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

**The City Council will not discuss or take action on any public hearings, or items listed in Section 3 “Public Presentations”, Section 5 “Citizens Appearances”, or Section 7 “Development Applications”, prior to 5:30 p.m.**

**1. CALL TO ORDER**

Invocation - Bob Massey, Secretary/Treasurer of the Burleson Christian Ministerial Alliance and Elder Emeritus at Grace Bible Fellowship

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. REPORTS AND PRESENTATIONS**

- A. Receive a report, hold a discussion, and give staff direction regarding short term rentals of real property. (Staff Presenter: Tony McIlwain, Development Services Director)

**3. PUBLIC PRESENTATIONS**

A. Proclamations

B. Presentations

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.

**4. 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A. Items to be continued or withdrawn.

- B. Items to be withdrawn from the Consent Agenda for separate discussion by the City Council, staff, or members of the public in attendance.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

## 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 January 18, 2023 special council meeting and January 23, 2023 regular council meeting. (*Staff contact: Amanda Campos, City Secretary*).
- B. Consider approval of an interlocal agreement with Johnson County Special Utility District (JCSUD) regarding placement of JCSUD water facilities within the City of Burleson's right-of-way of Lakewood Drive. (*Staff Contact: Errick Thompson, Deputy Director of Public Works*)
- C. Consider approval of renewing a Mutual Aid agreement between the City of Burleson and Tarrant County Emergency Services District No. 1. (*Staff Contact: K.T. Freeman, Fire Chief*)
- D. Consider approval of a construction contract with Reliable Paving, Inc. for construction of the Neighborhood Street Reconstruction - Cindy Ct. project in an amount not to exceed \$949,330.56. (Staff Presenter: Errick Thompson, Deputy Director of Public Works - Engineering)
- E. Consider approval of a resolution authorizing continued membership in the Steering Committee of Cities Served by Oncor and authorizing a payment of an annual assessment to fund regulatory and legal proceedings and activities related to Oncor Electric Delivery Company, LLC in an amount not to exceed \$5,161.80. (*Staff Contact: Matt Ribitzki, Deputy City Attorney/Compliance Manager*)
- F. Consider approval of a five-year contract with Priority Dispatch Corporation for the sole source purchase of the Medical Priority Dispatch System in the amount not to exceed \$188,537. (*Staff Contact: Paul Bradley, Director of Public Safety Communications*)



- G. Consider approval of a resolution ratifying the appointments of chairpersons and vice-chair persons of the City of Burleson Boards, Commissions and Committees. *(Staff Contact: Amanda Campos, City Secretary)*
- H. Consider approval of a resolution appointing the deputy city secretary to serve as acting city secretary in the absence of the city secretary. *(Staff Contact: Amanda Campos, City Secretary)*
- I. Consider approval of an ordinance amending the text of Appendix B, Zoning, Article I, Board of Adjustments and Appendix C, Urban Design Standards, Article IV Old Town Design Standards, Old Town Design Standards Committee of the Code of Ordinances by amending the number of voting members and terms of members for the Board of Adjustments and Old Town Design Standards Committee. (Final Reading) (Staff Presenter: Amanda Campos, City Secretary)
- J. Consider approval of an Amendment to the Chapter 380 Economic Development and Performance Agreement between the City of Burleson, Burleson 4A Economic Development Corporation, Burleson Community Service Development Corporation, and AC Burleson, LLC for a family entertainment facility located at 1258 SW Alsbury Blvd. *(Staff Presenter: Alex Philips, Economic Development Director)*
- K. Consider approval of a minute order ratifying the Burleson 4A Economic Development Corporation Board's actions taken on approval of an Amendment to the Chapter 380 Economic Development and Performance Agreement between the City of Burleson, Burleson 4A Economic Development Corporation, Burleson Community Service Development Corporation, and AC Burleson, LLC for a family entertainment facility located at 1258 SW Alsbury Blvd. *(Staff Presenter: Alex Philips, Economic Development Director)*
- L. Consider approval of a minute order ratifying the Burleson Community Service Development Corporation Board's actions taken on approval of an Amendment to the Chapter 380 Economic Development and Performance Agreement between the City of Burleson, Burleson 4A Economic Development Corporation, Burleson Community Service Development Corporation, and AC Burleson, LLC for a family entertainment facility located at 1258 SW Alsbury Blvd. *(Staff Presenter: Alex Philips, Economic Development Director)*
- M. Consider approval of a minute order ratifying the 4A Economic Development Corporation Board's actions taken on the approval of a Performance Agreement between the Burleson 4A Economic Development Corporation and 2525 FTG - Tulsa, LLC for a development located at 700, 708, 712, 714, 716, and 720 SW Wilshire Blvd in Burleson, Texas *(Staff Presenter: Alex Philips, Economic Development Director)*

## **7. DEVELOPMENT APPLICATIONS**

- A. **4139 S Burleson Blvd (Case 22-139):** Hold a public hearing and consider a resolution approving a waiver to Section 5.5.E "Parking Lot/Site Layout Design Criteria" of the Design Standards Manual as amended by Resolution R-1175-10 for the parking lot design within 4139 S. Burleson Blvd. *(Staff Presenter: Errick Thompson, Deputy Director of Public Works) (The Planning and Zoning Commission motion for approval passed 5-1)*
- B. **2825 S Burleson (Case 22-152):** Hold a public hearing and consider approval of an ordinance for a zoning change request from "A", Agriculture to "C" Commercial. *(First and Final*

*Reading) (Staff Presenter: Tony McIlwain, Development Services Director) (The Planning and Zoning Commission recommended approval by unanimous vote)*

## **8. GENERAL**

- A.** Consider approval of a Resolution ordering a General Election to be held on May 6, 2023 for the purpose of electing 4 council positions; Mayor, Place 2, Place 4, and Place 6 for full terms. *(Staff Presenter: Amanda Campos, City Secretary)*
- B.** Consider approval of a contract with Johnson County for election services for the May 6, 2023 general election in an amount not to exceed \$35,000. *(Staff Presenter: Amanda Campos, City Secretary)*

## **9. CITY COUNCIL REQUESTS AND FUTURE AGENDA ITEMS AND REPORTS**

## **10. 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.

- A. Pending or Contemplated Litigation or to Seek the Advice of the City Attorney Pursuant to Section 551.071**
  - 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)
- B. Discussion Regarding Possible Purchase, Exchange, Lease, or Value of Real Property Pursuant to Section 551.072**
- C. Deliberation regarding a negotiated contract for a prospective gift or donation to the state or the governmental body Pursuant to Section 551.073**
- D. Personnel Matters Pursuant to Section 551.074**
- E. Deliberation regarding (1) the deployment, or specific occasions for implementation of security personnel or devices; or (2) a security audit Pursuant to Sec. 551.076**
- F. 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**
  - Project Workforce
- G. Pursuant to Sec 418.183(f), deliberation of information related to managing emergencies and disasters including those caused by terroristic acts (must be tape recorded)**

## **CERTIFICATE**

I hereby certify that the above agenda was posted on this the **3rd of February 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 the 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.

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## City Council Regular Meeting

**DEPARTMENT:** Development Services  
**FROM:** Tony McIlwain, Development Services Director  
**MEETING:** February 6, 2023

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**SUBJECT:**

Receive a report, hold a discussion, and give staff direction regarding short term rentals of real property. (Staff Presenter: Tony McIlwain, Development Services Director)

**SUMMARY:**

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. The rental duration ranges from days to weeks, but is typically much shorter than a conventional lease agreement. City staff has received zoning inquiries and citizen complaints regarding short term rentals within the community. The purpose of this presentation is to provide City Council with an overall understanding of STRs and to request direction regarding drafting an ordinance that addresses the regulatory requirements for these types of uses.

During the course of this presentation staff will elaborate on the following topics:

- *What are short term rentals (STRs)?*
- *Who are the Providers?*
- *How do we regulate STRs?*
- *Are there any Issues or Complaints?*
- *Can we legally regulate STRs?*
- *How do other Cities regulate STRs?*
- *Recommendation*
- *Discussion*

Following the presentation of this item, staff is requesting Council's direction on creating an ordinance that defines and regulates STRs or consider further discussion on the topic.

**STAFF CONTACT:**

Name: **Tony McIlwain**  
Title: **Development Services Director**  
Email: [tmcilwain@burlesontx.com](mailto:tmcilwain@burlesontx.com)  
Phone: **817-426-9684**



# SHORT TERM RENTALS

Council Presentation  
February 6, 2023



# Short Term Rentals (STRs)

- What are short term rentals (STRs)?
- Who are the Providers?
- How do we regulate STRs?
- Are there any Issues or Complaints?
- Can we legally regulate STRs?
- How do other Cities regulate STRs?
- Regulation Options/ Recommendations
- Next steps



# What is a Short Term Rental (STR)?

- In general, 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.
- The precise legal definition of a short-term rental varies by community.
- Generally Short Term Rental pertains to a stay that is less than 30 days.

# PROVIDERS



## How do we regulate and enforce?

- There are no existing STR reporting or registration requirements
- Neighborhood Services estimates approximately 8-to-10 cases over the last 5 years
- Enforcement is complaint driven

# ISSUES/ COMPLAINTS

## ➤ Citizen Concerns:

- Use leads to transient element within neighborhood
- Recurring, unfamiliar people in the neighborhood
- Multiple cars parking in front of home
- Disruptive behavior (drinking, loud music)
- Commercial use in residential area



# WHAT DO OUR ORDINANCES ALLOW?

- Old Town Overlay allows Bed and Breakfast Establishments.
- Definition:
  - **Bed and Breakfast.** *A house, or portion thereof, where short-term lodging rooms and meals are provided. The operator or caretaker of the bed and breakfast establishment shall live on the premises or an adjoining premises.*
- Staff does not consider bed and breakfast establishments as short term rentals.
- The term short term rental is not defined in our zoning code, not is it listed as an allowable use. Consequently, staff interprets this to mean that STRs are not allowed.
- The short term rental of a house or room is distinct and different from the longer term leasing (greater than 30 days) of a house or room.
- Changes to the zoning code will be required if Council is to allow short term rentals.

# WHAT CAN WE LEGALLY REGULATE?

- City can legally define a STR and implementing land use regulations
- City can legally implement registration and inspections requirements
- City can subject STRs to hotel occupancy tax requirements
- City can require a higher level of zoning scrutiny (ie SUP) and public notice
- City can require health and safety regulations and occupancy limitations
- Texas Supreme Court has not issued an opinion on the issue of STR
- Lower courts decisions favor cities' ability to regulate STRs
- *Draper v. City of Arlington*
- *City of Grapevine v. Muns*
- *Anding v. City of Austin*
- *Zaatari v. City of Austin*: the court invalidated Austin's ban on short-term rentals of non-homestead properties
- City cannot regulate STR occupancy based on race, gender or religion

# OTHER CITIES

CITY	SHORT TERM RENTAL ORDINANCE	REGISTRATION REQUIRED	INSPECTION REQUIRED	ALLOWED BY RIGHT IN RESIDENTIAL DISTRICTS
Arlington	Yes	Yes	Yes	No
Cedar Hill	No	No	No	No
Cleburne	No	No	No	No
Coppell	Yes	Yes	Yes	No
Dallas	Yes	Yes	No	No
Eules	Yes	Yes	Yes	No
Fort Worth	Yes	Yes	Yes	No
Grand Prairie	Yes	Yes	Yes	No
Keller	No	No	No	No
Mansfield	No	No	No	No
North Richland Hills	No	No	No	No
The Colony	Yes	Yes	Yes	No



# OPTIONS

## ➤ Options to consider:

- Do not regulate
  - Enforce nuisance violations through normal city practices (i.e. police and code enforcement)
- Regulate via an ordinance; staff recommends
  - Require Registration
  - Require payment of Hotel Occupancy Tax
  - Protect integrity of single family zoned areas through the enforcement of the zoning ordinance

# DISCUSSION and/or QUESTIONS

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## City Council Regular Meeting

**DEPARTMENT:** City Secretary's Office  
**FROM:** Amanda Campos, City Secretary  
**MEETING:** February 6, 2023

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**SUBJECT:**

Consider approval of the minutes from the January 18, 2023 special council meeting and January 23, 2023 regular council meeting. (*Staff contact: Amanda Campos, City Secretary*).

**SUMMARY:**

The City Council duly and legally met on January 18, 2023 for a special council meeting and January 23, 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](mailto:acampos@burlesontx.com)  
Phone: 817-426-9665

**BURLESON CITY COUNCIL SPECIAL MEETING**  
**January 18, 2023**  
**DRAFT MINUTES**

**ROLL CALL**

**COUNCIL PRESENT:**

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

**COUNCIL ABSENT:**

**Staff present**

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

**1. CALL TO ORDER – 9:02 AM**

**2. REPORTS AND PRESENTATIONS**

- A. Receive a report and hold a discussion regarding the Matrix Consulting staffing and facility assessment of the Burleson Police Department. (*Staff Presenter: Billy J. Cordell, Chief of Police*).**

Billy Cordell, Chief of Police introduced Richard Brady, President of Matrix Consulting who presented the Burleson Police Department staffing and facility assessment to council.

**RECESS AND BACK TO ORDER**

Mayor Fletcher called for a short recess at 10:34 a.m. and called the meeting back to order at 10:43 a.m. with all members present.

**3. CITIZEN APPEARANCES**

- No speakers.

#### **4. GENERAL**

- A. CSO#4087-01-2023, professional services contract with Brinkley Sargent Wiginton Architects for design of the Burleson Police Headquarters Expansion project in the amount of \$2,581,495. (Staff Presenter: Eric Oscarson, Director of Public Works)**

Eric Oscarson, Director of Public Works, presented a professional services contract to the city council.

Motion made by Jimmy Stanford and seconded by Dan McClendon to approve.

Motion passed 7-0.

- B. CSO#4088-01-2023, contract for the purchase of a police intermediate incident command vehicle using the HGAC-Buy Contract with LDV Custom Specialty Vehicles in the amount not to exceed \$621,682. (Staff Presenter: Billy J. Cordell, Chief of Police)**

Billy Cordell, Chief of Police, presented a contract to the city council.

Motion made by Tamara Payne and seconded by Ronnie Johnson to approve.

Motion passed 7-0.

#### **5. 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.

- A. Pending or Contemplated Litigation or to Seek the Advice of the City Attorney Pursuant to Section 551.071**
- B. Discussion Regarding Possible Purchase, Exchange, Lease, or Value of Real Property Pursuant to Section 551.072**
- C. Deliberation regarding a negotiated contract for a prospective gift or donation to the state or the governmental body Pursuant to Section 551.073**
- D. Personnel Matters Pursuant to Section 551.074**
- E. Deliberation regarding (1) the deployment, or specific occasions for implementation of security personnel or devices; or (2) a security audit Pursuant to Sec. 551.076**
- F. 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**
- G. Pursuant to Sec 418.183(f), deliberation of information related to managing emergencies and disasters including those caused by terroristic acts (must be tape recorded)**

- No need for Executive Session.

6. **ADJOURNMENT**

Motion made by Ronnie Johnson and Dan McClendon to adjourn.

Mayor Fletcher adjourned the meeting.

**Time: 11:30 a.m.**

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Monica Solko  
Deputy City Secretary

# BURLESON CITY COUNCIL REGULAR MEETING

January 23, 2023

DRAFT MINUTES

## ROLL CALL

### COUNCIL PRESENT:

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

### COUNCIL ABSENT:

### 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. CALL TO ORDER – 5:31 PM

Invocation – Mayor Pro Tem Dan McClendon 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

- None.

### B. Presentations

- National Charity League, Burleson/Mansfield Chapter, book donation from their MLK book drive to the Mayor's Youth Council for restocking of the Little Free Libraries in Burleson.

### C. Community Interest Items

- Condolences to the family of Bruce Gilliam.
- Congratulations to Economic Development for their hard work on the upcoming Project U conference on February 21, 2023 that has sold out.
- Council member Tamara Payne announced she would not be running for re-election.



- Join us for the Great Giveback on Saturday, January 28, 2023, at Burleson Public Library from 9-11 a.m.
- Join us for City Fest on Thursday, February 2, 2023 at the Brick from 4:30 p.m.-7:00 p.m.

### 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.

- Remove 5D.

### 4. **CITIZEN APPEARANCES**

- Adele Parker, 336 S. Dobson, came forward with concerns of speeding on Dobson.

### 5. **CONSENT AGENDA**

#### A. Minutes from the January 9, 2023 regular council meeting. (*Staff contact: Amanda Campos, City Secretary*).

Motion made by Tamara Payne and seconded by Victoria Johnson to approve.

Motion passed 7-0.

#### B. CSO#4089-01-2023, ordinance amending the City of Burleson code of ordinances Chapters 2, 6, 10, 18, 44, 46, 62, and 86 amending the number of voting members and terms of members. (Final Reading) (*Staff Contact: Amanda Campos, City Secretary*)

Motion made by Tamara Payne and seconded by Victoria Johnson to approve.

Motion passed 7-0.

#### C. CSO#4090-01-2023, ordinance amending Article II “Fire Department” of Chapter 38 “Fire Prevention” of the City of Burleson Code of Ordinances by repealing and replacing Division 2 “Volunteer Fire Department” and Division 3 “Fire Prevention Department” setting forth that the fire department is no longer a volunteer fire department, that the fire prevention department is a division of the fire department, and that the fire marshal reports to the fire chief. (Final Reading) (*Staff Contact: Matt Ribitzki, Deputy City Attorney/Compliance Manager*)

Motion made by Tamara Payne and seconded by Victoria Johnson to approve.

Motion passed 7-0.

#### D. ~~CSO#1681-02-2021, contract with Amilia Technologies (SmartRec) for authorization of credit card user fees (\$230,041.52) at the Burleson Recreation~~

~~Center. (Staff Contact: Jen Basham, Director of Parks and Recreation) - REMOVED~~

*Item 5D was removed for separate discussion and consideration.*

- E. CSO#4091-01-2023, contract with EZGO for the purchase of 480 golf cart batteries to replace the existing batteries on all 80 golf carts at Hidden Creek Golf Course through a cooperative purchasing agreement with BuyBoard in the amount not to exceed \$98,107.20. (Staff Contact: Jen Basham, Director of Parks and Recreation)**

Motion made by Tamara Payne and seconded by Victoria Johnson to approve.

Motion passed 7-0.

- F. CSO#4092-01-2023, amending employment agreement with Amanda Campos to act as City Secretary. (Staff Contact: Matt Ribitzki, Deputy City Attorney/Compliance Manager)**

Motion made by Tamara Payne and seconded by Victoria Johnson to approve.

Motion passed 7-0.

- G. CSO#4093-01-2023, amending employment agreement with Bryan Langley to act as City Manager. (Staff Contact: Matt Ribitzki, Deputy City Attorney/Compliance Manager)**

Motion made by Tamara Payne and seconded by Victoria Johnson to approve.

Motion passed 7-0.

**REMOVED ITEM:**

- D. CSO#1681-02-2021, contract with Amilia Technologies (SmartRec) for authorization of credit card user fees (\$230,041.52) at the Burleson Recreation Center. (Staff Contact: Jen Basham, Director of Parks and Recreation)**

Jen Basham, Director of Parks and Recreation, presented credit card user fees to the city council.

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

Motion passed 7-0.

**6. DEVELOPMENT APPLICATIONS**

- A. 2500 SW Hulen St (TOD Mixed-Use) (Case 22-131): Hold a public hearing and consider an ordinance for a zoning change request from "PD" Planned Development district, to "PD" Planned Development district, to allow for retail and single-family attached residential development on 35.20 acres. (First and Final Reading) (Staff Presenter: Tony McIlwain, Director of Development)**

**Services) (The Planning and Zoning Commission recommended approval by unanimous vote) - CONTINUED**

*Amanda Campos, City Secretary announced that the applicant had requested to continue item 6A to the February 20, 2023 City Council meeting at 5:30 p.m.*

Mayor Fletcher opened the public hearing. **Time: 5:56 p.m.** and announced that the public hearing would be continued at the February 20, 2023 City Council meeting at Burleson City Hall, Council Chambers, 141 W. Renfro Street at 5:30 p.m.

- B. CSO#4094-01-2023, resolution for a sign variance to allow for a roof sign and two projection signs; Chapter 63, Sign Regulations for Razoo's located at 135 W Ellison St. (Case 22-156). (Staff Presenter: Tony McIlwain, Development Services Director) (No Planning and Zoning Commission action was required for this item.)**

Tony McIlwain, Development Services Director, presented Case 22-156 to the city council.

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

Motion passed 7-0.

## **7. GENERAL**

- A. Ordinance Modification for text amendments to Appendix B, Zoning, Article I, Board of Adjustments and Appendix C, Urban Design Standards, Article IV Old Town Design Standards, Old Town Design Standards Committee: Hold a public hearing and consider an ordinance amending the number of voting members and terms of members for the Board of Adjustments and Old Town Design Standards Committee.(First Reading) (Staff Presenter: Amanda Campos, City Secretary)**

Amanda Campos, City Secretary, presented an ordinance to the city council.

Mayor Fletcher opened the public hearing. **Time: 6:08 p.m.**

No speakers.

Mayor Fletcher closed the public hearing. **Time: 6:08 p.m.**

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

Motion passed 7-0.

## **8. REPORTS AND PRESENTATIONS**

None.

## **9. CITY COUNCIL REQUESTS FOR FUTURE AGENDA ITEMS OR REPORTS**

- None.

**10. 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.

- A. Pending or Contemplated Litigation or to Seek the Advice of the City Attorney Pursuant to Section 551.071**
  - Real Estate Sales Contract between Marilyn Bleeker and the Burleson Community Services Development Corporation Dated December 12, 2022
  - Real Estate Sales Contract between James W. Crouch, Jr. and Katherine Crouch Halwes and the Burleson 4A Economic Development Corporation Dated July 18, 2022
- B. Discussion Regarding Possible Purchase, Exchange, Lease, or Value of Real Property Pursuant to Section 551.072**
  - Approximately 11.705 acres of land out of the H.G. Catlett Survey, Abstract No. 177 in Burleson, Johnson County, Texas near the intersection of SW Hulen St and SW Alsbury Blvd
  - Approximately 30.76 acres of land commonly known as 2140 SW Hulen St in Burleson, Johnson County, Texas near the intersection of SW Hulen St and SW Alsbury Blvd
  - 130 E Renfro St in Burleson, Johnson County, Texas
- C. Deliberation regarding a negotiated contract for a prospective gift or donation to the state or the governmental body Pursuant to Section 551.073**
- D. Personnel Matters Pursuant to Section 551.074**
- E. Deliberation regarding (1) the deployment, or specific occasions for implementation of security personnel or devices; or (2) a security audit Pursuant to Sec. 551.076**
- F. 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**
  - Project Workforce
  - CHC Development/CHC Acquisition
- G. Pursuant to Sec 418.183(f), deliberation of information related to managing emergencies and disasters including those caused by terroristic acts (must be tape recorded)**

Motion was made by Dan McClendon and seconded by Ronnie Johnson to convene into executive session. **Time: 6:10 p.m.**

Motion passed 7-0.

Motion was made by Jimmy Stanford and seconded by Ronnie Johnson to reconvene into open session. **Time: 7:08 p.m.**

Motion passed 7-0.

## **ADJOURNMENT**

Motion made by Tamara Payne and Dan McClendon to adjourn.

Mayor Fletcher adjourned the meeting.

**Time: 7:09 p.m.**

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Monica Solko  
Deputy City Secretary

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## City Council Regular Meeting

**DEPARTMENT:** Public Works

**FROM:** Errick Thompson, Deputy Director of Public Works

**MEETING:** February 6, 2023

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**SUBJECT:**

Consider approval of an interlocal agreement with Johnson County Special Utility District (JCSUD) regarding placement of JCSUD water facilities within the City of Burleson's right-of-way of Lakewood Drive. (*Staff Contact: Errick Thompson, Deputy Director of Public Works*)

**SUMMARY:**

Johnson County Special Utility District is one provider of water service to property owners within the City limits and the City's extraterritorial jurisdiction (ETJ) as allowed by their Certificate of Convenience and Necessity (CCN). A CCN authorizes and requires utilities to provide continuous and adequate service to every customer who requests service within a certified area. The CCN boundary defines the area within which a water provider holds the exclusive right to provide retail water and/or sewer.

Lakewood Drive is currently in construction and located within JCSUD's water CCN. As part of the construction, existing JCSUD water facilities will be relocated. In addition, as part of the Chisholm Summit development, the developer is required to construct new water facilities that will not only serve Chisholm Summit, but future development in the area.

Typically, JCSUD requires a separate 20-foot wide water line easement adjacent to the property line on private property. This standard is appropriate for rural development, but as urban growth moves into JCSUD's CCN area the easement becomes a challenge for smaller lots. The interlocal agreement will allow JCSUD's water facilities to be located within the City's right-of-way.

Staff has worked with JCSUD on the terms of the interlocal agreement which allows for the following:

- JCSUD's water facilities may be located within the Lakewood Drive right-of-way
- Burleson would be financially responsible for any future relocation of JCSUD water facilities if the City realigns Lakewood Drive in the future
- JCSUD will reimburse the City for the cost to restore grass, sidewalk, curbing, and pavement as a result of repair/replacement of water facilities. All repairs will be coordinated with the City

JCSUD recognizes the growth the City is experiencing which is more urban in nature with larger homes on smaller lots. Staff will continue to work with JCSUD and as development continues within the JCSUD's CCN boundary, staff anticipates additional interlocal agreements will be presented to the City Council for consideration.

October 15, 2018 – City Council approved a similar interlocal agreement allowing placement of JCSUD's water facilities within the City of Burleson's right-of-way within the PF Farms Planned Development

**OPTIONS:**

- 1) Approve an interlocal agreement with Johnson County Special Utility District (JCSUD) regarding placement of JCSUD water facilities within the City of Burleson's right-of-way of Lakewood Drive.
- 2) Deny an interlocal agreement with Johnson County Special Utility District (JCSUD) regarding placement of JCSUD water facilities within the City of Burleson's right-of-way of Lakewood Drive.

**RECOMMENDATION:**

Approve an interlocal agreement with Johnson County Special Utility District (JCSUD) regarding placement of JCSUD water facilities within the City of Burleson's right-of-way of Lakewood Drive.

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

None

**FISCAL IMPACT:**

None

**STAFF CONTACT:**

Errick Thompson, P.E.  
Deputy Director of Public Works - Engineering  
[ethompson1@burlesontx.com](mailto:ethompson1@burlesontx.com)  
817-426-9610



# INTERLOCAL AGREEMENT

with Johnson County Special Utility District for  
Water Facilities within Lakewood Dr ROW

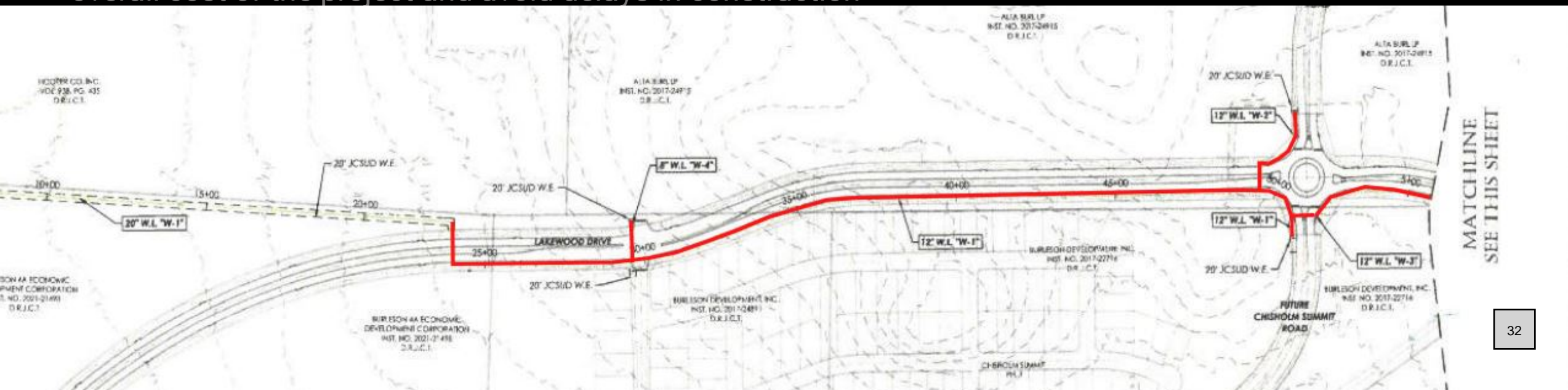




# INTERLOCAL AGREEMENT

## ALLOWS WATER FACILITIES IN CITY ROW

- Burleson would be financially responsible for any future relocation of JCSUD water facilities if the City realigns Lakewood Drive in the future
- JCSUD retains maintenance responsibility for their water facilities and will reimburse the City for the cost to restore grass, sidewalk, curbing, and pavement as a result of maintenance of the existing JCSUD water facilities. All repairs will be coordinated with the City
- Agreement will eliminate the need for exclusive JCSUD easements outside of the City's right-of-way, reducing overall cost of the project and avoid delays in construction





# OPTIONS

## RECOMMENDED



### APPROVE

Approve an interlocal agreement with Johnson County Special Utility District (JCSUD) regarding placement of JCSUD water facilities within the City of Burleson's right-of-way of Lakewood Drive.



### DENY

Deny an interlocal agreement with Johnson County Special Utility District (JCSUD) regarding placement of JCSUD water facilities within the City of Burleson's right-of-way of Lakewood Drive.



**INTERLOCAL AGREEMENT FOR JCSUD AND THE CITY OF BURLESON**  
**REGARDING PLACEMENT OF JCSUD'S WATER LINE FACILITIES WITHIN THE**  
**CITY OF BURLESON'S RIGHT OF WAY OF CHISHOLM SUMMIT**  
**CR 914/LAKEWOOD DR**

This Interlocal Agreement for placement of JCSUD's Water Line Facilities within the City of Burleson's right-of-way ("Agreement") is entered by and between Johnson County Special Utility District ("JCSUD") and the City of Burleson, Texas ("Burleson"), to be effective as of the last date of execution by JCSUD and Burleson (the "Effective Date"). JCSUD and Burleson may be referred to herein individually as a "Party" or collectively as the "Parties."

**WHEREAS**, JCSUD is a conservation and reclamation district created pursuant to Section 59, Article XVI of the Texas Constitution and operating under Chapters 49 and 65 of the Texas Water Code;

**WHEREAS**, Burleson is a home-rule city acting under its charter adopted pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Local Government Code;

**WHEREAS**, JCSUD is willing to permit the placement of its facilities within the right-of-way necessary for the Project according to the terms and conditions set forth herein;

**WHEREAS**, if Burleson determines from time to time that it is necessary to make certain improvements in their jurisdictional right-of-way which would require water facilities belonging to JCSUD to be removed and/or relocated it will necessitate the adjustment, removal, and/or relocation of certain water utility facilities belonging to JCSUD within the Chisholm Summit Development and CR 914/Lakewood Dr for improvement or extension of any roadways or other improvement project ("Project"), subject to but not limited to engineering, easement acquisition costs, and construction to relocate existing JCSUD utility lines along and/or across the proposed improvement project, roadway extension and/or any other improvement project;

**WHEREAS**, Burleson is willing to be responsible for any future costs associated with removing and relocating JCSUD's water line facilities whereby said improvements are deemed necessary and beneficial to Burleson including, but not limited to, engineering, easement acquisition, and construction inspection costs to relocate existing JCSUD utility lines along and/or across the proposed Project so long as the relocation does not negatively impact the maintenance and operation of JCSUD's water line facilities;

**NOW THEREFORE**, in consideration of the mutual promises set forth herein and for other good and valuable consideration the receipt and sufficiency of which being hereby acknowledged, the Parties agree as follows:

**I. RELOCATION PROJECT**

1. Area and Facilities Subject of Relocation Project. JCSUD currently owns, operates, and maintains certain water utility lines and facilities within the Chisholm Summit Development and CR 914/Lakewood Dr, currently located in Johnson County, Texas, as more particularly described

and illustrated in the map attached as Exhibit “A”, attached hereto and incorporated herein by reference for all purposes (the “Map”). The current location of the water utility lines and facilities within the Chisholm Summit Development and CR 914/Lakewood Dr is highlighted in red on the Map. The Parties hereby agree that Burleson may adjust, remove, and/or relocate of said water utility lines and facilities belonging to JCSUD within the Chisholm Summit Development and CR 914/Lakewood Dr to Burleson’s jurisdictional right-of-way shown in green and otherwise identified in the Map (the “Project”). The Parties agree that the facilities subject to relocation will be mutually agreed upon.

2. Responsibility for Construction. The Parties agree that Burleson shall be responsible for conducting necessary engineering, and/or surveying of the area to which the facilities will be relocated, acquiring easements for the Project, and all construction associated with the Project. The Parties agree that JCSUD shall review and approve the construction plans and provide inspection during construction, and JCSUD shall not unreasonably withhold its approval. JCSUD agrees that Burleson may assign and/or subcontract the Project work to any contractor, including to the general contractor selected by Burleson to undertake all or part of the Project.

3. Construction. After the Effective Date, JCSUD agrees to provide written notice authorizing Burleson to begin performing work. Burleson agrees to perform such work in a reasonable time frame, however, all parties shall recognize events outside of Burleson’s control may cause construction delays, including but not limited to a strike, war, or act of war (whether an actual declaration of war is made or not), insurrection, riot, the act of a public enemy, accident, fire, flood, adverse weather, or other act of God, sabotage, interference by JCSUD, or any third party with Burleson’s ability to proceed with Project, or any other event in which Burleson has exercised all due care in the prevention thereof so that the causes or other events are beyond the control and without the fault or negligence of Burleson. Once all inspections have been performed by JCSUD and the facilities found to be in conformance with the construction plans, JCSUD shall provide a letter of final acceptance. A two-year maintenance bond shall be provided by the contractor for any water line relocations associated with the Project. Burleson agrees to work with JCSUD in any correspondence with the contractor if there are deficiencies identified within the two-year maintenance period.

## **II. MAINTENANCE**

The Parties agree that JCSUD shall be the entity of record to repair its distribution lines and related facilities as needed to maintain normal operations. JCSUD will be responsible for excavation and backfill associated with maintenance of the water line facilities. Burleson shall be responsible for restoration of the grass, sidewalk, curbing, and pavement if removed as a result of maintenance to the water line by JCSUD. JCSUD and Burleson will coordinate the repairs/replacement process for all items associated with the site restoration listed above with Burleson in-house forces or contractors to assist on a “cost plus” basis to JCSUD.

## **III. TERMINATION**



Termination shall be by mutual consent of both parties. All payment provisions in Section II and of this Agreement shall survive any termination of this Agreement and shall be binding on the Parties and their successors and assigns.

#### **IV. MISCELLANEOUS**

1. Notices. Notices shall be in writing and delivered personally, or mailed by registered mail or certified mail, return receipt requested, postage prepaid, or transmitted by facsimile transmission (receipt of such transmission to be acknowledged by the recipient) to the Parties at their respective addresses shown below:

Johnson County Special Utility District  
Attn. Pete Kampfer, General Manager  
P.O. Box 509  
Cleburne, TX 76033  
T: (817) 760-5200  
F: (817) 760-5238

City of Burleson  
Attn: City Manager  
141 W. Renfro St.  
Burleson, TX 76028  
T: (817) 426-9600  
F: (817) 426-9376

2. Compliance with Applicable Laws. The Parties agree that they will comply with all federal and state laws, rules, and regulations applicable to construction associated with the.

3. Disclaimer of Liability. TO THE EXTENT ALLOWED BY LAW, EACH PARTY AGREES TO RELEASE, DEFEND, INDEMNIFY, AND HOLD HARMLESS THE OTHER (AND ITS OFFICERS, AGENTS, AND EMPLOYEES) FROM AND AGAINST ALL CLAIMS OR CAUSES OF ACTION FOR INJURIES (INCLUDING DEATH), PROPERTY DAMAGES (INCLUDING LOSS OF USE), AND ANY OTHER LOSSES, DEMANDS, SUITS, JUDGMENTS AND COSTS, INCLUDING REASONABLE ATTORNEYS' FEES AND EXPENSES, IN ANY WAY ARISING OUT OF, RELATED TO, OR RESULTING FROM ITS PERFORMANCE UNDER THIS AGREEMENT, OR CAUSED BY ITS NEGLIGENT ACTS OR OMISSIONS (OR THOSE OF ITS RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, OR ANY OTHER THIRD PARTIES FOR WHOM IT IS LEGALLY RESPONSIBLE) IN CONNECTION WITH PERFORMING THIS AGREEMENT. NOTWITHSTANDING ANYTHING TO THE CONTRARY, THIS SECTION IV.3. SHALL SURVIVE ANY TERMINATION OF THIS AGREEMENT AND SHALL BE BINDING ON THE PARTIES AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS.

4. Governing Laws. This Agreement shall be governed by and construed and enforced under the laws of the State of Texas.
5. Venue. The obligations and undertakings of each of the Parties to this Agreement shall be performed in Johnson County, Texas. The parties expressly agree that all judicial proceedings to enforce any of the provisions of this Agreement shall take place in Johnson County, Texas.
6. Third Party Beneficiaries. The Parties agree that there are no third party beneficiaries to this Agreement.
7. Attorneys' Fees. Except as provided in Section II of this Agreement, each Party shall bear its own attorneys' fees and costs related to this Agreement.
8. Entire Agreement. This Agreement contains the entire agreement of the Parties with respect to the subject matter of the Agreement. No agreement, statement, or promise made by any Party or to any employee, agent, or officer of any Party that is not contained in this Agreement shall be valid, binding, or of any force or effect.
9. Exhibits. All Exhibits hereto are incorporated as if set forth in their entirety in this Agreement.
10. Amendment. Any amendments to this Agreement must be in writing and signed by all the Parties.
11. Successors and Assigns. This Agreement shall be binding upon the parties hereto and their respective successors, heirs, representatives, and assigns. Notwithstanding the foregoing, no Party to this Agreement may assign their rights or obligations under this Agreement without the written consent of the other Parties.
12. Construction. This Agreement shall be deemed drafted equally by the Parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against either Party shall not apply. When required by context, the gender of words in this Agreement includes the masculine, feminine, and neuter genders and the singular includes the plural (and vice-versa). The headings in this Agreement are for convenience only and shall not affect the interpretation of this Agreement. The declarations, determinations and findings declared, made and found in the preamble to this Agreement are hereby adopted, restated and made part of the operative provisions hereof.
13. Severability. Should any provision of this Agreement be declared void by a court of competent jurisdiction, the remaining provisions of this Agreement shall remain in full force and effect.

14. Authority. The respective signatories to this Agreement represent that they are authorized to sign this Agreement on behalf of their respective Party, and that such signatory has received the necessary approval of its governing body to execute this Agreement on the Party's behalf.

15. Execution. This Agreement may be executed in multiple counterparts, each of which shall constitute an original, and all of which counterparts, when taken together, shall constitute one and the same Agreement. The Parties agree that delivery of a signed counterpart, or the signed Agreement or amendment by facsimile or electronic mail, shall be deemed the same as the delivery of an original document.

16. Enforceability. The Parties acknowledge and agree that this Agreement is a written contract stating the essential terms of the Parties' agreement for providing goods and services under Subchapter I of Chapter 271 of the Texas Local Government Code.

17. Waiver. Any waiver by any Party of its rights with respect to a default or requirement under this Agreement will not be deemed a waiver of any subsequent default or other matter.

***[Signature Pages to Follow]***



JOHNSON COUNTY  
SPECIAL UTILITY DISTRICT

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

CITY OF BURLESON

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Name: \_\_\_\_\_  
[SEAL]

# Exhibit "A" (Facilities Subject to Relocation)



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## City Council Regular Meeting

**DEPARTMENT:**Fire

**FROM:** K.T. Freeman, Fire Chief

**MEETING:** February 6, 2022

---

**SUBJECT:**

Consider approval of renewing a Mutual Aid agreement between the City of Burleson and Tarrant County Emergency Services District No. 1. *(Staff Contact: K.T. Freeman, Fire Chief)*

**SUMMARY:**

A mutual aid agreement between the City of Burleson and Tarrant County Emergency Services District NO. 1 (TCESD NO. 1) has existed for close to twenty years and is reviewed for renewal and approval on an annual basis. Under the terms of the agreement (which is attached as an exhibit) TCESD NO 1 agrees to *pay the City* eighty-five hundred dollars (\$8,500.00) for fire protection services as requested by other department contracting with the DISTRICT and within the City's ability to respond. The agreement is through September, 30, 2023. The agreement does not require the City to provide mutual aid to other entities within the TCESD when in the sole judgement of the City, such response would leave insufficient protection for the City.

**OPTIONS:**

- 1) Approve the Mutual Aid agreement with TCESD NO 1 as presented
- 2) Deny Mutual Aid agreement

**RECOMMENDATION:**

Staff recommends Council approval of the Mutual Aid agreement with TCESD NO 1

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

N/A

**FISCAL IMPACT:**

N/A

**STAFF CONTACT:**

K.T. Freeman  
Fire Chief  
ktfreeman@burlesontx.com  
817-426-9171

THE STATE OF TEXAS   §  
                                     §  
COUNTY OF TARRANT   §

City of Burleson, Texas  
Mutual Aid

The TARRANT COUNTY EMERGENCY SERVICES DISTRICT NO. ONE, acting by and through its Board of Emergency Commissioners, hereafter referred to as DISTRICT, and the CITY OF BURLESON, TEXAS, hereafter referred to as CITY, enter into the following Agreement:

### **Section 1: Authority and Services**

CITY has a volunteer fire department recognized by the Insurance Commission of the State of Texas or a full-time professional fire department, and is, by an order or resolution of its governing body, authorized to enter into this Agreement with DISTRICT for the use of the personnel and equipment of CITY for the purpose of providing fire protection to real and personal property located outside the boundaries of CITY and within such distance as the CITY may be reasonably expected to render service in case of emergency service needs. The equipment and personnel of the CITY shall be under the control and supervision of CITY employees during a fire or emergency medical response pursuant to this Agreement. In accordance with Section 418.109(d) of the Texas Government Code or Section 791.027 of the Texas Government Code, it is also understood and agreed that the existence of this Agreement does not prevent the CITY from providing mutual aid assistance on request from another municipality, county, emergency services district, fire protection agency, organized volunteer group or other emergency service entity, and shall not be obligated to respond, when in the sole judgment of the CITY, such response would leave insufficient protection for the CITY.

### **Section 2: Fire Services Provided**

CITY and DISTRICT hereby agree that for and in consideration of the monies to be paid by DISTRICT to CITY, the CITY will provide, through its fire department, fire protection services to the area described. These services include fire protection, fire rescue and first response for emergency medical services. In the event that the CITY resources are unavailable at the time of the request for services, the CITY will take reasonable efforts to make the resources available as soon as reasonably possible.

### **Section 3: Fire Service Compensation**

DISTRICT agrees to pay to CITY within 90 days of execution of this Agreement the total sum of EIGHTY-FIVE HUNDRED DOLLARS (\$8,500.00) during this contract year for fire protection services as requested by other departments contracting with the DISTRICT and within the CITY's ability to respond.

#### **Section 4: Equipment**

DISTRICT is under no obligation with respect to providing firefighting equipment or ambulance vehicles or supplies, or any other expenses incidental to the carrying out of this Agreement, and will have no right, title or interest in and to vehicles and equipment belonging to or contracted for by CITY.

#### **Section 5: Term**

Regarding payment, this Agreement will be in full force and effect for and during the period beginning October 1, 2022 and ending September 30, 2023. Regarding response purposes, this Agreement will remain in force until the 2023-24 DISTRICT budget is approved by the Commissioners and a new Agreement is executed retroactive to October 1, 2023 under the same terms and conditions.

#### **Section 6: Payment of Funds**

The DISTRICT will use its general fund to pay for the services supplied by the CITY pursuant to this Agreement. Payment pursuant to this Agreement will be in accord with the Rules and Regulations promulgated by the Commissioners. Said payments will be made as funds are available to DISTRICT.

#### **Section 7: Emergency Scene Control**

Whenever CITY responds to a call outside its normal jurisdictional limits, it will operate under the Fire Code in effect within the CITY limits of such cities or fire department primarily responsible for service to the area being served by CITY. Any fire investigators or other personnel who respond from DISTRICT to a fire or emergency scene which is under the control of CITY will be governed by the Fire Code of the CITY within whose limits the CITY normally operates. CITY personnel agree to fully cooperate with DISTRICT personnel.

#### **Section 8: Inspection of Equipment**

The DISTRICT or its agent has the right to inspect the equipment of the CITY that the CITY operates in its performance under this Agreement. The parties acknowledge that the nature of the CITY's equipment determines the consideration paid under this Agreement. In the event that the inspection reveals that the equipment is not in operating condition and in compliance with the Insurance Services Office (ISO) requirements for a department of its size, the CITY will authorize a re-inspection by the DISTRICT within fifteen (15) days. In the event the equipment is not in operating condition or in compliance with the ISO requirements for a department of its size during the re-inspection, all payments by the DISTRICT to the CITY will cease until the problem is corrected as certified by the DISTRICT.

### **Section 9: Workers' Compensation Coverage**

The CITY shall maintain statutory workers' compensation coverage for its employees, officers and volunteers regarding the CITY's performance under this contract. The CITY recognizes that the DISTRICT has no responsibility to furnish this coverage and CITY waives any right to pursue the DISTRICT for liability regarding payments for this coverage or for liability regarding payments for claims filed against this coverage.

