposes of the coverage provided by this endorsement, the following is added to SECTION II - LIABILITY, D. Liability and Medical Expenses Limits:

The General Aggregate Limit under D. Liability and Medical Expenses Limits of Insurance applies separately to each of "your projects" or each location listed in the Declarations.

- For purposes of the coverage provided by this endorsement, the following definition is added to SECTION II - LIABILITY, F. Liability And Medical Expenses Definitions:
 - 1. "Your project" means:
 - Any premises, site or location at, on, or in which "your work" is not yet completed; and
 - **b.** Does not include any location listed in the Declarations.
- 4. Damage to Premises Rented To You Revised Limit

SECTION II - LIABILITY, D. Liability And Medical Expenses Limits of Insurance, paragraph 4. is replaced by the following:

- 4. The most we will pay under Business Liability Coverage f or damages because of "property damage" to any one premises, while rented to you or while temporarily occupied by you with permission of the owner will be the greater of:
 - a. \$1,000,000; or
 - b. The Limit of Insurance f or Damage to Premises Rented To You shown in the Declarations.

5. Limits of Insurance - Medical Expenses

For purposes of the coverage provided by this endorsement, SECTION II - LIABILITY, D. Liability and Medical Expenses Limits of Insurance, paragraph 3. is replaced by the following:

 Subject to the Liability and Medical Expenses Limits Limit, the most we will pay for all medical expenses because of "bodily injury" sustained by any one person is \$10,000 or the Medical Expenses limit shown in the Declarations, whichever is greater.



- Newly Acquired or Formed Organizations
 SECTION II LIABILITY, C. Who is An Insured, paragraph 3. a. is replaced by the following:
 - a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier.
- 7. Nonowned Watercraft

SECTION II - LIABILITY, B. Exclusions, 1. Applicable to Business Liability Coverage, g. Aircraft, Auto or Watercraft, (2) Aircraft (Other Than Unmanned Aircraft), paragraph (b) is replaced by the following:

- (b) A watercraft you do not own that is:
 - (i) Less than 75 feet long; and
 - (ii) Not being used to carry persons or property for a charge.
- 8, Who is an Insured Unnamed Joint Venture
 - a. For purposes of the coverage provided by this endorsement, the final paragraph of SECTION II - LIABILITY, C. Who Is An Insured is replaced by the following:

Unnamed Joint Venture

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations. However, this does not apply to you, for your participation in any past or present "unnamed joint venture", or if that person or organization is

- otherwise an additional insured under Additional Insureds Unnamed Joint Venture below.
- For purposes of the coverage provided by this endorsement, the following is added to SECTION II - LIABILITY, C. Who is an Insured:

Additional Insureds - Unnamed Joint Venture:

You, as an insured for your participation in any past or present "unnamed joint venture". However, you are not an insured if the "unnamed joint venture" has:

- (1) Direct employees; or
- (2) Owns, rents, or leases any real or personal property.

No other member or partner, or their spouses, of any past or present "unnamed joint venture" is an insured.

- c. For purposes of the coverage provided by this endorsement, the following definition is added to SECTION II - LIABILITY, F. Liability And Medical Expenses Definitions:
 - "Unnamed joint venture" means any joint venture in which you are a member or partner where;
 - Each and every one of your co-ventures in that joint venture is an architectural, engineering or surveying firm; and
 - **b.** That joint venture is not named in the Declarations.

ALL OTHER TERMS, CONDITIONS, AND EXCLUSIONS REMAIN UNCHANGED.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET ADDITIONAL INSURED - PRIMARY AND NON-CONTRIBUTORY

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE PART

A. The following is added to SECTION II - LIABILITY COVERAGE, Paragraph A.1. Who Is An Insured:

Additional Insured if Required by Contract

If you agree in a written contract, written agreement or written permit that a person or organization be added as an additional "insured" under this Coverage Part, such person or organization is an "insured"; but only to the extent that such person or organization qualifies as an "insured" under paragraph A.1.c. of this Section.

If you agree in a written contract, written agreement or written permit that a person or organization be added as an additional "insured" under this Coverage Part, the most we will pay on behalf of such additional "insured" is the lesser of:

- (1) The Limits of Insurance for liability coverage specified in the written contract, written agreement or written permit; or
- (2) The Limits of Insurance for Liability Coverage shown in the Declarations applicable to this Coverage Part.