### **Section 10: Line of Duty**

When an employee or volunteer of the responding CITY is performing duties under the terms of this Agreement, that person is considered to be acting in the line of duty for the CITY for the purposes of 42 U.S.C.A., Section 3796; is considered to be in performance of duties for the CITY within the applicable provisions of Chapter 615 of the Texas Government Code, and of Chapter 142, Texas Local Government Code; and shall be entitled to any other benefits which accrue under law as a result of injury, death or loss which occurs while in the line of duty for the CITY under this Agreement. This section does not increase the DISTRICT's liability under this Agreement.

### **Section 11: Assignment of Liability**

The assisting party (CITY) shall be responsible for any civil liability or costs that may arise from the fire protection, fire rescue and first response for emergency medical services that the assisting party provides to the requesting party (DISTRICT) under this Agreement. The parties agree pursuant to Section 791.006 (a-1) of the Texas Government Code that assignment of liability provided by this Agreement is intended to be different than liability otherwise assigned under Section 791.006 (a) of the Texas Government Code, which provides that "the governmental unit that would have been responsible for furnishing the services in the absence of the contract is responsible for any civil liability that arises from the furnishing of those services." The parties also agree that pursuant to Section 775.0366 (e) of the Texas Health and Safety Code that assignment of liability provided by this Agreement is intended to be different than liability otherwise assigned under Section 775.0366 (d), which provides that the "district is responsible for any civil liability that arises from furnishing those services if the district would have been responsible for furnishing the services in the absence of the contract." It is expressly understood and agreed, however, that in the execution of this Agreement, neither the CITY nor the DISTRICT waives, nor shall be deemed to waive, any immunity or defenses that would otherwise be available to it against claims arising in the exercise of governmental powers and functions, including the liability limits and immunities for a governmental unit provided by the Texas Tort Claims Act, Chapter 101, Civil Practice and Remedies Code, or other law.

### **Section 12: Implied Rights; Employees**

By entering into this Agreement the parties do not intend to create any obligations expressed or implied other than those specifically set forth herein and this Agreement

will not create rights in parties not signatories hereto. The employees of the CITY are not employees or agents of the DISTRICT by virtue of this Agreement. The employees of the DISTRICT are not employees or agents of the CITY by virtue of this Agreement.

### **Section 13: Conferring of Rights**

This Agreement does not confer any rights on third parties who are not signatories to this Agreement, therefore no person may bring suit against CITY or DISTRICT regarding the performance of this Agreement as a third party beneficiary of this Agreement.

### **Section 14: Cancellation**

DISTRICT and CITY retain the right to cancel without cause this Agreement on thirty (30) days written notice to the non-canceling party. In the event of cancellation, DISTRICT will pay a prorated share of the monies due only if the CITY provides services as required in the Agreement during the period of time leading up to the termination date. However, in the event that CITY exercises this right of cancellation, CITY must repay to DISTRICT all money paid CITY by DISTRICT for personal property, if any, purchased by the CITY with funds from the DISTRICT.

### **Section 15: Form 1295 Acknowledgement**

CITY acknowledges that it is a governmental entity and not a business entity as those terms are defined in Section 2252.908 of the Texas Government Code, and therefore, no disclosure of interested parties pursuant to Section 2252.908 of the Texas Government Code is required.

WITNESS the signatures of the respective parties hereto this the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**TARRANT COUNTY EMERGENCY  
SERVICES DISTRICT NO. 1**

**CITY OF BURLESON, TEXAS**

\_\_\_\_\_  
President

\_\_\_\_\_  
Authorized Official

ATTEST:

ATTEST:

\_\_\_\_\_  
Secretary/Treasurer

\_\_\_\_\_  
Secretary



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## City Council Regular Meeting

**DEPARTMENT:** Public Works

**FROM:** Errick Thompson, Deputy Director of Public Works - Engineering

**MEETING:** February 6, 2023

---

**SUBJECT:**

Consider approval of a construction contract with Reliable Paving, Inc. for construction of the Neighborhood Street Reconstruction - Cindy Ct. project in an amount not to exceed \$949,330.56. (Staff Presenter: Errick Thompson, Deputy Director of Public Works - Engineering)

**SUMMARY:**

This contract is for the reconstruction of Cindy Ct. The project includes the reconstruction of existing subgrade with stabilization and asphalt paving, including driveway and driveway culvert reconstruction. This street segment was identified for reconstruction in the City of Burleson Neighborhood Street Rebuild program, prior to the 2022 GO Bond.

The project was advertised for construction bids beginning December 9, 2022. Four bids were publicly opened on January 12, 2023 as summarized in the table below. Reliable Paving, Inc. of Arlington, Texas provided the lowest responsible bid of \$791,108.80. Staff requests approval of an additional 20% for contingency funding, for a total approved contract amount of \$949,330.56. This provides staff the ability to more quickly react to unexpected conditions arising during construction and reduce the potential for extending the inconvenience of residents, property owners, and the traveling public due to construction activity.

The construction bids are based on a 60 calendar day contract period. Staff anticipates issuing a Notice to Proceed to begin contract time in early March and completing the project in summer.

Bid Summary			
Reliable Paving, Inc	GRod Construction LLC	Texas Bit	Peachtree Construction
\$791,108.80	\$795,724.00	\$897,824.70	1,016,954.75

**OPTIONS:**

- 1) Approve the construction contract as presented.
- 2) Deny the construction contract.

**RECOMMENDATION:**

Approve the construction contract as presented.

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

**FISCAL IMPACT:**

Fund Name:	STREET & DRAINAGE BOND FD
Full Account #s:	360-7503-439.72-98
Amount:	\$835,245.84

Fund Name:	NON-BOND CAPITAL PROJECTS
Full Account #s:	352-7503-439.72-98
Amount:	\$114,084.72

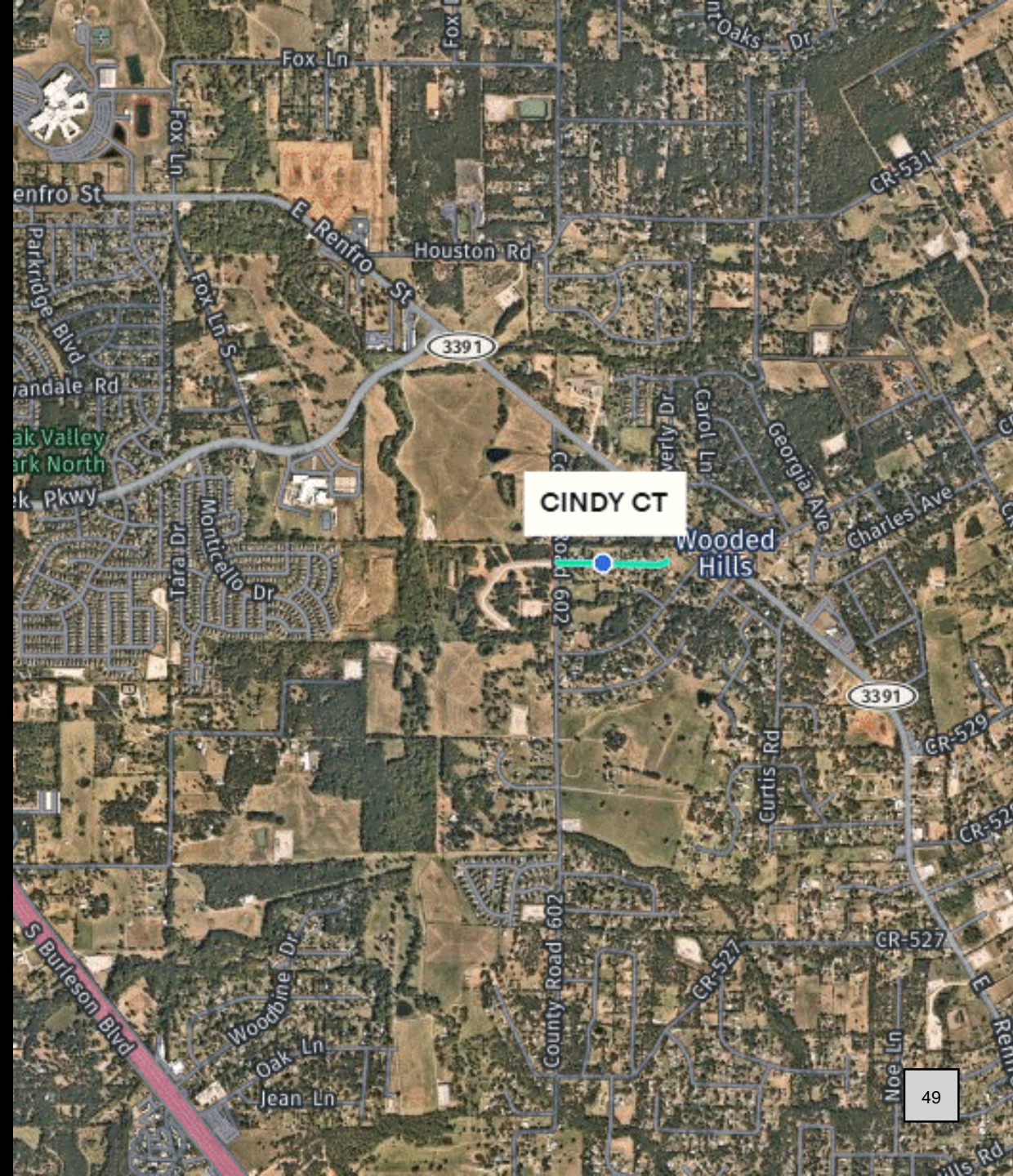
**STAFF CONTACT:**

Errick Thompson  
Deputy Director of Public Works - Engineering  
ethompson@burlesontx.com  
817-426-9610

NEIGHBORHOOD STREET RECONSTRUCTION

# CINDY COURT PAVING & DRAINAGE IMPROVEMENTS

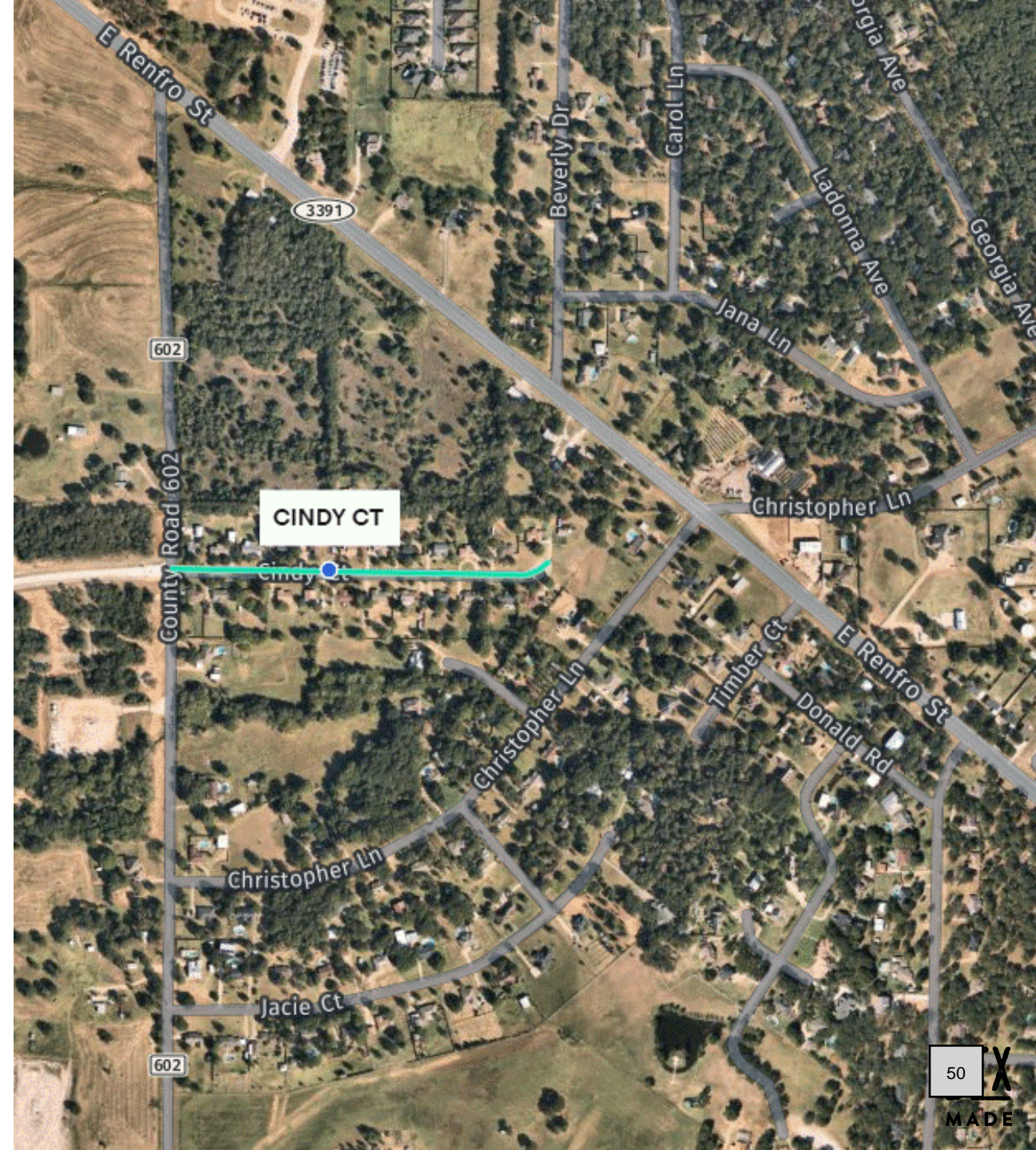
Construction Contract






# PROJECT ELEMENTS

- RECONSTRUCTION OF EXISTING ASPHALT PAVEMENT AND CONCRETE DRIVEWAYS
- REESTABLISHMENT OF ROADSIDE DRAINAGE DITCHES





# BY THE NUMBERS



**SEALED BID**

ADVERTISED FOR BIDS DECEMBER 9,  
2022

4 BIDS RECEIVED JANUARY 12, 2023

**RELIABLE PAVING, INC.**

LOW BID: \$791,108.80

20% CONTINGENCY: \$158,221.76

**TOTAL CONTRACT AMOUNT:**  
**\$949,330.56**



**CONTRACT TIME**  
**(FROM NOTICE TO PROCEED):**  
**60 CALENDAR DAYS**

**WITHIN BUDGET**  
**& FUNDED FROM**

STREET & DRAINAGE BOND FUND (NOT 2022 GO BOND)



# OPTIONS

## RECOMMENDED



### APPROVE

Approve of a construction contract with Reliable Paving, Inc. for the construction of Cindy Court Paving & Drainage in the amount not to exceed \$949,330.56, which includes a 20% Contingency.



### DENY

Deny a construction contract with Reliable Paving, Inc. for the construction of Cindy Court Paving & Drainage in the amount not to exceed \$949,330.56, which includes a 20% Contingency.





## Public Works

SPECIFICATIONS AND CONTRACT DOCUMENTS  
FOR THE CONSTRUCTION OF

CINDY COURT PAVING AND DRAINAGE IMPROVEMENTS

FOR THE  
CITY OF BURLESON, TEXAS  
PUBLIC WORKS DEPARTMENT

DECEMBER 2022



## TABLE OF CONTENTS

SECTION NUMBER	SUBJECT OF SECTION
1	Notice to Bidders
2	Instructions for Bidders
3	Prevailing Wage Rates for Municipal Construction in Burleson, Texas
4	Out of State Contractor Compliance to State Law
5	Affidavit Against Prohibited Acts
5A	Conflict of Interest
5B	House Bill 89 Verification Form
5C	Certificate of Interested Parties Form 1295
6	Proposal
6A	Bid Bond
7	Contract
8	Performance Bond
9	Payment Bond
10	Maintenance Bond
10A	Post Construction Forms
10A.1	Consent of Surety Company to Full Release of Retainage
10A.2	Contractor's Affidavit of Final Payment
11A	Special Provisions- Paving and Drainage Specifications



**ADVERTISEMENT FOR BIDS**  
**City of**  
**Burleson, Texas**  
**Cindy Court Paving and Drainage Improvements**

**General Notice**

The City of Burleson (Owner) is requesting Bids for the construction of the following Project:

Cindy Court Paving and Drainage Improvements

City of Burleson Project No. ST2205

Bids for the construction of the Project will be received electronically through the City's strategic sourcing platform, Bonfire, until January 6th, 2022 at 2:00 pm local time. At 3:00 pm local time the Bids received will be read via a publicly available online meeting, shared through the Bonfire platform.

The Project includes the following Work:

**3,775 SY of Asphalt Pavement**

Owner anticipates that the Project's total bid price will be approximately \$1,050,000. The Project has an expected duration of 60 calendar days.

**Obtaining the Bidding Documents**

Information and Bidding Documents for the Project can be found at the following designated

website: <https://burlesontx.bonfirehub.com/portal/?tab=openOpportunities>

Specifications and Contract Documents for this project shall be available for viewing and download in electronic (PDF) format at the City of Burleson website (through <https://burlesontx.bonfirehub.com/login>) at no cost beginning December 9<sup>th</sup>, 2022.

**Instructions to Bidders.**

For all further requirements regarding bid submittal, qualifications, procedures, and contract award, refer to the Instructions to Bidders that are included in the Bidding Documents.

**This Advertisement is issued by:**

Owner: **City of Burleson, Texas**

By: **Andrea Anderson**

Title: **Purchasing Manager**

Date: **December 9<sup>th</sup>, 2022 & December 11<sup>th</sup>, 2022**

---

## SECTION 2

### INSTRUCTIONS TO BIDDERS

#### 1. **PROPOSAL:**

- 1.1 The Proposal is included in these Bidding Documents; additional copies may be obtained from OWNER.
- 1.2 All blanks on the Proposal shall be completed in printed handwritten ink or by typewriter.
  - a. Bidder may use the original proposal forms included in these bid documents or the Bidder may substitute a computer-generated proposal for the original proposal included in these bid documents. The substitute submittal shall be word-for-word as written in the original proposal contained herein. The Bidder shall also sign the Substitute Proposal.
  - b. If the Substitute Proposal changes the intent of a bid item or contains an error in the quantities, unit prices, or extension of prices, the OWNER may reject the bid submitted.
  - c. The Bid price of each item on the form shall be stated in words and numerals. Words take precedence in case of a conflict. In the case of a conflict between the unit price indicated and the extended amount shown, the unit indicated multiplied by the state quantity shall govern.
- 1.3 The President or a Vice President (or other corporate officer accompanied by evidence of authority to sign) shall execute bids by corporations in the corporate name and the corporate seal shall be affixed and attested by the Secretary or an Assistant Secretary. The corporate address and state of incorporation shall be shown below the signature.
- 1.4 Bids by partnerships must be executed in the partnership name and signed by a partner, whose title shall appear under the signature and at the official address of the partnership shall be shown below the signature.
- 1.5 All names shall be typed or printed below the signature.
- 1.6 The bid shall contain an acknowledgement of receipt of all Addenda (the numbers of which must be filled in on the Proposal).
- 1.7 The address and telephone number for communications regarding the bid shall be shown.
- 1.8 The bid shall be complete with prices stated for all alternates. The Bidder should be aware that the OWNER to stay within the City's

available funds could adjust the scope of the project. Alternates selected and revisions to limits of construction and resulting quantity adjustments will be identified in the Notice of Award and will be adjusted in the proposal contained in the executed contract.

2. **SUBMISSION OF BIDS:**

It shall be the Bidder's responsibility for the delivery of his proposal at the proper place by the time stated in the Notice to Bidders. The mere fact that a proposal was dispatched will not be considered. Proposals must be submitted at <http://burlesontx.bonfirehub.com>. The BIDDER shall acknowledge receipt of any addenda.

3. **BID SECURITY:**

Each bid must be accompanied by a certified or cashier's check or an approved bidder's bond made payable to the Owner in an amount of five (5%) percent of the largest possible total of the bid as a guarantee that, if awarded the contract, the Bidder will enter into a Contract and execute all necessary bonds. Bid securities will be returned to Bidders when the Contract award is made or bids are rejected.

4. **PERFORMANCE, PAYMENT AND MAINTENANCE BONDS:**

Performance, Payment and Maintenance Bonds in the amount of not less than one hundred percent (100%) of the contract price conditioned upon the faithful performance of the contract, and upon payment of all persons supplying labor or furnishing materials, will be required upon the forms which are a part of the contract Documents. Bonds shall be executed by a surety company acceptable to and approved by the Owner, authorized to do business in the State of Texas and acceptable for underwriting of risks as indicated by the latest revision, Treasury Department Circular 570, listing acceptable sureties on Federal Bonds. The period of the Maintenance Bond shall be two years from the date of acceptance of all work done under the Contract, to cover the guarantee as set forth in the Special Conditions.

5. **QUALIFICATION OF BIDDERS:**

All Bidders on this project must be qualified to perform work as outlined within the contract documents. The City of Burleson Department of Engineering Services will verify the work history and qualifications. The following subcontractors must also be qualified if applicable to the project: water and sewer, paving, storm drain, excavation and parkway and median landscape work (includes seeding, sod, irrigation and tree and shrubbery planting). Bidders must be familiar with the North Central Texas Council of Governments (NCTCOG) Standard

Specifications for Public Works Construction, latest edition, and the construction methods, Standards and related Ordinances of the City of Burleson.

6. **BIDDERS KNOWLEDGE OF CONDITIONS:**

- 6.1 Prior to submission of a proposal, bidders shall make a thorough inspection of the site of work and a thorough examination of the plans and specifications, and shall become informed as to the nature of the work, labor conditions, federal, state and local Laws and Regulations, and all other matters that may affect the cost, progress, performance and time of completion of the Work.
- 6.2 Bidder shall notify OWNER of all conflicts, errors or discrepancies in the Contract Documents.
- 6.3 Bidder shall pay particular attention to providing methods of ingress and egress to adjacent private and public properties, procedures for protection existing improvements and disposition of all materials to be removed.
- 6.4 Information and data reflected in the Contract Documents with respect to underground facilities at or contiguous to the site is based upon information and data furnished to OWNER by owners of such underground facilities or other, and OWNER does not assume responsibility for the accuracy or completeness thereof.
- 6.5 The lands upon which the work is to be performed, rights-of-way and easements for access thereto and other lands designated for use by Contractor in performing the work are identified in the Contract Documents. All additional lands and access thereto required for temporary construction facilities or storage of materials and equipment not provided by OWNER, are to be obtained and, if necessary, paid by Contractor.
- 6.6 The submission of a bid will constitute an incontestable representation by Bidder that Bidder has complied with every requirement of the Article 6, that without exception the bid is premised upon performing and furnishing the work required by the Contract Documents and such means, method, techniques, sequences or procedures of construction as may be indicated in or required by the Contract Documents, and that the Contract Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance and furnishing of the work.

7. **AVAILABILITY OF UTILITY SERVICES**

OWNER shall not make available or guarantee any utility services to the Contractor such as (but not all inclusive) water, sewer, electricity, gas, or telephone for performance of his work in this contract. Contractor shall be

solely responsible for completing all requirements, make all arrangements, and make all payments as necessary to procure any utility services necessary to complete the work as prescribed in this contract.

8. **INTERPRETATION OF DOCUMENT:**

If any person contemplating submitting a bid is in doubt as to the meaning of any part of the plans, specifications, or other proposed contract documents, they may submit to the OWNER a written request for an interpretation thereof at least five (5) days prior to opening of bids. The person submitting the request will be responsible for its prompt delivery. Any interpretation of these documents will be made only by addendum duly issued. Only questions answered by formal written Addenda are to be binding. Oral interpretations or clarification will be without legal effect. The Owner will not be responsible for any other explanations or interpretations.

9. **STANDARD SPECIFICATIONS:**

9.1 All work for this project including but not limited to all grading, utility and paving improvements described in this Proposal and Construction Drawings shall be done in accordance with the *STANDARD SPECIFICATIONS FOR PUBLIC WORKS CONSTRUCTION* as issued by the North Central Texas Council of Government (NCTCOG); the latest edition with any revisions as may be modified by the special conditions of this Contract.

9.2 Asphaltic concrete and standard concrete pavement improvements done within TxDOT right of way, shall be done in accordance with the *STANDARD SPECIFICATIONS FOR CONSTRUCTION OF HIGHWAYS, STREETS, AND BRIDGES* as issued by The Texas Department of Transportation; the latest edition with any revisions as may be modified by the special conditions of this Contract.

10. **AWARD OF CONTRACT:**

10.1 OWNER reserves the right to reject any bid, to waive any and all informalities and to negotiate contract amendments with the successful Bidder, and the right to disregard all nonconforming, non-responsive, unbalanced or conditional bids. Also, OWNER reserves the right to reject the bid of any Bidder if OWNER believes that it would not be in the best interest of the Project to make an award to that Bidder, whether because the bid is not responsive or the Bidder is unqualified or of doubtful financial ability or fails to meet any other pertinent standard of criteria established by OWNER. Discrepancies in the multiplication of units of work and unit prices will be resolved in favor of the correct multiplication.

Discrepancies between the unit price in words and the unit price in figures will be resolved in favor of the price in words. Discrepancies between the indicated sum of a column of figures and the correct sum therefore will be resolved in favor of the correct sum.

- 10.2 In evaluating bids, OWNER will consider the qualifications of the Bidder, whether or not the bids comply with the prescribed requirements, and such alternates, unit prices and other data, as may be requested in the bid form or prior to the Notice of Award.

11. **ALTERNATE BIDS:**

No bids for alternate work items shall be submitted except as shown on the Proposal. The OWNER reserves the right to choose either the base bid or alternate bid whichever is most advantageous to the OWNER. There will be no adjustments to unit prices bid due to the OWNER'S choice of alternate bids.

12. **EXECUTION OF CONTRACT**

12.1 The successful Bidder shall execute the formal Contract Agreement and required Bonds to the OWNER within fifteen (15) days after the Notice of Award.

12.2 A Notice to Proceed authorizing the Contractor to commence work will be issued after the Contract Documents have been executed by the Owner.

13. **PROTECTION OF THE PUBLIC:**

For protection and convenience of the public and emergencies, the successful Bidder shall furnish the City with a telephone number at which the contractor can be contacted 24 hours a day during the entire construction period of this project. This telephone number shall be furnished to the City in writing prior to the beginning of construction.

14. **AFFIDAVIT AGAINST PROHIBITED ACTS:**

It shall be the successful Bidder's responsibility to complete this affidavit (Section 5 of the Contract Documents) prior to execution of the Contract by the City of Burleson. Failure to complete this form may prohibit the contractor's ability to secure the Contract.

15. **WAGE RATES**

Contractor shall pay no less than the general prevailing rates for the Project location as determined in accordance with statutory requirements. The minimum rates for various labor classifications as established by the OWNER are included in the contract documents.

16. **SALES TAXES**

The OWNER qualifies as an exempt entity as defined by the statutes (Chapter 151.309) of the Tax Code of the State of Texas. The Owner's purchasing department will issue exemption certificates. Comply with all statutes and rulings of the State Comptroller.

17. **GOVERNING DOCUMENTS:**

The Work shall conform to the requirements of these specifications and the details as shown therein. These contract documents are intended to be Primary. Requirements of any of the contract documents are as binding as if called for by all. In case of conflict between the referenced Specifications and the Special Project Specifications, the Special Project Specifications shall govern.

18. **SOIL INVESTIGATION:**

Investigation of soil and foundation conditions of the size and areas near the site is considered subsidiary to the paving portion of the work. A certified lab competent to do such investigations for subgrade stabilization shall be used to determine the amounts of cement or lime necessary for the structural ability of the roadway. It has been assumed to use the rate of 30# per square yard of lime **or** Portland cement, but the actual amount is to be verified by the lab prior to pavement work. A copy of the lab report shall be submitted to the City of Burleson for approval.

19. **REMOVAL OF DEFECTIVE AND UNAUTHORIZED WORK:**

All work that has been rejected or condemned shall be repaired, or if it cannot be repaired satisfactorily, it shall be removed and replaced at the contractor's expense. Defective materials shall be immediately removed from the site of the work. Work done without line and grade having been given, work done beyond the lines or not in conformity with the grades shown on the drawings or as given, save as herein provided, work done without proper inspection, or any extra or unclassified work done without written authority and prior agreement in writing as to prices, shall be done at the contractor's risk, and will be considered unauthorized, and at the option of the OWNER, may not be measured and paid for, and may be ordered removed at the contractor's expense. If the contractor fails to satisfactorily repair, replace or remove the rejected, condemned or unauthorized work or materials immediately upon receipt of written notice, the OWNER will have the authority to cause such remediation to be performed and to deduct the cost thereof from any monies due or to become due to the contractor.

20. **TRENCH SAFETY:**

- 20.1 A trench safety system must be provided for all trench excavations according to current OSHA requirements.
- 20.2 On all public projects bid by the City or private projects to be constructed within right-of-way or easements to be conveyed to the City, compliance with the current minimum Occupational Safety and Health Administration (OSHA) or other governmental agencies standards for trench safety will be required as part of the plans and specifications. Prior to start of construction a detailed trench safety system must be provided to the City by the contractor. This detailed trench safety system must meet all requirements by OSHA or other governmental agencies, and be designed and certified by a professional engineer licensed in the State of Texas.
- 20.3 A pay item shall be included in the plans and specifications for the trench safety system. Payment will be on a linear-foot basis and will be full compensation for labor, tools, materials, equipment and incidentals necessary to complete the work, including the removal of the trench safety system and back-filling the trench. Pursuant to Texas law, the City of Burleson has adopted a trench safety policy, which is addressed in Section 11 of the Specifications. Each bidder should be familiar with Section 11 prior to submitting a bid.

21. **BID TABULATION:**

A tabulation of all bids will be available within five (5) working days of the bid opening.

22. **ADDENDUM:**

- 22.1 The OWNER reserves the right to issue addendum(s) to the Plans, Proposal, Specifications, and Special Provisions. Addendums will be issued at <https://burlesontx.bonfire.com>
- 22.2 The Bidders will acknowledge the receipt of the addendum(s) by submitting a signed copy of the addendum(s) with the submission of their bid.
- 22.3 It shall be the Bidder's responsibility to ensure that they are aware of all addendum(s) issued by the owner.
- 22.4 Upon receipt of the addendum(s), the Bidder shall acknowledge the receipt of the addendum(s) in the appropriate spaces provided in the proposal.
- 22.5 N/A
- 22.6 **Bids that have not properly acknowledged addendum(s) will not be opened.**



## **PREVAILING WAGE RATES FOR MUNICIPAL CONSTRUCTION IN BURLESON, TEXAS**

The rates below have been determined by the City of Burleson, Texas, in accordance with the statutory requirements and prevailing local wages:

THE STATE OF TEXAS §

COUNTY OF JOHNSON §

### AFFIDAVIT

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared \_\_\_\_\_, who is known to me or who was proved to me on the oath of \_\_\_\_\_ (name of person identifying the acknowledging person) or who was proved to me through \_\_\_\_\_ (description of identity card or other document issued by the federal or state government containing the picture and signature of the acknowledging person) to be the person whose name is subscribed to this affidavit; and being by me first duly sworn, upon oath stated as follows:

"My name is \_\_\_\_\_. I am of sound mind and capable of making this affidavit. "I am a \_\_\_\_\_ for the \_\_\_\_\_ which company entered into a contract on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, to construct the Cindy Court Paving and Drainage Improvements, and I am duly authorized on behalf of said company to hereby swear and affirm that all wages for labor on the above-referenced project are in strict compliance with the established prevailing wage rates as described in the contract documents for the referenced project, and all wages have been and will be paid and satisfied as the prevailing rates may change from time to time. Upon request by the City of Burleson, I shall allow a complete examination of the financial records relative to this project, including, but not limited to, cancelled checks, invoices and statements at any time, and allow the City of Burleson to interview any and/or all employees of the above said company or any and/or all employees of said Company's subcontractor or subcontractors. Also, I hereby agree on behalf of the above company, to be accountable for any and all penalties and/or fine provisions in accordance with the contract documents and relevant law.

\_\_\_\_\_  
AFFIANT

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

\_\_\_\_\_  
Notary Public In and For the State of Texas

\_\_\_\_\_  
Notary's Printed Name

My Commission Expires: \_\_\_\_\_

"General Decision Number: TX20220025 02/25/2022

Superseded General Decision Number: TX20210025

State: Texas

Construction Type: Highway

Counties: Archer, Callahan, Clay, Collin, Dallas, Delta, Denton, Ellis, Grayson, Hunt, Johnson, Jones, Kaufman, Parker, Rockwall, Tarrant and Wise Counties in Texas.

HIGHWAY CONSTRUCTION PROJECTS (excluding tunnels, building structures in rest area projects & railroad construction; bascule, suspension & spandrel arch bridges designed for commercial navigation, bridges involving marine construction; and other major bridges).

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	<ul style="list-style-type: none"> <li>. Executive Order 14026 generally applies to the contract.</li> <li>. The contractor must pay all covered workers at least \$15.00 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2022.</li> </ul>
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	<ul style="list-style-type: none"> <li>. Executive Order 13658 generally applies to the contract.</li> <li>. The contractor must pay all covered workers at least \$11.25 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2022.</li> </ul>

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at

[https://www.dol.gov/agencies/whd/government-contracts.](https://www.dol.gov/agencies/whd/government-contracts)

Modification Number	Publication Date
0	01/07/2022
1	02/25/2022

\* SUTX2011-007 08/03/2011

	Rates	Fringes
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CONCRETE FINISHER (Paving and Structures).....\$ 14.12 \*\*

ELECTRICIAN.....\$ 19.80

#### FORM BUILDER/FORM SETTER

Paving & Curb.....\$ 13.16 \*\*

Structures.....\$ 13.84 \*\*

#### LABORER

Asphalt Raker.....\$ 12.69 \*\*

Flagger.....\$ 10.06 \*\*

Laborer, Common.....\$ 10.72 \*\*

Laborer, Utility.....\$ 12.32 \*\*

Pipelayer.....\$ 13.24 \*\*

Work Zone Barricade

Servicer.....\$ 11.68 \*\*

#### POWER EQUIPMENT OPERATOR:

Asphalt Distributor.....\$ 15.32

Asphalt Paving Machine.....\$ 13.99 \*\*

Broom or Sweeper.....\$ 11.74 \*\*

Concrete Pavement

Finishing Machine.....\$ 16.05

Concrete Saw.....\$ 14.48 \*\*

Crane Operator, Lattice

Boom 80 Tons or Less.....\$ 17.27

Crane Operator, Lattice

Boom over 80 Tons.....\$ 20.52

Crane, Hydraulic 80 Tons

or Less.....\$ 18.12

Crawler Tractor.....\$ 14.07 \*\*

Excavator, 50,000 pounds

or less.....\$ 17.19

Excavator, over 50,000

pounds.....\$ 16.99

Foundation Drill , Truck

Mounted.....\$ 21.07

Foundation Drill, Crawler

Mounted.....\$ 17.99

Front End Loader 3 CY or

Less.....\$ 13.69 \*\*

Front End Loader, over 3 CY.\$ 14.72 \*\*

Loader/Backhoe.....\$ 15.18

Mechanic.....\$ 17.68

Milling Machine.....\$ 14.32 \*\*

Motor Grader, Fine Grade....\$ 17.19

Motor Grader, Rough.....\$ 16.02

Pavement Marking Machine....\$ 13.63 \*\*

Reclaimer/Pulverizer.....\$ 11.01 \*\*

Roller, Asphalt.....\$ 13.08 \*\*

Roller, Other.....\$ 11.51 \*\*

Scraper.....\$ 12.96 \*\*

Small Slipform Machine.....\$ 15.96

Spreader Box.....\$ 14.73 \*\*  
 Servicer.....\$ 14.58 \*\*  
 Steel Worker (Reinforcing).....\$ 16.18  
 TRUCK DRIVER  
     Lowboy-Float.....\$ 16.24  
     Off Road Hauler.....\$ 12.25 \*\*  
     Single Axle.....\$ 12.31 \*\*  
     Single or Tandem Axle Dump  
     Truck.....\$ 12.62 \*\*  
     Tandem Axle Tractor with  
     Semi Trailer.....\$ 12.86 \*\*  
     Transit-Mix.....\$ 14.14 \*\*  
 WELDER.....\$ 14.84 \*\*  
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WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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\*\* Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$15.00) or 13658 (\$11.25). Please see the Note at the top of the wage determination for more information.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

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The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

## Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

## Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

## Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

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## WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can

be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour National Office because National Office has responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISIO"



## SECTION NO. 4

### OUT OF STATE CONTRACTOR COMPLIANCE TO STATE LAW

The State Legislature of the State of Texas at its 1985 Legislative Session passed House Bill 620 relative to the award of contracts to non-resident bidders. This law provides that, in order to be awarded a contract as low bidder, a non-resident bidder (out-of-state contractor whose corporate office or principal place of business is outside the State of Texas) bid projects in Texas at an amount lower than the lowest Texas resident bidder by the same amount that a Texas resident bidder would be required to underbid a non-resident bidder in order to obtain a comparable contract in the state in which the non-resident's principal place of business is located. The appropriate blanks in the following statement must be filled out by all out-of-state or non-resident bidders in order for those bids to meet specifications. The failure of out-of-state or non-resident contractors to do so will automatically disqualify that bidder.

Non-resident contractor in \_\_\_\_\_ (give state), our principal place of business, is required to be \_\_\_\_\_ percent lower than resident bidders by State Law. A copy of the statute is attached.

Non-resident contractor in \_\_\_\_\_ (give state), our principal place of business, is not required to underbid resident bidders.

#### BIDDER

\_\_\_\_\_  
Company

By \_\_\_\_\_  
(Please Print)

\_\_\_\_\_  
Address

\_\_\_\_\_  
Signature

\_\_\_\_\_  
City State Zip


\_\_\_\_\_  
Title (Please Print)

## AFFIDAVIT AGAINST PROHIBITED ACTS

I hereby affirm that I am aware of the provisions of the Texas Penal Code Sec. 36.02, 36.08, 36.09, and 36.10 (a copy of which follows), dealing with Bribery and Gifts to Public Servants. I further affirm that I will adhere to such rules and instruct and require all agents, employees, and sub-contractors to do the same. I am further aware that any violation of these rules subjects this agreement to revocation, my removal from bid lists, prohibiting future contract/subcontract work, revocation of permits, and prosecution.

  
Signature

1/12/23  
Date

  
ATTEST (if corporation)

1/12/23  
Date

# TEXAS PENAL CODE

## TITLE 8: OFFENSES AGAINST PUBLIC ADMINISTRATION

### CHAPTER 36. BRIBERY AND CORRUPT INFLUENCE

#### 36.02 BRIBERY

- (a) A person commits an offense if he intentionally or knowingly offers, confers or agrees to confer on another, or solicits, accepts or agrees to accept from another:
  - (1) any benefit as consideration for the recipient's decision, opinion, recommendation, vote or other exercise of discretion as a public servant, party official or voter;
  - (2) any benefit as consideration for the recipient's decision, vote, recommendation or other exercise of official discretion in a judicial or administrative proceeding;
  - (3) any benefit as consideration for a violation of a duty imposed by law on a public servant or party official; or
  - (4) any benefit that is a political contribution, as defined by Title 15, Election Code, if the benefit was offered, conferred, solicited, accepted or agreed to, pursuant to an express agreement, to take or withhold a specific exercise of official discretion if such exercise of official discretion would not have been taken or withheld but for the benefit; notwithstanding any rule of evidence or jury instruction allowing factual inferences in the absence of certain evidence, direct evidence of the express agreement shall be required in any prosecution under this subdivision.
- (b) It is no defense to prosecution under this section that a person whom the actor sought to influence was not qualified to act in the desired way whether because he had not yet assumed office, or he lacked jurisdiction or for any other reason.
- (c) It is no defense to prosecution under this section that the benefit is not offered or conferred or that the benefit is not solicited or accepted until after:
  - (1) the decision, opinion, recommendation, vote or other exercise of discretion has occurred; or
  - (2) the public servant ceases to be a public servant.
- (d) It is an exception to the application of Subdivisions (1), (2) and (3) of Subsection (a) of this section that the benefit is a political contribution accepted as defined by Title 15, Election Code.
- (e) An offense under this section is a felony of the second degree.

**36.08 GIFT TO PUBLIC SERVANT BY PERSON SUBJECT TO HIS JURISDICTION**

- (a) A public servant in an agency performing regulatory functions or conducting inspections or investigations commits an offense if he solicits, accepts or agrees to accept any benefit from a person the public servant knows to be subject to regulation, inspection or investigation by the public servant or his agency.
- (b) A public servant in an agency having custody of prisoners commits an offense if he solicits, accepts or agrees to accept any benefit from a person the public servant knows to be in his custody or the custody of his agency.
- (c) A public servant in an agency carrying on civil or criminal litigation on behalf of government commits an offense if he solicits, accepts or agrees to accept any benefit from a person against whom the public servant knows litigation is pending or contemplated by the public servant or his agency.
- (d) A public servant who exercises discretion in connection with contracts, purchases, payments, claims or other pecuniary transactions of government commits an offense if he solicits, accepts or agrees to accept any benefit from a person the public servant knows is interested in or likely to become interested in any contract, purchase, payment, claim or transaction involving the exercise of his discretion.
- (e) A public servant who has judicial or administrative authority, who is employed by or in a tribunal having judicial or administrative authority, or who participates in the enforcement of the tribunal's decisions, commits an offense if he solicits, accepts or agrees to accept any benefit from a person the public servant knows is interested in or likely to become interested in any matter before the public servant or tribunal.
- (f) A member of the legislature, the governor, the lieutenant governor or a person employed by a member of the legislature, the governor, the lieutenant governor or an agency of the legislature commits an offense if he solicits, accepts or agrees to accept any benefit from any person.
- (g) A public servant who is a hearing examiner employed by an agency performing regulatory functions and who conducts hearings in contested cases commits an offense if the public servant solicits, accepts or agrees to accept any benefit from any person who is appearing before the agency in a contested case, who is doing business with the agency, or who the public servant knows is interested in any matter before the public servant. The exception provided by Section 36.10(b) of this code does not apply to a benefit under this subsection.
- (h) An offense under this section is a Class A misdemeanor.

**36.09 OFFERING GIFT TO PUBLIC SERVANT**

- (a) A person commits an offense if he offers, confers or agrees to confer any benefit on a public servant that he knows the public servant is prohibited by law from accepting.
- (b) An offense under this section is a Class A misdemeanor.



**36.10 NON-APPLICABLE**

- (a) Sections 36.08 (Gift to Public Servant) and 36.09 (Offering Gift to Public Servant) of this code do not apply to:
- (1) a fee prescribed by law to be received by a public servant or any other benefit to which the public servant is lawfully entitled or for which he gives legitimate consideration in a capacity other than as a public servant;
  - (2) a gift or other benefit conferred on account of kinship or a personal, professional or business relationship independent of the official status of the recipient; or
  - (3) a benefit to a public servant required to file a statement under Chapter 421, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-9b, Vernon's Texas Civil Statutes), or a report under Title 15, Election Code, that is derived from a function in honor or appreciation of the recipient if:
    - (A) the benefit and the source of any benefit in excess of \$50 is reported in the statement; and
    - (B) the benefit is used solely to defray the expenses that accrue in the performance of duties or activities in connection with the office which are non-reimbursable by the state or political subdivision;
  - (4) a political contribution as defined by Title 15, Election Code; or
  - (5) a gift, award or memento to a member of the legislative or executive branch that is required to be reported under Chapter 305, Government Code.
- (b) Section 36.08 (Gift to Public Servant) of this code does not apply to food, lodging, transportation or entertainment accepted as a guest and, if the donee is required by law to report those items, reported by the donee in accordance with that law.
- (c) Section 36.09 (Offering Gift to Public Servant) of this code does not apply to food, lodging, transportation or entertainment accepted as a guest and, if the donor is required by law to report those items, reported by the donor in accordance with that law.

# CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor doing business with local governmental entity

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

## OFFICE USE ONLY

Date Received

1 Name of vendor who has a business relationship with local governmental entity.

Reliable Paving, Inc.

2 ☐ Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3 Name of local government officer about whom the information is being disclosed.

\_\_\_\_\_  
Name of Officer

4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

☐

Yes

☒

No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

☐

Yes

☒

No

5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.

6 ☐ Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

7

  
Signature of vendor doing business with the governmental entity

1/12/23  
Date



## **CONFLICT OF INTEREST QUESTIONNAIRE**

### **For vendor doing business with local governmental entity**

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

**Local Government Code § 176.001(1-a):** "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

**Local Government Code § 176.003(a)(2)(A) and (B):**

- (a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

\*\*\*

- (2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that

- (i) a contract between the local governmental entity and vendor has been executed;
- or

- (ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

- (i) a contract between the local governmental entity and vendor has been executed; or
- (ii) the local governmental entity is considering entering into a contract with the vendor.

**Local Government Code § 176.006(a) and (a-1)**

- (a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

(1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);

(2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or

(3) has a family relationship with a local government officer of that local governmental entity.

- (a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

- (1) the date that the vendor:

(A) begins discussions or negotiations to enter into a contract with the local governmental entity; or

(B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

- (2) the date the vendor becomes aware:

(A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);

(B) that the vendor has given one or more gifts described by Subsection (a); or

(C) of a family relationship with a local government officer.



## CONFLICT OF INTEREST

The Contractor covenants and agrees that Contractor and its officers, employees, and agents will have no interest, including personal financial interest, and will acquire no interest, either directly or indirectly, which will conflict in any manner with the performance of the services called for under this Contract. No officer or employee of the City shall have a financial interest, direct or indirect, in any contract with the City, or be financially interested, directly or indirectly, in the sale to the City of any land, materials, supplies or services, except on behalf of the City or in compliance with the provisions of the City of Burleson Personnel Policies and Procedures Manual. Any violation of this provision shall render this contract voidable at the discretion of the City.

A person or business, and their agents, contract or enter into an agreement with the City, are required by Texas Local Government Code, Chapter 176, to file a conflict of interest questionnaire FORM CIQ. Form CIQ is available online at [www.ethics.state.tx.us](http://www.ethics.state.tx.us) or electronically at [www.tml.org.legal](http://www.tml.org.legal) - Ethics Form ECIQ.

### Sec. 176.002. APPLICABILITY TO CERTAIN VENDORS AND OTHER PERSONS.

- (a) This chapter applies to a person who:
  - (1) enters or seeks to enter into a contract with a local governmental entity; or
  - (2) is an agent of a person described by Subdivision (1) in the person's business with a local governmental entity.
- (b) A person is not subject to the disclosure requirements of this chapter if the person is
  - (1) a state, a political subdivision of a state, the federal government, or a foreign government; or
  - (2) an employee of an entity described by Subdivision(1), acting in the employee's official capacity.

### Sec. 176.006. Disclosure requirements for vendors and other persons; questionnaire.

- (a) A person described by Section 176.002(a) shall file a completed conflict of interest questionnaire if the person has a business relationship with a local governmental entity and:
  - (1) has an employment or other business relationship with an officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A); or
  - (2) has given an officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1).

(a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

- (1) the date that the person:
  - (A) begins discussion or negotiations to enter into a contract with the local governmental entity; or
  - (B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or
- (2) the date the person becomes aware:

The form must be filed with the City Secretary no later than seven days after the date the person or business contracts with the City. Such persons and businesses, and their agents, must also file an

updated questionnaire not later than September 1 of each year in which the person or business contract begins, and within seven days after the date of an event that would make a filed questionnaire incomplete or inaccurate. An updated complete questionnaire is not required if the person or business filed a questionnaire or updated questionnaire after June 1 but before September 1.

# HOUSE BILL 89 VERIFICATION FORM

## PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL

The 85<sup>th</sup> Texas Legislature approved new legislation, effective Sept. 1, 2017, which amends Texas Local Government Code Section 1. Subtitle F, Title 10, Government Code by adding Chapter 2270 which states that a governmental entity may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it:

1. does not boycott Israel; and
2. will not boycott Israel during the term of the Contract Pursuant to Section 2270.001,

### TEXAS GOVERNMENT CODE:

1. "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes; and
2. "Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or any limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of those entities or business associations that exist to make a profit.

I, (authorized official), do hereby depose and verify the truthfulness and accuracy of the contents of the statements submitted on this certification under the provisions of Subtitle F, Title 10, Government Code Chapter 2270 and that the company named below:

1. does not boycott Israel currently; and
2. will not boycott Israel during the term of the contract; and
3. is not currently listed on the State of Texas Comptroller's Companies that Boycott Israel List located at <https://comptroller.texas.gov/purchasing/publications/divestment.php>

Reliable Paving, Inc.

Company Name

  
Signature of Authorized Official

President

1/12/23

Title of Authorized Official Date

# CERTIFICATE OF INTERESTED PARTIES

FORM 1295

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

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

Reliable Paving, Inc, Arlington, TX, USA

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

City of Burlington

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 goods or services to be provided under the contract.

ST2205

4 Name of Interested Party	City, State, Country (place of business)	Nature of Interest (check applicable)	
		Controlling	Intermediary

5 Check only if there is NO Interested Party.



6 AFFIDAVIT

I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.

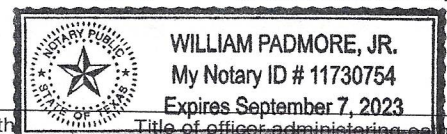
Signature of authorized agent of contracting business entity

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said Charles Long, this the 12 day of JAN, 20 23, to certify which, witness my hand and seal of office.

Signature of officer administering oath

Printed name of officer administering oath



ADD ADDITIONAL PAGES AS NECESSARY



## SECTION NO. 6

### PROPOSAL

To: The City of Burleson  
141 W. Renfro  
Burleson, TX 76028

For: Cindy Court Paving and Drainage Improvements  
Project No. ST2205

#### TO THE CITY OF BURLESON, TEXAS:

The undersigned hereby proposes to furnish the equipment, fuel, labor, materials, power, tools, superintendence, transportation, and to perform the work required for the construction of the Cindy Court Paving and Drainage Improvements, City of Burleson Project No. ST2205, in the City of Burleson, Texas, for the following prices, which prices it is clearly and definitely understood shall include all construction materials and equipment as set out in the basis of payment in the contractual documents and maintaining same as required by the detailed specifications.

Contractor understands that these quantities are approximate and that the actual price paid by the City to the Contractor will be made based on the actual quantity installed in the field.

---

### Successful BIDDER:

1. The undersigned bidder agrees to begin work within fifteen (15) calendar days after date of written notice to do so and to complete the work within 60 calendar days after the date on which he is required to begin; provided, however, that the OWNER'S construction funds are available.

Enclosed with this Proposal is a Bidder's Bond or Cashier's Check for 5% (\$ 5%) dollars, which it is agreed shall be collected and retained by the OWNER as liquidated damages if the OWNER accepts this bid within sixty (60) days after the opening of bids, and the undersigned bidder then fails to execute the contract and bonds with the said OWNER within ten (10) days after official notice of such acceptance; otherwise, said Bidder's Bond or Check shall be returned to the undersigned on demand. This sum of money is not to be considered as a penalty, but shall be deemed, taken and treated as reasonable liquidated damages. The sum of money is fixed and agreed on between the bidder and OWNER because of the impracticability and extreme difficulty of fixing and ascertaining the actual damage to the owner.

2. In submitting this Bid, BIDDER represents, as more fully set forth in the Agreement, that:

BIDDER has examined copies of all the Bidding Documents and of the following Addenda (receipt of which is hereby acknowledged):

Addendum No. 1 \_\_\_\_\_

Addendum No. 2 \_\_\_\_\_

Addendum No. 3 \_\_\_\_\_

3. BIDDER is familiar with the nature and extent of the Contract Documents, Work, site, locality, and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance or furnishing of the Work.
4. BIDDER has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all necessary examinations, investigations, explorations, tests and studies which pertain to the subsurface or physical conditions at the site or otherwise may affect the cost, progress, performance or furnishing the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, and no additional examinations, investigations, explorations, tests, reports or similar information or data are or will be required by BIDDER for such proposes.



5. BIDDER has reviewed and checked all information and data shown, indicated in the Contract Documents with respect to existing underground facilities at, or contiguous to the site and assumes responsibility for the accurate location of said underground facilities. No additional examinations, investigations, explorations, tests, reports or similar information or data in respect of said underground facilities are or will be required by BIDDER in order to perform or furnish the Work at the Contract Price, within the contract time and in accordance with the other terms and conditions of the Contract Documents.
6. This Bid is genuine and not made in the interest of or on behalf of any undisclosed person, firm or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; BIDDER has not directly or indirectly induced or solicited any other BIDDER to submit a false or sham BID; BIDDER has not solicited or induced any person, firm or corporation to refrain from bidding; and BIDDER has not sought by collusion to obtain for itself any advantage over any other BIDDER or over OWNER.
7. Total calendar days to complete all units (Note: Contractor has the option to construct all or some units simultaneously. Total calendar days to be determined based upon how Contractor intends to schedule the work. Schedules for various units may over lap at Contractors discretion).  
TOTAL DAYS: 60

BIDDER agrees that the work shall be substantially complete and ready for final payment within the number of calendar days listed herein from the date when the contract time commences to run. See Section 7 in regarding contract time.

8. BIDDER has included the cost of everything which will be needed to construct all the work called for in the specifications or the contract documents, in the unit cost for the bid items listed above. All such work for which there is not a specific bid item is considered subsidiary to the related major bid item and its cost is included in the appropriate bid item listed above.
9. BIDDER acknowledges that the quantities indicated in the previous schedule are not guaranteed and may be changed to conform with the Work. BIDDER has not detected any inaccuracies in the lengths, sized and quantities shown in the plans. The quantities as shown in the proposal are presumed to be the actual quantities required to construct the Work.
10. BIDDER acknowledges that the City of Burleson reserves the right to delete any portion of this project, as it may deem necessary to stay within the City's available funds. Should the City elect to delete any portion, the contract quantities will be adjusted accordingly.

11. BIDDER has reviewed and understands the various additive alternate work scoped associated this project and has provided corresponding prices and time frames for each as requested in the proposal. Bidder acknowledges that the City of Burleson reserves the right to add or delete these alternates in any combination, as it may deem necessary to stay within the City's available funds.
12. BIDDER accepts the provisions as to liquidated damages (\$240.00 per calendar day) in the event of failure to complete the work on time.
13. The terms used in the Bid which are defined in the *Standard Specifications for Public Works Construction*, published by the North Central Texas Council of Governments (NCTCOG), have the meanings assigned to them therein.

Respectfully Submitted,

BIDDER

\_\_\_\_\_  
Company

By \_\_\_\_\_

(Please Print)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Address

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip

(Seal if corporation)

Submitted by \_\_\_\_\_

An Individual  
A Corporation  
A Partnership

Doing Business as \_\_\_\_\_

(Complete A or B below, as applicable)

[ ]A. The principal place of business of our company is in the State of

Texas.

Non-resident bidders in the State of \_\_\_\_\_, our principal place of business, are required to be \_\_\_\_\_% lower than resident bidders by State Law.

A copy of statute is attached.

[✓]B. The principal place of business of our company or our parent company or majority owner is in the state of Texas.

## STATEMENT OF MATERIAL AND OTHER CHARGES

MATERIALS INCORPORATED INTO THE PROJECT: \$ \_\_\_\_\_

ALL OTHER CHARGES: \$ \_\_\_\_\_

\*TOTAL: \$ \_\_\_\_\_

This total must agree with the total figure shown in the Item and Quantity Sheets in the bound contract.

**For purpose of complying with the Texas Tax Code, the Contractor agrees that the charges for any material incorporated into the project in excess of the estimated quantity provided for herein will be no less than the invoice price for such material to the Contractor.**

**NOTE: THIS PAGE MAY REMAIN BLANK FOR THE INITIAL SUBMITAL OF THE BID. THE COPY OF THIS FORM IN THE EXECUTED CONTRACTS IS REQUIRED TO BE FILLED OUT.**

**PROPOSAL FORM EXHIBIT 'A'****Cindy Court Paving and Drainage Improvements**

<b>Item No.</b>	<b>Estimated Quantity</b>	<b>Unit</b>	<b>Item Description Total Unit Price Written in Words</b>	<b>Unit Price</b>	<b>Extension</b>
1	1	LS	Mobilization <u>Forty Three Thousand Eight</u> <u>Hundred</u> Dollars and <u>Zero</u> Cents Per Lump Sum	\$ <u>43,800.00</u>	\$ <u>43,800.00</u>
2	15	STA	Right of Way Preparation <u>Nine Hundred Ninety Five</u> <u>Zero</u> Dollars and <u>Zero</u> Cents Per Station	\$ <u>995.00</u>	\$ <u>14,925.00</u>
3	3,725	SY	Remove Existing Pavement and Base Material <u>Ten</u> <u>Zero</u> Dollars and <u>Zero</u> Cents Per Square Yard	\$ <u>10.00</u>	\$ <u>37,250.00</u>
4	1	LS	Roadway Grading <u>Eighteen Thousand Seven</u> <u>hundred</u> Dollars and <u>Zero</u> Cents Per Lump Sum	\$ <u>18,700.00</u>	\$ <u>18,700.00</u>
5	3,775	SY	2" Type D HMA Pavement <u>Sixteen</u> <u>Fifty</u> Dollars and <u>Zero</u> Cents Per Square Yard	\$ <u>16.50</u>	\$ <u>62,287.50</u>

## Cindy Court Paving and Drainage Improvements

Item No.	Estimated Quantity	Unit	Item Description Total Unit Price Written in Words	Unit Price	Extension
6	3,775	SY	5" Type B HMAC Pavement _____ Thirty Three _____ Dollars and _____ Zero _____ Cents Per Square Yard	\$ _____ 33.00	\$ _____ 124,575.00
7	4,125	SY	6" Flexbase Subgrade _____ Twenty Three _____ Dollars and _____ Zero _____ Cents Per Square Yard	\$ _____ 23.00	\$ _____ 94,875.00
8	675	SY	Concrete Driveway Repair _____ Eighty _____ Dollars and _____ Fifty _____ Cents Per Square Yard	\$ _____ 80.50	\$ _____ 54,337.50
9	64	SF	Construct 4" Sidewalk _____ Nineteen _____ Dollars and _____ Twenty _____ Cents Per Square Foot	\$ _____ 19.20	\$ _____ 1,228.80
10	48	LF	12" Class III Reinforced Concrete Pipe _____ One Hundred _____ Thirty Seven _____ Dollars and _____ Zero _____ Cents Per Linear Foot	\$ _____ 137.00	\$ _____ 6,576.00



# PROPOSAL FORM EXHIBIT 'A'

## Cindy Court Paving and Drainage Improvements

<b>Item No.</b>	<b>Estimated Quantity</b>	<b>Unit</b>	<b>Item Description Total Unit Price Written in Words</b>	<b>Unit Price</b>	<b>Extension</b>
11	862	LF	18" Class III Reinforced Concrete Pipe <u>One Hundred Sixty Eight</u> <u>Dollars and</u> <u>Zero Cents</u> Per Linear Foot	\$ <u>168.00</u>	\$ <u>144,816.00</u>
12	42	EA	Driveway Culvert Safety End Treatments (6:1) <u>One Thousand Eight Hundred</u> <u>Forty Dollars and</u> <u>Zero Cents</u> Per Each	\$ <u>1,840.00</u>	\$ <u>77,280.00</u>
13	2	EA	Driveway Dual Culvert Safety End Treatments (6:1) <u>Two Thousand One Hundred</u> <u>Ninety Dollars and</u> <u>Zero Cents</u> Per Each	\$ <u>2,190.00</u>	\$ <u>4,380.00</u>
14	2	EA	Roadway Culvert Safety End Treatments (3:1) <u>Two Thousand One Hundred</u> <u>Ninety Dollars and</u> <u>Zero Cents</u> Per Each	\$ <u>2,190.00</u>	\$ <u>4,380.00</u>
15	3,090	LF	Parkway Ditch Grading <u>Ten</u> <u>Dollars and</u> <u>Twenty Cents</u> Per Linear Foot	\$ <u>10.20</u>	\$ <u>31,518.00</u>

**PROPOSAL FORM EXHIBIT 'A'****Cindy Court Paving and Drainage Improvements**

<b>Item No.</b>	<b>Estimated Quantity</b>	<b>Unit</b>	<b>Item Description Total Unit Price Written in Words</b>	<b>Unit Price</b>	<b>Extension</b>
16	15	STA	Parkway Restoration <u>Three Thousand Four Hundred</u> <u>Thirty</u> Dollars and <u>Zero</u> Cents Per Station	\$ <u>3,430.00</u>	\$ <u>51,450.00</u>
17	1	LS	Traffic Control <u>Eight Thousand Four Hundred</u> <u>Fifty</u> Dollars and <u>Zero</u> Cents Per Lump Sum	\$ <u>8,450.00</u>	\$ <u>8,450.00</u>
18	1	LS	Erosion Control & SWPPP <u>Ten Thousand Two Hundred</u> <u>Eighty</u> Dollars and <u>Zero</u> Cents Per Lump Sum	\$ <u>10,280.00</u>	\$ <u>10,280.00</u>

**Total Base Proposal**Seven Hundred Ninety-One ThousandOne Hundred Eight Dollars andEighty Cents\$ 791,108.80

**Construction Time:** Offeror shall complete the work within 60 calendar days from notice to proceed to substantial completion.

# AIA<sup>®</sup> Document A310<sup>™</sup> – 2010

## Bid Bond

### CONTRACTOR:

(Name, legal status and address)

RELIABLE PAVING, INC.  
1903 North Peyco  
Arlington, TX 76021

### SURETY:

(Name, legal status and principal place  
of business)

MERCHANTS BONDING COMPANY (MUTUAL)  
6700 Westown Parkway  
West Des Moines, IA 50266

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

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

### OWNER:

(Name, legal status and address)

CITY OF BURLESON

141 W. Renfro St., Burleson, TX 76028

**BOND AMOUNT:** Five Percent of Amount bid  
(5% of Amount Bid)

### PROJECT:

(Name, location or address, and Project number, if any)

Bid No. ST2205 - Cindy Court Paving and Drainage Improvements  
Burleson, TX

Project Number, if any:

The Contractor and Surety are bound to the Owner in the amount set forth above, for the payment of which the Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, as provided herein. The conditions of this Bond are such that if the Owner accepts the bid of the Contractor within the time specified in the bid documents, or within such time period as may be agreed to by the Owner and Contractor, and the Contractor either (1) enters into a contract with the Owner in accordance with the terms of such bid, and gives such bond or bonds as may be specified in the bidding or Contract Documents, with a surety admitted in the jurisdiction of the Project and otherwise acceptable to the Owner, for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof; or (2) pays to the Owner the difference, not to exceed the amount of this Bond, between the amount specified in said bid and such larger amount for which the Owner may in good faith contract with another party to perform the work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect. The Surety hereby waives any notice of an agreement between the Owner and Contractor to extend the time in which the Owner may accept the bid. Waiver of notice by the Surety shall not apply to any extension exceeding sixty (60) days in the aggregate beyond the time for acceptance of bids specified in the bid documents, and the Owner and Contractor shall obtain the Surety's consent for an extension beyond sixty (60) days.

If this Bond is issued in connection with a subcontractor's bid to a Contractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

When this Bond has been furnished to comply with a statutory or other legal requirement in the location of the Project, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

Signed and sealed this 9th day of January, 2023

(Witness)

RELIABLE PAVING, INC.

(Principal)

(Seal)

(Title)

MERCHANTS BONDING COMPANY (MUTUAL)

(Surety)

(Seal)

(Witness)

*Sophie Hunter*  
Sophie Hunter

(Title)

*Mikaela Peppers*  
Mikaela Peppers, Attorney in Fact



**MERCHANTS**  
**BONDING COMPANY™**  
**POWER OF ATTORNEY**

Know All Persons By These Presents, that MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., both being corporations of the State of Iowa, d/b/a Merchants National Indemnity Company (in California only) (herein collectively called the "Companies") do hereby make, constitute and appoint, individually,

Don E Cornell; Josh Saunders; Kelly A Westbrook; Mikaela Peppers; Ricardo J Reyna; Robbi Morales; Sophie Hunter; Tina McEwan; Tonie Petranek

their true and lawful Attorney(s)-in-Fact, to sign its name as surety(ies) and to execute, seal and acknowledge any and all bonds, undertakings, contracts and other written instruments in the nature thereof, on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

This Power-of-Attorney is granted and is signed and sealed by facsimile under and by authority of the following By-Laws adopted by the Board of Directors of Merchants Bonding Company (Mutual) on April 23, 2011 and amended August 14, 2015 and adopted by the Board of Directors of Merchants National Bonding, Inc., on October 16, 2015.

"The President, Secretary, Treasurer, or any Assistant Treasurer or any Assistant Secretary or any Vice President shall have power and authority to appoint Attorneys-in-Fact, and to authorize them to execute on behalf of the Company, and attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof."

"The signature of any authorized officer and the seal of the Company may be affixed by facsimile or electronic transmission to any Power of Attorney or Certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligations of the Company, and such signature and seal when so used shall have the same force and effect as though manually fixed."

In connection with obligations in favor of the Florida Department of Transportation only, it is agreed that the power and authority hereby given to the Attorney-in-Fact includes any and all consents for the release of retained percentages and/or final estimates on engineering and construction contracts required by the State of Florida Department of Transportation. It is fully understood that consenting to the State of Florida Department of Transportation making payment of the final estimate to the Contractor and/or its assignee, shall not relieve this surety company of any of its obligations under its bond.

In connection with obligations in favor of the Kentucky Department of Highways only, it is agreed that the power and authority hereby given to the Attorney-in-Fact cannot be modified or revoked unless prior written personal notice of such intent has been given to the Commissioner-Department of Highways of the Commonwealth of Kentucky at least thirty (30) days prior to the modification or revocation.

In Witness Whereof, the Companies have caused this instrument to be signed and sealed this 8th day of December, 2022.



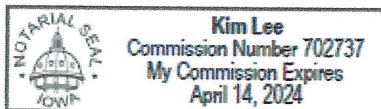
**MERCHANTS BONDING COMPANY (MUTUAL)**  
**MERCHANTS NATIONAL BONDING, INC.**  
d/b/a MERCHANTS NATIONAL INDEMNITY COMPANY

By

*Larry Taylor*  
President

STATE OF IOWA  
COUNTY OF DALLAS ss.

On this 8th day of December 2022, before me appeared Larry Taylor, to me personally known, who being by me duly sworn did say that he is President of MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC.; and that the seals affixed to the foregoing instrument are the Corporate Seals of the Companies; and that the said instrument was signed and sealed in behalf of the Companies by authority of their respective Boards of Directors.



*Kim Lee*  
Notary Public

(Expiration of notary's commission does not invalidate this instrument)

I, William Warner, Jr., Secretary of MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., do hereby certify that the above and foregoing is a true and correct copy of the POWER-OF-ATTORNEY executed by said Companies, which is still in full force and effect and has not been amended or revoked.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Companies on this 9th day of January, 2023.



*William Warner Jr.*  
Secretary

## SECTION NO. 7

STATE OF TEXAS§

**Contract**

COUNTY OF JOHNSON §

PROJECT NO. ST2205

This Contract, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the City of Burleson of Johnson County, Texas, a municipal corporation, hereinafter called "Owner," and Reliable Paving, Inc. \_\_\_\_\_ hereinafter called "Contractor."

W I T N E S S E T H:

For and in consideration of the payment, agreements and conditions hereinafter mentioned, and under the conditions expressed in the bonds herein, Contractor hereby agrees to complete the construction of improvements described as follows:

### **Cindy Court Paving and Drainage Improvements**

#### **City of Burleson Project No. ST2205**

in the City of Burleson, Texas, and all extra work in connection therewith, under the terms as stated in the Standard Specifications for Public Works Construction as it may be amended from time to time (hereinafter called "Standard Specifications"), and under the terms of the Special Provisions of this Contract; and at his, her or their own proper cost and expense to furnish all superintendence, labor, insurance, equipment, tools and other accessories and services necessary to complete the said construction in accordance with all the Contract documents, incorporated herein as if written word for word, and in accordance with the plans, which include all maps, plats, blueprints, and other drawings and printed or written explanatory manner therefore, and the specifications as prepared by **City of Burleson** hereinafter called Engineer, who has been identified by the endorsement of the Contractor's written proposal, these General Provisions of the Standard Specifications, the Special Provisions of this Contract, the payment, performance, and maintenance bonds hereto attached; all of which are made a part hereof and collectively evidence and constitute the entire Contract.

The Contractor hereby agrees to commence work within fifteen (15) days after the date written notice to do so shall have been given to him or her and to

complete same within 60 calendar days after the date of written notice to commence work.

The Owner agrees to pay the Contractor in current funds for the performance of the Contract in accordance with the proposal submitted therefore, subject to additions and deductions, as provided therein.

This Contract is entered into subject to the Charter and ordinances of Owner, 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.

If any of the terms, sections, subsections, sentences, clauses, phrases, provisions, covenants, or conditions of this Contract is held for any reason 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.

Owner reserves the right to terminate this agreement immediately upon breach of any term or provision of this Contract by Contractor; or, if any time during the term of this Contract, Contractor shall fail to commence the work in accordance with the provisions of this Contract or fail to diligently provide Services in an efficient, timely, and careful manner and in strict accordance with the provisions of this Contract or fail to use an adequate number or quality of personnel and equipment to complete the work or fail to perform any of its obligations under this Contract, then Owner shall have the right, if Contractor shall not cure any such default after thirty (30) days written notice thereof, to terminate this Contract and complete the work in any manner it deems desirable, including engaging the Services of other parties therefore. Any such act by Owner shall not be deemed a waiver of any other right or remedy of Owner. If after exercising any such remedy the cost to Owner of the performance of the balance of the work is in excess of that part of the Contract sum which has not theretofore been paid to Contractor hereunder, Contractor shall be liable for and shall reimburse Owner for such excess.

No right or remedy granted herein or reserved to the parties is exclusive of any other right or remedy herein by law or equity provided or permitted; but, each shall be cumulative of every other right or remedy given 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.

Contractor's status shall be that of an independent Contractor and not an agent, servant, employee or representative of Owner in the performance of this



Contract. No term or provision of, or act of Contractor or Owner under this Contract shall be construed as changing that status.

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 the written agreement of the parties.

Owner and Contractor each bind themselves, their successors, executors, administrators and assigns to the other party to this Contract. Neither Owner nor Contractor will assign, sublet, subcontract or transfer any interest in this Contract without the written consent of the other party. No assignment, delegation of duties or subcontract under this Contract will be effective without the written consent of Owner.

It is further agreed that one or more instances of forbearance by the City in the exercise of its rights herein shall in no way constitute a waiver thereof.

In performing this Contract, Contractor agrees to use diligent efforts to purchase all goods and services from Burleson Businesses whenever such goods and services are comparable in availability, quality and price.

IN WITNESS WHEREOF, the parties of these presents have executed this agreement in the year and date first written above.

WITNESS:

CONTRACTOR

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

Reliable Paving, Inc  
Company Name

\_\_\_\_\_  
Typed/Printed Name

\_\_\_\_\_  
Tax Identification Number:

\_\_\_\_\_  
Title

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

\_\_\_\_\_  
Address

\_\_\_\_\_  
Printed or Typed Name

\_\_\_\_\_  
City State Zip

\_\_\_\_\_  
Printed or Typed Title

ATTEST:

CITY OF BURLESON, TEXAS

\_\_\_\_\_  
Amanda Campos  
City Secretary

\_\_\_\_\_  
Bryan Langley  
City Manager

THE STATE OF TEXAS §

**Corporate Acknowledgment**

COUNTY OF JOHNSON §

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared \_\_\_\_\_, ☐ who is known to me or ☐ who was proved to me on the oath of \_\_\_\_\_ (name of person identifying the acknowledging person) or ☐ who was proved to me through \_\_\_\_\_ (description of identity card or other document issued by the federal or state government containing the picture and signature of the acknowledging person) to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed same for and as the act and deed of \_\_\_\_\_, a corporation of \_\_\_\_\_ County, Texas, and as \_\_\_\_\_ thereof, and for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public In and For The State of Texas

\_\_\_\_\_  
Notary's Printed Name

My Commission Expires: \_\_\_\_\_

THE STATE OF TEXAS §

**City Acknowledgement**

COUNTY OF JOHNSON §

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared \_\_\_\_\_, known to me to be a person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed same for and as the act of the City of Burleson, Texas, a Texas municipal corporation, and as \_\_\_\_\_ thereof, and for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public In and For The State of Texas

\_\_\_\_\_  
Notary's Printed Name

My Commission Expires: \_\_\_\_\_

## SECTION NO. 8

THE STATE OF TEXAS §

## Performance Bond

COUNTY OF JOHNSON §

KNOW ALL BY THESE PRESENTS:

**THAT** Reliable Paving, Inc.

of the City of Arlington, County of Tarrant

State of Texas hereinafter referred to as "PRINCIPAL," and

, a corporate surety/sureties organized under the laws of the State of Texas  
and authorized to do business in the State of Texas, hereinafter referred to as "SURETY,"  
(whether one or more), are held and firmly bound unto the **CITY OF BURLESON, TEXAS**,  
a municipal corporation located in Johnson County, Texas, hereinafter referred to as  
"CITY," in the amount of SEVEN HUNDRED NINETY-ONE THOUSAND ONE HUNDRED EIGHT AND 80/100  
DOLLARS (\$ 791,108.80 ), lawful money of the United States, to be paid in Burleson,  
Johnson County, Texas, for the payment of which sum well and truly to be made, we bind  
ourselves, our heirs, executors, assigns, administrators and successors, jointly and  
severally; and firmly by these presents, the condition of this obligation is such that,

WHEREAS, PRINCIPAL entered into a certain written Contract with the City of Burleson dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, a copy of which is attached hereto and made a part hereof, to furnish all materials, equipment, labor, supervision, and other accessories necessary for the construction of:

## Cindy Court Paving and Drainage Improvements

**City of Burleson Project No. ST2205**

in the City of Burleson, Texas, as more particularly described and designated in the above referenced contract such contract being incorporated herein and made a part hereof as fully and to the same extent as if written herein word for word:

**NOW THEREFORE,**

If PRINCIPAL shall well, truly and faithfully perform and fulfill all of the undertakings, covenants, terms, conditions and agreements of the above referenced 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 such 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 PRINCIPAL shall fail to do so, it is agreed that CITY may do such work and supply such materials and charge the same against PRINCIPAL and SURETY on this obligation, and PRINCIPAL and SURETY hereon shall be subject to the liquidated damages mentioned in the Contract for each day's failure on its part to comply with the terms and provisions of such Contract.

Provided, further, that if any legal action be filed on this Bond, venue shall lie in Johnson County, Texas.

And, that 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 as the agent resident in either Tarrant or Johnson County 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 is executed on this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

WITNESS

PRINCIPAL

Reliable Paving, Inc. \_\_\_\_\_  
Company

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

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

\_\_\_\_\_  
Typed/Printed Name

\_\_\_\_\_  
Typed/Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

\_\_\_\_\_  
City State Zip

\_\_\_\_\_  
City State Zip

WITNESS

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

\_\_\_\_\_  
Typed/Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Address

\_\_\_\_\_  
City                      State                      Zip

SURETY

\_\_\_\_\_  
Company

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

\_\_\_\_\_  
Typed/Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Address

\_\_\_\_\_  
City                      State                      Zip



## SECTION NO. 9

THE STATE OF TEXAS §

COUNTY OF JOHNSON §

## Payment Bond

## KNOW ALL BY THESE

PRESENTS:

THAT Reliable Paving, Inc

of the City of Arlington, County of Tarrant

State of Texas hereinafter referred to as "PRINCIPAL," and

corporate surety/sureties organized under the laws of the State of Texas and authorized to do business in the State of Texas, hereinafter referred to as "SURETY," (whether one or more), are held and firmly bound unto the **CITY OF BURLESON, TEXAS**, a municipal corporation located in Johnson County, Texas, hereinafter referred to as "CITY," and unto all persons, firms and corporations who may furnish materials for or perform labor upon the buildings, structures or improvements referred to in the attached Contract, in the penal sum of SEVEN HUNDRED NINETY-ONE THOUSAND ONE HUNDRED EIGHT AND 80/100 DOLLARS (\$ 791,108.80 ), lawful money of the United States, to be paid in Burleson, Johnson County, Texas, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally; and firmly by these presents, the condition of this obligation is such that,

WHEREAS, PRINCIPAL entered into a certain Contract with City of Burleson, dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, a copy of which is attached hereto and made a part hereof, to furnish all materials, equipment, labor, supervision, and other accessories necessary for the construction of:

## Cindy Court Paving and Drainage Improvements

**City of Burleson Project No. ST2205**

NOW THEREFORE,

If PRINCIPAL shall well, truly and faithfully perform its duties and make prompt payment to all persons, firms, subcontractors, corporations and claimants supplying labor and materials in the prosecution of the work provided for in the above referenced Contract and any and all duly authorized modifications of such

Contract that may hereafter be made, notice to SURETY of such modifications being hereby waived, then this obligation shall be void, otherwise to remain in full force and effect.

PROVIDED, further, that if any legal action be filed on this Bond, venue shall lie in Johnson County, Texas.

And, that such 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.

This Bond is given pursuant to the provisions of Chapter 2253 of the Government Code, as amended. The terms "payment bond beneficiary," "public work labor," and "public work material," as used herein, are in accordance with and as defined in the relevant provisions of Chapter 2253 of the Government Code.

The undersigned and designated agent is hereby designated by SURETY herein as the resident agent in either Tarrant or Johnson 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 is executed on this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

WITNESS

PRINCIPAL

Reliable Paving, Inc.  
Company

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

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

\_\_\_\_\_  
Typed/Printed Name

\_\_\_\_\_  
Typed/Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

\_\_\_\_\_  
City State Zip

\_\_\_\_\_  
City State Zip

WITNESS

SURETY

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

\_\_\_\_\_  
Typed/Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Address

\_\_\_\_\_  
City State Zip

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

\_\_\_\_\_  
Typed/Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Address

\_\_\_\_\_  
City State Zip

The Resident Agent of the SURETY in either Tarrant or Johnson County, Texas,  
for delivery of notice and service of process is:

NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_

NOTE: Date of Payment Bond must NOT be prior to date of Contract.

## SECTION NO. 10

THE STATE OF TEXAS      §

## Maintenance Bond

COUNTY OF JOHNSON §

## KNOW ALL BY THESE

PRESENTS:

THAT Reliable Paving, Inc.

of the City of Arlington, County of Tarrant

State of Texas hereinafter referred to as "PRINCIPAL,"  
and

corporate surety/sureties organized under the laws of the State of Texas and authorized to do business in the State of Texas, hereinafter referred to as "SURETY," (whether one or more), are held and firmly bound unto the **CITY OF BURLESON, TEXAS**, a municipal corporation located in Johnson County, Texas, hereinafter referred to as "CITY," in the amount of SEVEN HUNDRED NINETY-ONE THOUSAND ONE HUNDRED EIGHT AND 80/100 DOLLARS (\$ 791,108.80), lawful money of the United States, to be paid in Burleson, Johnson County, Texas, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, assigns, administrators and successors, jointly and severally; and firmly by these presents, the condition of this obligation is such that:

WHEREAS, PRINCIPAL entered into a certain written Contract with City of Burleson, dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, a copy of which is attached hereto and made a part hereof, to furnish all materials, equipment, labor, supervision, and other accessories necessary for the construction of:

## Cindy Court Paving and Drainage Improvements

**City of Burleson Project No. ST2205**

in the City of Burleson, Texas, as more particularly described and designated in the above referenced contract such contract being incorporated herein and made a part hereof as fully and to the same extent as if written herein word for word:

NOW THEREFORE,

If PRINCIPAL 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

perform all necessary work and repair any defective condition growing out of or arising in any part of the construction of said improvement, 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 PRINCIPAL; then this obligation shall be void, otherwise it shall remain in full force and effect; and in case PRINCIPAL shall fail to do so, it is agreed that CITY may do such work and supply such materials and charge the same against PRINCIPAL and SURETY on this obligation, and in addition, PRINCIPAL and SURETY herein shall be subject to the liquidated damages as provided in the Contract referred to herein for each day's failure on its part to comply with the terms and provisions of such Contract.

Provided, further, that if any legal action be filed on this Bond, venue shall lie in Johnson County, Texas.

And, that 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 as the resident agent in either Tarrant or Johnson County 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 is executed on this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

WITNESS

PRINCIPAL

Reliable Paving, Inc.

Company

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

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

\_\_\_\_\_  
Typed/Printed Name

\_\_\_\_\_  
Typed/Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

\_\_\_\_\_  
City State Zip

\_\_\_\_\_  
City State Zip

WITNESS

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

\_\_\_\_\_  
Typed/Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Address

\_\_\_\_\_  
City State Zip

SURETY

\_\_\_\_\_  
Company

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

\_\_\_\_\_  
Typed/Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Address

\_\_\_\_\_  
City State Zip



## CONSENT OF SURETY COMPANY TO FINAL PAYMENT

Project Name: Cindy Court Paving and Drainage Improvements

Project Number: ST2205

Owner: City of Burleson, Texas

Contractor: \_\_\_\_\_

Engineer: Teague Nall & Perkins, Inc.

*The Surety Company, on bond of the Contractor listed above for the referenced project, in accordance with the Contract Documents, hereby approves final payment to the Contractor, and agrees that final payment to the Contractor shall not relieve the Surety Company of any of its obligations to the Owner under the terms of the Contract and as set forth in said Surety Company's bond.*

In witness whereof, the Surety Company has hereunto set its hand this \_\_\_\_\_ day  
of \_\_\_\_\_ 20\_\_\_\_

\_\_\_\_\_  
Surety Company

By \_\_\_\_\_  
Authorized Representative

\_\_\_\_\_  
Title

\_\_\_\_\_  
Address

\_\_\_\_\_  
City State Zip

*Attach Power of Attorney*

## CONTRACTOR'S AFFIDAVIT OF FINAL PAYMENT

THE STATE OF TEXAS  
COUNTY OF JOHNSON

§ CONTRACTOR'S AFFIDAVIT OF  
§ FINAL PAYMENT AND RELEASE

BEFORE ME, the undersigned authority, on this day personally appeared \_\_\_\_\_

("Affiant"), who, after being by me duly sworn, deposes and says that he is \_\_\_\_\_

, a \_\_\_\_\_ (corporation, partnership, trade name)  
of \_\_\_\_\_ (County, State of Texas) the ("Contractor"), which said Contractor  
was awarded the contract dated the \_\_\_\_\_ day of \_\_\_\_\_, for the construction  
of \_\_\_\_\_ Cindy Court Paving and Drainage Improvements \_\_\_\_\_ (the "Work"), for a total  
consideration of \_\_\_\_\_ Dollars to be paid to the said  
Contractor (the "Contract"), and the Affiant has full power of authority to make this affidavit.

That CITY OF BURLESON (the "Owner") has received the request for final payment on said Work, and that the said contractor has fully satisfied and paid any and all claims that may be covered by Chapter 53 of the Texas Property code, and Article 510 of the Revised civil Statues of the State of Texas, or any other applicable statues or charter provisions, and that all just bills for labor and materials have been paid and charged by said Contractor insofar as they pertain to the Work in question.

That in addition to any funds which may have been previously paid by the Owner, the Contractor hereby accepts the amount of \_\_\_\_\_ Dollars as FULL AND FINAL PAYMENT under the aforementioned contract, and hereby waives and releases any right against the Owner arising out of or in any manner connected with the performance of the work and/or his Contract, including but not limited to claims of third parties that supplied material and/or labor for the Work for or through the Contractor ("Subcontractors"), as well as claims for delay, additional compensation or for recovery of liquidated damages which may have been withheld by the Owner. The Contractor shall defend, hold harmless and indemnify the Owner from any such claims of such Subcontractors. The contractor further releases the Owner from any claim or liability arising from any act or neglect of the Owner related to or connected with the contract and shall not be deemed to alter or modify the terms and provisions of said Contract.

\_\_\_\_\_

By \_\_\_\_\_  
(Affiant)

\_\_\_\_\_  
(Printed Name)

SUBSCRIBED AND SWORN TO BEFORE ME, THIS THE \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(Notary Public, in and for the State of Texas)

\_\_\_\_\_  
(Printed Name of Notary)

My Commission expires: \_\_\_\_\_

## SPECIAL PROVISIONS

### PART A – PAVING AND DRAINAGE SPECIFICATIONS

#### 11A-1      **PURPOSE OF SPECIAL PROVISIONS:**

The project shall be constructed in accordance with the *Standard Specifications for Public Works Construction* as issued by the North Central Texas Council of Governments (NCTCOG), as it may be amended from time to time, hereinafter referred to as the Standard Specifications.

These Special Provisions are included for the purpose of adapting the Standard Specifications to the particular project which is subject to this agreement and of adding thereto such further provisions as may be necessary to state the contract in its entirety.

Where any discrepancies occur between the Special Provisions and the Standard Specifications, the Special Provisions shall govern.

References made to “TxDOT” items in this contract shall mean items in the *Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges* as published by the Texas Department of Transportation in 2004, or most recent edition, Standard version only. There will be no Metric projects. Further technical requirements contained in other publications are referenced in sections where they apply and are hereby incorporated.

#### 11A-2      **SCOPE OF WORK:**

- A. The work governed by these specifications is located in the city of Burleson, Texas and consists of Cindy Court Paving and Drainage Improvements, City of Burleson Project No. ST2205. The project includes the reconstruction of existing subgrade with stabilization and asphalt paving on Cindy Court, including driveway and driveway culvert reconstruction. All work shall be bid and installed complete and in place as outlined within the Contract Documents and Specifications.
- B. The intent of the Contract Documents, including the Standard Specifications, Special Provisions & Projects, and other instruments, documents, drawings and maps comprising the Plans and Specifications, is to describe the completed work to be performed by the Contractor under the contract as an independent Contractor.
- C. Horizontal and vertical control, if available, will be provided by the Owner prior to construction. Construction staking will be the responsibility of the contractor. No separate pay item is included for construction staking.

The work will be performed subject to the right of inspection by the City Engineer or his authorized representative. Any provision of the agreement vesting in the City of Burleson, Department of Engineering Services, the right of supervision or inspection is understood by all the parties to be for the purpose of ensuring that the plans and specifications are complied with and that the completed work is obtained as described, and no such provision shall be interpreted as vesting in the City of Burleson, Department of Engineering Services the right to control the details of the work.

- D. The Contractor shall maintain at all times on the job site, a superintendent authorized to receive and execute instructions from the engineer.
- E. The Contractor shall employ only competent, efficient workmen and shall not use on the work any unfit person or one not skilled in the work assigned to him; and shall at all times maintain good order among his employees.

Whenever the City of Burleson shall inform the Contractor in writing that, in his opinion, any employee is unfit, unskilled, disobedient or is disrupting the orderly progress of the work; such employee shall be removed from the work and shall not again be employed on it.

Under urgent circumstances, the City of Burleson may orally require immediate removal of an employee for cause, to be followed by written confirmation.

#### **11A-3                      BONDS, INSURANCE AND AFFIDAVITS:**

- A. The following bonds and proof of insurance shall be filed with the City of Burleson as a condition of the contract, together with appropriate powers of attorney.
  - 1. **Performance, Payment, And Maintenance Bonds:** Performance, Payment and Maintenance bonds in the amount of not less than one hundred percent (100%) of the contract price conditioned upon the faithful performance of the contract, and upon payment of all persons supplying labor or furnishing materials, will be required upon the forms which are a part of the Contract Documents. Bonds shall be executed by a surety company authorized to do business in the State of Texas and acceptable to and approved by the City of Burleson. The period of the Maintenance Bond shall be two years from the date of acceptance of all work done under the contract, to cover the guarantee as set forth in the Special Conditions.
  - 2. **Performance Bonds And Payment Bonds In Excess Of \$100,000:** In addition to all other requirements set forth with regard to performance bonds and payment bonds, any performance bond or

payment bond in an amount exceeding One Hundred Thousand Dollars (\$100,000) must be issued by a surety that is qualified as a surety on obligations permitted or required under federal law as indicated by publication of the surety's name in the current U.S. Treasury Department Circular 570. In the alternative, an otherwise acceptable surety company that is authorized and admitted to write surety bonds in Texas must obtain reinsurance on any amounts in excess of One Hundred Thousand Dollars (\$100,000) from a reinsurer authorized and admitted as a reinsurer in Texas who qualifies as a surety or reinsurer on obligations permitted or required under federal law as indicated by publication of the surety's or reinsurer's name in the current U.S. Treasury Department Circular 570.

3. **Insurance:** Contractor shall, at his own expense, purchase, maintain and keep in force during the term of this contract such insurance as set forth below. Contractor shall not commence work under this contract until he has obtained all the insurance required under the contract and such insurance has been approved by the City, nor shall the Contractor 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
Employer's Liability	\$100,000 Each Occurrence
	\$100,000 Disease – Each Employee

Liability Insurance

Commercial General Liability (No standard coverages are to be excluded by endorsement.)	\$1,000,000 Per Occurrence
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Automobile Liability Insurance

Commercial Auto Liability Policy (including coverage for owned, hired, and non-owned autos)	\$ 500,000 Combined Single Limit
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Umbrella Liability

(Following Form and Drop Down Provisions Included)	\$2,000,000 Each Occurrence
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- B. 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 thirty days notice of cancellation to the City, for nonpayment of premium, material change, or any other cause.
  3. Be written through companies duly authorized to transact that class of insurance in the State of Texas.
  4. Waive subrogation rights for loss or damage so that insurers have no right to recovery or subrogation against the City of Burleson, it being the intention that the required insurance policies shall protect all parties to the 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  
Department of Engineering Services  
141 W. Renfro  
Burleson, TX 76028
- C. Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the engineer (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the work for which the City of Burleson or the City of Burleson's property might be responsible or encumbered (less amounts withheld by City of Burleson) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the contract documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days prior written notice has been given to the City of Burleson, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the contract documents, (4) consent of Surety, if any, to final payment and (5) if required by the City of Burleson, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the contract, to the extent and in such form as may be designated by the City of Burleson. If a subcontractor refuses to furnish a release or waiver required by the City of Burleson, the Contractor may furnish a bond satisfactory to the City of Burleson to indemnify the City of Burleson against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the City of Burleson all money that the City of Burleson may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

- D. In addition to the requirements contained above, the Contractor shall comply with the following in its provision of workers' compensation insurance.