Such amount shall be part of and not in addition to the Limits of Insurance shown in the Declarations applicable to this Coverage Part. Regardless of the number of covered "autos", "insureds", premiums paid, claims made or vehicles involved in the "accident", the most we will pay for the total of all damages and "covered pollution cost or expense" combined resulting from any one "accident" is the Limit of Insurance for Liability Coverage shown in the Declarations.

B. The following is added to SECTION IV - BUSINESS AUTO CONDITIONS, Paragraph B. General Conditions, subparagraph 5. Other Insurance:

Primary and Non-Contributory

If you agree in a written contract, written agreement or written permit that the insurance provided to a person or organization who qualifies as an additional "insured" under SECTION II - LIABILITY COVERAGE, Paragraph A.1. Who Is An Insured, subparagraph Additional Insured if Required by Contract is primary and non-contributory, the following applies:

The liability coverage provided by this Coverage Part is primary to any other insurance available to the additional "insured" as a Named Insured. We will not seek contribution from any other insurance available to the additional "insured" except:

- (1) For the sole negligence of the additional "insured"; or
- (2) For negligence arising out of the ownership, maintenance or use of any "auto" not owned by the additional "insured" or by you, unless that "auto" is a "trailer" connected to an "auto" owned by the additional "insured" or by you; or
- (3) When the additional "insured" is also an additional "insured" under another liability policy.
- C. This endorsement will apply only if the "accident" occurs:
 - 1. During the policy period;
 - 2. Subsequent to the execution of the written contract or written agreement or the issuance of the written permit; and
 - 3. Prior to the expiration of the period of time that the written contract, written agreement or written permit requires such insurance to be provided to the additional "insured".
- D. Coverage provided to an additional "insured" will not be broader than coverage provided to any other "insured" under this Coverage Part.

ALL OTHER TERMS, CONDITIONS, AND EXCLUSIONS REMAIN UNCHANGED.

TEXAS WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

This endorsement applies only to the insurance provided by the policy because Texas is shown in Item 3.A. of the Information Page.

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule, but this waiver applies only with respect to bodily injury arising out of the operations described in the Schedule where you are required by a written contract to obtain this waiver from us.

This endorsement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

The premium for this endorsement is shown in the Schedule.

| _ | | | | |
|-----------------|----|---|----|----|
| ς_{c} | h۵ | d | 11 | ےا |

| | Schedule | | |
|---|--|---|---|
| Specific Waiver Name of person or organi | zation | | |
| (X) Blanket Waiver | | | |
| Any person or organization waiver. | on for whom the Named Insured ha | as agreed by written contract to furnish this | |
| 2. Operations: | | | |
| ALL TEXAS OPERA | TIONS | | |
| Premium: The premium charge for this e on payroll in connection with voperations described. Advance Premium: | ndorsement shall be <u>2</u> vork performed for the above perso | percent of the premium develope on(s) or organization(s) arising out of the | d |
| This endorsement changes the pol | icy to which it is attached and is effect | rive on the date issued unless otherwise stated. | |
| (The information below is requir | ed only when this endorsement is issu | ued subsequent to preparation of the policy.) | |
| Endorsement Effective Insured | Policy No. | Endorsement No. Premium | |
| Insurance Company | Countersigned by | | |

CERTIFICATE OF INTERESTED PARTIES FORM 1295 1 of 1 OFFICE USE ONLY Complete Nos. 1 - 4 and 6 if there are interested parties. Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties. **CERTIFICATION OF FILING** Name of business entity filing form, and the city, state and country of the business entity's place Certificate Number: of business. 2023-1004269 Komatsu/Rangel, Inc. dba Komatsu Architecture Fort Worth, TX United States Date Filed: 04/07/2023 2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed. Date Acknowledged: City of Burleson Texas Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract. City of Burleson Fire Station 1 Renovation and Addition Nature of interest Name of Interested Party City, State, Country (place of business) (check applicable) Controlling Intermediary Fort Worth, TX United States X Komatsu, Karl 5 Check only if there is NO Interested Party. 6 UNSWORN DECLARATION My name is __Karl Komatsu, President Komatsu Architecture and my date of birth is USA My address is_ (zip code) (country) I declare under penalty of perjury that the foregoing is true and correct. County, State of Texas Executed in Tarrant 20 23 (month) (year)

ized agent of contracting business entity

(Declarant)