1. **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, or TWCC-84), showing statutory workers' 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 Contractor's/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 Contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent Contractors, subcontractors, leasing companies, motor carriers, owner-operators, 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 delivering equipment or materials, or providing labor, transportation or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries and delivery of portable toilets.

2. The Contractor 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 Contractor providing services on the project, for the duration of the project.
3. The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.
4. If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.

5. The Contractor shall obtain from each person providing services on a project, and provide to the governmental entity:
  - a. a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and
  - b. no later than seven (7) days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
6. The Contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.
7. The Contractor shall notify the governmental entity in writing by certified mail or personal delivery, within ten days after the Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.
8. The Contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
9. The Contractor shall contractually require each person with whom it contracts to provide services on a project, to:
  - a. provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;
  - b. provide to the Contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;
  - c. provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

- d. obtain from each other person with whom it contracts, and provide to the Contractor:
    - (1) a certificate of coverage, prior to the other person beginning work on the project; and
    - (2) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
  - e. retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
  - f. notify the governmental entity in writing by certified mail or personal delivery, within ten days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
  - g. contractually require each person with whom it contracts, to perform as required by paragraphs 1 – 7 above, with the certificates of coverage to be provided to the person for whom they are providing services.
10. By signing this contract or providing or causing to be provided a certificate of coverage, the Contractor is representing to the governmental entity that all employees of the Contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.
11. The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor which entitles the governmental entity to declare the contract void if the Contractor does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.

#### **11A-4 INDEMNIFICATION:**

***Contractor does hereby agree to waive all claims, release, indemnify, defend and hold harmless City of Burleson and all its officials, officers,***

***agents, and employees, from and against any and all claims, losses, damages, suits, demands or causes of action, and liability of every kind including all expenses of litigation and/or settlement, court costs and attorneys fees for injury or death of any person or for loss of, damage to, or loss of use of any property, arising out of or in connection with the performance of this contract. Such indemnity shall apply whether the claims, losses, damages, suits, demands or causes of action arise in whole or in part from the negligence of the City of Burleson, his officers, officials, agents or employees. It is the express intention of all the parties that the indemnity provided for in this paragraph is indemnity by Contractor to indemnify and protect City of Burleson from the consequences of City of Burleson's own negligence, whether that negligence is a sole or concurring cause of the injury, death or damage and whether said negligence is characterized as sole, contractual comparative, concurrent, joint, gross, active, passive, or any other form of negligence.***

***In any and all claims against any party indemnified hereunder by any employee of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, this indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any sub-contractor under workmen's compensation acts or other employee benefit acts.***

#### **11A-5      ADDENDUM:**

This section has been moved to "Instructions to Bidders."

#### **11A-6      TIME FOR COMPLETION AND LIQUIDATED DAMAGES:**

Since time is of the essence, the City has seen fit to establish the time required to complete this project. The time, as set out in SECTION 5 of this contract, will be the maximum number of **calendar** days allowed to substantially complete this project. ***Substantially complete is defined as having completed all bid items included in the contract to allow the facilities to function as designed.*** Failure of the Contractor to complete the work within this time will result in damages being sustained by the City of Burleson. Such damages are, and will continue to be, impracticable and extremely difficult to determine. The Contractor will pay the City of Burleson **TWO HUNDRED FORTY DOLLARS (\$240.00)** for each **calendar** day of delay (including Sundays and holidays) in finishing the work in excess of time specified for completion, plus any authorized time extensions. Execution of the contract under these specifications shall constitute agreement by the City of Burleson and Contractor that **TWO HUNDRED FORTY (\$240.00)** is the minimum value of the costs and actual damage caused by failure of the Contractor to complete the work within the allotted time, that such sum is liquidated damages and shall not be construed as

a penalty, and that such sum may be deducted from payments due the Contractor if such delay occurs.

***The days as outlined in the Bid Summary for each section is given as a guide to the amount of time assumed to complete that particular portion of work. Liquidated damages will incur as a relation to completion of the entire Project within the allotted total number of Calendar days, which is 180 days.***

#### **11A-7      COMPUTATION OF CONTRACT TIME FOR COMPLETION:**

The Contract Documents furnished to the Contractor shows the number of calendar days allowed in the contract. If the satisfactory completion of the contract shall require unforeseen work or work and materials in greater amounts than those set forth in the contract, then additional calendar days will be considered, equal to the time which, in the opinion of the engineer, the work as a whole is delayed. However, the completion time can only be changed by the execution of a supplemental agreement (change order).

Time will be charged for all calendar days regardless of weather conditions, material supplies, or other conditions not under the control of the Contractor, which could impede the prosecution of the work. Time will also be charged for Sundays and holidays.

Prior to beginning construction operations, the Contractor shall submit to the engineer a *Critical Path Method (CPM)* chart progress schedule showing the manner of prosecution of the work that he intends to follow in order to complete the contract within the allotted time. The purpose for this schedule is to assure adequate planning and execution of the work. The progress schedule must present a reasonable approach to completing the work within the allotted time.

Payment of partial monthly estimates shall not be commenced until the CPM chart progress schedule has been approved by the engineer.

The Contractor shall be entirely responsible for maintaining the progress of the work in accordance with the approved schedule. Should it become evident, in the opinion of the engineer, any time during the construction that the progress of the work has not been maintained in accordance with the approved schedule, the Contractor shall, upon written request of the engineer, promptly submit a revised schedule. This revised schedule shall set out operations, methods, equipment, added labor, and additional work shifts by which time lost shall be made up. At the end of each estimate period, the engineer will determine whether the Contractor is in compliance with the approved schedule, or the approved revised schedule. In the event the Contractor is determined not to be in compliance, he will be notified immediately in writing. If the Contractor does not correct the work progress to comply with the approved revised schedule by the end of the month of notification, payment for work performed during the period of non-compliance will be reduced according to the following:



1st Month - Reduction = 30% X work performed (Month Only)  
2nd Month - Reduction = 40% X work performed (Month Only)  
3rd Month - Reduction = 50% X work performed (Month Only)  
Subsequent Month - Reduction = 50% work performed (Month Only)

The first month (the month of notification) is that month in which notification is made. Each month's reduction will be assessed only for that work performed during that specific month. The reduction will be cumulative for the entire period of non-compliance; i.e., 30% payment reduction for the work performed during the first month, plus 40% payment reduction for work performed during the second month, plus 50% payment reduction for work performed during the third month, and plus 50% payment reduction for work performed in each succeeding month of non-compliance thereafter. When the work progress becomes in compliance with the approved schedule, or the approved revised schedule, all withheld monies will be paid to the Contractor with the next regular estimate.

The Contractor shall anticipate possible delays and shall be prepared to supplement and revise his construction methods accordingly.

Prior to any construction activities, the Contractor shall install erosion control measures. The Contractor shall then begin the work to be performed under the contract within 15 days after the date of the authorization to begin work and shall continuously prosecute same with such diligence as will enable him to complete the work within the time limit specified. He shall not open up work to the detriment of work already begun. The Contractor shall conduct his operations so as to impose a minimum interference to traffic.

#### **11A-8                      DELAYS:**

The Contractor assumes the risk of all suspensions of or delays in performance of the contract, regardless of length thereof, arising from all causes whatsoever, whether or not relating to this contract, including wrongful acts or omissions of City of Burleson or its Contractors or subcontractors except only to the extent, if any, that compensation or an extension of time may be due as expressly provided for elsewhere in this contract for such suspension or delays, and, subject only to such exception, the Contractor shall bear the burden of all costs, expenses and liabilities which he may incur in connection with such suspensions or delays, and all such suspensions, delays, costs, expenses and liabilities of any nature whatsoever, whether or not provided for in this contract, shall conclusively be deemed to have been within the contemplation of the parties.

Notwithstanding any provisions of this contract, whether relating to time of performance or otherwise, City of Burleson makes no representation or guarantee as to when the construction site or any part thereof will be available for the performance of the contract, or as to whether conditions at the construction site will be such as to permit the contract to be formed thereon without interruption or by any particular sequence or method or as to whether

the performance of the contract can be completed by the time required under this contract or by any other time.

Wherever in connection with this contract it is required, expressly or otherwise, that City of Burleson shall perform any act relating to the contract, including making available or furnishing any real property, materials or other things, no guarantee is made by the City of Burleson as to the time of such performance and the delay of City of Burleson in fulfilling such requirement shall not result in liability of any kind on the part of City of Burleson except only to the extent, if any, that an extension of time or compensation may be due as expressly provided for in this contract.

#### **11A-9      MONTHLY ESTIMATE:**

Although Contractor estimates may be submitted on a monthly basis, The City of Burleson does not use a monthly pay estimate schedule. The City will process the estimate within a reasonable time. It is the Contractor's best interest to get the estimate to the inspector as early in the week as possible to verify quantities and make the request. After verification, payment can be made

#### **11A-9A      RIGHT TO AUDIT:**

CONTACTOR agrees that CITY shall, until the expiration of three (3) years after final payment under this contract, have access to and the right to examine any directly pertinent books, documents, papers and records of CONTRACTOR involving transactions relating to this contract. CONTRACTOR agrees that 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. CITY shall give CONTRACTOR reasonable advance notice of intended audits.

#### **11A-10      PREVAILING WAGE RATES:**

The Contractor shall comply with V.T.C.A., Government Code, Chapter 2258, in performing this project. In accordance with V.T.C.A., Government Code, Chapter 2258, the prevailing wage rates as set forth in Section 2 of the contract documents shall be paid on this project. For overtime work and legal holidays, the hourly rate shall be one and one-half times the basic hourly rate set forth in Section 2. The City will require an affidavit stating that the Contractor has complied with the prevailing wage rate provision of the contract documents, prior to acceptance of the project. The City reserves the right to conduct interviews with the Contractor's employees to insure compliance with Section 2 of the contract documents in accordance with applicable State and Federal Laws.

Upon written request by the City, the general contractor shall be responsible for submitting payroll information to the City of Burleson for all employees

performing work on the project, whether employed by the general contractor or a subcontractor to the general contractor. Each submittal shall be certified by the general contractor as to completeness and accuracy.

A Contractor or subcontractor in violation of V.T.C.A., Government Code, Chapter 2258 is liable for a penalty. That Contractor or subcontractor shall pay to the City sixty dollars (\$60.00) for each laborer, workman, or mechanic employed for each calendar day, or portion thereof, such laborer, workman, or mechanic is paid less than the said stipulated rates for work done under the contract.

The Contractor or subcontractor violating a requirement of this Special Provision may be determined ineligible to bid on or receive any additional work during the calendar year following the year in which the violation of this Special Provision occurred.

#### **11A-11      CONSTRUCTION WATER:**

Construction water necessary for the normal construction of this project will not be provided free to the Contractor. All construction water will be metered by City owned meters and only these meters. The Contractor is responsible for paying the current security deposit for the meter at the Utility Billing Department Office, 141 W. Renfro, City Hall, prior to picking up the meter. These meters will be furnished by the City of Burleson and will be picked up at City Hall. The assigned company is liable for any theft and/or damage done to the meter once in the Contractor's possession. The loss of the meter or failure to turn it in when the job is completed will result in the forfeiture of the security deposit. Damages to the meter will be billed. It will be up to the assigned company to supply the monthly meter reading, meter number and signature of the company employee in writing to the Utility Billing department no later than the 10<sup>th</sup> of each month. That written reading may be dropped off to the Utility Billing department at City Hall or faxed to 817-447-3928. This procedure will be followed wherever construction water is needed. No exceptions to the rule will be sanctioned. Where water is necessary only to settle dust on the street at the request of the property owners, the engineer or inspector will notify the Contractor. The necessary application of water for dust shall be considered subsidiary to the other bid items listed in SECTION 7 (PROPSAL) of this contract.

#### **11A-12      DETOURS AND BARRICADES/TRAFFIC CONTROL:**

The Contractor shall submit to the inspector two (2) copies of a Traffic Control Plan two (2) weeks prior to closing any street or causing any obstruction to traffic on any street. The Contractor shall not proceed with the implementation of the Traffic Control Plan until notified by the inspector that the plan has been accepted. The Traffic Control Plan shall be drawn at a scale not less than 1"=200' unless approved by the inspector and such that it is legible and shall include proposed street closings, detours, barricade placements, and sign

placement, including advance warning signs, and pavement markings if necessary. The Contractor shall furnish and erect suitable barricades, signs, and appropriate pavement markings to protect motorists and pedestrians, as set forth in the latest edition of the *TEXAS MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES (TxMUTCD)*. The barricades, signs, and pavement markings shall be constructed, placed, and adequately maintained as set forth in the Traffic Control Plan or as directed by the engineer or authorized representative. Unless included as a bid item, no direct compensation will be made to the contractor for the preparation of the Traffic Control Plan.

Unless otherwise approved by the engineer or authorized representative, two-way traffic shall be maintained on all roadways under construction at all times. If it becomes necessary to detour traffic off the existing paved roadway for more than seven (7) days, a hard surface driving lane, such as asphalt, shall be properly constructed and maintained by the Contractor throughout the duration of the detour. All temporary tie-ins shall be constructed of 4-inch Type B asphalt over a compacted subgrade (standard compaction). Subsequent maintenance of all detours and tie-ins shall be considered subsidiary to the unit prices bid for temporary asphalt. Cutting, removing, and replacing the asphalt for utility installations, excavation, and/or liming operations shall be considered subsidiary to the initial placement of asphalt and will not be paid for each re-installation. Asphalt shall be replaced within seven (7) days of removal for these activities. A bid item shall be included for furnishing, installing, maintaining and final removal of the asphalt.

Where pavement drop-offs occur, traffic control plans shall be in accordance as illustrated on the following "*Traffic Control Device Detail*," which is enclosed as part of these specifications. These guidelines are applicable to construction work where continuous pavement edges or drop-offs exist parallel and adjacent to a lane used for traffic.

No direct compensation (unless bid item included) will be made to the Contractor for furnishing, installing, and maintaining barricades, signs, pavement markings, and detours and their subsequent removal. This is to be considered subsidiary to the several items for which unit prices are requested in the PROPOSAL. Should it be necessary for the City to provide and/or maintain signs, barricades, and markings the cost of such shall be deducted from the monthly estimate.

#### **11A-13      SALES TAX EXEMPTION:**

The Contractor is cautioned that Texas law regarding tax exemption for City projects has been revised. The Contractor is responsible for obtaining the latest information from the State Comptroller's Office and/or other appropriate entities and bidding accordingly.

#### **11A-14      ACCESS TO PRIVATE PROPERTIES:**

The Contractor shall maintain all private drives in an accessible condition to allow residents ingress and egress before leaving the job site, except during the placing and curing of drive approaches. All commercial drives and other locations with high traffic volumes, as directed by the engineer, shall be maintained with 4-inch Type B asphalt over a compacted subgrade (standard compaction). Subsequent maintenance of drives shall be considered subsidiary to the unit prices bid. Cutting, removing, and replacing the asphalt for utility installations, excavation, and/or liming operations shall be considered subsidiary to the initial placement of asphalt and will not be paid for each re-installation. Asphalt shall be replaced within seven (7) days of removal for these activities.

The Contractor will leave with the engineer the phone numbers of responsible persons available twenty-four (24) hours a day to handle emergencies concerning egress and ingress. If a vehicle becomes stranded due to an inaccessible condition, any legitimate claims arising from such conditions shall be the sole responsibility of the Contractor. If such claims are not settled prior to the monthly pay estimate, they shall be deducted from that estimate.

#### **11A-15      CRUSHED ROCK BAD WEATHER PROTECTION:**

During periods of bad weather, the Contractor shall put in place, on excavated streets, an amount of Type A, Grade 1, flex base sufficient to provide temporary access to private non-commercial property. Crushed concrete flexible base meeting TxDOT Item 247, Grade 1 is also acceptable to provide temporary access to private property. All flex base will be removed and stockpiled for future use at other locations as necessary. Any base removed and hauled off the project site without approval from the engineer will be replaced by an equal quantity at the Contractor's expense. Special care will be taken by the Contractor during placement and removal of the flex base, not to unnecessarily combine the flex base with native material on the project. If special care is not taken by the Contractor, an equal quantity of flex base will be replaced at the Contractor's expense. This specification is not considered a separate bid item. It is considered subsidiary to other items in the proposal. Ingress and egress onto private and public property shall be maintained at all times when contractor is not working in the area.

#### **11A-16      USE OF PRIVATE PROPERTY:**

The Contractor shall not at any time use private property to park or turn around construction vehicles or store equipment and/or materials without the written permission of the property owner involved. ***The Contractor shall not at any time use private water meters set for the property owners use without written permission of the property owner.*** Contractor is responsible for any and all damages to private property used for construction purposes.

#### **11A-17      PROTECTION OF THE PUBLIC:**

(COG 107.18) The Contractor shall at all times conduct the work in such manner as to ensure the least possible obstruction to public traffic and protect the safety of the public. Public safety and convenience and provisions therefore made necessary by the work, shall be the direct responsibility of the Contractor and shall be performed at his entire expense.

Materials placed on the site, or materials excavated and the construction materials or equipment used shall be located so as to cause as little obstruction to the public as possible.

The City of Burleson reserves the right to remedy any neglect on the part of the Contractor in regard to public convenience and safety which may come to its attention. The cost of such work done or material furnished by the City of Burleson shall be deducted from monies due or to become due to the Contractor.

#### **11A-18      PROTECTION OF ADJACENT PROPERTY:**

The Contractor shall be responsible for the protection of all fences, trees, curb and gutter, and other improvements on the property adjoining the construction sites from damage by the Contractor's equipment and personnel. The Contractor shall be responsible for notifying the property owners in advance of any trimming to be done on trees. The Contractor will notify the City of any trees, shrubs, or bushes that must be removed by the construction. No trees will be removed by the Contractor until permission is granted by the engineer or his designated representative. The Contractor will not be allowed to place excess material, forms, equipment, or any other material outside the street right-of-way without written permission of the property owner and approval of the Engineer. No dumping will be allowed in floodplains or below the 100-year flood elevation of drainage ways.

#### **11A-19      TESTING:**

The City Inspector, deemed necessary, shall have the authority to test materials, equipment and in-place construction to verify compliance with project specifications. The expense of tests shall be paid for by the City as follows:

##### **1. *Sanitary Sewer Lines***

- Trench backfill density- City pays initial testing, Contractor pays for retesting.
- Pressure Testing of the Line - Contractor pays.
- Manhole Vacuum Test – Contractor pays.

##### **2. *Water Lines***

- Trench Backfill Density – City pays initial testing, Contractor pays for retesting.

- Pressure Testing of the Line- Contractor pays.
- Line Sterilization – Contractor pays for sterilization. City takes water sample and pays for the initial testing, Contractor pays for retesting.

### 3. *Storm Drain*

- Trench Backfill density – City pays initial testing, Contractor pays for retesting.

### 4. *Paving*

- Lime or cement stabilized subgrade gradation and density – City pays initial testing, contractor pays for retesting.
- Mix design/plant control – Contractor pays
- Strength test/ cylinders – City pays initial testing, Contractor pays for retesting.
- Thickness test/coring - City pays initial testing, Contractor pays for retesting and additional tests to isolate deficient areas.

### 5. *Structures*

- Mix design/plant control – Contractor pays
- Strength test/cylinders – City pays initial testing, Contractor pays for retesting.

The failure of the City to make any tests shall in no way relieve the Contractor of his responsibility to provide materials, equipment, and in-place construction which comply with project specifications. The Contractor shall provide such facilities as the engineer may require for collecting and forwarding samples and shall not, without specific written permission of the engineer, use the materials represented by the samples until tests have been made and materials approved for use. The Contractor will furnish adequate samples without charge to the City of Burleson.

In case of concrete, the aggregates, design minimum and the mixing and transporting equipment shall be approved by the engineer before any concrete is placed, and the Contractor shall be responsible for replacing any concrete which does not meet the requirements of the contract documents.

## **11A-20      DEFECTIVE MATERIALS, EQUIPMENT OR, IN-PLACE CONSTRUCTION:**

- A. Materials and equipment not conforming to the requirements of these specifications will be rejected and shall be removed immediately from the site of the work, unless permitted to remain by the engineer. Rejected materials, the defects of which have been subsequently corrected, shall have the status of new material.
- B. In-Place construction not conforming to the requirements of these specifications will be removed and replaced at the Contractor's expense or reworked at the Contractor's expense as deemed appropriate by the engineer. Tests made on in-place construction which has been replaced or reworked due to failure to meet project specifications will be authorized



by the engineer and the cost of such tests will be the expense of the Contractor.

**11A-21      MATERIALS AND WORKMANSHIP: WARRANTIES AND GUARANTEES:**

Under the terms of the warranties which arise from these contract documents and/or by the terms of any applicable special warranties required by the contract documents, if any of the work in accordance with this contract is found to not be in accordance with the requirements of the contract documents, the Contractor shall correct such work promptly after receipt of written notice from the City of Burleson. This obligation shall survive acceptance of the work under the contract and termination of the contract. In order to facilitate a prompt response, Contractor agrees to provide for warranty service to the extent practical, from local businesses, including goods and services, when such goods and services are comparable in availability, quality and price. If Contractor fails within a reasonable time after written notice to correct defective work or to remove and replace rejected work, or if Contractor fails to perform the work in accordance with the contract documents, or if Contractor fails to comply with any provision in the contract document, either the City of Burleson or its designee may, after seven (7) days written notice to Contractor, correct and remedy any such deficiency at the expense of the Contractor.

**11A-22      EXISTING UTILITIES:**

The Contractor will make every effort to protect existing utilities and other lines or structures. The Contractor shall not adjust, remove, or operate existing utilities unless specifically requested to do so in these specifications or authorized to do so by the engineer or his representative. Any utility damaged by the Contractor during the construction shall be suitably replaced at the Contractor's expense.

The Contractor shall contact the proper utility representative as follows for questions or coordination of construction related to existing utilities:

<u>Utility</u>	<u>Representative</u>	<u>Phone Number</u>
ATMOS (formerly TXU Gas) 100 W. Morningside Dr. Fort Worth, TX 76110	MATTHEW MCCARTNEY Engineering Department	682-328-5125
TXU Electric Delivery 7860 Winbrook Benbrook, TX 76126	TERRY SEARS PMDS Utility Designer Sr.	817-569-7916

SW BELL TELEPHONE CO.  
1116 Houston St., Rm 1410  
Fort Worth, TX 76102

SEAN KIRBY  
Engineering Department

817-338-5810

ONCOR  
7860 Winbrook Dr.  
Benbrook, TX 76126

Josh Brown  
Engineering Department

682-226-8977

CHARTER COMMUNICATIONS  
8912 S. I-35W, Ste. D  
Fort Worth, TX 76134

GREG PIATT  
Line Locator

817-509-6272,  
ext. 3363

AT&T  
206 W. Renfro St.  
Burleson, TX 76028

DANIEL DUNN  
Engineering Department

817-994-3700

PUBLIC WORKS  
1675 John Jones Dr.  
Burleson, TX 76028

TRAVIS ROSENBAUM, P.E.  
Project Manager

817-426-9620,

#### **11A-23      PROTECTION & CLEANING OF EXISTING SEWERS**

If the contractor, through any carelessness or negligence, obstructs the flow through any existing sewer within the limits of the project, the Public Works Department of the City of Burleson will provide the necessary equipment and labor to clean the obstructions(s) at a rate of Two Hundred Dollars (\$200.00) per hour with a two (2) hour minimum per location.

#### **11A-24      LOCATION & PROTECTION OF EXISTING STRUCTURES & UTILITIES:**

In the preparation of plans and specifications, the engineer has endeavored to indicate the location of existing underground utility lines which are known to the engineer. No attempt has been made to show minor lines or service lines however, and it is not guaranteed that all major lines or structures have been shown on the plans. Prior to the start of construction, the Contractor shall communicate with the local representative of all utility companies and advise said representatives of the route of the proposed construction in order to obtain the assistance of the utility companies in the location of and in the avoidance of the conflicts with utility lines. It is the Contractor's responsibility to uncover and determine the elevation and location of all potential conflicts well ahead of the excavation.

**11A-25      RIGHT-OF-WAY PREPARATION:** This item shall include furnishing all labor and materials necessary for the preparation of the site and those areas

adjacent to or offsite as may be designated on the plans for construction operations. All work shall be performed per NCTCOG Item 203, Site Preparation. This work shall include the clearing and grubbing and the removal of all obstructions not designed on the plans to remain in place. Such items include, but are not limited to the following: tree removal, removing existing bushes and vegetation, clearing of underbrush, stump removal, removal of topsoil, rock removal, miscellaneous debris removal, removal of driveway culverts and safety end treatments, retaining wall removal, and removal of above ground and below ground utilities and structures not designated by a separate pay item, septic system, and/or irrigation appurtenances, etc. including the relocation of any existing buildings, mailboxes, signs, or structures within the project limits not designed by a separate pay item. Any temporary fencing necessary for security or animal containment during construction shall be part of this pay item.

This item also includes all Contractor insurance, bonds, and permits.

The Contractor shall be responsible for preserving and protecting all existing trees, structures, etc. not designated for removal. All protection shall be performed per NCTCOG Item 201, Site Protection, and shall be considered subsidiary to Site Preparation.

It is the Contractor's responsibility to verify all existing structures necessary to be relocated or removed that will conflict with construction and include the materials and labor necessary for this relocation and/or removal within this pay item. Unless otherwise noted, no separate payment will be made for the removal or relocation of existing structures within the limits of construction. The Contractor shall prepare a video of existing conditions to verify the condition and location of all existing structures prior to construction. A copy of this video shall be provided to the City Representative prior to beginning construction.

**11A-26      ROADWAY EXCAVATION:** All roadway excavation on this project shall be unclassified and shall be performed in full accordance with the NCTCOG Specifications, Division 200, 203.4, "Unclassified Street Excavation."

Payment for excavation is based on plan quantity. Contractor shall verify excavation/fill quantities and shall notify City of Burleson in writing of concurrence or disagreement with plan quantities prior to start of construction. Any discrepancies in quantities shall be resolved prior to beginning excavation. No adjustments to plan quantities shall be allowed once excavation/fill activities have begun.

It shall be the responsibility of the Contractor to locate a suitable disposal site outside the right-of-way limits to dispose of both excess and unsuitable material from roadway excavation not needed in roadway fill and embankment. No separate payment shall be made for disposal of excess or unsuitable material. No dumping or disposal of excess material will be allowed in floodplains or

below the 100-year flood elevation of drainage ways. Disposal shall be performed in accordance with appropriate laws and ordinances.

**11A-27      UNCLASSIFIED STRUCTURAL EXCAVATION: N/A**

**11A-28      SITE GRADING: N/A**

**11A-29      COMPACTED ROADWAY FILL & EMBANKMENT: N/A**

**11A-30      BORROW: N/A**

**11A-31      FILLING: N/A**

**11A-32      DRAINAGE:**

Contractor shall maintain adequate drainage at all times during construction. Changing of natural runoff flow locations or concentrating flows to a point of potential harm to the adjacent property shall not be allowed.

**11A-33      REMOVAL ITEMS: N/A**

**11A-34      HYDRATED LIME AND PORTLAND CEMENT FOR SUBGRADE STABILIZATION:**

Hydrated lime to be used on this job shall conform to NCTCOG Specification Item 301.2 with the exception of 301.2.1.2 Quicklime. No Quicklime will be allowed on this project. Portland cement to be used for stabilization shall conform to NCTCOG Specification Item 301.3.

**11A-34A      LIME STABILIZATION OF SUBGRADE: N/A**

**11A-34B      PORTLAND CEMENT STABILIZATION OF SUBGRADE**

- A. Prior to beginning any Cement modification, the subgrade shall be brought to the required line, grade, cross-section, and proof rolled in accordance with specification requirements. Proof rolling shall be in accordance with Texas Department of Transportation *Standard Specification for Construction of Highways, Streets and Bridges, 2004*, Item 301, or the most recent edition. The cost of proof rolling shall be considered subsidiary to this item.

- B. After the subgrade has been shaped, the roadway will be scarified to full depth and width of modification. Full depth will be six (6") inches below finished grade and full width will be that distance from the fronts of gutter pans on either side of the roadway. (On roadways where full length curb and gutter are removed to be replaced during reconstruction, one (1') foot behind the back of proposed curb on each side of the roadway.)
- C. Portland cement will be applied to that area defined in Part B of this section so that the initial mixing operation can be completed during the same working day. Portland cement stabilization shall be applied by either the slurry or dry method. If the method used is "DRY", it shall be the Contractor's responsibility to maintain dust control during the application of Portland cement. If during application of Portland cement stabilization the Contractor has failed to maintain the dust to within limits specified by the inspector, the contractor will apply future Portland cement stabilization by "slurry method".
1. It shall be the responsibility of the CONTRACTOR to regulate the sequence of work, to process a sufficient quantity of material so as to provide full depth as shown on plans, to use the proper amount of Portland cement, maintain the work and to rework the courses as necessary to meet the foregoing requirements. Cement stabilized base shall not be mixed or placed when the air temperature is below 40°F (5°C) and falling, but may be mixed or placed with the air temperature is above 35°F (2°C) and rising, the temperature being taken in the shade and away from artificial heat, and with the further provisions that cement stabilized base shall be mixed or placed only when weather conditions, in the opinion of the OWNER, are suitable.
  2. The cement-modified soil layer may be constructed with any machine or combination of machines and auxiliary equipment that shall produce the results meeting the requirements for soil pulverization, cement application, water application, mixing, incorporation of materials, compaction, finishing and curing as specified herein. The CONTRACTOR shall at all times provide sufficient equipment to enable continuous performance of the work and its completion in the required number of working days.
2. Soft or yielding subgrade shall be corrected and made stable before construction proceeds. The soil and/or recycled asphalt pavement shall be so pulverized that at the completion of moist-mixing, it meets the gradation in the table below.

Table 1. (a) Cement Treated Materials-In-Place

Sieve Size	Minimum Passing by Dry
Weight <sup>1, 2</sup>	
1-in. (25mm)	100%
No. 4 (4.75mm)	80%

1. Exclusive of gravel or stone retained on these sieves.
2. Recycled asphalt pavement shall be pulverized so that 100-percent shall pass a 2-in. (50mm) sieve.

D. *Application of Cement to Materials-In-Place:* Portland cement shall be spread by an approved dry or slurry method uniformly on the soil at the rate specified on the plans or as determined by preliminary laboratory tests. If a bulk cement spreader is used, it shall be positioned by string lines or other approved method during spreading to insure a uniform distribution of cement. Cement shall be applied only to such an area that all the operations can be continuous and completed in daylight within 6-hours of such application. The percentage of moisture in the soil at the time of cement application shall not exceed the quantity that shall permit uniform and intimate mixture of soil and cement during dry-mixing operations, and it shall not exceed the specified optimum moisture content for the soil and cement mixture. In the event of high soil-moisture contents, cement may be applied at one-half the specified rate when approved by the Engineer. The remainder of the application rate of cement shall be applied the following day(s), not to exceed 48-hours. The usual construction sequence shall then be resumed. No equipment, except that used in the spreading and mixing, shall be allowed to pass over the freshly spread cement until it is mixed with the soil.

1. Mixing shall continue until a homogeneous, friable mixture of the material and cement is obtained, free from all clods or lumps. The mixture shall be kept within moisture tolerances throughout the operation.
2. Compaction shall begin after mixing and after gradation and moisture requirements have been met. The material shall be compacted to at least 95-percent of the maximum density as determined by ASTM 698 Laboratory Compaction Characteristics of Soil Using Standard Effort (12,400 ft-lbf/ft<sup>3</sup> (600 kN-m/m<sup>3</sup>)). At the start of compaction, the percentage of moisture in the mixture and in un-pulverized soil lumps, based on oven-dry weights, shall be within 2-percentagepoints of the specified optimum moisture content and shall be less than the quantity which shall cause the soil cement mixture to become unstable during compaction and finishing. When the un-compacted soil-cement mixture is wetted by rain so that the average moisture content exceeds the tolerance given at the time of final compaction, the entire section shall be

reconstructed in accordance with this specification at the sole expense of the CONTRACTOR. The specified optimum moisture content and density shall be determined in the field on the representative samples of soil-cement mixture obtained from the area being processed. Final moisture content shall be within minus 2 (-2) to plus 4 (+4) of optimum. Prior to the beginning of compaction, the mixture shall be in a loose condition for its full depth. Compaction shall begin at the bottom and shall continue until the entire depth of the mixture is uniformly compacted. The loose mixture shall then be uniformly compacted to the specified density within 2-hours. After the soil and cement mixture, except the top mulch, is compacted, water shall be uniformly applied as needed and thoroughly mixed in. The surface shall then be reshaped to the required lines, grades and cross section and then lightly scarified to loosen any imprint left by the compacting or shaping equipment. The resulting surface shall be thoroughly rolled with a pneumatic tire roller and "clipped," "skinned," and "tight-bladed" by a power grader to a depth of approximately ¼-in. (6mm), moving all loosened soil and cement from the section. The surface shall then be thoroughly compacted with the pneumatic roller, adding small increments of moisture as needed during rolling. When directed by the OWNER, surface finishing methods may be varied from this procedure, provided a dense, uniform surface, free of surface material, is maintained at its specified optimum during all finishing operations. Surface compaction and finishing shall proceed in such a manner as to produce, in not more than 2-hours, a smooth, closely knit surface, free of cracks, ridges or loose material, conforming to the drawn grade and line shown on the plans. OWNER shall conduct In-place density tests shall as outlined in ASTM D2922 Density of Soil and Soil-Aggregate in Place by Nuclear Methods (Shallow Depth). In-place density tests shall be performed at the rate of one-per-300-linear-ft. (one/91-m) of paving for two (2) lanes. The suitability of the modification shall be confirmed by Atterberg Limit testing at the rate of one test per 2,500 cubic-yards (one/1,910-m<sup>3</sup>) of processed material. In addition to the requirements specified for density, the full depth of the material shown on the plans shall be compacted to the extent necessary to remain firm and stable under construction equipment. After each section is completed, tests as necessary will be made by the OWNER. If the material fails to meet the density requirements, it shall be reworked as necessary to meet these requirements. Throughout this entire operation the shape of the course shall be maintained by blading, and the surface upon completion shall be smooth and in conformity with the typical section shown on the plans and to the established lines and grades. Should the material, due to any reason or cause, lose the stability, density and finish before the next course is placed or the work is accepted, it shall be re-compacted and refinished at the sole expense of the CONTRACTOR.



- E. *Application of Cement to Plant Mixed Cement:* Mixing and Processing of Portland cement for stabilization by plant mixing shall follow the guidelines as provided in section 11A-34B, subsections A-D.
1. Free access to the plant shall be provided to the OWNER for construction quality control. The mixture shall be hauled to the paving area in trucks having beds cleaned of deleterious material.
  2. The mixture shall be placed on a moistened subgrade in a uniform layer by any approved method of spreading that will deposit the required quantity per lineal foot, without segregation, to produce a uniformly compacted base conforming to the grade and cross-section. Not more than 30-minutes shall elapse between placement of cement treated base in adjacent lanes at any location except at longitudinal and transverse construction joints. Compaction shall start as soon as possible after spreading. Elapsed time between the addition of water to the cement treated base mixture and the start of compaction shall not exceed 60-minutes under normal conditions. The Engineer may alter this time if environmental conditions, such as temperature, humidity or wind conditions would justify such a change. Laboratory tests may be required to verify changes in compaction time limits.
- F. *Opening to Traffic.* The CONTRACTOR shall not be permitted to drive heavy equipment over completed portions. Pneumatic-tired equipment required for hauling cement and water may be permitted to drive over after the surface has hardened sufficiently to prevent the equipment from marring the surface, provided that protection and cover are not impaired. The soil-cement course may be opened to local traffic as soon as the curing seal has been applied and dusted or sanded as necessary to prevent it from being picked up by traffic. Completed portions may be opened to all traffic after 7-days.
- G. *Maintenance.* The CONTRACTOR shall be required within the limits of its contract to maintain the soil-cement treatment in good condition from the time it first starts work until all work shall have been completed. Maintenance shall include immediate repairs of any defect that may occur after the cement is applied. Such maintenance work shall be done by the CONTRACTOR at the CONTRACTOR'S expense, and repeated as often as necessary to keep the area continuously intact. Repairs are to be made in such a manner as to insure restoration of a uniform surface for the full depth of treatment. Any low area of treated subgrade shall be remedied by scarifying the surface to a depth of at least 2-in. (5cm), filling the area with treated material and compacting. Any low area of sub-base or base shall be remedied by replacing the material for the full depth of sub-base or base treatment rather than adding a thin layer of stabilized material to the completed work.

- H. No stabilizer, either concentrated or diluted, shall be allowed to enter a storm drain system or a natural waterway. The stabilizer shall be applied in a manner that prevents puddling and/or runoff. Runoff will be considered a spill. All spills shall be immediately reported to the City of Burleson's Communications & Environmental Services at (817) 447-5410. ext. 269 during City Hall working hours and to the Burleson Fire Department Dispatcher (817) 295-5498, ext. 230 during evenings and weekends. The spill shall be contained, neutralized, cleaned up, and removed from the site. Washing down the spill is not allowed. This is subsidiary to the Portland cement stabilization item.

#### **11A-35      FLEXIBLE BASE:**

All flexible base shall be in accordance with Item 247 of the 2014 edition of the Texas Department of Transportation *Standard Specifications for the Construction of Highways, Streets, and Bridges*.

Type "A" Grade 1 Flex Base shall be used as subgrade material under the proposed HMAC pavement. An acceptable alternative to Type "A" Grade 1 Flex Base is crushed concrete. Crushed concrete shall be categorized as Type "D" Grade 1 Flex Base. Flex Base shall be thoroughly compacted and placed to a depth specified on the plans.

Type "A"

Crushed or Broken Aggregate	Retained on Sq. Sieve	%
	1 3/4 in. ....	0
	7/8 in. ....	10 - 35
	3/8 in. ....	30 - 50
	No. 4 ....	45 - 65
	No. 40 ....	70 - 85
	Max LL ....	35
	Max PI ....	10
	Wet Ball Mill, Max Amt. ....	40
	Max Increase in passing No. 40 ....	20

Payment for Flexible Base shall include all materials, labor, equipment, hauling and placement. Measurement shall be compacted in-place plan quantities by the square yard to the thickness specified on the plans.

Daily tickets will be submitted by the Contractor and signed by the inspector or his representative no later than one week after delivery of the flexible base.

#### **11A-36      CONCRETE CURB AND GUTTER:**

Concrete curb and gutter shall be placed at locations along the project where portions of the existing curb and gutter is removed. In cases where 100% of the existing curb and gutter is to be removed, it shall be replaced with the Standard 30 inch curb and gutter section. All concrete used for curb and gutter in the City of Burleson will have a cement content of not less than five (5) sacks of cement per cubic yard of concrete, 5% entrained air ( $\pm 1.5\%$ ), and a minimum compressive strength at 28 days of 3,000 pounds per square inch. The unit price bid for curb and gutter shall include 3-#3 bars of reinforcing steel. Expansion joints shall be placed at all intersections, PCs, PTs, driveways, inlets, other curb and gutter or every 200 feet. All expansion joints shall not be less than one-half inch (1/2") in thickness with longitudinal dowels. Dowel shall be three No. 4 smooth bars, 24 inches in length. One-half of the dowel shall be coated with asphalt and terminated with an expansion cap. All work shall be in compliance with NCTCOG Section 305.1. All loose material between the form will be removed and the grade wetted prior to the placing of the concrete. An approved curing compound shall be applied to the surface in accordance with the Curing Specification.

#### **11A-37      EPOXY BONDING AGENT:**

Epoxy used for tie bars drilled into existing concrete shall be submitted to the project inspector for approval.

#### **11A-38      HOT MIX ASPHALTIC CONCRETE:**

##### **A.      PAVING MIXTURES:**

1.      **Mixture Design:** The Job Mix Formula shall be designed by the Contractor in accordance with the requirements of this Special Provision, TxDOT Bulletin C-14 and TxDOT Test Method Tex-204-F and tested in accordance with TxDOT Test Methods Tex-201-F and Tex-202-F, with the exception that the laboratory density will be determined as a percentage of the mixture maximum theoretical density. The maximum theoretical specific gravity shall be determined in accordance with TxDOT Test Method Tex-227-F on trial samples of the mixture near optimum asphalt content and conform with the requirements herein. The Contractor shall submit the Job or Plant Mix Formula for review on forms acceptable to the City for each source of supply and type of mixtures specified. Total sand content shall not exceed 18% for Type "D" mix. The bulk specific gravity will be determined for each aggregate to be used in the design mixture. The mixture shall be designed to produce a mixture within the density and stability requirements shown below. In addition, washed gradations of the aggregate in the job mix

formula shall be plotted on the 0.45 power chart for comparison with the maximum density line.

2. **Stability and Density:** The mixture shall be designed to produce an acceptable mixture within tolerance, at or near optimum density. The mixture molded in the laboratory in accordance with TxDOT Test Method Tex-206-F and the bulk specific gravity of the laboratory compacted mixture determined in accordance with TxDOT Test Method Tex-207-F should have the following percent of maximum theoretical density as measured by TxDOT Test Method Tex-227-F and stability conforming to TxDOT Test Method Tex-208-F:

<u>Optimum Density Range</u>	<u>Stability, Percent</u>
95 to 97 Percent	Not Less than 42

3. **Types:** The paving mixtures shall consist of a uniform mixture of coarse aggregate, fine aggregate and asphaltic material. Mineral filler may also be required.

When properly proportioned, the mineral aggregate shall produce a gradation which will conform to the limitations for master grading given for the type specified unless otherwise shown on plans. The gradation will be determined in accordance with TxDOT Test Method Tex-200-F (Dry Sieve Analysis) and shall be based on aggregate only. The amount of asphaltic material shall conform to the limitations shown for the paving type specified.

Type "B" (Fine Grade Binder of Leveling-up Course)	Percent Aggregate by Weight or Volume
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Passing 1" sieve .....	100
Passing 7/8" sieve .....	95 to 100
Passing 7/8" sieve, retained on 3/8" sieve .....	21 to 53
Passing 3/8" sieve, retained on No. 4 sieve .....	11 to 42
Passing No. 4 sieve, retained on No. 10 sieve .....	5 to 26
Total retained on No. 10 sieve .....	50 to 74
Passing No. 10 sieve, retained on No. 40 sieve .....	6 to 32
Passing No. 40 sieve, retained on No. 80 sieve .....	4 to 21
Passing No. 80 sieve, retained on No. 200 sieve ...	3 to 21
Passing No. 200 sieve .....	1 to 8

The asphaltic material shall form from 3.5 to 7 percent of the mixture by weight, unless specified otherwise on the plans.

Type "D"  
(Fine Grade Surface Course):

Percent Aggregate  
by Weight or Volume

Passing ½" sieve .....	100
Passing 3/8" sieve .....	85 to 100
Passing 3/8" sieve, retained on No. 4 sieve .....	21 to 53
Passing No. 4 sieve, retained on No. 10 .....	11 to 32
Total retained on No. 10 sieve .....	54 to 74
Passing No. 10 sieve, retained on No. 40 sieve .....	6 to 32
Passing No. 40 sieve, retained on No. 80 sieve .....	4 to 27
Passing No. 80 sieve, retained on No. 200 sieve ...	3 to 27
Passing No. 200 sieve .....	1 to 8

The asphaltic material shall form from 4 to 8 percent of the mixture by weight, unless specified otherwise on the plans.

4. **Sampling and Testing for Field Control:** Extraction tests for bitumen content and aggregate gradation shall be made for each 500 tons produced or fraction thereof. Extraction tests shall conform to TxDOT Test Method Tex-210-F. Tests for stability of the asphalt mixture shall conform to TxDOT Test Method Tex-208-F. The mixture shall not vary from the grading proportions of the aggregate and the asphalt content by more than the respective tolerances and shall be within the limits specified for master grading.
5. **Tolerances in Relation to Approved Design:** The aggregate portion of the paving mixture produced shall not vary from the design gradation by more than the tolerances which follow. The material passing the No. 200 sieve is further restricted to conform to the limitations for the master grading for the type specified. The asphaltic material portion of the paving mixture shall not vary from the design amount by more than the allowed tolerance and is also restricted to conform to the master limits. The method of test for determining the aggregate gradation and asphalt content of the mixture shall be TXDOT Test Method Tex-210-F or other methods of proven accuracy.

Type "B"  
(Fine Grade Binder or Leveling-up):

Percent Aggregate  
by Weight or Volume

Passing 2" sieve .....	±5%
Passing 1¾" sieve .....	±5%
Passing 1¾" sieve, retained on 7/8" sieve .....	±5%
Passing 7/8" sieve, retained on 3/8" sieve .....	±5%
Passing 3/8" sieve, retained on No. 4 sieve .....	±5%
Passing No. 4 sieve, retained on No. 10 sieve .....	±5%
Total retained on No. 10 sieve .....	±5%
Passing No. 10 sieve, retained on No. 40 sieve .....	±3%

Passing No. 40 sieve, retained on No. 80 sieve .....  $\pm 3\%$   
 Passing No. 80 sieve, retained on No. 200 sieve .....  $\pm 3\%$   
 Passing No. 200 sieve .....  $\pm 3\%$   
 Asphaltic material .....  $\pm 0.5\%$ /or 1.2% by vol.

Type "D"	Percent Aggregate
(Fine Graded Surface Course):	by Weight or Volume

Passing 1/2" sieve .....  $\pm 5\%$   
 Passing 3/8" sieve .....  $\pm 5\%$   
 Passing 3/8" sieve, retained on No. 4 sieve .....  $\pm 5\%$   
 Passing No. 4 sieve, retained on No. 10 .....  $\pm 5\%$   
 Total retained on No. 10 sieve .....  $\pm 5\%$   
 Passing No. 10 sieve, retained on No. 40 sieve .....  $\pm 3\%$   
 Passing No. 40 sieve, retained on No. 80 sieve .....  $\pm 3\%$   
 Passing No. 80 sieve, retained on No. 200 sieve .....  $\pm 3\%$   
 Passing No. 200 sieve .....  $\pm 3\%$   
 Asphaltic Material .....  $\pm 0.5\%$ /or 1.2% by vol.

B. IN-PLACE COMPACTION CONTROL: In-place compaction control is required for all mixtures.

- Asphaltic concrete should be placed and compacted to contain not more than 8 percent nor less than 3 percent air voids unless otherwise indicated. The percent air voids will be calculated using the maximum theoretical specific gravity of the mixture determined according to TXDOT Test Method Tex-227-F. Roadway specimen, which shall either be cores or sections of asphalt pavement, will be tested according to TXDOT Test Method Tex-207-F. The same specimen shall be used for determining both the maximum theoretical density and field density. Specimens used for field density determinations shall be carefully crumbled, using heat, if necessary, and the maximum theoretical density determined as specified. If heating is necessary, the specimen shall be heated to the lowest temperature required for proper preparation of the sample. The use of nuclear field density determinations shall not be accepted as the basis for acceptance with respect to density. However, an approved nuclear gauge may be used to establish a rolling pattern.
- The Contractor shall be responsible for assuring that the compaction of the asphaltic concrete in place will attain between 3 and 8 percent air voids. The Contractor's responsibility for the required compaction includes the selection of rolling equipment and the selection of rolling patterns to achieve the required compaction within the guidelines provided herein. The above selections of equipment and procedures must provide the required qualities of profile, smooth riding surface, and consistent workmanship in appearance.

Initial testing will be the responsibility of the City of Burleson. Any retest will be the responsibility of the Contractor. Additional information is provided in Section 11-18 of these Special Provisions.

**11A-39      TACK COAT:**

The unit bid prices for coarse graded base course and fine graded surface course shall include the application of a tack coat to each layer of asphaltic concrete before the next layer is applied and a tack coat shall also be applied to any exposed concrete edges that shall abut any hot mix asphaltic concrete. The tack coat shall be liquid asphalt complying with the specifications of the Asphalt Institute for SS-1, MS-2 Emulsified Asphalt. The tack coat shall be applied to each layer at a rate not to exceed 0.05 gallons per square yard of surface.

**11-40      ASPHALTIC PRIME COAT:**

A prime coat shall be used on the stabilized base material immediately after the base material has been compacted to specified density and cut to grade. The prime coat shall be liquid asphalt complying with the specification of the Asphalt Institute for type MS-2 Emulsified Asphalt. The prime coat shall be applied to the surface of the base at a rate of 0.20 to 0.40 gallons per square yard of surface and allowed to penetrate as far as possible. The cost of furnishing and installing the asphalt prime coat shall be considered subsidiary to the unit prices bid for hot mix asphaltic concrete.

**11A-41      REINFORCING STEEL:**

All reinforcing steel used on this project shall comply in all respects to Item 440, "Reinforcing Steel" of the *Standard Specifications for Construction of Highways, Streets and*, as adopted by the Texas Department of Transportation, 2014 ed. Payment for reinforcing steel shall be considered subsidiary to the various bid items.

**11A-42      TEMPORARY BATCH PLANT: N/A**

**11A-43      TESTING REQUIREMENTS (CONCRETE):**

The strength of the concrete shall be determined during the construction by taking a minimum of three (3) test cylinders and/or two test beams during each fifty (50) cubic yards of continuous pouring. These tests shall be conducted by an approved testing laboratory and the initial tests shall be paid for by the City of Burleson. The cost of additional testing to isolate areas not complying with the specifications shall be paid for by the Contractor.



Beam strength tests permitted by the specifications for early form removal shall be conducted by an approved testing laboratory and the cost shall be borne by the Contractor.

#### **11A-44      CONCRETE VALLEY GUTTERS:**

All concrete valley gutters shall have a thickness of six inches (6"). Concrete valley gutters shall be reinforced with #4 bars on twelve inch (12") spacing in both directions. All concrete shall have a minimum cement content of 5 sacks per cubic yard of concrete, 5% entrained air ( $\pm 1.5\%$ ) and a minimum compressive strength at 28 days of 3,000 pounds per square inch. An approved curing compound shall be applied to the surface.

#### **11A-45      CONCRETE DRIVEWAYS:**

Driveways shall be composed of concrete having a minimum cement content of 5 sacks per cubic yard of concrete, 5% entrained air ( $\pm 1.5\%$ ) and a minimum compressive strength at 28 days of 3,000 pounds per square inch. The unit bid price shall also include #3 bars on twelve inch (12") centers, or #4 bars on eighteen (18") centers both ways. An approved curing compound shall be applied to the surface.

The City will replace only those existing driveways specified. Any new drives installed by the Contractor under criteria other than the above will be at his own expense.

All drive connections to State Right-of Way shall use TxDOT details.

#### **11A-46      RECONSTRUCT DRIVES:**

Existing drives which will be destroyed by proposed construction and which will be reconstructed are specifically called out on the plans and construction shall conform to this special provision. After construction operations are completed in the street area, these drives shall be reconstructed to original or better condition than existed before construction and to satisfaction of the engineer. Existing surface and base materials and storm drain pipe may be reused if approved by the engineer. Where new materials will be required in order to reconstruct drives to the required condition, the Contractor shall be aware of their need and they shall be incidental to the price requested. All work shall conform to the applicable standard and special project specifications. Payment for reconstructing drives shall be a price per square yard of typical concrete driveway or a price per square yard of exposed aggregate concrete driveway. Such price shall include all materials, labor, and supervision for the completed construction.

## **11A-47      CONCRETE SIDEWALKS:**

- A. **MATERIALS:** Sidewalks shall be constructed of concrete with a minimum cement content of 5 sacks of cement per cubic yard of concrete, 5% entrained air ( $\pm 1.5\%$ ), and a compressive strength of not less than 3,000 pounds per square inch at 28 days. Reinforcing steel shall be #3 bars on 18" centers located two inches (2") below the top surface of the sidewalk. As soon as the concrete has obtained its initial set, a white pigmented approved curing compound shall be applied.
- B. **CONSTRUCTION PROCEDURE:** In general, the grade of the sidewalks shall be established with respect to the curb. Forms shall be set for all sidewalks and shall be true to line and grade. Forms shall be set to provide a cross slope of 1/4 inch per foot (2%) across the sidewalk toward the street. All forms shall remain in place at least twenty-four (24) hours.

The plane of all joints shall make a right angle with the surface of the pavement. No joints shall have an error in alignment of more than one-half (1/2") inch at any point. The edges of the slab at all joints, except where the joints are sawed, shall be rounded with an edger having a radius of one-fourth (1/4") inch, except as otherwise shown on the plans. The edging shall also be done symmetrically on each section with the plane of the joint.

Longitudinal expansion joints, joints used to separate new from old concrete, and all joints around all fire hydrants shall be made of conventional one-half (1/2") inch asphalt expansion joint material extending completely through the concrete unless otherwise specified on the plans.

Transverse expansion joints shall be three-fourths (3/4") inch in width and be made of high grade redwood placed through the concrete at a spacing not to exceed forty (40') feet. No. 4 X 18" steel dowels shall be placed on eighteen inch (18") centers through each redwood expansion joint, one end of each dowel being wrapped or otherwise prevented from bonding to the concrete.

Contraction joints shall be made in the sidewalk at regular intervals, such intervals generally being equal to the width of the sidewalk.

The Contractor shall grade or fill, as necessary, along the sidewalk to match the existing ground. Care will be used to ensure that adjacent property outside the right-of-way line is protected.

## **11A-47A      CONCRETE SIDEWALKS WITH RETAINING WALL:**

When sidewalks are constructed adjacent to retaining walls, the plans shall specify if the sidewalk and retaining wall are to be constructed as separate items or as a sidewalk with wall unit. The sidewalk with wall unit shall be constructed in accordance with the City of Burleson typical details and shall be paid on a linear foot basis for various wall heights up to four (4') foot. When specified to

be constructed as separate items, the limits of pay for the sidewalk shall be of the sidewalk up to the face of the retaining wall on a square yard basis. The retaining wall shall be paid under retaining wall on a cubic yard basis.

Generally, location of sidewalk with retaining wall will be the same as a standard sidewalk. If necessary, the sidewalk shall be adjusted in the field, as approved by the Project Engineer, to match existing sidewalks and to avoid trees, fire hydrants, light poles, traffic signs, etc., that otherwise would be in the sidewalk.

It is assumed that areas showing sidewalk with retaining wall will require a retaining wall of only about two foot. Nonetheless, as the details shows, there is a four foot maximum height allowance and the bid price shall reflect the possibility of a four foot (4') wall dependent on field conditions.

**11A-48      BARRIER FREE RAMPS: N/A**

**11A-49      CONCRETE MEDIANS: N/A**

**11A-50      ADJUSTMENT OR RELOCATION OF WATER SERVICES & METER BOXES:**

The Contractor shall be responsible for adjusting (vertical), or relocating (horizontal and vertical), and bringing to grade, water meter boxes, within the limits of this project. This shall include the adjustment or relocation of the service line on the City's side of meter (from main to the meter), the quarter bend, the curb stop or angle valve, depending on service size, and the meter. Adjustment of the customer's service line shall be performed by a licensed plumber and shall be considered subsidiary. All of the work shall be in accordance with the Standard Specifications for Waterworks and Sewerage Improvements (1997). The Contractor shall also endeavor to keep meters accessible during the project construction for reading purposes. In the event the meters are covered during construction, the Contractor shall mark their locations with stakes and shall uncover the meters within 24 hours when notified to do so by the inspector. The Contractor shall also replace cast iron meter boxes, with boxes of the following specifications:

For Meter Boxes for 5/8", 3/4", and 1" services

1. Single Mtr. Box (non-traffic) - Alliance 1200.SBTR
2. Double Mtr. Box (non-traffic) - Alliance 16AMR2.DU.SB

For Meter Boxes of 1.5" and 2" services

1. Single Mtr Box (traffic) - Rotec D1730-18-BD5M
2. Double Mtr. Box (traffic) - Rotec DFW38C-14-KSBSM

Water meter boxes broken by the Contractor shall be replaced at the Contractor's own expense. If any portion of the meter box is in a concrete sidewalk, the meter box shall be relocated outside the sidewalk. The box shall be set to the finished grade of the surrounding lot. Water service and meter box *adjustments* (vertical) shall be subsidiary to the various items in the PROPOSAL. Water service and meter box *relocations* (horizontal and vertical) shall be paid for as outlined in the PROPOSAL.

**11A-51      VERTICAL ADJUSTMENT OF SANITARY SEWER MANHOLES, SANITARY SEWER CLEANOUTS, AND WATER VALVES:**

Prior to the application of the lime slurry, all manholes, cleanouts, and water valves shall be adjusted to approximately one foot (1') below the bottom of the proposed subgrade. Prior to the placement of any pavement, the Contractor shall verify the locations of all valves, manholes, and cleanouts. For existing manholes that are being adjusted to proposed grade, the Contractor shall replace old manhole ring and lid with new manhole ring and lid, as directed by the engineer or his representative. All manholes, water valves, and cleanouts may be blocked out or brought to proper grade before placement of concrete pavement. Where HMAC is used, adjustment to proper grade shall be made after placement of the top layer of coarse grade binder. It shall then be encased in concrete for a minimum of six inches (6") in depth and the concrete shall be a minimum of twelve inches (12") wide at all points around the water valves, cleanouts, or manholes. Valve stacks shall be ductile iron only. In the event the top of the operating nut for any valve is more than six feet (6') deep from the finished ground elevation, valve stem extensions shall be furnished and installed by the Contractor to bring the operating nut to within three feet (3') of the finished ground level. Payment for the valve stem extension shall be subsidiary to other unit prices bid in the PROPOSAL.

It shall be the sole function of the Contractor to re-establish the location of all valves, manholes, cleanouts, etc. If the Contractor, through carelessness or negligence, damages any valve, manhole, or cleanout, it will be the Contractor's responsibility to replace the same. Should the Contractor fail to re-establish the location and adjust any valve, manhole, or cleanout, he will be required to perform the necessary work to raise the same at no additional charge to the City of Burleson.

Where manholes, cleanouts, or gate valves are to be raised within the proposed fill slopes or in areas other than a concrete or asphalt surface, the manhole, cleanout or gate valve shall be raised at least six inches (6") higher than the proposed finished grade. An exception to this specification is in areas where the appurtenance is on private property. The engineer or its representative will give the proper height above the proposed finished grade.

Where manholes, cleanouts, or gate valves are located within the alignment of a sidewalk, the following adjustments shall be made: (1) Manholes shall be flush within the sidewalk and located within construction joints creating an isolated panel for easy removal and repairs if necessary. If the manhole ring and lid are located only partially within the sidewalk and an eccentric cone will not remove it completely from the sidewalk, the manhole ring and lid shall be formed circumferentially within the sidewalk to create vertical edges. The grass side shall be planted with sod to the edge of the ring and lid. (2) Water valve boxes and cleanouts shall be raised flushed within the sidewalk. A block-out of 12" beyond all sides of the valve or cleanout shall be formed. The alignment of the block-out shall that of a 48" square rotated 45 degrees when looking perpendicular to the sidewalk. Contraction joints shall extend from the top and bottom vertices to the outer edged of the sidewalk. The contraction joints for the side vertices shall extend to meet the traverse construction joints on either side, forming a panel of four feet (4') square that will allow for removal and repairs if necessary.

Except as called for on the plans, the Contractor shall not be responsible for the relocation of power poles, gas meters, telephone cable boxes and signs, gas pipeline markers, fire hydrants, light poles, traffic signs and signals, or for adjustment of the top elevation of gas and telephone manholes which are in direct conflict with improvements. If these items have not been relocated and/or adjusted at the time of construction and the plans do not require the Contractor to adjust them, the Contractor shall inform the engineer and/or his representative of the problem.

Sanitary sewer manholes may be adjusted up to 12 inches in additional height above the cone section with concrete grade rings. Adjustments over 12 inches shall be accomplished using a concrete flat top section or by using pre-cast or cast-in-place manhole sections.

#### **11A-52      REINFORCED CONCRETE PIPE:**

Pipe for storm sewers and culverts shall conform to the latest specifications for "Reinforced Concrete Culvert, Storm Drain, and Sewer Pipe," A.S.T.M. Designations. All pipe shall be machined made by a process which will provide for uniform placement of zero slump concrete in the form of compaction by mechanical devices which will assure a dense concrete in the finished product. All excavation, bedding, jointing, and backfilling shall be done in accordance with the specifications outlined in Sections 501.6, 504.3, and 504.4 of the NCTCOG Specifications except as modified by these Special Provisions.

The contractor will be required to furnish and use a laying schedule supplied by the manufacturer showing location of all bends, fittings, and beveled end joints required to accurately construct the system, including curves, as shown on the plans. The pipe will not be laid until the laying schedule has been reviewed and accepted by the City for construction purposes.

The laying schedule shall be based on all pipe joints constructed to the "home" or normal position and the distance between the ends of adjacent pipe sections will be essentially uniform around the periphery of the pipe. OMNI-FLEX® (or approved equal) joint sealer shall be used on all joints and the joint gap range shall not exceed the OMNI-FLEX® recommendations for curved or straight sections.

Payment for all reinforced concrete pipe shall be based on the contract unit price bid per linear foot of pipe measured along the centerline of the pipe in the trench and shall be full compensation for all labor and materials necessary to make the complete installation, including excavation, bedding, jointing, backfilling and OMNI-FLEX® (or approved equal) joint sealer. The cost of constructing concrete collars shall be considered subsidiary to the unit prices bid for reinforced concrete pipe.

After the trench has been cut to depth below the barrel of the pipe, the bedding shall be brought up to a point slightly above the grade. Bell holes shall be formed, a trough scooped out to grade and the pipe laid and jointed as specified.

The pipe shall be bedded in a minimum of four inches (4") of crushed stone for pipe up to 60 inches and six inches (6") for pipe 66" and larger except in rock or in wet or unstable trenches where an additional 3 inches of crushed stone will be added to the standard bedding requirements. Crushed stone shall meet NCTCOG 504.2.2 Standard Crushed Rock - Aggregate Grade 4. River rock/gravel will be allowed as long as it meets this gradation requirement.

After the pipe has been laid and the joints made, granular material of a quality satisfactory to the engineer shall be placed from the bottom of the pipe to 6" above the **top** of pipe. Granular material shall be defined as a free flowing, pit run sand free of stones, clay, organic material, and debris. This material shall not have a P.I. greater than 10. The material shall be placed uniformly on both sides of the pipe in order to prevent disturbance of the pipe and, if necessary, blocking shall be placed against the sides of the trench to prevent displacement of the pipe. The backfill material shall be worked under the haunches of the pipe during the time it is being placed. The material shall be mechanically compacted to 95% standard density in lifts not to exceed eight inches (8") (loose).

For the specifications for the remaining backfill operations, see the Trench Backfill Special Provision.

**11A-53      CORRUGATED METAL PIPE (CMP): N/A**

**11A-54      HIGH DENSITY POLYETHYLENE PIPE (HDPE): N/A**

**11A-55      MECHANICALLY      COMPACTED      TRENCH      BACKFILL**  
**SPECIFICATIONS:**

After free moisture is gone from the embedment material, the ditch shall be backfilled with native material and compacted by mechanical methods. If hand pneumatic tampers are used, the backfill shall be placed in layers not exceeding six inches (6") in loose thickness and thoroughly compacted at least ninety-five percent (95%) Standard Proctor density at optimum moisture content,  $\pm$  two percentage points as determined by ASTM D 698. Backfill shall be placed in uniform layers completely across the trench, and compaction shall proceed in an orderly, uniform manner. If compaction is performed by the use of heavy tamping (sheep's foot) rollers, backfill shall be placed in layers not exceeding nine inches (9") in loose thickness and compacted to at least ninety-five percent (95%) Standard Proctor density at optimum moisture content,  $\pm$  two percentage points as determined by ASTM D 698.

For lines under the proposed roadway and laid prior to new street construction, the backfill shall continue to within two feet (2') of the top of subgrade. At this point the trench shall be widened a minimum of one foot (1') on each side. The remaining two feet (2') shall be native material, compacted in six inch (6") loose lifts at optimum moisture content,  $\pm$  two percentage points, to a density of at least ninety-five percent (95%) of maximum dry density, as determined by ASTM D 698.

The City of Burleson shall be responsible for testing during backfill operations. If a test does not meet the requirements as outlined above, the Contractor shall be responsible for additional tests until the above requirements are met.

Payment shall be subsidiary to unit prices bid for pipe.

**11A-56      FLOWABLE FILL TRENCH BACKFILL SPECIFICATIONS:**

- A.    FLOWABLE BACKFILL: Flowable backfill shall consist of a mixture of native sand or a blend of native sand/manufactured sand, cement, fly ash and water which produces a material with unconfined compressive strength of between 250 and 450 psi after 28 days.

The flowable mixture shall be mixed at a concrete batch plant or a mobile transit mixer and shall have a minimum slump of five inches (5") and a minimum air content of 6 percent. The flowable mixture must be allowed to set prior to the placement of any overlying material.

- B.    MODIFIED FLOWABLE BACKFILL: Modified flowable backfill in areas of possible future excavation such as utility installations shall consist of a mixture of native sand or a blend of native sand/manufactured sand, cement, fly ash and water which produces a material with unconfined compressive strength of between 50 and 150 psi after 28 days.



Modified flowable backfill in permanent areas such as abandoned pipe closures, abutments and embankments shall contain the same materials with an unconfined compressive strength of greater than 150 psi after 28 days.

The flowable mixture shall be mixed at a concrete batch plant or a mobile transit mixer and shall have a minimum slump of five inches (5") and a minimum air content of 6 percent.

The flowable mixture must be allowed to set prior to the placement of any overlying material.

The Contractor shall submit to the engineer a mix design for the type of flowable backfill to be used 10 days prior to the start of the backfill operation. When the mix design has been approved by the engineer there shall be no changes or deviation from the proportions or sources of supply except as approved by the engineer.

C. Flowable backfill will be allowed for the following:

Backfill	Structural Fill	Miscellaneous Uses
•Bridge abutments	•Road base	•Abandoned sewer mains
•Box culverts	•Pipe bedding	•Soil erosion
•Sewer trenches	•Mud jacking	•Slope stabilization
•Utility trenches		•Abandoned tank fill
•Conduit trenches		

#### 11A-57 **CONCRETE:**

Concrete for all concrete drainage structures, manholes, and inlets shall be Class "A" with a minimum compressive strength of 3,000 psi at 28 days. A minimum of five (5) sacks of cement (Type I) shall be used per cubic yard and the maximum water-cement ratio shall not exceed 6.5 gallons per sack.

Concrete for channel lining and rip-rap shall also be Class "A" concrete having a minimum compressive strength of 3,000 psi at 28 days.

The desired slump for Class "A" concrete shall be three inches (3") and the maximum allowable slump shall be four inches (4").

Air entrainment (5 %,  $\pm$  1.5%) is required for all exposed concrete.

Calcium Chloride will not be permitted. Air-entraining, retarding, and water reducing admixtures must be approved and shall conform in all respects to NCTCOG Specification Item 303.2.3.

Aggregates for Class "A" concrete shall be either Grade 2 or Grade 3 for coarse aggregate, and Grade 1 for fine aggregate. Grades specified above refer to those outlined in Item 421 of the Texas Department of Transportation Specifications referenced above.

Forms used in the construction, concrete placement, and concrete finishing, shall comply in all respects to the requirements of Item 420 of the above referred Texas Department of Transportation Specifications.

All concrete shall be cured for a minimum of four (4) curing days. The acceptable methods for curing the concrete are as follows:

A.FORM CURING: Forms left in place in contact with the concrete.

B.WATER CURING: Water curing using wet mats, water spray or ponding.

C.MEMBRANE CURING: Compound may be used.

All weight supporting forms shall remain in place a minimum of four (4) curing days after which they may be removed if the concrete has attained a flexural strength of 500 psi as evidenced by strength tests of beam specimens cast at the time of the pour. If beams have not reached the required strength after 4 days, the forms shall be left in place 14 days.

**11A-58      REINFORCED CONCRETE BOX CULVERT: N/A**

**11A-59      UNCLASSIFIED CHANNEL EXCAVATION: N/A**

**11A-60      MANHOLES, INLETS, AND OTHER CONCRETE DRAINAGE STRUCTURES: N/A**

**11A-61      CURB INLET: N/A**

**11A-62      BACKFILL & BACKFILL MATERIAL:**

Backfill operations shall begin immediately following removal of the forms on the permanent improvements. All loose concrete, rocks, roots, trash, and other debris shall be removed from the excavation prior to any backfill being placed.

Backfill material shall consist of the native material obtained from the street excavation unless in the opinion of the engineer, this material is unsuitable for use. The material shall not contain trash, rock, concrete, asphalt, lime shavings, gravel or other debris. Sand shall not be used for backfill material unless the native soil in the construction area is sandy in nature. All backfill material will be considered subsidiary to the unit price bid for the permanent improvements.

Backfill shall be placed in such a manner as to eliminate voids in the backfill material. The use of power equipment to place the backfill, or to bring it to grade, shall be limited to small farm-type tractors. Bring the backfill material to within four inches (4") of proper finished grade. The top four inches (4") shall be placed in accordance with Spec 11A-63 "Topsoil."

**11A-63      TOPSOIL:**

A minimum of four inches (4") of topsoil shall be placed on all disturbed areas adjacent to permanent improvements within the project limits. The topsoil shall be free from stone, rock, lumps, clods of hard earth, plants or their roots, sticks and other foreign material and shall be brought to the lines and grades as established by the engineer. Under no circumstances will topsoil be accepted unless it is free from the aforementioned contaminants. Contractor may use approved means of treating the topsoil to ensure its acceptability. This item shall be considered subsidiary to the other items in this project and shall not be a separate pay item.

The existing topsoil from the project limits may be used if Contractor stockpiles and protects it properly. No trash, lime shavings or other foreign material, shall be added to this stockpile. Topsoil material shall be stockpiled at locations approved by the engineer, and after completion of permanent improvements, topsoil shall be placed on all disturbed areas so as to provide a minimum four-inch (4") depth of topsoil. The topsoil shall be tilled to a 1/2"-1" diameter size.

The City of Burleson retains the authority to require the Contractor to provide topsoil meeting the following specification should the Contractor fail to maintain the integrity of the stockpiled existing topsoil.

The soil texture shall be classified as loam or sandy loam according to the following criteria:

	(% Passing) <u>Loam</u>	(% Passing) <u>Sandy Loam</u>
Sand (0.074 to 4.76 mm diameter)	25-50%	45-85%
Silt (0.002 to 0.074 mm diameter)	30-50%	Less than 50%
Clay (Smaller than 0.002 mm) (Hydrometer analysis)	5-25%	Less than 20%

Soil texture shall be determined by utilizing processes as prescribed in ASTM D 422.

**11A-64      5" REINFORCED CONCRETE RIPRAP: N/A**

**11A-65      HYDRO-MULCH SEEDING:**

- A. **DESCRIPTION:** This item shall consist of preparing ground, providing, and planting seed, or a mixture of seeds, of the kind specified along and across such areas as are designated by the engineer.
- B. **MATERIALS:** The type seed used shall be in accordance with NCTCOG Specification, Section 202.6, and approved by the engineer. All seed must carry a Texas Seed Label showing purity and germination, name and type of seed and that the seed meets all requirements of the Texas Seed Law. Seed furnished shall be of the previous season's crop and the date of analysis shown on each tag shall be within 9 months of the time of delivery to the project. Each variety of seed shall be furnished and delivered in separate bags or containers. A sample of each variety of seed shall be furnished for analysis and testing when directed by the engineer. Grass seed shall equal or exceed 95% purity and 90% germination.
- C. **PLANTING SEASON:** Planting of hulled Bermuda grass seed shall be done between the months of April through September. The density of seeds planted shall be 80 pounds per acre. A blend of 30 pounds Rye grass and 40 pounds unhulled Bermuda may be used between the months of September through April.
- D. **CONSTRUCTION METHODS:** The designated areas shall be raked, leveled and fine graded as necessary to provide a smooth uniform grade, free of ruts, depressions, humps and objectionable soil clods, prior to seeding. The area shall also be free of weeds, rubbish, and building materials. Any low areas shall also be filled to prevent ponding. All particles in the seed bed shall be reduced to less than one inch (1") in diameter or they shall be removed. The area to be seeded shall be loosened or disked prior to placement of seed in areas that appear to be overly compacted or to destroy existing vegetation, at the direction of the engineer or authorized representative. The cost of any chemical treatment to the soil in order to establish a uniform stand of grass will be subsidiary to "Hydro-mulch Seeding." Seeding of the type specified shall be performed in accordance with the requirements in NCTCOG Specification 202.6 except as hereinafter described:
1. **Watering:** The seeded areas shall be watered as necessary to establish grass as described in Establishment and Acceptance of Seeding.
  2. **Hydro-Mulch Seeding:** In accordance with COG Specification 202.6.4.4 alternate methods for placement of seed may be used if approved by the engineer.
- E. **MEASUREMENT:** Work and acceptable material for "Hydro-mulch Seeding" will be measured by the unit bid, complete in place.

- F. **PAYMENT:** The work performed and materials furnished and measured as provided under "Measurement" will be paid for at the unit price bid for "Seeding" which price shall be full compensation for furnishing all materials and for performing all operations necessary to complete the work, including fertilizer. Once a "uniform stand of grass" is provided, the City will provide payment for the seeding. See definition of "uniform stand of grass" below.
- G. **ESTABLISHMENT AND ACCEPTANCE OF SEEDING:** Regardless of unseasonable climatic conditions or other adverse conditions affecting planting operations and the growth of the grass, it shall be the sole responsibility of the Contractor to establish a uniform stand of grass as herein specified. When adverse conditions such as drought, cold weather, high winds, excessive precipitation, or other factors prevail to such an extent that satisfactory results are unlikely, the City of Burleson may, at his own discretion, stop any phase of the work until conditions change to favor the establishment of grass.
1. **Uniform Stand of Grass:** A uniform stand with complete coverage of the specified grass shall be defined as not less than one hundred-fifty (150) growing plants per square foot seeded (approximately 75% of disturbed area covered). Growing plants shall be defined as healthy grass plants of two blades or more at least two inches (2") tall.
- H. **POST-PLANTING MAINTENANCE:** Maintenance shall begin immediately after each portion of grass area is planted. It will be the Contractor's responsibility to maintain the existing grades and leave them in a true and even condition after planting. All planted areas will be protected and maintained by watering, weed control, mowing, and replanting as necessary for at least thirty (30) days after initial planting and for as much longer as necessary to establish a uniform stand with complete coverage of the specified grass.
- I. **FERTILIZER:** (Subsidiary to Seeding Item)
1. **Description:** This item shall consist of providing and distributing fertilizer over the seeded areas.
2. **Materials:** Shall be in accordance with NCTCOG Specification 202.4.1 and Special Provisions, Landscaping Specifications, Section 14.5.C.
3. **Construction Methods:** The fertilizer shall be pelleted or granular fertilizer and shall be applied uniformly over the entire area specified to be fertilized and in the manner directed for the particular item of work. The fertilizer shall be dry and in good physical condition. Fertilizer that is powdered or caked will be

rejected. Distribution of fertilizer for the particular item of work shall meet the approval of the engineer.

Unless otherwise indicated on the plans, fertilizer shall be applied uniformly at the average rate of 400 pounds per acre for all types of seeding.

**11A-66      SODDING:**

Grass sod shall be provided along disturbed areas of the parkways at the completion of construction and clean-up operations. Sodding is specified to be provided for but not limited to street reconstruction which includes new curb and gutter, adjacent to sidewalk construction, and along graded drainage swales. Sod limits shall be to a maximum of five feet behind the new curbs. The City of Burleson shall approve sod types with the intent of matching existing grass cover in the individual yards. Sod pallets shall be inspected before unloading to ensure quality and physical appearance of sod. If the individual sod patches display less than 75% dark green in color, it shall not be used. Sod should not be laid during the dormant time of year or during the peak of summer. THE General contractor will be responsible for the initial growth and establishment. Payment for sodding shall include the cost of leveling disturbed areas, topsoil, fertilizer and water. No separate payment will be made for topsoil, fertilizer and watering. Buffalo grass sod shall be used on all medians unless otherwise specified in the plans.

**11A-67      SLOPE EROSION CONTROL:**

Erosion control material shall be "Curlex Blanket" heavy jute netting such as "AMXCO Curlex Blanket," or approved equal (no plastic meshes are allowed), and shall be applied after seeding is complete. Heavy jute mesh shall be open plain weave of unbleached single jute yarn, averaging one hundred and thirty (130) pounds per spindle of 14,400 yards. Jute mesh shall be furnished in approximately ninety (90) pound rolled strips. Other criteria for jute mesh shall be as follows:

Length- approximately seventy-five (75) yards.  
Width - forty-eight (48") inches ( $\pm$  one inch).  
0.78 warp ends per width of cloth.  
Forty-one (41) weft ends per yard.  
Weight of cloth - 1.22 pounds per linear yard ( $\pm$  5%).

Staples shall be of No. 11 gauge steel wire formed into a "U" shape six inches (6") long.

To install erosion control material on channel slopes, bury the up-channel end in a trench six inches (6") deep. After the jute is buried, the trench shall be tamped firmly closed. Using a steel tube or three-quarter inch (3/4") pipe through the paper core of the roll with a rope on each end will enable the

operator to lower the roll down the slope. The material should be applied without stretching. The material should lie smoothly, but loosely on the soil surface. In order to keep the area as smooth as possible, workers should avoid, as much as possible, walking directly on the seed bed, either before or after the jute is applied. In cases where one roll ends and another is needed, the up-channel piece should overlap the second roll by at least eighteen inches (18"). Where two or more widths are applied side by side, an overlap of at least four inches (4") shall be maintained. The material shall be brought to level area before terminating. The end shall be across the fold on twelve-inch (12") centers. Outside edges, centers, and overlaps on banks shall be stapled on two-foot (2') intervals. Each width of cloth will have a row of staples down the center as well as along each edge. On soft or sandy soil or windy areas, apply staples in alternate slanting position and space at closer intervals (12" to 18"). For extra hard soil or shale areas, use sharp pointed, hardened steel three-inch (3") fence-type staple. Outside edges shall have loose topsoil spread over them to allow for smooth entry of water. The entire jute covered area should be rolled with a smooth roller weighing fifty (50) to seventy-five (75) pounds per foot of length.

Any clods, debris, etc., which hold the jute off the ground, shall be stamped into the soil. The netting shall completely cover all areas to be protected from erosion. Overlaps must be ample and well stapled so that no gapping can occur. The material shall be in intimate contact with the surface at all points. If some areas experience severe erosion, two layers shall be in intimate contact with the surface at all points.

The quantity shown in the PROPOSAL is a rough estimate as the actual amount and location of the jute mesh will be determined in the field as directed by the engineer in areas where excessive slopes exist. Overlapping of material will not be paid for double.

Heavy jute netting will be paid for at the unit price bid per square yard, which price will be full compensation for furnishing and placing all materials, including all labor, tools, equipment, and incidentals necessary to complete the work.

**11A-68      STEEL GUARD RAIL: N/A**

**11-69      CLEANUP:**

It is the intent of the Special Provisions to ensure that an adequate cleanup job be performed by the Contractor as soon during the construction procedure as possible. In particular, all curb and gutter and sidewalk shall be backfilled as soon as possible. Before the project is accepted by the City, all rocks, stones, and other construction debris shall be removed. All necessary cleanup work shall be considered subsidiary to the various bid items on this contract.



**11A-70      FINAL INSPECTION:**

The engineer will make final inspection of all work included in the contract as soon as practicable after the work is completed and ready for acceptance. If the work is not acceptable to the engineer at the time of such inspection, he will inform the Contractor as to the particular defects to be remedied before final acceptance will be made.

**11A-71      TOWING OF VEHICLES:**

The Contractor shall follow applicable City of Burleson Ordinances should it be determined that vehicles parked upon a City street must be moved in order to perform street maintenance or construction.

**11A-72      TRAFFIC SIGNAL CONDUIT: N/A**

**11A-73      SPRINKLER RELOCATIONS:**

Sprinkler relocations may be required on this project. Prior to construction, the Contractor and inspector shall identify and document the sprinkler systems that will be affected by the construction of the project. The Contractor shall contact the owner of each sprinkler system and arrange to test each system. In the presence of the inspector, the Contractor shall: (1) determine if the system functions properly, (2) identify the layout of the system and, (3) document in writing the layout and function of the system. The work described above is required by the Contractor for all projects and should be considered subsidiary to the unit prices bid for other items.

If the Contractor is responsible for actual irrigation relocations, a dollar amount will be included in the PROPOSAL to reimburse the Contractor for any required sprinkler relocations. The amount is only an estimate. Prior to beginning construction, the Contractor shall contact the City of Burleson of each sprinkler system and arrange to test each system. When construction activities approach a sprinkler system, the Contractor shall cut all feed lines to the system and salvage existing sprinkler heads for re-use (if possible). The feed lines shall be cut at the right-of-way line. All of these activities shall be coordinated with the inspector. The Contractor shall obtain a licensed irrigator to repair or replace sprinkler systems with equal or better materials as the existing system. The Contractor shall submit copies of monthly invoices from the licensed irrigator for all sprinkler work performed during the month. Payment will only be made based on the invoices submitted; therefore, the full dollar amount included in the PROPOSAL for sprinkler relocations may or may not be paid. No payment will be made for adjustments except those determined necessary by the inspector. All sprinkler systems affected must be fully functional prior to final acceptance of the project.

#### **11A-74      PROJECT SIGNS:**

The Contractor on this project shall provide and erect up to two (2) project signs as required.

Generally, project signs shall be located at the beginning and end of the project and on major intersecting streets. Locations of signs and specific information on signs shall be approved by the inspector prior to fabrication of signs.

Signs shall be substantially in accordance with the sample drawing enclosed as part of these Special Provisions. Construction shall be on 3/4 inch weatherproof (marine) 4'x8' plywood and the painting shall be accomplished with good quality paint which will not weather or fade during the life of the contract. Sign colors shall be as indicated on the sample drawing.

A City of Burleson logo shall be incorporated into each project sign at the left end of the plywood signboard as indicated on the enclosed sample drawing.

Signs shall be placed in prominent locations and maintained in good condition until the completion of the project. Damaged or defaced signs will be repaired or replaced within two (2) calendar days at the Contractor's expense. The cost of the plywood sign(s) shall be considered subsidiary to the unit prices bid on this project.

#### **11A-75      SIGNS FOR BUSINESSES:**

Weatherproof signs directing motorists to adjacent business entrances shall be provided by the Contractor and used during construction at locations directed by the project engineer. The signs shall be white with red letters and include the business name, shall be approximately 18 inches by 24 inches and have lettering at least six inches tall. The sign shall be placed such that it is visible from the street to help direct patrons to adjacent businesses, but shall not obstruct traffic visibility for vehicles exiting the driveway. It will be the Contractor's responsibility to maintain the signs until such time as the project engineer agrees they can be removed. A bid item has been included which shall cover all costs related to fabricating, installing, and maintaining the signs.

#### **11A-76      USE OF CITY PARKS:**

The Contractor shall obtain written permission from the Parks and Recreation Department prior to the use of City park property for access or for the storage of machinery, equipment, materials, and/or supplies. Any damage incurred to City park property, by unauthorized use by the Contractor, will be the responsibility of the Contractor to repair in an equal or better condition. Payment to the Contractor may be withheld until the damage is repaired and/or payment for the

damages has been made.

**11A-77      STORM WATER MANAGEMENT (CONTRACTOR PROVIDE)**

- A. This project is subject to the Texas Commission on Environmental Quality's (TCEQ) General Permit requirements for construction projects, through the Texas Pollutant Discharges Elimination System (TPDES) Program. The Contractor shall be required to submit a "Notice of Intent" (NOI) to TCEQ prior to the start of any construction activity on projects 5 acres and larger. The contractor shall provide the city a copy of the approved NOI. The City of Burleson will submit its own "Notice of Intent (NOI)" to TCEQ. On projects 1 acre and larger but less than 5 acres the contractor shall be required to submit a "TCEQ Site Notice" to TCEQ prior to the start of any construction activity. The information contained in the NOI's and TCEQ Site Notices shall be in accordance with the TPDES General Permit Regulations.

The Contractor shall provide a site specific "Storm Water Pollution Prevention Plan" (SWPPP), in accordance with the TPDES General Permit Regulations, prior to submitting either a NOI or TCEQ site notice. The SWPPP shall be prepared and certified by a licensed professional civil engineer who is familiar with the TCEQ TPDES General Permit requirements. The SWPPP shall be subject to approval by the City and/or TCEQ. The SWPPP shall contain information as required by the TPDES General Permit Regulations, including, but not limited to:

1. Site Description - including a site map, description of construction activity, estimate of disturbed area, runoff coefficient, and name of receiving waters.
2. Description of Controls - including plans for controlling erosion and sedimentation caused by construction activity by utilizing hay bales, silt fences, detention/retention structures, check dams, sand bag barriers, or other approved best management practices.
3. Construction Implementation - including phasing of construction activities and corresponding sequencing of erosion/pollution control measures. The Contractor shall perform his construction operations in accordance with best management practices to control erosion/pollutants in storm water discharges during construction.
4. Information on endangered species and critical habitat.
5. Current description of construction and waste materials stored on-site with updates as appropriate. Description of controls to reduce pollutants from these materials including storage practices to minimize exposure of the materials to storm water, spill prevention and response.

- B. Payment for the preparation and submittal of the NOI and the SWPPP, including any revisions necessary throughout the duration of the construction contract, shall be considered subsidiary to other items bid.
- C. The following shall be maintained on the project site by the Contractor at all times:
  - 1. Post near main entrance to project site or at project site office:
    - a. NOI or TCEQ site notice depending on project size.
    - b. Local contact person with phone number.
    - c. Brief description of project.
    - d. Location of SWPPP if site is inactive or does not have an on-site location to store the plan.
  - 2. SWPPP including any revisions.
  - 3. Copy of the TPDES General Permit TXR150000.
  - 4. Inspection reports for inspections performed every 14 days and within 24 hours after every ½ inch rain.
  - 5. Record of construction activities:
    - a. Dates when grading activities will occur.
    - b. Dates when construction activities will temporarily and/or permanently cease on a portion of the project.
    - c. Dates when ground cover will be initiated on disturbed areas.
  - 6. Current description of construction and waste materials stored on-site with updates as appropriate. Description of controls to reduce pollutants from these materials including storage practices to minimize exposure of the materials to storm water, spill prevention and response.
- D. A Notice of Termination (NOT) must be submitted to TCEQ 30 days of project completion on all 5 acre or larger projects.
- E. Payment shall be a lump sum bid item and dollar amount in the PROPOSAL. This amount shall include complete payment for the physical erosion/pollution control measures throughout the duration of the construction contract, as delineated in the approved SWPPP. This amount also includes removal of all items and structures constructed for

storm water pollution protection at completion of the project when called to do so by the engineer or representative.

- F. The erosion control measures must be in place on the project prior to being authorized for any other construction activity. Any stockpiles of unusable items and/or excavated materials shall be removed from the project site within seven days.** In case of failure on the part of the Contractor to control soil erosion, pollution and/or siltation, the engineer reserves the right to employ outside assistance or to use City forces to provide the necessary corrective measures. Such incurred direct costs will be deducted from any money due or to become due to the Contractor.

**11A-77A STORM WATER MANAGEMENT (CITY PROVIDE): N/A**

**11A-78 FINAL QUANTITIES:**

The Contractor is required to be present when final quantities are measured by the inspector. The inspector will coordinate with the Contractor to schedule a mutually agreeable date and time (including Saturdays) to perform the final measuring. If the Contractor chooses not to be present when final quantities are measured by the inspector, the Contractor agrees to accept the inspector's measurements or reimburse the City for time the inspector spends remeasuring any portion of the project.

**11A-79 PUBLIC MEETING: N/A**

**11A-80 PRE-CONSTRUCTION MEETING:**

A Pre-Construction Meeting shall take place prior to construction. This meeting will cover all of the aspects usually covered in the pre-construction meeting, but is also designed to build relationships between the City of Burleson representatives and the Contractor's representatives who will work together on a daily basis. Issues will be discussed related to the chain-of-command, areas of special concern, and coordination expectations. It is the City of Burleson's hope that this meeting promotes a partnership between the Contractor and the City that lasts throughout this project, making the project more pleasant for the Contractor, the City of Burleson, and the affected property owners/occupants.

**11A-81 CONSTRUCTION MEETING:**

Once construction begins, project construction meetings may be held for this project. A representative of the Contractor, knowledgeable of the project, shall attend the construction meetings. The engineer will schedule the time and location, and determine the frequency of these meetings.

**11A-82      TEMPORARY STREET REPAIR FOR STORM DRAIN:**

A temporary driving surface shall be required on all street cut openings. It shall be composed of permanent type paving material, specifically excluding gravel or flexbase as the surface material, unless approved by the engineer. Four (4) inches of flexible base shall be placed to a level 2-inches below the existing surface. A 2-inch hot mix asphaltic concrete (Type D) surface shall then be placed by the Contractor as soon as possible after completing the backfill, but always within 5 working days after completion of the work involving the cut. Any temporary surface that fails to provide an acceptable driving surface shall be removed and replaced at the Contractor's expense, as directed by the engineer. Payment for this item is considered subsidiary to other bid items and shall not be a separate bid item.

**11A-83      PROTECTION OF ADJACENT LANDSCAPING IMPROVEMENTS:**

The Contractor shall be responsible for the protection of any existing landscaping improvements in the medians and parkways adjacent to the project including but not limited to trees, shrubs and irrigation from damage by Contractor's equipment or personnel. If the Contractor damages any of the landscaping improvements, the Contractor shall be responsible for replacing and/or repairing the improvements prior to processing the final pay estimate for the project. If the Contractor feels any of the landscaping improvements are in conflict with the project and must be removed or have prior damage, the Contractor shall coordinate this with the project inspector prior to removal of any landscaping improvements.

**11A-84      RESTORATION OF EXISTING PAVED SURFACES:**

The Contractor shall be responsible for maintenance of existing paved roadway surfaces within the project limits throughout the duration of the project. The Contractor shall perform daily inspections and restoration work required to provide an acceptable driving surface, as determined by the engineer. Restoration of paved surfaces shall be of asphalt, unless otherwise approved by the engineer. Should the Contractor be notified by the City of unacceptable roadway conditions, the Contractor shall restore the surface within 24 hours. Should it become necessary for the City to provide for the restoration of the surface, the cost of such shall be deducted from the monthly estimate. All asphalt for restoration of existing paved surfaces shall be considered subsidiary to the various bid items on this contract.

**11A-85      REPLACEMENT/ RELOCATION OF FENCES:    N/A**

#### **11A-86    RELOCATION / REPLACING OF MAILBOXES: (POST OR BRICK):**

This provision shall cover all the labor and materials necessary to temporary relocate mailboxes indicated on the plans and within the Contract Documents. Contractor shall be responsible for repair or replacement in the event of damage during the movements and return of the mailboxes to their original condition or better. The Contractor will restore the ground and surface area disturbed during relocation of the mailboxes back to original condition or better after returning the mailboxes to their original locations. Concrete bases for posts or foundations of minimum 2000 psi strength shall be provided to support the mailboxes. Mailboxes shall be positioned per the attached specifications provided by the United States Postal Service. Compensation for this work shall be considered full compensation for all labor, materials, tools, and any other incidentals necessary to fulfill the requirements of the plans and specifications. No partial payments shall be made. Contractor will be paid in full upon successful completion of this item and approval by the City.

#### **11A-88    PAVEMENT MARKINGS:**

This provision shall cover all the labor and materials necessary to install all pavement markings as indicated on the plans, details, and within the Contract Documents. Pavement markings shall include reflectorized pavement markings, prefabricated pavement markings, non-reflective traffic buttons, and raised pavement markers, and shall be installed in accordance with NCTCOG Item 804.2 "Painting and Marking". Compensation for this work shall be considered full compensation for all labor, materials, tools, any any other incidentals necessary to fulfill the requirements of the plans and specifications. No partial payments shall be made. Contractor will be paid in full upon successful completion of this item and approval by the City.

#### **11A-89    CONCRETE CONTAINMENT STRIP:**

The construction of the concrete containment strip as described in this document, the proposal, and the construction plans shall be covered under this provision and quantified by unit of Linear Foot. The concrete containment strip shall match the provisions and technical specifications as described in the provision for concrete curb and gutter. Measurement and payment of these items shall be on the basis of the unit price per square yard of pavement removed. The contract price shall be total compensation for the furnishing of all labor, material, tools, equipment, and incidentals necessary to complete the work.

#### **11A-90    PARKWAY RESTORATION:**

This provision shall be full compensation for grading and restoring the easement and right-of-way areas to their pre-project conditions or better. The Contractor



shall video tape all private easement areas prior to construction to establish the existing condition.

Any damage to existing structures shall be repaired and/or replaced at or above the original condition as directed by the City and shall be considered subsidiary to this pay item. Parkway Restoration shall include the price for placing and watering of solid block sod as described in the separate provision and technical specifications. The contract price shall be the total compensation for the furnishing of all labor, material, tools, equipment, grading, and incidentals necessary to complete the work.

# CERTIFICATE OF INTERESTED PARTIES

FORM 1295

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

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

Reliable Paving, Inc, Arlington, TX, USA

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

City of Burlington

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 goods or services to be provided under the contract.

ST2205

4 Name of Interested Party	City, State, Country (place of business)	Nature of Interest (check applicable)	
		Controlling	Intermediary

5 Check only if there is NO Interested Party.



6 AFFIDAVIT

I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.

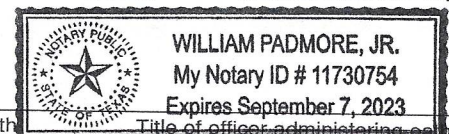
Signature of authorized agent of contracting business entity

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said Charles Long, this the 12 day of JAN, 20 23, to certify which, witness my hand and seal of office.

Signature of officer administering oath

Printed name of officer administering oath



ADD ADDITIONAL PAGES AS NECESSARY

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## City Council Regular Meeting

**DEPARTMENT:** Legal and Purchasing

**FROM:** Matt Ribitzki, Deputy City Attorney/Compliance Manager

**MEETING:** February 6, 2023

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**SUBJECT:**

Consider approval of a resolution authorizing continued membership in the Steering Committee of Cities Served by Oncor and authorizing a payment of an annual assessment to fund regulatory and legal proceedings and activities related to Oncor Electric Delivery Company, LLC in an amount not to exceed \$5,161.80. (*Staff Contact: Matt Ribitzki, Deputy City Attorney/Compliance Manager*)

**SUMMARY:**

The City of Burleson is a member of a 171-member city coalition known as the Steering Committee of Cities Served by Oncor (Steering Committee). The resolution approves the assessment of a ten cent (\$0.10) per capita fee to fund the activities of the Steering Committee.

The Steering Committee undertakes activities on behalf of municipalities for which it needs funding support from its members. Municipalities have original jurisdiction over the electric distribution rates and services within the city. The Steering Committee has been in existence since the late 1980s. It took on a formal structure in the early 1990s. Empowered by city resolutions and funded by per capita assessments, the Steering Committee has been the primary public interest advocate before the Public Utility Commission, ERCOT, the courts, and the Legislature on electric utility regulation matters for over three decades.

The Steering Committee is actively involved in rate cases, appeals, rulemakings, and legislative efforts impacting the rates charged by Oncor Electric Delivery Company, LLC within the City. Steering Committee representation is also strong at ERCOT. It is possible that additional efforts will be necessary on new issues that arise during the year, and it is important that the Steering Committee be able to fund its participation on behalf of its member cities. A per capita assessment has historically been used, and is a fair method for the members to bear the burdens associated with the benefits received from that membership.

The Steering Committee is the most active consumer group advocating the interests of cities and residential and small commercial customers within the cities to keep electric transmission and distribution (*i.e.*, wires) rates reasonable. Steering Committee activities protect the authority of

municipalities over the regulated wires service and rates charged by Oncor Electric Delivery Company, LLC ("Oncor").

The work undertaken by the Steering Committee has saved cities and ratepayers millions of dollars in unreasonable charges. In order to continue to be an effective voice before the Public Utility Commission of Texas ("Commission" or "PUC"), ERCOT, the Legislature, and in the courts, the Steering Committee must have the support of cities.

Currently, the Steering Committee is involved in numerous rulemakings and projects at the PUC. The Steering Committee expects to participate in Oncor's Rate Case and Energy Efficiency Cost Recovery Factor ("EECRF") proceedings later this year.

On December 8, 2022, the Steering Committee approved the 2023 assessment for Steering Committee membership. Based upon the population-based assessment protocol previously adopted by the Steering Committee, the assessment for 2023 is a per capita fee of \$0.10 based upon the population figures for each city shown in the latest TML Directory of City Officials. The City of Burleson's total 2023 membership assessment is \$5,161.80.

#### **OPTIONS:**

- 1) Approve the resolution
- 2) Approve the resolution with changes
- 3) Deny the resolution

#### **RECOMMENDATION:**

Approve the resolution

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

None

#### **FISCAL IMPACT:**

Fund Name:	Legal – Other Legal Retainer Fees
Fund Account #:	001-1016-414.30-02
Project #:	n/a
Amount:	\$5,161.80

#### **STAFF CONTACT:**

Matt Ribitzki  
Deputy City Attorney/Compliance Manager  
[mribitzki@burlesontx.com](mailto:mribitzki@burlesontx.com)  
817-426-9664



## Cities Served by Oncor Steering Committee

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Presented to the City Council on  
February 6, 2023

## Cities Served by Oncor Steering Committee

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- The City of Burleson is a regulatory authority under the Public Utility Regulatory Act (PURA) and has exclusive original jurisdiction over the rates and services of Oncor Electric Delivery Company, LLC (Oncor) within the municipal boundaries of the city.
- The City is a member of the Steering Committee of Cities Served By Oncor.
- The Steering Committee has historically intervened in Oncor rate proceedings and electric utility related rulemakings to protect the interests of municipalities and electric customers residing within municipal boundaries.
- The City's 2023 Steering Committee membership assessment is \$5,161.80.

## Cities Served by Oncor Steering Committee

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- Action Requested

Approve or deny a resolution:

authorizing continued membership in the Steering Committee of Cities Served by Oncor and authorizing a payment of an annual assessment to fund regulatory and legal proceedings and activities related to Oncor Electric Delivery Company, LLC in an amount not to exceed \$5,161,80.

- Staff recommends approval.



## RESOLUTION

A RESOLUTION AUTHORIZING CONTINUED PARTICIPATION WITH THE STEERING COMMITTEE OF CITIES SERVED BY ONCOR; AND AUTHORIZING THE PAYMENT OF TEN CENTS PER CAPITA TO THE STEERING COMMITTEE TO FUND REGULATORY AND LEGAL PROCEEDINGS AND ACTIVITIES RELATED TO ONCOR ELECTRIC DELIVERY COMPANY, LLC.

- WHEREAS, the City of Burleson is a regulatory authority under the Public Utility Regulatory Act (PURA) and has exclusive original jurisdiction over the rates and services of Oncor Electric Delivery Company, LLC (Oncor) within the municipal boundaries of the city; and
- WHEREAS, the Steering Committee of Cities Served By Oncor (Steering Committee) has historically intervened in Oncor rate proceedings and electric utility related rulemakings to protect the interests of municipalities and electric customers residing within municipal boundaries; and
- WHEREAS, the Steering Committee is participating in Public Utility Commission dockets and projects, as well as court proceedings, and legislative activity, affecting transmission and distribution utility rates; and
- WHEREAS, the City is a member of the Steering Committee; and
- WHEREAS, the Steering Committee functions under the direction of an Executive Committee which sets an annual budget and directs interventions before state and federal agencies, courts and legislatures, subject to the right of any member to request and cause its party status to be withdrawn from such activities; and
- WHEREAS, the Steering Committee at its December 2022 meeting set a budget for 2023 that compels an assessment of ten cents (\$0.10) per capita; and
- WHEREAS, in order for the Steering Committee to continue its participation in these activities which affects the provision of electric utility service and the rates to be charged, it must assess its members for such costs.

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

### I.

That the City is authorized to continue its membership with the Steering Committee of Cities Served by Oncor to protect the interests of the City of Burleson and protect the interests of the customers of Oncor Electric Delivery Company, LLC residing and conducting business within the City limits.

II.

The City is further authorized to pay its assessment to the Steering Committee of ten cents (\$0.10) per capita based on the population figures for the City shown in the latest TML Directory of City Officials.

III.

A copy of this Resolution and the assessment payment check made payable to "*Steering Committee of Cities Served by Oncor*" shall be sent to Brandi Stigler, Steering Committee of Cities Served by Oncor, c/o City Attorney's Office, Mail Stop 63-0300, 101 S. Mesquite St., Suite 300, Arlington, Texas 76010.

PRESENTED AND PASSED on this the \_\_\_\_\_ day of \_\_\_\_\_, 2023, by a vote of \_\_\_\_\_ ayes and \_\_\_\_\_ nays at a regular meeting of the City Council of the City of Burleson, Texas.

\_\_\_\_\_  
Signature  
Mayor

ATTEST:

\_\_\_\_\_  
Signature  
City Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
Signature  
City Attorney

City of Arlington, c/o Oncor Cities  
Steering Committee  
Attn: Brandi Stigler  
101 S. Mesquite St., Ste. 300  
MS # 63-0300  
Arlington, TX 76010

# Invoice

Date	Invoice #
12/29/2022	23-19

Bill To
City of Burleson

Item	Population	Per Capita	Amount
2023 Membership Assessment	51,618	0.10	5,161.80
Please make check payable to: Oncor Cities Steering Committee and mail to Oncor Cities Steering Committee, Attn: Brandi Stigler, Arlington City Attorney's Office, 101 S. Mesquite St., Ste. 300, MS #63-0300, Arlington, Texas 76010		<b>Total</b>	\$5,161.80

# 2022 OCSC NEWSLETTER



## 2022 YEAR IN REVIEW ISSUE

This past year was an active one for the Steering Committee of Cities Served by Oncor. This Year in Review edition of the OCSC newsletter highlights significant 2022 events and looks ahead to 2023.

## OCSC Welcomes New 2022 Members

The Steering Committee of Cities Served by Oncor welcomed several new members to the coalition in 2022, including the cities of Seymour, Garrett, Lavon, Gunter and Hutchins. OCSC, an organization of more than 160 Texas cities with residents served by the Oncor transmission and distribution utility, represents consumer interests in ratemaking matters at the Public Utility Commission of Texas. Membership in this standing committee is determined by passage of a resolution by each governing body.

## Oncor Rate Case Update

On December 28, 2022, after several months of deliberation, the State Office of Administrative Hearing (SOAH) released its Proposal for Decision (PFD) in Oncor's ongoing rate case, PUC Docket No. 53601. Oncor initially filed its application to change rates with the Public Utility Commission of Texas on May 13, 2022, requesting an annual retail base rate revenue requirement of \$5.811 billion. Put differently, Oncor sought a \$251 million increase to its revenue requirement, which represents a 4.5 percent increase over its adjusted test-year revenues. If adopted, the requested revenue requirement would have increased residential rates by 11.2 percent.

OCSC played an active role throughout the case, with recommendations focused on striking an appropriate balance between consumer rates and Oncor's capital recovery. OCSC recommended that the PUC reduce Oncor's requested revenue requirement by \$525.7 million. If adopted, this reduction would result in a \$275 million reduction to Oncor's 2021 test-year revenue requirement.

SOAH agreed that Oncor's requested rates would unduly burden consumers. Accordingly, the PFD recommends that the PUC decrease Oncor's test-year revenue requirement by \$60.6 million.

To reach its conclusion, among other things, SOAH found that:

- Oncor's current capital structure of 57.5% long-term debt and 42.5% common equity is appropriate.
- Oncor's Return on Equity (ROE) should be 9.3% rather than Oncor's requested ROE of 10.30%.
- The PUC should not consider Oncor's mobile generation unit leasing costs, which accounted for \$3.1 million of Oncor's rate base, in Oncor's revenue requirement.
- A ten-year amortization period for all non-tax regulatory assets and liabilities, except the Intangible Amortization Over-Recovery Liability, is appropriate. The Intangible

Amortization Over-Recovery Liability should have a five-year amortization period.

The PFD also addresses substantive concerns raised by OCSC in hearing. For example, the PFD recommends that the PUC include language in Oncor’s tariff that expressly grants city customers input in selecting street light alternatives.

would substantially lower Oncor’s requested revenue requirement and, among other things, ensure that city customers have appropriate input in key decisions such as Oncor’s streetlamp selections. To take effect, the PFD still must be adopted by the PUC Commissioners. The Commissioners should issue their decision soon, likely at the next PUC Open Meeting on January 12, 2023.

The PFD, if adopted by the PUC commissioners, Find more information at the PUC website, under Docket No. 53601.

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## Policymakers Consider Post-Winter Storm Uri Market Reforms

In response to the statewide power outages from the previous year, the Public Utility Commission during 2022 continued its consideration of potentially far-reaching reforms for the ERCOT market.

Broadly referred to as “Phase II” reforms, the market modifications — if authorized — could lead to generation capacity additions but likewise add to consumer costs. Consideration of these Phase II changes followed the adoption of so-called “Phase I” changes in 2021. These previous changes included new weatherization requirements for power plants and modifications to existing operational rules at ERCOT.

On Nov. 10, the Public Utility Commission released an independent study from the San Francisco-based E3 consulting firm that outlined several Phase II reform options. These included a “Performance Credits Mechanism” model favored by PUC chair Peter Lake, and a separate “Forward Reliability Market” favored by the E3 consultants themselves.

However, both proposals as well as others in the E3 report drew pushback from key lawmakers during 2022. Some representatives of influential ERCOT stakeholder groups and the state’s independent monitor of the ERCOT market also panned the E3 analysis during Nov. 17 and Dec. 5 legislative hearings.

### Reform Options

The Forward Reliability Market (recommended by the E3 consultants) and the Performance Credits Mechanism (favored by PUC Chair Lake) share various operational similarities and would impact consumers in similar ways. For example, both would add approximately \$460 million per year to energy costs, according to the E3 report. Both also appear similar to “capacity market” concepts historically rejected in Texas.

More specifically, the Forward Reliability Market (“FRM”) design recommended by the E3 consultants would establish a reliability standard within ERCOT — that is, a level of targeted capacity reserves based on calculated outage risks — and then a corresponding quantity of reliability credits would be created to fulfill that standard. Market participants would acquire these reliability credits through a mandatory, centrally cleared forward market administered by ERCOT.

By contrast, PUC Chair Lake’s favored Performance Credits Mechanism (“PCM”) design would establish a reliability standard along with a corresponding quantity of performance credits. The performance credits would be purchased by load-serving entities, and the value of the credits would go to generation resources based on their availability during high-risk hours. The overall value of the credits would be determined by an administratively set demand curve. In addition, the PCM design allows for load-serving entities and generators to trade Performance Credits during the year, through a voluntary market.

Other market designs examined by E3 include the state’s status quo Energy Only design, a Load Serving Entity Reliability Obligation design, a Backstop Reliability Service design, a Dispatchable Energy Credits design, and a hybrid of the Backstop Reliability Service and Dispatchable Energy Credits designs.

## Legislative Concerns

These market reform efforts pursued by the PUC and the E3 report took center stage during a pair of legislative committee meetings — a Nov. 17 meeting of the Senate Business and Commerce Committee, and a Dec. 5 meeting of the House State Affairs committee. The E3 consultants themselves did not appear at either meeting — an absence described as “bad form” by one of the lawmakers.

Of the two committee meetings, it was that of Senate Business and Commerce in which lawmakers expressed the most skepticism about the report’s findings. For instance, Sen. Charles Schwertner, chair of the Senate Business and Commerce Committee, questioned whether any of the plans would guarantee the construction of new thermal generation. In addition, all nine Senate committee members signed onto a critical Dec. 1 letter addressed to the PUC. The lawmakers wrote in it that none of the proposals so far under consideration adhered to the goals set forth in Senate Bill 3, which was omnibus energy reform legislation adopted in 2021. “It is not in the best interest of our constituents to support any proposal that further delays investments in new dispatchable generation, and the Commission should carefully consider the unintended consequences of any type of proposal that creates more uncertainty for market participants,” the lawmakers wrote.

PUC Chair Lake defended the E3 report during both legislative hearings and said that three of the agency’s five commissioners have expressed qualified support for the PCM option. According to Lake, the extra consumer costs associated with that option are worthwhile because of its reliability benefits. He said that if it turned out more reliability was unneeded, then the extra costs would be inconsequential. “Anything short of a comprehensive reliability standard and reliability service like the PCM is just a band-aid,” Lake told members of the State Affairs Committee.

Lake said the PUC would adopt one of the planned options during the commissioners’ January 12 meeting, but not authorize implementation until after they receive input from the Texas Legislature during the upcoming session that convenes on January 10.

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## 2022 Interim Filings

In addition to the ongoing general rate, Oncor also submitted interim rate requests during 2022.

### Energy Efficiency Cost Recovery Factor Order

On May 31, Oncor filed an application with the PUC to adjust its Energy Efficiency Cost Recovery Factor to recover \$83,058,209 in program costs incurred during 2023. This included the energy-efficiency costs of \$51,665,637, a net under recovery of \$2,603,394 for 2021 program costs and other expenses. Under an agreement with OCSC and other parties, Oncor will reduce its recovery by \$200,000, for a total of \$82,858,209. The resulting EECRF charge for residential consumers amounts to \$.001028 per kilowatt hour, or approximately \$1.34 cents for a customer consuming

1,300 kilowatt hours of electricity per month. The PUC adopted the order on September 15, 2022. More information can be found in PUC Docket No. 53671.

### Transmission Cost of Service Order

On January 26, 2022, Oncor filed an application seeking an interim update of its previously approved transmission cost of service and wholesale transmission rate. On March 31, an approval was granted adjusting Oncor’s annual revenue on an interim basis to \$1,247,772,772 and adjusting its wholesale transmission rate to \$17,212.955892 per megawatt.

Find more information at the PUC website, under Docket No. 53145.

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## Oncor Distribution Spending and Reliability Update

Even while nearly tripling its spending in gross capital additions to its distribution systems over the years, Oncor’s service reliability decreased, according to the seventh annual “Electric Distribution System spending and Reliability Report” released Sept. 7 by the Texas Public Utility Commission.

An annual report that tracks reliability and reliability-related spending trends, the latest iteration covers the ten-year period from 2012-2021 and included findings for Oncor, as well as other major Texas utilities such as CenterPoint, AEP Texas, El Paso Electric Company, Entergy Texas, Southwestern Electric Power Company, Southwestern Public Service Company, and Texas-New Mexico Power Company.

Under the report, the frequency of outages is benchmarked through a “System Average Interruption Frequency Index,” or “SAIFI.” The report likewise employs the “System Average Interruption Duration Index” or “SAIDI,” to rank Texas distribution utilities by average interruption time on a per-customer basis. All else equal, a lower SAIDI represents better reliability.

Both SAIDI and SAIFI calculations in the report do not account for momentary service interruptions. Further, the report specifically does not mention Winter Storm Uri, although presumably the devastating February 2021 storm contributed to the exponential increases in SAIFI and SAIDI observed from 2020 to 2021.

Report highlights pertaining to Oncor include:

- From 2012 to 2021, Oncor’s distribution gross capital additions per customer nearly tripled, from about \$120 per customer to \$300 per customer.
- Oncor’s major event SAIFI value increased from .5 interruptions per customer in 2020 to 1.20 interruptions per customer in 2021. Major event interruptions from 2012 to 2021 ranged from about .5 interruptions to 1.20 interruptions depending on the year.
- Oncor’s major events SAIDI value increased from ninety interruptions per customer in 2020 to about five hundred interruptions per customer in 2021. Prior to this peak, there was one other peak (though not nearly as high) in 2019 due to Hurricane Harvey.

The report can be found on the PUC website, under Docket No. 46735.

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## Oncor Financial Results

Oncor Electric has reported net income of \$318 million during the three months ending September 30, as compared to net income of \$258 million for the same period in 2021, according to the most recent financial report the Texas electric utility released to investors.

The company attributed the \$60 million quarter-over-quarter increase to higher weather-related consumption, increases in customer growth, increases to transmission and distribution rates, and performance bonus revenue from its energy efficiency efforts. Those gains were partially offset by increases in operation and maintenance expenses and taxes.

The quarterly financial information was released Nov. 3 and coincided with a call with financial analysts by California-based Sempra Energy, Oncor’s majority owner. Oncor is based in Dallas and operates the state’s largest electric transmission and distribution utility.

Oncor also reported an increase of 9.2 percent in distribution base revenues for the recent quarter (or 2.3 percent on a weather normalized basis), as compared to the same quarter in 2021. Contributing to this increase was a 12.6 percent increase in distribution base revenues from residential customers.

The company noted that its service territory continues growing at one of the nation’s fastest rates, and that this dramatic growth has allowed it to increase revenues while simultaneously developing new infrastructure projects. Indicative of that growth is the

approximately 14,000 new premises Oncor connected to the ERCOT grid during the third quarter of 2022, an increase of about 7.7 percent as compared to the third quarter of 2021.

Oncor likewise reported 565 active transmission point-of-interconnection requests in queue as of Sept. 30, which is a 52 percent increase from Sept. 30, 2021. Of those active requests, approximately 52 percent are for solar generators, 35 percent for energy storage, 10 percent for wind generators and three percent for gas, according to the company.

In addition, Oncor reported the construction or upgrade of approximately three hundred miles of power lines and the completion of two major substations during the third quarter of 2022. It also placed \$80 million of transmission projects into service.

In total, the company reported capital expenditures totaling \$2.2 billion during the nine months ending Sept. 30, and it reports that it remains on track to meet its \$3 billion capital plan for 2022. However, financial uncertainties associated with high inflation and a pending rate case prompted the board to put off adoption of its 2023 capital expenditure budget until a later board meeting. It likewise delayed any announcement pertaining to a new five-year capital plan, and instead said it will reveal those details at the end of the first quarter of 2023.



# Lawmakers File Energy-Related Bills in Preparation for 88th Regular Session

During the most recent Regular Session of the Texas Legislature — the 87th in 2021 — lawmakers filed approximately four hundred energy-related bills, which is far more than the typical number of such bills. This aggressive filing of energy-related bills largely can be attributed to public outcry over the 2021 winter storm power outages. Given that Texas so far has not suffered a repeat grid crisis, do not expect the number of such bills filed during the 88th session to match those of the 87th session. However, both ERCOT and the Public Utility Commission will be subject to the Sunset Review process during the upcoming session and so legislative interest in both organizations will be keen. The 88th session convenes on Jan. 10.

## Bills of interest

This year's bill filing deadline is on March 10. Some of the energy-related bills we have seen so far relate to wind and solar power, electric vehicles, energy efficiency and the use of natural gas appliances. Here is a sample:

- House Bill 564, by Rep. Ron Reynolds, would require the Texas Facilities Commission, in collaboration with the Department of Information Resources, to conduct a study on the potential use by state agencies of energy efficient and energy-saving information technology.
- House Bill 763, by Rep. Christina Morales, requires the PUC to study the impact of additional interconnections between the ERCOT grid, Mexico and other jurisdictions. This is refiled legislation from 2021.
- House Bill 795, by Rep. Ed Thompson, would require nursing homes to maintain an emergency generator or comparable power source that can operate for at least 72 hours during a power outage.
- House Bill 820, by Rep. Ken King, would impose an additional registration fee of \$200 for electric vehicles and \$100 for hybrid vehicles. Most proceeds would go to State Highway Fund, but 10 percent would go to an "electric battery disposal account" to reimburse costs incurred by the state or its political subdivisions for disposing of electric car batteries.
- Senate Bill 330, by Bob Hall, would create the Texas Electric Grid Security Commission that would be charged with evaluating the vulnerabilities to the grid and critical infrastructure and developing standards that will mitigate these threats.
- Senate Bill 114, by Jose Menendez, stipulates that electric customers are entitled to participate in demand response programs through their retail electric providers and must receive notice when ERCOT issues an emergency energy alert about low operating reserves to generators, planned outages, and the length of time the outages are expected to last.
- Senate Bill 258, by Sen. Sarah Eckhardt, would enhance energy efficiency goals for electric utilities.
- House Bill 697, by Rep. Justin Holland, would require home sellers to reveal the sort of gas piping installed at their residence and particularly whether black iron pipes, corrugated, copper or stainless steel. The disclosure holds importance for customer safety given that older black iron pipes have been associated with various fatal accidents.
- House Bill 743, by Rep. Jay Dean, prohibits cities and counties from adopting ordinances that restrict the use of gas appliances in residential or commercial buildings. The issue has been pressed in recent years by gas utilities, who have seen a move away from the use of gas appliances nationwide for environmental reasons.

### 2023 OCSC Meetings

March 9 — in person and Zoom  
June 8 — Zoom only  
September 7 — in person and Zoom  
December 7 — Zoom only

### OCSC Officers

Paige Mims — Chair  
Don Knight — Vice Chair  
Lupe Orozco — Secretary  
David Johnson — Treasurer



For more questions or concerns regarding any OCSC matter or communication, please contact the following representative, who will be happy to provide assistance:

**Thomas L. Brocato**  
Attorney

Direct : (512) 322-5857  
Email: [tbrocato@lglawfirm.com](mailto:tbrocato@lglawfirm.com)



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## City Council Regular Meeting

**DEPARTMENT:** Public Safety Communications

**FROM:** Paul Bradley, Director

**MEETING:** February 6, 2023

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**SUBJECT:**

Consider approval of a five-year contract with Priority Dispatch Corporation for the sole source purchase of the Medical Priority Dispatch System in the amount not to exceed \$188,537. (*Staff Contact: Paul Bradley, Director of Public Safety Communications*)

**SUMMARY:**

The City will transition to Fire-based Emergency Medical Services in October 2023. In tandem with this transition, the Public Safety Communications Department will implement an Emergency Medical Dispatch (EMD) system. EMD establishes a standard for emergency dispatchers taking calls for a broad range of field and triage responses; emergency call takers utilize the protocol to quickly gather the right information, dispatch the right help and, when necessary, provide lifesaving support. There are various protocols available for EMD; options were thoroughly researched and staff has concluded that the solution offered by Priority Dispatch Corporation is the best fit for the City. Their system, which utilizes protocol from the International Academies of Emergency Dispatch (IAED), is used by leading organizations worldwide and is endorsed by the City's Medical Director, Joseph Cordova, M.D. Priority Dispatch Corporation provides licensing, training, implementation and maintenance of products and services, altogether the Medical Priority Dispatch System (MPDS). The system utilizes a protocol software, ProQA, which interfaces with the City's Computer-Aided Dispatch (CAD) system; the associated interface is provided by CentralSquare Technologies.

Priority Dispatch costs:

- Year 1: \$123,737 (all equipment; licensing and maintenance)
- Year 2: \$16,200 (licensing renewal and maintenance)
- Year 3: \$16,200 (licensing renewal and maintenance)
- Year 4: \$16,200 (licensing renewal and maintenance)
- Year 5: \$16,200 (licensing renewal and maintenance)

**Budgeted costs:**

Costs associated with Emergency Medical Dispatch protocol implementation were incorporated with the City's EMS services; expenditures are within budget. The budgeted five-year cost was \$234,500; the actual five-year cost is \$188,537. The difference between budgeted and actual costs provides contingency in the event of staffing changes and the potential need to train additional staff members. First year costs of \$123,737 will be covered by ARPA funds; recurring costs of \$16,200 per year will be funded through the IT Support Services fund. The City has an existing agreement with CentralSquare; that contract will be amended to add CAD interface costs of \$16,120 over five years. The purchase of the interface will be processed administratively, pending approval of the agreement with Priority Dispatch Corporation.

**Timeline:**

Priority Dispatch Corporation will deliver equipment and initiate the install of software in June 2023. System Administration training will take place in July 2023. Staff will begin EMD training in August 2023; Quality Assurance staff will receive training in September 2023. All Public Safety Communications staff will receive training prior to go-live. Staff must receive training and pass a test to become certified EMDs. Training and certification will be conducted as close to go-live as possible so that information learned may be quickly put into practice; this is the most efficient way for our staff to achieve success with the program.

**OPTIONS:**

- 1) Approve the contract with Priority Dispatch Corporation
- 2) Deny the contract with Priority Dispatch Corporation

**RECOMMENDATION:**

Approve the contract with Priority Dispatch Corporation as outlined

**FISCAL IMPACT:**

Budgeted: Yes

Fund Name: IT Support Services Fund

Fund Account: 504-1511-412.42-04

Amount: \$188,537

**STAFF CONTACT:**

Paul Bradley  
Director of Public Safety Communications  
[pbradley@burlesontx.com](mailto:pbradley@burlesontx.com)  
817-426-9075



# Public Safety Communications

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Priority Dispatch Corporation

Medical Priority Dispatch System

# Public Safety Communications

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## The *first*, first responders

- Answer 9-1-1 and non-emergency calls for assistance
  - Provide assistance to the community
  - 19,626 emergency 9-1-1 calls received in 2022
- Operate Computer-Aided Dispatch (CAD) system
  - Dispatching of Police and Fire units via radio
  - 37,381 total calls for service processed in 2022
- Ensure safety of fellow first responders
  - Maintain status of Police and Fire units
  - Communicate and provide vital information
- Operate National Crime Information Center (NCIC) terminals

# Fire-based Emergency Medical Services

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Burleson Fire Department will staff ambulances

- Respond to calls for service
- Transport patients to medical facilities

Public Safety Communications

- We have a vital role in this transition
- Our Department will implement an Emergency Medical Dispatch (EMD) protocol
  - We will utilize the protocol to provide life-saving pre-arrival instructions to bystanders
  - All Public Safety Communications personnel will become certified EMDs

# What is EMD?

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Emergency Medical Dispatch incorporates a protocol for emergency call takers to quickly gather the right information, dispatch the right help and, when necessary, provide lifesaving support. The protocol provides guidance for a broad range of field and triage responses such as:

- Active Assailant (Shooter)
- Breathing Problems
- Cardiac or Respiratory Arrest
- Choking
- Seizures
- Diabetic Problems
- Drowning
- Falls
- Heart Problems/A.I.C.D.
- Heat/Cold Exposure
- Hemorrhage/Lacerations
- Overdose/Poisoning
- Pregnancy/Childbirth/Miscarriage
- Psychiatric/Abnormal Behavior/Suicide Attempt
- Stab/Gunshot/Penetrating Trauma
- Stroke
- Traffic/Transportation Incidents
- Unconscious/Fainting
- Transfer/Interfacility/Palliative Care

# Medical Priority Dispatch System

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The Medical Priority Dispatch System (MPDS) is an Emergency Medical Dispatch (EMD) protocol which was developed by the International Academies of Emergency Dispatch (IAED)

- Priority Dispatch Corporation is the sole provider of the protocol which is incorporated in their ProQA automated call taking software

Training, Certification and Continuing Education

- Ongoing education to stay up-to-date
- Ensures our community receives the highest level of care possible

Quality Assurance / Quality Improvement Program

- Case review program will allow us to measure performance and continuously improve

Implementation and maintenance of products and services



# Benefits of MPDS

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## Higher confidence

- Confident dispatchers provide expert customer service to our community

## Reduced risk

- Lowered liability by meeting the established standard of care and practice

## Customization

- Prioritized responses set by our Medical Director will allow locally-defined inputs

## Guides call takers to bypass case entry questions and go directly to pre-arrival lifesaving instructions for critical patients

- For example, if a patient is determined to be not breathing the protocol will immediately direct the call taker to provide instructions for CPR

## Higher accuracy

- Accurate, consistent and concise information for first responders and callers

## Easy to use

- MPDS is built into ProQA software which interfaces with the Computer-Aided Dispatch (CAD) system

# ProQA

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Priority Dispatch Corporation is the sole provider of ProQA medical call taking software which utilizes the Medical Priority Dispatch System (MPDS) to guide emergency dispatchers seamlessly through the process of gathering essential information and dispatching the right resources

- Directs emergency call takers to gather information tailored to the chief complaint
- Responses obtained by the call taker are automatically populated into the CAD system
- Guides call takers to provide lifesaving support in accordance with the MPDS

Allows complete control

- We will determine the response for each chief complaint / condition

Decreased liability

- No successful litigation against a protocol-compliant call has been brought against Priority Dispatch or its customers in over 40 years

Faster response

- Structured to gather critical information quickly with no extra questions or detours

Reduced human error

# ProQA Highlights

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## Stroke Diagnostic Tool

- Provides early and accurate stroke identification for responders and hospitals

## Childbirth-Delivery

- Encompasses every possible childbirth scenario

## Tourniquets Protocol

- Dispatcher-instructed use for bleeding control

## CPR Compression Tracker

- Functions as a compression monitor and helps emergency dispatchers guide callers in administering CPR until emergency responders arrive

## Breathing Verification Tool

- Helps emergency dispatchers assess a patient's breathing and identify patterns consistent with sudden cardiac arrest

## Active Assailant

- Provide inbound officers the most appropriate information possible
- Relay life-saving instructions to citizens

# Our impact

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Emergency Medical Dispatchers utilizing the Medical Priority Dispatch System have a significant and positive influence in the following areas:

- The quality of patient care
  - Patient care while responders are en route
  - No gap in patient care between the time the call is received and responders arrive on scene
- The performance of prehospital EMS providers
  - Informed dispatching of EMS responders
- The community's EMS experience
  - Enhanced customer service to the caller

# Priority Dispatch Corporation

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Sole source provider of ProQA call taking software which utilizes International Academies of Emergency Dispatch (IAED) protocols

- IAED is considered the “gold standard” for Emergency Medical Dispatch protocols
- IAED’s Emergency Priority Dispatch System is the most studied, scientifically validated, updated and dynamic response system in the world

ProQA utilizes the Medical Priority Dispatch System (MPDS) which includes 39 protocols

- Protocols are built by experts, backed by science and tested over time to reduce complexity and risk

This system is utilized by leading organizations worldwide, including many in the DFW area

- Allen, CareFlite, Dallas, Denton, Flower Mound, Frisco, Grand Prairie, Mansfield, MedStar, Mesquite, Midlothian, North Texas Emergency Communications Center (NTECC), Richardson, Roanoke, Sachse, Sherman, The Colony, University Park

Protocol is endorsed by Burleson’s Medical Director

- Joseph Cordova, MD

# What is included

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ProQA medical automated call taking software licenses

- Training and backup software licenses

AQUA case review software

EMD protocol training and certification

ProQA software training

ED-Q (Quality Assurance) training and certification

Call taking training simulator

Backup card sets

# CAD Integration

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CentralSquare will permit access to the CAD database to interface with ProQA Medical automated call taking software

- The interface will allow responses gathered in ProQA to be populated into CAD call notes
- The incident type may be automatically upgraded if ProQA determines a greater response is required

Existing contract with CentralSquare will be amended

- There will be a minimal charge for the purchase of the interface which will be processed administratively, pending approval of the agreement with Priority Dispatch Corporation
- ProQA will interface with the future CAD system
  - Costs will be factored into that implementation

# Budget

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Costs associated with Emergency Medical Dispatch protocol implementation were incorporated with the City's EMS services

- Expenditures are within budget
  - Budgeted 5-year cost: \$234,500
  - Actual 5-year cost: \$188,537
- The difference between budgeted and actual costs provides contingency in the event of staffing changes and the potential need to train additional staff members



# Timeline

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Implementation Agreement executed February 2023

Project kick-off April 2023

Software install; equipment delivery June 2023

System Administration training July 2023

EMD training begin August 2023

- All Public Safety Communications staff will receive training prior to go-live
  - Multiple training sessions will be conducted to arrange for continuity of operations
- Staff must receive training and pass a test to become certified EMDs
- Training and certification will be conducted as close to go-live as possible
  - Allows information learned to be quickly put into practice
  - This is the most efficient way for our staff to achieve success with the program

Training for Quality Assurance staff September 2023

- Priority Dispatch provides implementation support and quality management program development

# Recommendation

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Approve the contract with Priority Dispatch Corporation for the purchase of the Medical Priority Dispatch System (MPDS)

# Questions / Comments

## PRIORITY DISPATCH SYSTEM IMPLEMENTATION AGREEMENT

This Priority Dispatch System Implementation Agreement (the “Agreement”) is made on **January 18, 2023** (“Effective Date”) and entered by and between Medical Priority Consultants, Inc. dba **Priority Dispatch Corp.** (“PDC”), a Utah corporation, and **City of Burleson** (“Customer”). PDC and Customer are collectively referred to herein as the “Parties” or individually as a “Party.”

### BACKGROUND

- A. Customer desires to procure and provide an effective, efficient, and comprehensive emergency medical dispatch system for its residents and transient population.
- B. The Parties desire to enter into an agreement for the licensing, training, implementation, and maintenance of PDC’s products and services, altogether the Medical Priority Dispatch System (“MPDS”).

The Parties agree as follows:

1. **Pricing & Payment Terms.** Pricing details for the Medical Priority Dispatch System are set forth in **Attachment A**. Additional services or products may be provided upon request. The price of any additional products or services will be negotiated at the time of request. Any increase in the the quantity of products and services under this Agreement may result in an increase in Customer’s pricing, including annual support fees.
2. **Statement of Work.** The Parties will work together in good faith to develop a mutually acceptable Statement of Work for the implementation of the MPDS. Once agreed upon, the Statement of Work shall attach to this Agreement as **Attachment B**. The Statement of Work will provide a phased approach to the implementation of the MPDS, designed to assist Customer with meeting the International Academies of Emergency Dispatch (“IAED”) operational and performance requirements to become an Accredited Center of Excellence (“ACE”).
  - a. **Change in Statement of Work.** Should it become necessary to change the Statement of Work for any reason the Parties shall work together to make any necessary changes. As we work together to support your center, the scheduling we agree upon is critical. At any given time, PDC has many implementations at various stages of the implementation process and we’re also conducting many emergency dispatch and software training courses monthly. We must consider all PDC clients when you make cancellations, updates, or changes to the agreed-upon dates. The cancellation/change form can be found at [https://forms.zohopublic.com/ivanwhitaker/form/ImplementationCourseSoftwareTrainingorTaskChangeRe/formperma/nvPtug7UHo5M79rHzr9tDW4UF0GxF5HNN1RG\\_4ukAmU](https://forms.zohopublic.com/ivanwhitaker/form/ImplementationCourseSoftwareTrainingorTaskChangeRe/formperma/nvPtug7UHo5M79rHzr9tDW4UF0GxF5HNN1RG_4ukAmU)
3. **License.** The use and maintenance of the MPDS and other PDC licensed products are set forth in the applicable End User License Agreement (“EULA”).
4. **CAD Integration.** The Parties understand in the event a Computer Aided Dispatch system (“CAD”) is used by Customer, any costs relating to the integration of the MPDS software (ProQA®) and Customer’s CAD system shall be the sole responsibility of Customer. The integration of Customer’s CAD system and ProQA must be inspected, tested, and certified by PDC before taking live calls.
5. **Term & Termination.** This Agreement shall remain in effect for five (5) years. After five years, the Parties shall revisit the terms of this Agreement and in good faith shall determine the relationship going forward. Notwithstanding, the Parties understand that if this Agreement is not terminated or the Parties fail to determine the relationship going forward, this Agreement shall

automatically renew for subsequent terms of one year at the then current annual support prices, and thereafter may be terminated as set forth below or by giving 90-days non renewal notice before the annual renewal date (anniversary of the date of execution). This Agreement shall remain in effect until terminated by one of the Parties.

- a. **Termination after Initial Term.** Either Party may terminate this agreement by providing written notice to the other Party at least 90-days before the anniversary of the Effective Date. If written notice is not received by the non-terminating Party at least 90-days before the anniversary of the Effective Date, this Agreement will automatically renew for another year as set forth above.
  - b. **Termination for Cause.** Either Party may terminate this Agreement if the other Party commits any material breach of its obligations under this Agreement and fails to cure such breach within thirty (30) days of written notice of the breach.
  - c. **EULA.** This Agreement may be terminated for any reason set forth in the EULA.
  - d. **Effect of termination.** Upon termination or expiration of this Agreement, Customer shall return to PDC, within 10 days, all PDC's Confidential Information and intellectual property. In addition, all payments owed to PDC that have accrued prior to the termination or expiration of this Agreement shall be payable to PDC within thirty (30) days.
6. **Relationship of the Parties.** The Parties shall act as independent contractors in the performance of this Agreement. The employees of one Party shall not be deemed the employees of the other Party.
7. **Confidentiality.** During the course of this Agreement, it may become necessary for Customer to handle or receive PDC's Confidential Information. Customer agrees to keep all Confidential Information received from PDC confidential, and Customer may only disclose it to employees or contractors on a need-to-know basis, provided that the employee or contractor receives the Confidential Information under a written obligation of confidentiality. Confidential Information means any information, in any form or medium, disclosed by PDC to Customer, including, but not limited to, expertise, trade secrets, proprietary information and products, know-how, lists, technical specifications, processes, training materials, software programs, software documentation, price lists, marketing plans, and manuals, including all derivatives of the aforementioned. This section shall survive termination or expiration of the Agreement
8. **Intellectual Property.** Each Party acknowledges and understands that the copyrights, patents, trade secrets, trademarks, and other intellectual property, including derivatives and rights thereof, belonging to a Party are and shall remain the sole and exclusive property of that Party. This section shall survive termination or expiration of the Agreement.
9. **Conflict of Interest.** During the term of this Agreement, a Party shall not accept work, enter into a contract, or accept an obligation from any third party inconsistent or incompatible with the Party's obligations under this Agreement.
10. **Survival of Terms.** Termination or expiration of this Agreement for any reason shall not release either Party from any obligations set forth in this Agreement which (i) the Parties have expressly agreed shall survive any such termination or expiration, or (ii) by their nature would be intended to be applicable following any such termination or expiration.
11. **Compliance with Laws.** In performing services or obligations hereunder, the Parties shall comply with applicable local statutes, ordinances, and regulations.
12. **Assignment.** Customer shall not assign, sell, transfer or delegate its rights and obligations under this Agreement without obtaining prior written consent of PDC.
13. **Attachments.** All Attachments are incorporated by references as if set forth in the body of the Agreement. This Agreement may not be modified or altered except in writing signed by the Parties.

14. **Severability.** If any portion of this Agreement is determined to be invalid or unenforceable, such portion shall be adjusted, rather than voided, to achieve the intent of the Parties to the extent possible, and the remainder shall be enforced to the maximum extent possible.
15. **Dispute Resolution.** If a dispute arises out of or relates to this Agreement, or the breach thereof, the Parties agree first to try in good faith to settle the dispute.
16. **Law.** This Agreement shall be governed by and construed exclusively in accordance with the laws of the State of Utah, United States of America. All legal proceedings brought in connection with this Agreement may only be brought in a state or federal court located in Salt Lake County in the State of Utah. Each Party hereby agrees to submit to the personal jurisdiction of these courts.
17. **Notices.** Any notice or demand required or permitted hereunder shall be sufficiently given when set forth in writing and delivered in person, email, fax or mail:

**To PDC:**

Priority Dispatch Corp.  
110 South Regent Street, Suite 500  
Salt Lake City, Utah 84111  
Attention: Legal Department  
Email: [legaldepartment@prioritydispatch.net](mailto:legaldepartment@prioritydispatch.net)  
Phone: 800.363.9127

**To Customer:**

City of Burleson  
141 W. Renfro St.  
Burleson, Texas 76028  
Attention: Paul Bradley  
Email: [pbradley@burlesontx.com](mailto:pbradley@burlesontx.com)  
Phone: \_\_\_\_\_

18. **Counterparts.** This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same agreement, and either Party may enter into this Agreement by executing a counterpart.

**In Witness Whereof,** the parties have caused this Independent Contractor Services Agreement to be executed by their duly authorized representative.

**PDC**

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

Print Name: \_\_\_\_\_

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

**CUSTOMER**

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

Print Name: \_\_\_\_\_

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

## Attachment A

SEE ATTACHED SALES QUOTE #58974

### INITIAL MPDS IMPLEMENTATION PRICING (YEAR 1)

Fees for the initial MPDS implementation and training are **USD \$123,737.00**(see attached Sales Quote #Q-58974). This fee covers all of the quoted implementations activities and the first year of product licensing and maintenance.

**Payment Schedule:** Please see attached Payment Schedule for the initial MPDS Implementation.

### CONTINUING ANNUAL SERVICE AND SUPPORT FEES (YEAR 2-5)

The fee for the annual product licensing renewal and maintenance (Extended Service Plan - ESP) of PDC's products and services is shown below.

Year 2:	USD \$16,200.00
Year 3:	USD \$16,200.00
Year 4:	USD \$16,200.00
Year 5:	USD \$16,200.00

**Payment Schedule:** Annual support fees will be billed yearly upon the anniversary of the Effective Date of this Agreement.

#### **Payment Notes:**

1. Customer will be billed on an annual basis.
2. All prices in USD
3. This pricing is exclusive of any applicable tax. Any applicable taxes will be added to this amount.
4. Payment must be paid by Customer within 30-days of receiving an invoice from PDC.
5. If invoice is not paid within 60-days it will be considered "overdue" and accrue interest at 1% per month, compounding.
6. If invoice is not paid within 90-days it will be in "default" and services and products provided by Priority Dispatch may be removed, suspended, or become unavailable. If there is a dispute over an invoice the "overdue" or "default" status may be delayed if there is communication towards resolution. Lack of communication for 30-days will advance the invoice to the next status (i.e. overdue to default).





# QUOTE

110 Regent Street, Suite 500

Salt Lake City, UT 84111  
USA

[www.prioritydispatch.net](http://www.prioritydispatch.net)

Prepared By: Jon Noel

Phone: (800) 363-9127

Direct: 385-355-0435

Email: [jon.noel@prioritydispatch.net](mailto:jon.noel@prioritydispatch.net)

Agency:

Agency ID#:

Quote #:

Date:

Offer Valid Through:

Payment Terms

Currency:

Burleson Public Safety  
Communications

22687

Q-58974

1/18/2023

4/28/2023

Net 30

USD

Bill To:

City of Burleson

141 W. Renfro St.

Burleson, Texas 76028

United States

Ship To:

Burleson Public Safety Communications

1161 SW Wilshire Blvd

Burleson, Texas 76028

United States

Product	Qty	Amount
ProQA Medical Software Licenses Automated calltaking software	5	USD 20,000.00
ProQA Medical Training Software Licenses Training, non-live calltaking software	2	USD 4,000.00
ProQA Medical Backup Software Licenses Offsite, backup location software	5	USD 4,000.00
AQUA Case Review Software for EMD Quality Assurance (case review) software base engine and discipline module	1	USD 1,950.00
XLerator Client Server Suite Client server software application suite	1	USD 2,500.00
MPDS Quality Assurance Guide - Digital Quality Assurance Guide for training and case review only	3	USD 135.00
MPDS Mobile App Field Responder Guide Smartphone-based field reference guide for responders	100	USD 1,000.00
Advanced SEND Cards for MPDS - Box of 100 Individual S.E.N.D. cards	1	USD 50.00
Implementation Support Package for EMD Implementation support and quality management program development	1	USD 30,000.00
Equip QA for EMD Initial implementation of expert case review, quality management and mentoring for telecommunicators, QA staff and management	1	USD 12,350.00
Protocol Training and Certification for EMD Materials, tuition and certification	22	USD 8,030.00
Remote ProQA Software Training - M Per person cost for four hours of ProQA software training completed in a virtual, instructor-led environment	22	USD 3,278.00
College of Emergency Dispatch Annual Subscription Online access to the College of Emergency Dispatch for 12 months	22	USD 1,958.00

"To lead the creation of meaningful change in public safety and health."



Product	Qty	Amount
ED-Q Training and Certification for EMD Materials, tuition and certification (2 days, 16 hours)	7	USD 3,850.00
Remote AQUA Software Training - M Per person cost for six hours of AQUA software training completed in a virtual, instructor-led environment	7	USD 1,393.00
Remote System Administration Training Per person cost for training for center management detailing program configuration and customization options, completed in a virtual, instructor-led environment	3	USD 597.00
Remote ProQA & AQUA Reports Training Per person cost for four hours of training for administrators, managers and supervisors on the configuration and customization options in ProQA and AQUA, completed in a virtual, instructor-led environment	7	USD 1,043.00
Active Assailant Course Registrations	22	USD 2,178.00
IAED Accreditation Application Fee EMD IAED fee for accreditation	1	USD 2,250.00
Academy Analytics Dashboard – Tier 3 Near-real-time, online dashboard and analytics tool for ProQA, powered by FirstWatch	1	USD 5,000.00
Annual License and Maintenance Fee for Academy Analytics Dashboard – Tier 3 License renewal, service and support	1	USD 1,500.00
Priority Dispatch AI SkillLab - Powered by Call Simulator ProQA calltaking training simulator powered by artificial intelligence (AI). Price is based on hourly usage and is sold in blocks of 100.	300	USD 6,000.00
Priority Dispatch System ESP (P) M System License Renewal, Service & Support	5	USD 7,500.00
ProQA Training License ESP (B) M License Renewal, Service & Support	2	USD 600.00
ProQA Backup License ESP (B) M License Renewal, Service & Support	5	USD 600.00
MPDS Backup Cardset License Licensed manual protocol set for backup	5	USD 1,975.00
Implementation and Year 1 TOTAL:		USD 123,737.00

Product	Qty	Amount
Priority Dispatch System ESP (P) M System License Renewal, Service & Support	5	USD 7,500.00
ProQA Training License ESP (B) M License Renewal, Service & Support	2	USD 600.00
ProQA Backup License ESP (B) M License Renewal, Service & Support	5	USD 600.00
Annual License and Maintenance Fee for Academy Analytics Dashboard – Tier 3 License renewal, service and support	1	USD 1,500.00

"To lead the creation of meaningful change in public safety and health."

Product	Qty	Amount
Priority Dispatch AI SkillLab - Powered by Call Simulator ProQA calltaking training simulator powered by artificial intelligence (AI). Price is based on hourly usage and is sold in blocks of 100.	300	USD 6,000.00
Year 2 Annual Maintenance TOTAL:		USD 16,200.00

Product	Qty	Amount
Priority Dispatch System ESP (P) M System License Renewal, Service & Support	5	USD 7,500.00
ProQA Training License ESP (B) M License Renewal, Service & Support	2	USD 600.00
ProQA Backup License ESP (B) M License Renewal, Service & Support	5	USD 600.00
Annual License and Maintenance Fee for Academy Analytics Dashboard – Tier 3 License renewal, service and support	1	USD 1,500.00
Priority Dispatch AI SkillLab - Powered by Call Simulator ProQA calltaking training simulator powered by artificial intelligence (AI). Price is based on hourly usage and is sold in blocks of 100.	300	USD 6,000.00
Year 3 Annual Maintenance TOTAL:		USD 16,200.00

Product	Qty	Amount
Priority Dispatch System ESP (P) M System License Renewal, Service & Support	5	USD 7,500.00
ProQA Training License ESP (B) M License Renewal, Service & Support	2	USD 600.00
ProQA Backup License ESP (B) M License Renewal, Service & Support	5	USD 600.00
Annual License and Maintenance Fee for Academy Analytics Dashboard – Tier 3 License renewal, service and support	1	USD 1,500.00
Priority Dispatch AI SkillLab - Powered by Call Simulator ProQA calltaking training simulator powered by artificial intelligence (AI). Price is based on hourly usage and is sold in blocks of 100.	300	USD 6,000.00
Year 4 Annual Maintenance TOTAL:		USD 16,200.00

Product	Qty	Amount
Priority Dispatch System ESP (P) M System License Renewal, Service & Support	5	USD 7,500.00
ProQA Training License ESP (B) M License Renewal, Service & Support	2	USD 600.00
ProQA Backup License ESP (B) M License Renewal, Service & Support	5	USD 600.00

"To lead the creation of meaningful change in public safety and health."



Product	Qty	Amount
Annual License and Maintenance Fee for Academy Analytics Dashboard – Tier 3 License renewal, service and support	1	USD 1,500.00
Priority Dispatch AI SkillLab - Powered by Call Simulator ProQA calltaking training simulator powered by artificial intelligence (AI). Price is based on hourly usage and is sold in blocks of 100.	300	USD 6,000.00
Year 5 Annual Maintenance TOTAL:		USD 16,200.00

Subtotal	USD 123,737.00
Estimated Tax	
Total	USD 123,737.00

Customer Signature:		Date:	
Customer Name:		Purchase Order ID:	
Expiration Date:			

## TERMS AND CONDITIONS

This quote is valid for 120 days from date of issue. All prices quoted are exclusive of any applicable taxes, duties, or government assessments relating to this transaction, which are the sole obligation of Buyer. You can find it here: <https://prioritydispatch.net/licensing/>

## **Attachment B**

### **STATEMENT OF WORK**

## STATEMENT OF WORK

PHASE	EXPLANATION OF PHASE
Initial Assessment	Implementation Pre-Planning – Conference Call
Phase 1	Organization Set-up and Quality Improvement Unit (QIU) Activities
Phase 2	Training
Phase 3	Software Installation and Configuration
Phase 4	System Implementation
Phase 5	Quality Assurance Phase: 30 days post on-line
Phase 6	Quality Improvement Phase: 90 days post on-line
Phase 7	Accreditation
Phase 8	Ongoing support

### DELIVERY AND IMPLEMENTATION OF THE MPDS, PROQA, & AQUA

#### Delivery and Implementation of the MPDS

The purpose of this Implementation and Detailed Schedule is to provide an overview of the proper steps that will be taken to ensure the successful implementation of, and ongoing support of the MPDS. This plan will also assist your agency in meeting all the standards necessary for accreditation by the IAED as an Accredited Center of Excellence (ACE). To accomplish this, PDC will assist in implementing a self-sustaining quality improvement and risk management system that will ensure a continuous, safe and effective emergency dispatch operation both now and in the future.

#### Statement of Work: Implementation of the MPDS

##### INITIAL ASSESSMENT (IMPLEMENTATION PRE-PLANNING CONFERENCE CALL)

The initial step in the implementation process will be a conference call involving the communications center director and any other senior management team members deemed appropriate by the director, the involved PDC Regional Account Manager, and the PDC consultant detailed to be the Project Manager for the implementation. The purpose of the conference call will be an initial introduction of all involved parties and to set a start date for the implementation.

The next step, through the use of our Consulting Questionnaire and Consulting Evaluation processes, PDC Project Managers will obtain information about the communications center, key management officials and positions, the current emergency dispatch methodology, services provided, unit allocation and configuration, response times, management practices, quality improvement/assurance and risk management programs as they relate to the emergency dispatch function.

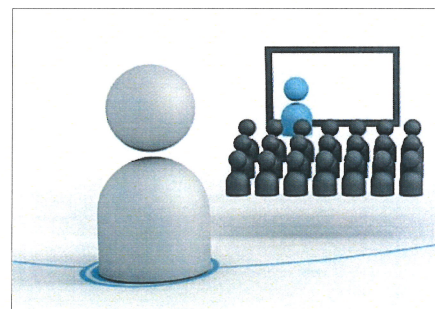
Other information obtained will include local and regional issues of concern, as well as demographic and statistical data. Information will be gathered primarily through the use of survey documents where possible. These documents should be completed and returned to the PDC Project Manager for review. PDC's assessment focus is directed towards training needs and quality improvement/assurance issues, the communication center dispatch policies, practices and procedures, and a comprehensive systems approach to emergency services dispatch evaluation. PDC may elect to perform an on-site visit to gather or help facilitate the gathering of information.

### **PHASE 1 Organization Set-up and Quality Improvement Unit (QIU) Activities**

- Leadership/Implementation Course. PDC staff will conduct a Leadership/Implementation Course for the Center senior managers. This course is designed to be an orientation to the EMD process as it relates to national standards, management oversight responsibility, quality management processes, and the implementation process.
- Steering and MDRC meeting. PDC staff will assist in the development of the implementation process by supporting the managers of the agency.
- Combined Steering and Medical Dispatch Review Committee (MDRC) meeting. PDC staff will provide guidance and support in the creation and first meeting of the Steering and MDRC committee. PDC will provide generic policies and procedures for review and revision to aid in administration of the Steering
- Committee, MDRC and Quality Improvement Unit (QIU), as well as the appropriate use of the MPDS. During this meeting, the PDC staff will also review the strategic goals and objectives of your organization in order to assist you in meeting your targets as they pertain to the Communications Center and the organization.
- Technical Evaluation. A PDC technical specialist will meet with your IT staff to lay out a plan of action, review system requirements for PDC software, discuss software options to prepare for installation, identify and verify all dispatch and training workstations, and discuss Computer-Aided Dispatch (CAD) interface parameters. Typical participants in the Technical Evaluation include system administrators, IT staff, in-house CAD staff, and dispatch center management.

### **PHASE 2 Training**

- Project Manager training. PDC personnel will listen to the needs of and advise on the project management of the implementation. Formal project management support is available throughout the implementation process.
- Certification and Software training split into two categories. PDC will liaise with the agency to ensure a satisfactory timetable of training, at a suitable venue. Certification training will require a projector for the instructor and a classroom suitable for the number of designated trainees. IAED Certified instructors will provide training and certification courses to all calltakers, dispatchers and supervisors. Emergency Dispatch — Quality (ED-Q) instructors will provide certification training to all QA/QI personnel. A PDC software specialist will set-up, install and train all dispatch personnel on the use of the EMD ProQA software as well as ED-Q personnel in the use of AQUA case review software. Software training will require a projector as well as a training computer for each trainee in attendance. PDC will conduct an agreed upon number of training sessions over a suitable amount of days.





**PHASE 3 Software Installation and Configuration**

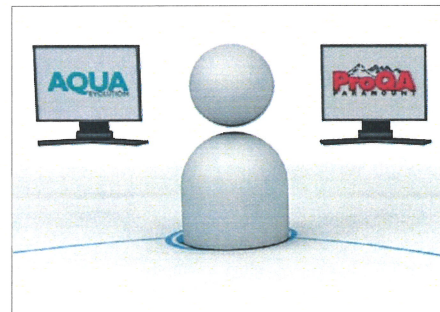
- ProQA, AQUA, and XLerator database management Software. PDC Software Specialist will conduct onsite installation and configuration of the appropriate software while working with local IT personnel to train in the ongoing use and maintenance of ProQA, AQUA and XLerator Software.
- CAD Interface Testing. The CAD Interface will also be tested for proper functionality.

**PHASE 4 System Implementation**

- EMD orientation to Quality Improvement Unit (QIU), Quality Manager (QM) activities and performance monitoring. PDC staff (or an appropriately qualified (EMD-Q) instructor), will provide an EMD-Q course to the designated QIU personnel. The course will facilitate the QIU understanding of quality rationale, measurement methods, and applications. Emergency Medical Dispatch-Quality (EMD-Q) training will require a projector for the instructor and a class room suitable for all EMD-Q attendees.
- Initiate use of the MPDS On-line Training. PDC staff will provide on-site supervision and on-line training of communication staff during implementation of MPDS.

**PHASE 5 Quality Assurance Phase (30 days post on-line)**

- Ongoing MDRC support. PDC staff will provide ongoing support for MDRC activities through direct attendance of separate or joint MDRC and Steering Committee meetings.
- QA Review of Agency Calls. PDC personnel will audit and review a predetermined number of calls per month (depending on call volume) via VPN or ftp. Additional calls may need to be reviewed by Agency as per IAED guidelines.
- Review and calibrate QA system data. PDC personnel will review QA reports and data to determine what revisions or adjustments may need to be made.
- Developmental support of Continuing Dispatch Education (CDE) program. PDC staff will review quality assurance data to assist communications staff in identifying possible performance issues to aid in the development of CDE topics. PDC will provide examples and curriculum outlines.
- Field orientation and distribution of Field Responder Guides (FRG) (in appropriate markets). PDC staff will provide a brief (30 minutes) tutorial on the principles of the MPDS and its impact on operations to field personnel. In addition, field personnel and administration will be provided with a description of supporting documentation and adjuncts (Field Responder Guide) that clarify the use of the protocol from a field and management perspective.
- SEND (Secondary Emergency Notification of Dispatch) Orientation (in appropriate markets). PDC will provide an orientation to the SEND card which will be issued to field personnel and to their dispatch staff. The cards are required by non-EMS personnel to provide a minimum amount of information to ensure an appropriate EMS response. Field personnel will be provided with a brief tutorial CD.
- Public education. PDC staff will assist in the development of a public education program to ensure that the implementation of the program is perceived as an enhancement to the system rather than an effort to ration or deny service. PDC staff will be available for media activities.



- Ongoing master case review of the QIU case reviewers and recommendations for performance improvement. PDC staff will provide regular reviews of QIU case reviewer performance to ensure compliance scoring and reporting is consistent with IAED Accreditation requirements.

#### **PHASE 6 Quality Improvement Phase (90 days post on-line)**

- Response configuration modification support. PDC staff will assist the system Medical Director in making changes to response configurations after compliance to protocol has reached appropriate levels.
- System impact evaluation. Once changes to response configurations and modes have been implemented for two months, PDC staff, working with management and the communication staff, will provide an interim assessment regarding the impact of these changes on system performance. Further adjustments will be made as necessary.
- Supplemental Visit (1-day increment). In the event 90% compliance has not been reached at the 90-day post on-line date, PDC will conduct a visit to troubleshoot and assist in the development of an appropriate action plan. Within an agreed upon amount of time following this visit, a supplemental visit will occur to verify that the 90% compliance has been met and the organization is on target for accreditation.

#### **PHASE 7 Accreditation**

- Master review of case review processes prior to accreditation. PDC staff will provide ongoing "master case review" of QIU reviewed cases prior to accreditation. Your communications staff will be responsible for randomly selecting and submitting compliance data on three percent of the calls received and processed by the communications center.
- Accreditation submission support. PDC will provide assistance to your communications staff in the preparation and submission of their Accreditation application and attending documentation.

For more information, see "Accreditation of Excellence" and "20 Points of Accreditation Excellence" located in Tabs 4.5 and 4.5.

#### **PHASE 8 Ongoing support**

- IT, Consulting and or CDE onsite days. PDC will provide ongoing days onsite (number of days to be determined) annually for any applicable protocol refresher, software, consulting, Continuing education requirements as per the client to maintain high MPDS protocol performance and compliance.







## MEMORANDUM OF SOLE SOURCE

### Emergency Medical, Police, and Fire Priority Dispatch Systems

18 February 2021

Priority Dispatch Corp. (evolved from Medical Priority Consultants, Inc.) is the only all-purpose and comprehensive Priority Dispatch systems provider company in the world. This includes the following exclusive areas within Emergency Dispatch:

- 1) Only provider of Expert System Priority Dispatch call-taking software
- 2) Only provider of fully two-way CAD integrated Priority Dispatch software system (ProQA)
- 3) Only provider of Automated Quality Assurance Priority Dispatch Case Review software (AQUA)
- 4) Only provider of 24 hour/7day technical support service for Priority Dispatch-related software
- 5) Only contracted provider of the International Academies of Emergency Dispatch's evidenced based protocols that meets or exceeds International Standards
- 6) Only contracted provider of the International Academies of Emergency Dispatch's unified protocol systems: Medical Priority Dispatch System version 13.3, Police Priority Dispatch System version 6.3, and Fire Priority Dispatch System version 7.1
- 7) Only contracted provider of Priority Dispatch System cardset trays (springless design for MPDS, FPDS, and PPDS cards on-line dispatching), and Priority Dispatch System protocol tablets
- 8) Only contracted provider of the International Academies of Emergency Dispatch's unified alternate care/referral protocol OMEGA (Medical Priority Dispatch System) version 13.3 OMEGA
- 9) Only contracted provider of the IAEMD's Principles of Emergency Medical Dispatch, 6<sup>th</sup> Edition
- 10) Only provider of Comprehensive Implementation of MPDS, FPDS, and PPDS Consulting Services (IAED Accreditation Eligibility services)
- 11) Only contracted Emergency Dispatch Instructor Training organization through the International Academies of Emergency Dispatch
- 12) Only contracted ED-Q Training organization through International Academies of Emergency Dispatch
- 13) Only contracted Quality Performance Review (QPR) comprehensive quality assurance program
- 14) Only contracted Priority Dispatch International Emergency Dispatch Leadership Certification Seminar Training organization through International Academies of Emergency Dispatch
- 15) Only MPDS, FPDS, and PPDS web-based continuing education (CDE) program provider
- 16) Only contracted provider of IAED-approved Priority Dispatch standards and versions update materials
- 17) Only provider of automated EMD Dispatch Diagnostics (Agonal Breathing Detector Dx, Pulse Check Dx, CPR Compressions Monitor and Metronome, Childbirth Contractions Timer Dx, Stroke Diagnostic Tool Dx, Aspirin Diagnostic and Instruction Tool, Meningitis Diagnostic Tool)
- 18) Only provider of Academy Analytics™ powered by FirstWatch®

Priority Dispatch takes pride in being the sole source for the majority of Priority Dispatch-related systems and services and is generally acknowledged as both the inventor of the science and the leader in the field of Priority Dispatch.

If any further information is required, please contact me directly.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff J. Clawson".

Jeff J. Clawson, M.D.  
CEO & Medical Director

# 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

Certificate Number:  
2023-972860

Date Filed:  
01/17/2023

Date Acknowledged:

**1 Name of business entity filing form, and the city, state and country of the business entity's place of business.**

Medical Priority Consultants Inc. D/B/A Priority Dispatch Corp.  
Salt Lake City, UT United States

**2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.**

City of Burleson - Public Safety Communications

**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.**

-  
Medical Priority Dispatch Software License, Implementation, Training, and License Renewal, Service and Support

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	Clawson, Jeffery J.	Salt Lake City, UT United States	X	

**5 Check only if there is NO Interested Party.**

☐

**6 UNSWORN DECLARATION**

My name is Simón Cantarero, and my date of birth is October 27, 1974.

My address is 110 South Regent St., Suite 500, Salt Lake City, Utah, 84111, USA.  
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Salt Lake County, State of Utah, on the 17th day of January, 2023.  
(month) (year)

*J. Simón Cantarero*

Signature of authorized agent of contracting business entity  
(Declarant)

# 2023-01-17 City of Burleson (TX) Form 1295 Certificate. Completed

Final Audit Report

2023-01-17

Created:	2023-01-17
By:	Iman Haddad (iman.haddad@prioritydispatch.net)
Status:	Signed
Transaction ID:	CBJCHBCAABAAC2ToytPg2PjAe9j_M0E-Ht2tUoFHTx6m

## "2023-01-17 City of Burleson (TX) Form 1295 Certificate. Completed" History



Document created by Iman Haddad (iman.haddad@prioritydispatch.net)

2023-01-17 - 9:03:10 PM GMT



Document emailed to Simón Cantarero (simon.cantarero@prioritydispatch.net) for signature

2023-01-17 - 9:03:44 PM GMT



Email viewed by Simón Cantarero (simon.cantarero@prioritydispatch.net)

2023-01-17 - 9:35:43 PM GMT



Document e-signed by Simón Cantarero (simon.cantarero@prioritydispatch.net)

Signature Date: 2023-01-17 - 9:35:56 PM GMT - Time Source: server



Agreement completed.

2023-01-17 - 9:35:56 PM GMT



Adobe Acrobat Sign

**Quote #:** Q-124379**Primary Quoted Solution:** ONESolution PS**Quote expires on:** April 12, 2023**Quote prepared for:**

Paul Bradley

Burleson Police Department

1161 SW. Wilshire Blvd.

Burleson, TX 76028

(817) 426-9600

Thank you for your interest in CentralSquare. CentralSquare provides software that powers over 8,000 communities. More about our products can be found at [www.centralsquare.com](http://www.centralsquare.com).

## WHAT SOFTWARE IS INCLUDED?

	PRODUCT NAME	QUANTITY	UNIT PRICE	TOTAL
1.	ONESolution Medical ProQA/Paramount Interface Annual Subscription Fee	1	2,600.00	2,600.00
Software Total				2,600.00 USD

## WHAT SERVICES ARE INCLUDED?

	DESCRIPTION	TOTAL
1.	Public Safety Project Management Services - Fixed Fee	780.00
2.	Public Safety Technical Services - Fixed Fee	2,340.00
Services Total		3,120.00 USD

## QUOTE SUMMARY

**Software Subtotal**

2,600.00 USD

**Services Subtotal**

3,120.00 USD

**Quote Subtotal**

5,720.00 USD

**Quote Total****5,720.00 USD**

## WHAT ARE THE RECURRING FEES?

TYPE	AMOUNT
FIRST YEAR MAINTENANCE TOTAL	0.00
FIRST YEAR SUBSCRIPTION TOTAL	2,600.00

The amount totals for Maintenance and/or Subscription on this quote include only the first year of software use and maintenance. Renewal invoices will include this total plus any applicable uplift amount as outlined in the relevant purchase agreement.

The On Premise Subscriptions purchased under this Quote shall be governed by Exhibit A attached hereto.

---

## BILLING INFORMATION

Fees will be payable within 30 days of invoicing.

Please note that the Unit Price shown above has been rounded to the nearest two decimal places for display purposes only. The actual price may include as many as five decimal places. For example, an actual price of \$21.37656 will be shown as a Unit Price of \$21.38. The Total for this quote has been calculated using the actual prices for the product and/or service, rather than the Unit Price displayed above.

Prices shown do not include any taxes that may apply. Any such taxes are the responsibility of Customer. This is not an invoice.

For customers based in the United States or Canada, any applicable taxes will be determined based on the laws and regulations of the taxing authority(ies) governing the "Ship To" location provided by Customer on the Quote Form.

## PAYMENT TERMS

### License Fees & Annual Subscriptions

- 100% Due Upon Contract Execution

### Contract Startup

- 100% Due Upon Contract Execution

### Hardware & Third-Party Software

- 100% Due Upon Contract Execution

### Services

- Fixed Fee: 100% Due Upon Completion
- Time & Material: Due as Incurred
- Services Bundle: Fixed Fee, 100% Due Contract Execution

### Third-Party Services

- Fixed Fee: 50% Due Upon Contract Execution; 50% Due Upon Completion

### Travel & Living Expenses

- Due as Incurred

---

## **PURCHASE ORDER INFORMATION**

---

Is a Purchase Order (PO) required for the purchase or payment of the products on this Quote Form? (Customer to complete)

Yes [ ☐ ] No [ ☐ ]

Customer's purchase order terms will be governed by the parties' existing mutually executed agreement, or in the absence of such, are void and will have no legal effect.

PO Number: \_\_\_\_\_

Initials: \_\_\_\_\_

### **Burleson Police Department**

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

Name: \_\_\_\_\_

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

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

## EXHIBIT A

### Terms and Conditions for On-Prem Subscriptions

BY INDICATING YOUR ACCEPTANCE, OR BY USING THE SOFTWARE, YOU ACCEPT THE TERMS AND CONDITIONS AS STATED HEREIN.

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## City Council Regular Meeting

**DEPARTMENT:** City Secretary's Office  
**FROM:** Amanda Campos, City Secretary  
**MEETING:** February 6, 2023

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**SUBJECT:**

Consider approval of a resolution ratifying the appointments of chairpersons and vice-chair persons of the City of Burleson Boards, Commissions and Committees. (*Staff Contact: Amanda Campos, City Secretary*)

**SUMMARY:**

The purpose of this item is to consider a resolution to ratify the appointments of chairpersons and vice-chair persons of the City of Burleson Boards, Commissions and Committees.

Pursuant to Section 2-32 - Chairpersons; vice-chairpersons of the City of Burleson Code of Ordinances, each board, commission or committee must nominate from among its members a member to serve as chair and another member to serve as vice-chair. The city council shall ratify the chair and vice-chair prior to October 1 each year. The city council must continue to use the qualification for ratification of the chair and vice-chair in the enabling ordinance that created the board or commission. All chairpersons are appointed for a duration of one year and must be reappointed annually, but if not reappointed will continue to serve until a successor is appointed.

**OPTIONS:**

N/A.

**RECOMMENDATION:**

Approve resolution.

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

N/A.

**FISCAL IMPACT:**

N/A.

**STAFF CONTACT:**

Name: Amanda Campos, TRMC  
Department: City Secretary's Office  
Email: [acampos@burlesontx.com](mailto:acampos@burlesontx.com)  
Phone: 817-429-9665

## **RESOLUTION**

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BURLESON, TEXAS, RATIFYING THE CHAIRPERSONS AND VICE-CHAIR PERSONS OF THE BURLESON BOARDS, COMMISSIONS AND COMMITTEES; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City of Burleson Code of Ordinances Chapter 2, Article II, Section 2-32 establishes the chairperson and vice-chairperson for all boards, commissions and committees of the city;

**WHEREAS**, City Council appoints members of the public to serve on various boards, commissions and committee; and

**WHEREAS**, appointed members nominate from among its members a member to serve as chair and another member to serve as vice-chair; and

**WHEREAS**, city council shall ratify the chair and vice-chair prior to October 1 each year, and

**WHEREAS**, all chairpersons are appointed for a duration of one-year and must be reappointed annually, and

**WHEREAS**, all chairpersons serve until their successor has been duly appointed and qualified; and

**WHEREAS**, all chairpersons have been submitted for consideration by the City Council.

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

**SECTION 1.** The following chairpersons have been submitted for ratification by a majority of the City Council, and the City Council hereby ratifies the same.

#### **Advisory Committee on People with Disabilities**

- Stephanie Hollins, Chair
- Michael Smith, Vice-chair

#### **Animal Shelter Advisory Committee**

- Jennifer Stockemer, Chair
- Trina Argo, Vice-chair

**Cemetery Board**

- Esmeralda Martin, Chair
- John Gonzales, Vice-chair

**Library Board**

- Joan Coubarous, Chair
- Claire Coggin, Vice-chair

**Old Town Design Standards Review Committee**

- Art Brucks, Chair
- Tim Spears, Vice-chair

**Parks Board**

- Matthew Quinn, Chair
- Sherry Scott, Vice-chair

**Planning & Zoning Commission**

- Adam Russell, Chair
- Michael Tune, Vice-chair

**Zoning Board of Adjustment**

- Dan Milam, Chair
- Sarah Brown, Vice-chair

**PASSED, APPROVED AND SO RESOVED** by the City Council of the City of Burleson, Texas, on the 6th day of February, 2023.

**CITY OF BURLESON**

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Chris Fletcher, Mayor

**ATTEST:**

*(City Seal)*

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Amanda Campos, City Secretary



# City of Burleson Boards & Commission

February 6, 2022 Council Meeting

# Chapter 2 Article II Section 2-32; Chairperson, Vice-Chairperson

Each Board, Commission, and Committee select from its members a Chair and Vice-Chair

- All Chairpersons and Vice-Chairpersons serve for 1 year
- All Chairpersons and Vice-Chairpersons selection must be ratified by the City Council prior to October 1
- Council ratifies all Chairperson and Vice-Chairperson in an open meeting of the council by Resolution



# Action Requested:

Approve Resolution ratifying the appointments of chairpersons and vice-chairperson of the City of Burleson Boards, Commissions, and Committees.

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## City Council Regular Meeting

**DEPARTMENT:** City Secretary's Office  
**FROM:** Amanda Campos, City Secretary  
**MEETING:** February 6, 2023

---

**SUBJECT:**

Consider approval of a resolution appointing the deputy city secretary to serve as acting city secretary in the absence of the city secretary. (*Staff Contact: Amanda Campos, City Secretary*)

**SUMMARY:**

The City Charter establishes the responsibilities of the City Secretary in Section 29 and provides for the appointment by the city council. The city council appointed Amanda Campos the city secretary in 2007 and perform the responsibilities. The city council in 1992 created the position of Deputy City Secretary by Ordinance C-439. The ordinance set forth the appointment of deputy city secretary would be done by the city secretary. City Secretary Amanda Campos appointed Monica Solko, Deputy City Secretary in 2021.

The city charter and the code of ordinances does not clearly provide for the appointment of acting city secretary in the instances of absence of the city secretary. The statutory responsibilities of the city secretary in local government shall be required at all times for the city. This resolution clearly sets forward the city council appointment of the deputy city secretary to hold the authority of the city secretary position when the city secretary is absent. The deputy city secretary shall have the authority to sign and attest for the city secretary as acting city secretary.

**OPTIONS:**

- 1) Approve the resolution
- 2) Approve the resolution with modifications
- 3) Deny the resolution

**RECOMMENDATION:**

Approval of the resolution

**FISCAL IMPACT:**

The position of Deputy City Secretary is a fully funded position since 2004.

**STAFF CONTACT:**

Name: Amanda Campos  
Title: City Secretary  
[acampos@burlesontx.com](mailto:acampos@burlesontx.com)  
817-426-9665



## RESOLUTION

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BURLESON, TEXAS, APPOINTING THE DEPUTY CITY SECRETARY TO SERVE AS ACTING CITY SECRETARY IN THE ABSENCE OF THE CITY SECRETARY; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City Charter establishes the responsibilities of the City Secretary in Section 29; and

**WHEREAS**, the City Council appointed Amanda Campos to serve as City Secretary for the City of Burleson; and

**WHEREAS**, the City Code of Ordinances Chapter 2, Article I, Section 2-1 created the office of Deputy City Secretary and established the City Secretary shall appoint the Deputy City Secretary; and

**WHEREAS**, the City Secretary appointed Monica Solko to be the Deputy City Secretary for the City of Burleson, and

**WHEREAS**, the Deputy City Secretary shall assume the responsibilities of the City Secretary during the City Secretary's temporary absence or disability, and

**WHEREAS**, the Deputy City Secretary will be Acting City Secretary will all the authority and full rights of the position during this time period if needed; and

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

### SECTION 1.

That the Deputy City Secretary shall be appointed Acting City Secretary in the absence of the City Secretary.

**PASSED, APPROVED AND SO RESOVED** by the City Council of the City of Burleson, Texas, on the 6th day of February, 2023.

**CITY OF BURLESON**

\_\_\_\_\_  
Chris Fletcher, Mayor

**ATTEST:**

*(City Seal)*

\_\_\_\_\_  
Amanda Campos, City Secretary

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## City Council Regular Meeting

**DEPARTMENT:** City Secretary Office  
**FROM:** Amanda Campos, City Secretary  
**MEETING:** February 6, 2023

---

**SUBJECT:**

Consider approval of an ordinance amending the text of Appendix B, Zoning, Article I, Board of Adjustments and Appendix C, Urban Design Standards, Article IV Old Town Design Standards, Old Town Design Standards Committee of the Code of Ordinances by amending the number of voting members and terms of members for the Board of Adjustments and Old Town Design Standards Committee. (Final Reading) (Staff Presenter: Amanda Campos, City Secretary)

**SUMMARY:**

The city council reviewed and discussed the current structure of all the city's boards, commissions, and committees with the goal in mind to increase community participation. The review covered the number of members, the qualifications, total number of existing boards, commissions, and committee, the term limits, and the absence rule.

The city council agreed the number of members appointed to each board, commission, and committee should be increased to 9 voting members. The qualifications, the absence rule, and number of existing boards, commissions, and committees should remain unchanged.

The city council agreed the term limits should be modified by changing the current term limits from 3 full terms to 2 full terms for all boards, commissions, and committee except the planning and zoning commission and youth members. The proposed amendments would change 3 full 3 year terms to 2 full 3 year terms. The planning and zoning commission terms will remain unchanged and continue to be 3 full 3 year terms. All youth member terms would change to a 1 year term with no term limits.

The transition of the these changes will be as follows:

1. Each current term of all member of all boards, commissions, and committee would remain the same as they currently are.
2. Term limits will effect members when their current term is over and under review and consideration for re-appointment.
3. The number of members will increase to 9 voting members after final approval of the ordinance (January 23, 2023) and required publication of ordinance in both a newspaper

and website. Would suggest council provide for an effective date of April 1, 2023 to allow time to appoint members to the vacancies created by added numbers.

The Board of Adjustments and the Old Town Design Standards committee were established in Appendix B, Zoning and Appendix C, Urban Design Standards requiring a public hearing and consideration of the Planning and Zoning Commission for recommendation to the city council. This item is presented to city council for consideration on first reading at this January 23, 2023 council meeting with the final reading presented at the February 6, 2023 meeting. City council will follow Council Policy #40 Boards/Commissions/Committee appointment process.

The Board of Adjustments currently is composed of 5 regular voting members and 4 alternate members. The alternate members only vote when there is an absence on the board. The new proposed change to 9 voting members would allow these alternate members to become full voting members. The change requires amendments to Section 11, Board of adjustments, 11-100. Organization and 11-120. Vote required for board decisions.

### **Section 11. Board of adjustment.**

**11-100. Organization.** There is hereby created a board of adjustment. ~~The board membership shall be in compliance with Chapter 2, Article II, Section 2-31(e) for number of members, Section 2-33(a) for qualifications and Section 2-31(d) for terms, consisting of five members, each to be appointed for a term of two years and removable for cause by the city council upon written charges and after public hearing. Vacancies shall be filled for the unexpired term of any member whose position becomes vacant. The city council may appoint four alternate members who shall serve in the absence of one or more regular members when requested to do so by the mayor or city manager, as the case may be. All cases to be heard by the board of adjustment must be heard by a minimum number of the four five members. The alternate members shall serve for the same terms and shall be subject to removal the same as regular members. Vacancies in the positions of alternate members shall be filled in the same manner as for regular members.~~

**11-120. Vote required for board decisions.** The concurring vote of ~~four five~~ members of the board shall be necessary to reverse any order, requirement, decision, or determination of any administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under this ordinance, or to effect any variance to the ordinance.

The Old Town Design Standard Review Committee currently is composed of 5 regular voting members and 2 alternate members. The new proposed change to 9 voting members would all the alternate members to be full voting members and provide for 2 new members. These changes require amendments to Section 4-91 Appointment and terms.

**Sec. 4-91. Appointment and terms.**

- A. → *Membership.* ~~The committee membership shall be in compliance with Chapter 2, Article II, Section 2-31(e) for number of members. The committee shall be composed of five regular members and two alternate members appointed by the City Council. Regular members shall be appointed to places numbered 1 through 5 and the alternate members shall be appointed to places numbered 6 and 7. The City Council shall appoint a chair from among the regular members.~~ The director of planning or that person's duly authorized representative shall be an ex-officio member of and shall act as secretary to the committee, but shall have no vote on any matter before the committee. Appointed members of the committee shall hold office at the pleasure of the City Council.
- B. → *Terms.* ~~Each member shall serve terms in compliance with Chapter 2, Article II, Section 2-31(d). Upon initial appointment pursuant to this ordinance, members in the odd-numbered places shall be appointed to serve terms expiring on October 30, 2005, and members appointed to the even-numbered places shall serve terms expiring on October 30, 2006. Thereafter, the terms of office of the members shall be two years beginning on November 1, of the year of appointment. The terms of the odd-numbered places shall expire in the odd-numbered years, and the terms of the even-numbered places shall expire in the even-numbered years. Committee members may be appointed to succeed themselves. Vacancies shall be filled by the City Council for the unexpired term. Newly appointed members shall be installed at the first regular committee meeting after their appointment.~~
- C. → *Alternate members.* ~~The alternate members shall serve in the absence of one or more regular members. Alternate members must meet the same qualifications as regular committee members. An alternate member has voting privileges only when sitting in place of an absent member and may be seated in place of any member.~~

**OPTIONS:**

- 1) Approve Ordinance Modification for text amendments to Appendix B, Zoning, Article I, Board of Adjustments and Appendix C, Urban Design Standards, Article IV Old Town Design Standards, Old Town Design Standards Committee as presented
- 2) Approve Ordinance Modification for text amendments to Appendix B, Zoning, Article I, Board of Adjustments and Appendix C, Urban Design Standards, Article IV Old Town Design Standards, Old Town Design Standards Committee with changes
- 3) Deny Ordinance Modification for text amendments to Appendix B, Zoning, Article I, Board of Adjustments and Appendix C, Urban Design Standards, Article IV Old Town Design Standards, Old Town Design Standards Committee

**RECOMMENDATION:**

Staff recommends approval to accomplish city council goals of increased participation.

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

The Planning & Zoning Commission held a public hearing and considered this item at their January 17, 2023 meeting. The commission recommended approval.

**FISCAL IMPACT:**

N/A

**STAFF CONTACT:**

Name: Amanda Campos  
Title: City Secretary  
[acampos@burlesontx.com](mailto:acampos@burlesontx.com)  
817-426-9665

## **ORDINANCE**

AN ORDINANCE AMENDING THE CITY OF BURLESON CODE OF ORDINANCES BY AMENDING SECTIONS 11-100 (ORGANIZATION) AND 11-120 (VOTE REQUIRED FOR BOARD DECISIONS) OF SECTION 11 (BOARD OF ADJUSTMENT) OF ARTICLE I (ADMINISTRATIVE) OF APPENDIX B (ZONING) AND SECTION 4-91 (APPOINTMENT AND TERMS) OF DIVISION 5 (BURLESON OLD TOWN DEVELOPMENT STANDARDS REVIEW COMMITTEE) OF ARTICLE IV (OLD TOWN DESIGN STANDARDS) OF APPENDIX C (URBAN DESIGN STANDARDS) BY INCREASING THE NUMBER OF VOTING MEMBERS ON THE ZONING BOARD OF ADJUSTMENT AND OLD TOWN DEVELOPMENT STANDARDS REVIEW COMMITTEE AND TO LIMIT THE NUMBER OF CONSECUTIVE TERMS A MEMBER MAY SERVE ON SAID BOARDS, EXCEPT FOR YOUTH MEMBERS; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW; PROVIDING A CUMULATIVE CLAUSE, A SEVERABILITY CLAUSE, AND 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**, the City Council desires to increase the number of voting members to nine (9) on the Zoning Board of Adjustment and Old Town Development Standards Review Committee; and

**WHEREAS**, except for youth members, the City Council desires to limit the number of consecutive terms a member may serve on the Zoning Board of Adjustment and Old Town Development Standards Review Committee to two (2); and

**WHEREAS**, the City Council desires to amend its ordinances as provided herein; and

**WHEREAS**, the City Council hereby finds and determines that the amendments and regulations set forth herein are in the best interest of the public and are adopted 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.**

Appendix B “Zoning,” Article I “Administrative,” Section 11 “Board of Adjustment,” is hereby amended by repealing and replacing Section 11-100 “Organization” to read as follows:

**“Sec. 11-100. Organization.**

There is hereby created a board of adjustment. The board membership shall be in compliance with Chapter 2, Article II, Section 2-31(e) for the number of members, Section 2-33(a) for qualifications of members, and Section 2-31(d) for terms of members. The City Council may appoint three alternate members who shall serve in the absence of one or more regular. All cases to be heard by the board of adjustment must be heard by a minimum number of the seven members. The alternate members shall serve for the same terms and shall be subject to removal the same as regular members. Vacancies in the positions of alternate members shall be filled in the same manner as for regular members.”

**Section 2**

Appendix B “Zoning,” Article I “Administrative,” Section 11 “Board of Adjustment,” is hereby amended by repealing and replacing Section 11-120 “Vote Required for Board Decisions” to read as follows:

**“Sec. 11-120. Vote Required for Board Decisions.**

The concurring vote of seven members of the board of adjustment shall be necessary to reverse any order, requirement, decision, or determination of any administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under this ordinance, or to effect any variance to the ordinance.”

**Section 3**

Appendix C “Urban Design Standards,” Article IV “Old Town Design Standards,” Division 5 “Burleson Old Town Development Standards Review Committee,” is hereby amended by repealing and replacing Section 4-91 “Appointment and Terms” to read as follows:

**“Sec. 4-91. Appointment and Terms.**

- A. *Membership.* The committee membership shall be in compliance with Chapter 2, Article II, Section 2-31(e) for number of members. The director of planning or that person’s duly authorized representative shall be an ex officio member of and shall act a secretary to the committee, but shall have no vote on any matter before the committee. Appointed members of the committee shall hold office at the pleasure of the City Council.
- B. *Terms.* Each member shall serve terms in compliance with Chapter 2, Article II, Section 2-31(d).”

**Section 4**

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 5**

This ordinance shall be cumulative of all provisions of the City Code and other ordinances of the City of Burleson, Texas, except where the provisions of this ordinance are in direct conflict with the provisions of other ordinances, in which event the conflicting provisions of the other ordinances are hereby repealed.

## Section 6

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 7

This ordinance shall be in full force and effect on and after April 1, 2023. The City Secretary shall provide for the publication of this ordinance after its passage and as provided by law.

First Reading:        the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Final Reading:        the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**PASSED AND APPROVED this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.**

\_\_\_\_\_  
Chris Fletcher, Mayor

(Seal)

ATTEST:

APPROVED AS TO FORM & LEGALITY:

\_\_\_\_\_  
Amanda Campos, City Secretary

\_\_\_\_\_  
E. Allen Taylor, Jr., City Attorney



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## City Council Regular Meeting

**DEPARTMENT:** Economic Development  
**FROM:** Alex Philips, Economic Development Director  
**MEETING:** February 6, 2023

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**SUBJECT:**

Consider approval of an Amendment to the Chapter 380 Economic Development and Performance Agreement between the City of Burleson, Burleson 4A Economic Development Corporation, Burleson Community Service Development Corporation, and AC Burleson, LLC for a family entertainment facility located at 1258 SW Alsbury Blvd. (*Staff Presenter: Alex Philips, Economic Development Director*)

**SUMMARY:**

The City Council, Burleson 4A Economic Development Corporation, and Burleson Community Service Development Corporation approved a Chapter 380 Economic Development and Performance Agreement on December 13, 2021, with AC Burleson, LLC.

Alley Cats is a family owned establishment with locations in Arlington and Hurst. The family has been in business since 1964 operating the Putt-Putt Golf and games in the region. They offer a multitude of offerings including bowling, arcade. Laser tag, batting cages, go-carts and so much more.

Alley Cats Entertainment will be relocating their corporate office to Burleson within the development that is being proposed at 1258 SW Alsbury Boulevard. The development will be approximately 50,000 square feet and will include bowling lanes as well as lanes that will be for corporate and other events, arcade, miniature golf, batting cages, go-carts and a meeting room with a seated capacity of 100 people.

The amendment to the agreement is being requested due to the requirements of their financing. The Small Business Administration requires the use of green energy in the form of solar to be 15% of the electricity for the development. Due to this requirement AC Burleson, LLC, had to redesign the roof and electrical to support the solar panels that will be within the development to get the approval needed.

They are asking that the following dates be adjusted by one year to August 1, 2024, for the completion of the development:

- Complete construction of the Development no later than August 1, 2023.
- Make a minimum Capital Investment of no less than \$10,000,000 Dollars in the property no later than August 1, 2023.
- Opening Date for the Family Entertainment Center and Corporate Headquarters no later than August 1, 2023.
- Relocate the Alley Cats corporate headquarters to the Burleson location by August 1, 2023.

**OPTIONS:**

- 1) Approve as presented
- 2) Deny the Amendment

**RECOMMENDATION:**

Staff recommends the approval of the Amendment

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

Original Agreement was passed on December 13, 2021.

**FISCAL IMPACT:**

N/A

**STAFF CONTACT:**

Alex Philips  
Economic Development Director  
aphilips@burlesontx.com  
817-426-9613



# Economic Development



- AC Burleson, LLC is requesting an amendment to the 380 Agreement.
- AC Burleson is financing the construction of the development through the Small Business Administration.
- The request is due to the requirements of the SBA. One of the major requirements is the use of solar in the development.
- Due to this requirement AC Burleson needed to redesign the roof and electrical to support the weight and wind load of the solar panels.
- They are requesting the construction completion date, capital investment requirement date, relocation of the corporate headquarters date, and the opening date be pushed a year to August 1, 2024

# Alley Cats Obligations



- Completed the purchase of the property by June 30, 2022. **(Completed)**
- Commence construction of the development by July 31, 2022. **(Completed with the installation of environmental fencing and placement of job trailer)**
- Complete construction of the Development no later than August 1, 2023, with an approximate Capital Investment of no less than \$10 million dollars. **(August 2024)**
- Prospect agrees to relocate the corporate headquarters to the Burleson facility. The facility will have a separate entrance marked as corporate headquarters. **(August 2024)**
- Opening date of the Family Entertainment Center by August 1, 2023. **(August 2024)**







- Approve the 380 Amendment with AC Burleson, LLC.
- Deny the 380 Amendment with AC Burleson, LLC.



# Questions / Comments

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**FIRST AMENDMENT TO THE**  
**CHAPTER 380 AND ECONOMIC DEVELOPMENT AND PERFORMANCE**  
**AGREEMENT BETWEEN THE CITY OF BURLESON, THE BURLESON 4A**  
**ECONOMIC DEVELOPMENT CORPORATION, THE BURLESON COMMUNITY**  
**SERVICE DEVELOPMENT CORPORATION, AND AC BURLESON, LLC**

This First Amendment to the Chapter 380 Economic Development and Performance Agreement (the "Amendment") is made and entered into on this \_\_\_\_ day of February, 2023, by and between the City of Burleson, a Texas municipal corporation located in the Counties of Johnson and Tarrant, State of Texas ("City"), by and through its City Manager, the Burleson 4A Economic Development Corporation ("EDC"), a Texas municipal development corporation located in the City, by and through its Board President, the Burleson Community Service Development Corporation ("BCSDC") acting by and through its Board President, and AC Burleson, LLC ("Alley Cats"), a Texas limited liability company, acting by and through its manager. City, EDC, BCSDC, and Alley Cats are sometimes hereafter referred to individually as a "Party" and collectively as the "Parties."

**RECITALS:**

WHEREAS, on or about December 13, 2021, the City, the EDC, BCSDC and Alley Cats entered into that certain Chapter 380 Economic Development and Performance Agreement (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. Section 4.01 "Covenants Regarding Alley Cats Development and Operations" of the Agreement is hereby amended and replaced to read as follows:**

"4.01 Covenants Regarding Alley Cats Development and Operations. In consideration of City agreeing to pay Alley Cats the Grant Payments in accordance with the terms, provisions and conditions of this Agreement, Alley Cats agrees to the following, which are not obligations of Alley Cats, but are duties that must be fulfilled in order to receive Grant Payments and Incentives:

- (A) Design and construct the Development in conformance with the criteria and development standards set forth in the ordinances of the City of Burleson and applicable state and federal laws.
- (B) Design and construct the Development in substantial conformance with the Concept Plan.



- (C) Operate the Development in conformance with the criteria and development standards set forth in the ordinances of the City of Burleson and applicable state and federal laws.
- (D) Design and construct the Development to include the following amenities:
  - D.01 Bowling Lanes;
  - D.02 Secondary Bowling Lanes for corporate and other events, including parties;
  - D.03 Arcade;
  - D.04 Laser Tag;
  - D.05 Miniature Golf;
  - D.06 Batting Cages;
  - D.07 Go-Karts; and
  - D.08 Meeting Room with a seated capacity of at least 100 people.
- (E) Design and construct the Development to include an entrance to the Corporate Headquarters that is marked and signed as the corporate headquarters of Alley Cats and that is separate and distinct from the entrance to the Family Entertainment Center.
- (F) If Alley Cats does not own fee simple title to the Property as of the Effective Date, enter into a real estate contract to purchase fee simple title to the Property by December 31, 2021.
- (G) Complete a pre-development meeting with the City by December 31, 2021.
- (H) Complete platting and zoning approval by the City Council by April 30, 2022.
- (I) If Alley Cats does not own fee simple title to the Property as of the Effective Date, purchase and acquire fee simple title to the Property by June 30, 2022.
- (J) Commence construction of the Development no later than July 31, 2022.
- (K) Complete construction of the Development no later than **August 1, 2024**.
- (L) Make a minimum Capital Investment of no less than TEN MILLION AND NO/100 DOLLARS (\$10,000,000.00) in the Property no later than **August 1, 2024**.
- (M) Relocate the Alley Cats corporate headquarters to the Corporate Headquarters no later than **August 1, 2024**.



- (N) Opening Date for the Family Entertainment Center and Corporate Headquarters no later than **August 1, 2024**.
- (O) After the Opening Date, operate the Family Entertainment Center and Corporate Headquarters for the term of this Agreement subject to (i) Force Majeure, (ii) casualty and condemnation, and (iii) temporary closings for repair, renovations and/or alterations not to exceed ninety (90) consecutive days, in each event, subject to extensions for force majeure.
- (P) Alley Cats shall remain current and paid on all property taxes, subject to appeal rights in accordance with law and subject to a right to cure any delinquency as set forth herein."

2. **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]*

EXECUTED on the respective dates of acknowledgement, to be effective as of the date first set forth above.

**CITY OF BURLESON**

By: \_\_\_\_\_  
Bryan Langley, City Manager

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

STATE OF TEXAS  
COUNTY OF JOHNSON

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_ by Bryan Langley, known personally by me to be the City Manager of the City of Burleson, on behalf of said City.

[Notary Seal]

\_\_\_\_\_  
Notary Public, State of Texas



**BURLESON 4A ECONOMIC DEVELOPMENT  
CORPORATION**

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

Name: \_\_\_\_\_

Title: Board President

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

STATE OF TEXAS  
COUNTY OF \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_ by  
\_\_\_\_\_, known personally by me to be the Board President of the  
Burleson 4A Economic Development Corporation, on behalf of said entity.

[Notary Seal]

\_\_\_\_\_  
Notary Public, State  
of Texas

**BURLESON COMMUNITY SERVICES  
ECONOMIC DEVELOPMENT CORPORATION**

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

Name: \_\_\_\_\_

Title: Board President

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

STATE OF TEXAS  
COUNTY OF \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_ by  
\_\_\_\_\_, known personally by me to be the Board President of the  
Burleson Community Services Development Corporation, on behalf of said entity.

[Notary Seal]

\_\_\_\_\_  
Notary Public, State of Texas



AC BURLESON, LLC

By: 

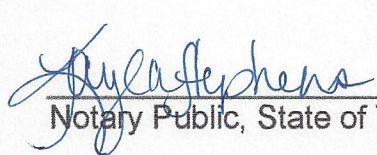
Brian K. Smith, Manager

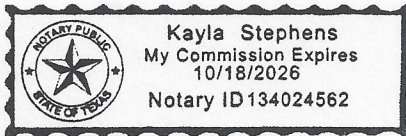
Date: 1-26-2023

STATE OF TEXAS  
COUNTY OF Tarrant

This instrument was acknowledged before me on Jan 26, 2023 by Brian K. Smith, known personally by me to be the Manager of AC Burleson, LLC, on behalf of said entity.

[Notary Seal]

 / Kayla Stephens  
Notary Public, State of Texas



**Exhibit A**  
**The Agreement**



**CHAPTER 380 AND ECONOMIC DEVELOPMENT AND PERFORMANCE  
AGREEMENT BETWEEN THE CITY OF BURLESON, THE BURLESON 4A  
ECONOMIC DEVELOPMENT CORPORATION, THE BURLESON COMMUNITY  
SERVICE DEVELOPMENT CORPORATION, AND AC BURLESON, LLC**

This Chapter 380 Economic Development and Performance Agreement (the "Agreement") is entered into as of December 13, 2021 (the "Effective Date") by and between the City of Burleson, a Texas municipal corporation located in the Counties of Johnson and Tarrant, State of Texas ("City"), by and through its City Manager, the Burleson 4A Economic Development Corporation ("EDC"), a Texas municipal development corporation located in the City, by and through its Board President, the Burleson Community Service Development Corporation ("BCSDC") acting by and through its Board President, and AC Burleson, LLC ("Alley Cats"), a Texas limited liability company, acting by and through its manager. City, EDC, BCSDC, and Alley Cats are sometimes hereafter referred to individually as a "Party" and collectively as the "Parties."

**WITNESSETH:**

**WHEREAS**, on May 27, 1993, the City adopted Resolution No. 583 establishing an Economic Development Program (the "Program") pursuant to Chapter 380 of the Texas Local Government Code; and

**WHEREAS**, Alley Cats desires to participate in the Program by entering into this Agreement; and

**WHEREAS**, the Burleson City Council finds and determines that this Agreement will effectuate the purposes set forth in the Program, and that Alley Cats's performance of its obligations herein will promote local economic development and stimulate business and commercial activity in the City; and

**WHEREAS**, the City is authorized by Article 52-a Texas Constitution, and Section 380 of the Texas Local Government Code to provide economic development grants to promote local economic development and to stimulate business and commercial activity in the City; and

**WHEREAS**, Alley Cats owns or has under contract to purchase and own certain real property in the City of Burleson, Johnson County, Texas, commonly known as 1258 SW Alsbury, Burleson, Texas, and more particularly described in Exhibit "A", attached hereto and incorporated herein by reference for all purposes (the "Property"); and

**WHEREAS**, Alley Cats proposes to operate a regional or national commercial headquarters and a family entertainment center on the Property; and

**WHEREAS**, the City has found the Development (hereinafter defined) will contribute to an increase in economic development in the City; and

**WHEREAS**, the EDC has determined and found that the incentives contemplated in this Agreement constitute a "Project" as defined by the Development Corporation Act, codified in Subtitle C-1 of Title 12 of the Texas Local Government Code, in Section 501.101, in that the expenditures fund the provision of land, buildings, equipment, facilities, expenditures, or targeted infrastructure and improvements that are for the creation or retention of primary jobs for regional or national corporate headquarters facilities; and

**WHEREAS**, the BCSDC has determined and found that the incentives contemplated in this Agreement constitute a "Project" as defined by the Development Corporation Act, codified in Subtitle C-1 of Title 12 of the Texas Local Government Code, in Section 501.101, in that the expenditures fund the provision of land, buildings, equipment, facilities, expenditures, or targeted infrastructure and improvements that are for the creation or retention of primary jobs for regional or national corporate headquarters facilities; and

**WHEREAS**, the BCSDC has further determined and found that the incentives contemplated in this Agreement constitute a "Project" as defined by the Development Corporation Act, codified in Subtitle C-1 of Title 12 of the Texas Local Government Code, in Section 505.152, in that the expenditures fund the provision of land, buildings, equipment, facilities, expenditures, or improvements that are required or suitable for use for athletic, entertainment, and tourist purposes; and

**WHEREAS**, the Property is not owned or leased by any member of the Burleson City Council or any member of the City Planning and Zoning Commission; and

**WHEREAS**, the Burleson City Council finds and determines that Alley Cats performance of its obligations herein will revitalize the John Jones corridor and promote local economic development and stimulate business and commercial activity in the City.

**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:

#### **ARTICLE 1.** **AUTHORIZATION**

The Burleson City Council finds and determines that this Agreement is authorized by Chapter 380 of the Texas Local Government Code and Chapters 501, 504, and 505 of the Texas Local Government Code.

#### **ARTICLE 2.** **DEFINITIONS**



- 2.01 The terms "Agreement," "Alley Cats," "BCSDC," "City," "EDC," "Effective Date," "Party," "Parties," "Program," and "Property," shall have the meanings provided, above.
- 2.02 "Affiliate" means any person or entity that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with Alley Cats.
- 2.03 "Available Sales Taxes" means the amount of Sales Tax actually and lawfully received by the City from the Texas Comptroller of Public Accounts attributable to gross taxable sales at the Family Entertainment Center during each calendar year or portion thereof during the Term of this Agreement.
- 2.04 "Capital Investment" means and shall include all costs incurred relating to the improvement of the Property, including the purchase price of the building and actual construction costs of all buildings, structures, infrastructure, utilities, landscaping and other onsite improvements, including all labor and materials, and shall include any third party funds borrowed by Alley Cats in furtherance thereof.
- 2.05 "City Sales Tax" means the tax authorized and levied pursuant to Section 321.101 of the Texas Tax Code and payable into the general fund, currently established at one percent (1%). City Sales Taxes shall not include sales and/or use taxes levied and collected exclusively for special purposes (such as a Type A or B Corporation) created and operating under the Development Corporation Act, codified in subtitle C1 of Title 12, Texas Local Government Code, transit districts. If the City, at its discretion ever elects to, or the voters choose to, reallocate the City Sales Tax and to levy less than a one percent (1%) sales tax, then "City Sales Taxes" shall mean the amount of sales taxes actually received by the City of Burleson arising from the actual City Sales Tax levied on gross taxable sales. Should the voters or the City set the City Sales Tax rate at more than one percent (1%), the City Sales Tax will not exceed one percent (1%).
- 2.06 "Concept Plan" means the plan depicted on **Exhibit "B"**.
- 2.07 "Corporate Headquarters" means the national corporate headquarters of Alley Cats, comprised of approximately 2,000 square feet and located on the Property.
- 2.08 "Development" means the construction of the Corporate Headquarters and Family Entertainment Center and related landscaping and onsite infrastructure on the Property.
- 2.09 "Event of Bankruptcy" means the dissolution or termination of Alley Cat's existence as a going business, insolvency, appointment of receiver for any part of Alley Cat's property and such appointment is not terminated within 90 days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Alley Cats and such proceeding is not dismissed within 90 days after the filing thereof.

- 2.10 "Family Entertainment Center" means an Alley Cats operated and branded facility comprised of approximately 50,000 square feet located on the Property operated in a manner substantially similar to the Alley Cats Entertainment located at 609 NE Loop 820 Hurst, Texas, that includes the following amenities: (1) bowling lanes; (2) secondary bowling lanes for corporate and other events including parties; (3) arcade; (4) laser tag; (5) miniature golf; (6) batting cages; (7) go-karts; and (8) a meeting room with a seated capacity of at least 100 people.
- 2.11 "Grant Payment(s)" means the periodic payments of a percentage of Available Sales Taxes as provided herein.
- 2.12 "Grant Payment Cap" has the meaning set forth in Section 5.02 of this Agreement.
- 2.13 "Incentives" mean the combined contributions, monetary or otherwise, of the City, EDC, and BCSDC towards completion of the Development, as required by this Agreement.
- 2.14 "Opening Date" means that date on which Alley Cats opens both the Family Entertainment Center and Corporate Headquarters.
- 2.15 "Sales Tax" shall mean the combination of the City Sales Tax, Type A Sales Tax, and Type B Sales Tax, the combination of which is currently established at two percent (2.0%).
- 2.16 "Type A Sales Tax" means the tax authorized, adopted, levied and/or collected by or on behalf of the City pursuant to Section 321.101(b) of the Texas Tax Code, as amended and/or replaced, currently established at one-half of one percent (0.5%), for use by the Burleson 4A Economic Development Corporation, a Type A economic development corporation, operating pursuant to Chapter 504 of the Texas Local Government Code, as amended and/or replaced. If the City, at its discretion ever elects to, or the voters choose to, reallocate the Type A Sales Tax and to levy less than a one-half of one percent (0.5%) sales tax, then "Type A Sales Taxes" shall mean the amount of sales taxes actually received by the City of Burleson arising from the actual Type A Sales Tax levied on gross taxable sales. Should the voters or the City set the Type A Sales Tax rate at more than one-half of one percent (0.5%), the Type A Sales Tax will not exceed one-half of one percent (0.5%).
- 2.17 "Type B Sales Tax" means the tax authorized, adopted, levied and/or collected by or on behalf of the City pursuant to Section 321.101(b) of the Texas Tax Code, as amended and/or replaced, currently established at one-half of one percent (0.5%), for use by the Burleson Community Service Development Corporation, a Type B economic development corporation, operating pursuant to Chapter 505 of the Texas Local Government Code, as amended and/or replaced. If the City, at its discretion ever elects to, or the voters choose to, reallocate the Type B Sales Tax and to levy less than a one-half of one percent (0.5%) sales tax, then "Type B Sales Taxes" shall mean the amount of sales taxes actually received by the City



of Burleson arising from the actual Type B Sales Tax levied on gross taxable sales. Should the voters or the City set the Type B Sales Tax rate at more than one-half of one percent (0.5%), the Type B Sales Tax will not exceed one-half of one percent (0.5%).

### **ARTICLE 3.** **TERM**

The term of this Agreement shall commence on the Effective Date and will terminate ten years following the date Alley Cats receives a Certificate of Occupancy on the Property.

### **ARTICLE 4.** **COVENANTS OF ALLEY CATS**

4.01 Covenants Regarding Alley Cats Development and Operations. In consideration of City agreeing to pay Alley Cats the Grant Payments in accordance with the terms, provisions and conditions of this Agreement, Alley Cats agrees to the following, which are not obligations of Alley Cats, but are duties that must be fulfilled in order to receive Grant Payments and Incentives:

- (A) Design and construct the Development in conformance with the criteria and development standards set forth in the ordinances of the City of Burleson and applicable state and federal laws.
- (B) Design and construct the Development in substantial conformance with the Concept Plan.
- (C) Operate the Development in conformance with the criteria and development standards set forth in the ordinances of the City of Burleson and applicable state and federal laws.
- (D) Design and construct the Development to include the following amenities:
  - D.01 Bowling Lanes;
  - D.02 Secondary Bowling Lanes for corporate and other events, including parties;
  - D.03 Arcade;
  - D.04 Laser Tag;
  - D.05 Miniature Golf;
  - D.06 Batting Cages;
  - D.07 Go-Karts; and

D.08 Meeting Room with a seated capacity of at least 100 people.

- (E) Design and construct the Development to include an entrance to the Corporate Headquarters that is marked and signed as the corporate headquarters of Alley Cats and that is separate and distinct from the entrance to the Family Entertainment Center.
- (F) If Alley Cats does not own fee simple title to the Property as of the Effective Date, enter into a real estate contract to purchase fee simple title to the Property by December 31, 2021.
- (G) Complete a pre-development meeting with the City by December 31, 2021.
- (H) Complete platting and zoning approval by the City Council by April 30, 2022.
- (I) If Alley Cats does not own fee simple title to the Property as of the Effective Date, purchase and acquire fee simple title to the Property by June 30, 2022.
- (J) Commence construction of the Development no later than July 31, 2022.
- (K) Complete construction of the Development no later than August 1, 2023.
- (L) Make a minimum Capital Investment of no less than TEN MILLION AND NO/100 DOLLARS (\$10,000,000.00) in the Property no later than August 1, 2023.
- (M) Relocate the Alley Cats corporate headquarters to the Corporate Headquarters no later than August 1, 2023.
- (N) Opening Date for the Family Entertainment Center and Corporate Headquarters no later than August 1, 2023.
- (O) After the Opening Date, operate the Family Entertainment Center and Corporate Headquarters for the term of this Agreement subject to (i) Force Majeure, (ii) casualty and condemnation, and (iii) temporary closings for repair, renovations and/or alterations not to exceed ninety (90) consecutive days, in each event, subject to extensions for force majeure.
- (P) Alley Cats shall remain current and paid on all property taxes, subject to appeal rights in accordance with law and subject to a right to cure any delinquency as set forth herein.

4.02 Verification of Capital Investment. Within 45 days following the receipt of a Certificate of Occupancy for the Development, Alley Cats shall provide written verification to the City that the Capital Investment made by Alley Cats meets or exceeds the requirements set forth in this Agreement. Alley Cats agrees that City shall not be required to make any Grant Payments under this Agreement until such

time that Alley Cats provides such written verification. The City may request, and Alley Cats hereby agrees that it will permit reasonable review of information that permits the City to verify that the Capital Investment made by Alley Cats for the Development meets or exceeds the requirements of this Agreement.

## **ARTICLE 5. PROGRAM GRANT**

- 5.01 Subject to Alley Cats complying with his duties and obligations under this Agreement, the City agrees that, subject to the terms and conditions contained herein, Alley Cats shall be entitled to receive Grant Payments and benefits according to the schedule set forth in this Article.
- 5.02 The maximum Grant Payments cumulatively available to Alley Cats over the term of this Agreement shall not exceed Seven Hundred Fifty Thousand Dollars (\$750,000.00).
- 5.03 The City shall make Grant Payments to Alley Cats in annual installments equal to one hundred percent (100%) of Available Sales Taxes received by the City for the prior calendar year of the Family Entertainment Center's operation.
- 5.04 The Grants Payments shall cease upon the earlier of:
- (A) The date upon which the Grant Payment is paid for the final twelve (12) month period ending five years following the date Alley Cats receives a Certificate of Occupancy on the Property; or
  - (B) The date upon which the Grant Payment Cap has been reached.
- 5.05 For each calendar year in which a grant payment is requested, Alley Cats agrees to provide a release to the City that will allow the Texas Comptroller of Public Accounts (the "Comptroller") to release information to the City that documents the amount of Available Sales Taxes collected by the Comptroller for the City from the Restaurant (the "Sales Tax Disclosure"). The City and Alley Cats shall rely on the Sales Tax Disclosure as accurate and definitive for purposes of this Agreement. City shall not be required to pay Alley Cats the Grant Payments under this Article until such time that Alley Cats provides the required release and the Comptroller provides the Sales Tax Disclosure.
- 5.06 Following receipt of the Sales Tax Disclosure and the receipt of Available Sales Taxes by City, City shall pay Alley Cats the annual installment of Grant Payments due hereunder, subject to the terms and provisions of this Agreement, within 60 days. Both parties acknowledge that as of the Effective Date of this Agreement, the Sales Tax Disclosure and disbursement of Available Sales Taxes for the prior calendar year to City by Comptroller is expected to occur no sooner than March 1 of each calendar year.

## **ARTICLE 6.**



## INCENTIVES

- 6.01 Subject to Alley Cats complying with its duties and obligations under this Agreement, the City agrees to the following Incentives: The City shall reimburse to Alley Cats a total amount not to exceed One Million Two Hundred Fifty Thousand Dollars (\$1,250,000.00) for expenses related to the Corporate Headquarters. The Incentives shall be paid in the incremental, scheduled amounts specified below upon completion of the following Development construction milestones:
- (A) Upon closing on the real estate contract and obtaining fee simple title to the Property, the Incentive due to Alley Cats shall be One Hundred Fifty-Six Thousand Two Hundred and Fifty Dollars (\$156,250);
  - (B) Upon receiving a building permit for construction of the Development, the Incentive due to Alley Cats shall be One Hundred Fifty-Six Thousand Two Hundred and Fifty Dollars (\$156,250);
  - (C) Upon completion of the construction of the entrance to the Corporate Headquarters, the Incentive due to Alley Cats shall be One Hundred Fifty-Six Thousand Two Hundred and Fifty Dollars (\$156,250);
  - (D) Upon completion of the construction of the meeting room with a seated occupancy of 100, the Incentive due to Alley Cats shall be Two Hundred Eight Thousand Three Hundred Thirty-Three Dollars (\$208,333);
  - (E) Upon completion of all public improvement infrastructure for the Development (and such public improvement infrastructure is accepted by the City, in its reasonable discretion), the Incentive due to Alley Cats shall be Two Hundred Eight Thousand Three Hundred Thirty-Three Dollars (\$208,333); and
  - (F) Upon receipt of a certificate of occupancy for both the Corporate Headquarters and Family Entertainment Center, the Incentive due to Alley Cats shall be Three Hundred Sixty-Four Thousand Five Hundred Eighty-Four Dollars (\$364,584).
- 6.02 The BCSDC authorizes the expenditure of up to Six Hundred Twenty-Five Thousand Dollars (\$625,000.00) for the Incentives. The BCSDC authorizes the City Manager to allocate such funds as permitted by law, and as necessary to meet the City obligations set forth in this Agreement.
- 6.03 The EDC authorizes the expenditure of up to Six Hundred Twenty-Five Thousand Dollars (\$625,000.00) for the Incentives. The EDC authorizes the City Manager to allocate such funds as permitted by law, and as necessary to meet the City obligations set forth in this Agreement.
- 6.04 Verification of Completion of the Development. Following the completion of each Development construction milestone specified in Section 6.01, Alley Cats shall provide written notice of such completion to the City and provide proof of costs reasonably satisfactory to the City. Alley Cats agrees that City shall not be required to make any Incentive payment under this Agreement until such time that Alley Cats provides such written notice and proof of costs. The City may request, and

Alley Cats hereby agrees that it will permit reasonable review of information that permits the City to verify that the costs made by Alley Cats for the Development meets or exceeds the requirements of this Agreement. Additionally, the City may request, and Alley Cats hereby agrees that it will permit reasonable inspection of the Property during normal business hours that permits the City to verify that the improvements made by Alley Cats for the Development meet or exceed the requirements of this Agreement. Following written notice of completion and proof of costs reasonably satisfactory to the City, City shall pay Alley Cats the Incentive amount specified in Section 6.01(A)-(F), as applicable, subject to the terms and provisions of this Agreement, within 60 days.

#### **ARTICLE 7.**

#### **REGULATIONS REGARDING BUILDING PRODUCTS, MATERIALS, OR METHODS**

The parties hereto find that the Property constitutes an area of architectural importance and significance and the City Council of the City of Burleson, Texas, hereby designates it as an area of architectural importance and significance for purposes of Chapter 3000 of the Texas Government Code (the "Code"). In consideration for the mutual covenants and conditions contained herein and pursuant to Section 3000.002(d) of the Code, Alley Cats voluntarily consents to the application of all City rules, charter provisions, ordinances, orders, building codes, and other regulations existing as of the Effective Date hereof (the "Regulations") that govern the use or installation of a building product or material in the construction, renovation, maintenance, or other alteration of a residential or commercial building on the Property regardless of whether a different building product or material is approved for use by a national model code published within the last three code cycles that applies to the construction, renovation, maintenance, or other alteration of the building. In addition, Alley Cats voluntarily consents to the application of the Regulations that establish a standard for a building product, material, or aesthetic method in construction, renovation, maintenance, or other alteration of a residential or commercial building, regardless of whether the standard is more stringent than a standard for the product, material, or aesthetic method under a national model code published within the last three code cycles that applies to the construction, renovation, maintenance, or other alteration of the building. The parties agree that: 1) the City will not issue any permits for the Property in violation of this Article; 2) the covenants contained within this Article constitute a material term of this Agreement; 3) Alley Cats's voluntary consent to the application of the Regulations to the Property, as described in this Article, constitutes a material inducement for the City to authorize the Incentives described herein; 4) the covenants contained herein shall run with the land and shall bind Alley Cats and all successors and assigns; and 5) this Article shall survive termination or expiration of this Agreement.

#### **ARTICLE 8.**

#### **AUTHORITY; COMPLIANCE WITH LAW**

- 8.01 Alley Cats hereby represents and warrants to the City that it has full lawful right, power and authority to execute and deliver and perform the terms and obligations



of this Agreement and that the execution and delivery of this Agreement has been duly authorized by all necessary action by Alley Cats and this Agreement constitutes the legal, valid and binding obligation of Alley Cats, and is enforceable in accordance with its terms and provisions, except as enforcement may be stayed or limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally.

- 8.02 Notwithstanding any other provision of this Agreement, Alley Cats shall comply with all federal, state, and local laws.
- 8.03 During the term of this Agreement, Alley Cats agrees not to knowingly employ any undocumented workers at the Development, and if convicted of a violation under 8 U.S.C. Section 1324a(f), Alley Cats shall repay the amount of the Incentives received by Alley Cats as of the date of such violation within 120 business days after the date Alley Cats is notified by the City of such violation, plus interest at the rate Burleson is paying on the most recent issuance of bonded indebtedness prior to Alley Cats's violation of this Article.

## **ARTICLE 9. DEFAULT AND REMEDIES**

9.01 Default by Alley Cats.

- (A) It shall be a default of this Agreement if: (i) Alley Cats fails to fulfill its obligations under Article 4 of this Agreement; (ii) Alley Cats has delinquent ad valorem or sales taxes owed to the City provided that Alley Cats retains the right to timely protest and/or contest any such taxes; (iii) Alley Cats materially breaches any of the material terms and conditions of this Agreement after the expiration of the notice and cure periods described herein, or (iv) Alley Cats experiences an Event of Bankruptcy. In the event of such a default, City shall give Alley Cats written notice of such breach and/or default, and if Alley Cats has not cured such breach or default within 90 days after receipt of such notice, the City may terminate this Agreement by written notice to Alley Cats, and the City shall have no further obligation to Alley Cats.
- (B) In the event Alley Cats fails to comply with Section 4.01 and closes or ceases operation prior to the end of the Term of this Agreement, Alley Cats shall not be entitled to any additional payments from City.

- 9.02 No waiver or any breach of any term or condition of this Agreement shall be construed to waive any subsequent breach of the same or any other term or condition of this Agreement. Any waiver of any term or condition of this Agreement must be in writing and approved by the City Council of Burleson.

- 9.03 If the Property is converted to a use other than the Corporate Headquarters and Family Entertainment Center within eight (8) years from the Opening Date or if Alley Cats does not open the Corporate Headquarters and Family Entertainment Center within three (3) years from the Effective Date of this Agreement, subject to extensions for force majeure, Alley Cats shall reimburse the City an amount equal to the total amount of the Incentive paid pursuant Section 6.01 less -\$156,250.00 for every full year Alley Cats remained on the Property in accordance this Agreement.

#### **ARTICLE 10.**

#### **RIGHT OF OFFSET**

Alley Cats agrees that, subject to the provision of Notice by City and 90-day period following receipt of Notice in which Alley Cats may respond or act, City may offset the amount of any compensation due to Alley Cats for any calendar year under this Agreement against any amount which is: (i) lawfully due to City from Alley Cats, and (ii) not subject to challenge by Alley Cats in a court of competent jurisdiction by Alley Cats.

#### **ARTICLE 11.**

#### **VENUE AND GOVERNING LAW**

This Agreement is performable in Johnson County, Texas and venue of any action arising out of this Agreement shall be exclusively in Johnson County, Texas. This Agreement shall be governed and construed in accordance with the Charter, ordinances, and resolutions of the City of Burleson, applicable federal and state laws, violation of which shall constitute a default of this Agreement. To the extent permitted by law, the laws of the State of Texas shall apply without regard to applicable principles of conflicts of law, and the parties submit to the jurisdiction of the state and federal courts in Burleson, Johnson County, Texas.

#### **ARTICLE 12.**

#### **FORCE MAJEURE**

Performance of Alley Cats's obligations under this Agreement shall be subject to extension due to delay by reason of events of force majeure, and Alley Cats's obligations shall be abated during any period of force majeure. Force majeure shall include, without limitation, damage or destruction by fire or other casualty, condemnation, strike, lockout, civil disorder, war, disease, endemic and/or pandemic (including any governmental measures taken in response thereto), issuance of any permit and/or legal authorization (including engineering approvals by any governmental entity), governmental approvals and permits, shortage or delay in shipment of materials or fuel occasioned by any event referenced herein, acts of God, unusually adverse weather or wet soil conditions or other causes beyond the parties' reasonable control, including but not limited to, any court or judgment resulting from any litigation affecting the Property or this Agreement.



### **ARTICLE 13.**

#### **GIFT TO PUBLIC SERVANT OR TO ALLEY CATS REPRESENTATIVE**

- 13.01 No Benefit. Each party hereto represents to the other that it has not offered, conferred, or agreed to confer and that it will not offer, confer or agree to confer in the future any benefit upon an employee or official of the other party. For purposes of this section, "benefit" means anything reasonably regarded as economic advantage, including benefit to any other person in whose welfare the beneficiary is interested, but does not include a contribution or expenditure made and reported in accordance with law.
- 13.02 Right of Reimbursement. Notwithstanding any other legal remedies, City may obtain reimbursement for any expenditure made to Alley Cats as a result of the improper offer, agreement to confer, or conferring of a benefit to a City employee or official.

### **ARTICLE 14.**

#### **ASSIGNMENT**

Alley Cats may not assign any part of this Agreement without consent or approval by the City Council. Alley Cats may assign this Agreement to an Affiliate of Alley Cats for the purpose of owning the Property upon the consent and approval by City Council, which consent shall not be unreasonably withheld, conditioned or delayed, provided that (i) Alley Cats or an Affiliate shall continue to occupy the Development as an owner or tenant of the Property, and (ii) the assignee assumes all of Alley Cats's obligations under this Agreement.

### **ARTICLE 15.**

#### **INDEMNIFICATION**

- 15.01 ALLEY CATS EXPRESSLY AGREES TO FULLY AND COMPLETELY DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, AND ITS OFFICERS, AND EMPLOYEES, AGAINST ANY AND ALL CLAIMS, LAWSUITS, LIABILITIES, JUDGMENTS, OUT-OF-POCKET COSTS, AND OUT-OF-POCKET EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM, DAMAGES OR LIABILITY FOR WHICH RECOVERY OF DAMAGES IS SOUGHT (COLLECTIVELY, "LOSSES"), SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY ANY NEGLIGENT, GROSSLY NEGLIGENT, WRONGFUL, OR STRICTLY LIABLE ACT OR OMISSION OF ALLEY CATS OR ITS AGENTS, EMPLOYEES, OR CONTRACTORS, ARISING OUT IN THE PERFORMANCE OF THIS CONTRACT; NOTWITHSTANDING THE FOREGOING, IN NO EVENT SHALL ALLEY CATS BE RESPONSIBLE FOR, NOR SHALL ITS INDEMNIFICATION OBLIGATIONS SET FORTH IN THIS SECTION 15.01 EXTEND TO, ANY LOSSES ARISING OUT OF OR OCCASIONED BY THE ACTS OR OMISSIONS OF THE CITY, ITS OFFICERS AND EMPLOYEES, THAT CONSTITUTE GROSS

**NEGLIGENCE OR WILLFUL MISCONDUCT.** Nothing in this paragraph may be construed as waiving any governmental immunity available to the City under state law. This provision is solely for the benefit of Alley Cats and the City and is not intended to create or grant any rights, contractual or otherwise, in or to any other person.

- 15.02 It is acknowledged and agreed by the parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the parties. The City (including its past, present and future officers, elected officials, directors, employees and agents of the City) does not assume any responsibility to any third party in connection with Alley Cats's construction of the Development.

## **ARTICLE 16.** **MISCELLANEOUS MATTERS**

- 16.01 Time is of Essence. Time is of the essence in this Agreement. The parties hereto will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation.
- 16.02 Agreement Subject to Law. This Agreement is made subject in accordance with the Burleson Home Rule Charter and ordinances of City, as amended, and all applicable State and federal laws.
- 16.03 Interpretation. Each of the parties have been represented by counsel of their choosing in the negotiation and preparation of this Agreement. In the event of any dispute regarding the interpretation of this Agreement, this Agreement will be interpreted fairly and reasonably and neither more strongly for nor against any party based on draftsmanship.
- 16.04 Counterparts Deemed Original. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.
- 16.05 Captions. The captions to the various clauses of this Agreement are for informational purposes only and shall not alter the substance of the terms and conditions of this Agreement.
- 16.06 Complete Agreement. This Agreement embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporary agreements between the parties and relating to matters in the Agreement, and except as otherwise provided herein cannot be modified without written agreement of the parties to be attached and made a part of this Agreement.



- 16.07 No Waiver. Nothing contained in this Agreement shall be construed as the granting of any permit or permission required by any City ordinance or regulation, or the waiver of any requirement of any City ordinance or regulation.
- 16.08 Notice. Any notice to be given or served hereunder or under any document or instrument executed pursuant hereto shall be in writing and shall be (i) delivered personally, with a receipt requested therefore; or (ii) sent by a nationally recognized overnight courier service; or (iii) delivered by United States certified mail, return receipt requested, postage prepaid. All notices shall be addressed to the respective party at its address set forth below, and shall be effective (a) upon receipt or refusal if delivered personally; (b) one business day after depositing, with such an overnight courier service or (c) two business days after deposit in the United States mails, if mailed. Any party hereto may change its address for receipt of notices by service of a notice of such change in accordance with this subsection.

**Alley Cats:** AC Burleson, LLC  
Attn: Brian Smith  
P.O. Box 152465  
Arlington, Texas 76015

With a copy to: Barlow Garsek & Simon, LLP  
Attn: Amanda Myers  
920 Foch Street  
Fort Worth, Texas 76107

**City:** City Manager  
City of Burleson, Texas  
141 West Renfro  
Burleson, Texas 76028

With a copy to: Betsy Elam  
Taylor, Olson, Adkins, Sralla & Elam, L.L.P.  
6000 Western Place  
Suite 200  
Fort Worth, Texas 76107

**EDC:** Burleson 4A Economic Development Corp.  
Attn: Board President  
141 West Renfro  
Burleson, Texas 76028

With a copy to: Betsy Elam  
Taylor, Olson, Adkins, Sralla & Elam, L.L.P.  
6000 Western Place  
Suite 200



Fort Worth, Texas 76107

**BCSDC:**

Burleson Community Services Development Corp.  
Attn: Board President  
141 West Renfro  
Burleson, Texas 76028

With a copy to:

Betsy Elam  
Taylor, Olson, Adkins, Sralla & Elam, L.L.P.  
6000 Western Place  
Suite 200  
Fort Worth, Texas 76107

16.09 Amendment. This Agreement may only be amended by the mutual written agreement of the parties.

16.10 Severability. In the event any section, subsection, paragraph, subparagraph, sentence, phrase, or word herein is held invalid, illegal, or unenforceable, the balance of this Agreement shall stand, shall be enforceable, and shall be read as if the parties intended at all times to delete said invalid section, subsection, paragraph, subparagraph, sentence, phrase, or word. In the event there shall be substituted for such deleted provision a provision as similar in terms and in effect to such deleted provision as may be valid, legal and enforceable.

*[Signature pages to follow]*

EXECUTED on the respective dates of acknowledgement, to be effective as of the date first set forth above.

**CITY OF BURLESON**

By: [Signature]  
Bryan Langley, City Manager

Date: 12/13/21

STATE OF TEXAS  
COUNTY OF JOHNSON

This instrument was acknowledged before me on Dec. 13, 2021 by Bryan Langley, known personally by me to be the City Manager of the City of Burleson, on behalf of said City.

[Notary Seal]

[Signature]  
Notary Public, State of Texas



BURLESON 4A ECONOMIC DEVELOPMENT  
CORPORATION

By: 

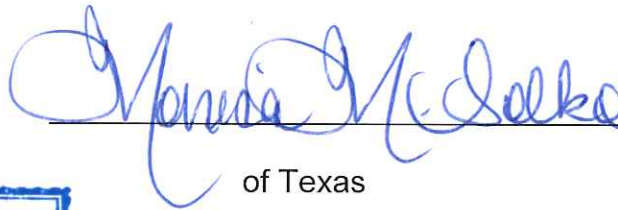
Name: Dan McClendon  
Title: Board President

Date: December 13, 2021

STATE OF TEXAS  
COUNTY OF Johnson

This instrument was acknowledged before me on Dec 13, 2021 by Dan McClendon, known personally by me to be the Board President of the Burleson 4A Economic Development Corporation, on behalf of said entity.

[Notary Seal]

  
of Texas

Notary Public, State



BURLESON COMMUNITY SERVICE  
DEVELOPMENT CORPORATION (4B)

By: 

Name: Dan McClendon

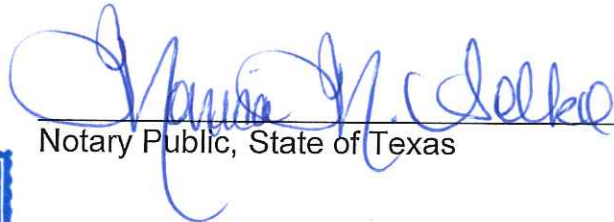
Title: Board President

Date: December 13, 2021

STATE OF TEXAS  
COUNTY OF Johnson

This instrument was acknowledged before me on Dec. 13, 2021 by Dan McClendon, known personally by me to be the Board President of the Burleson Community Services Development Corporation, on behalf of said entity.

[Notary Seal]

  
Notary Public, State of Texas



AC BURLESON, LLC

By: BK Smith  
Brian K. Smith, Manager

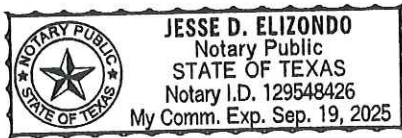
Date: 12-8-2021

STATE OF TEXAS  
COUNTY OF Tarrant / Johnson

This instrument was acknowledged before me on 8 DECEMBER 2021 by Brian K. Smith, known personally by me to be the Manager of AC Burleson, LLC, on behalf of said entity.

[Notary Seal]

Jesse Elizondo  
Notary Public, State of Texas



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## City Council Regular Meeting

**DEPARTMENT:** Economic Development

**FROM:** Alex Philips, Economic Development Director

**MEETING:** February 6, 2023

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**SUBJECT:**

Consider approval of a minute order ratifying the Burleson 4A Economic Development Corporation Board's actions taken on approval of an Amendment to the Chapter 380 Economic Development and Performance Agreement between the City of Burleson, Burleson 4A Economic Development Corporation, Burleson Community Service Development Corporation, and AC Burleson, LLC for a family entertainment facility located at 1258 SW Alsbury Blvd. *(Staff Presenter: Alex Philips, Economic Development Director)*

**SUMMARY:**

The City Council, Burleson 4A Economic Development Corporation, and Burleson Community Service Development Corporation approved a Chapter 380 Economic Development and Performance Agreement on December 13, 2021, with AC Burleson, LLC.

Alley Cats is a family owned establishment with locations in Arlington and Hurst. The family has been in business since 1964 operating the Putt-Putt Golf and games in the region. They offer a multitude of offerings including bowling, arcade. Laser tag, batting cages, go-carts and so much more.

Alley Cats Entertainment will be relocating their corporate office to Burleson within the development that is being proposed at 1258 SW Alsbury Boulevard. The development will be approximately 50,000 square feet and will include bowling lanes as well as lanes that will be for corporate and other events, arcade, miniature golf, batting cages, go-carts and a meeting room with a seated capacity of 100 people.

The amendment to the agreement is being requested due to the requirements of their financing. The Small Business Administration requires the use of green energy in the form of solar to be 15% of the electricity for the development. Due to this requirement AC Burleson, LLC, had to redesign the roof and electrical to support the solar panels that will be within the development to get the approval needed.



They are asking that the following dates be adjusted by one year to August 1, 2024, for the completion of the development:

- Complete construction of the Development no later than August 1, 2023.
- Make a minimum Capital Investment of no less than \$10,000,000 Dollars in the property no later than August 1, 2023.
- Opening Date for the Family Entertainment Center and Corporate Headquarters no later than August 1, 2023.
- Relocate the Alley Cats corporate headquarters to the Burleson location by August 1, 2023.

**OPTIONS:**

- 1) Approve as presented
- 2) Deny the Amendment

**RECOMMENDATION:**

Staff recommends the approval of the Amendment

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

Original Agreement was passed on December 13, 2021.

**FISCAL IMPACT:**

N/A

**STAFF CONTACT:**

Alex Philips  
Economic Development Director  
aphilips@burlesontx.com  
817-426-9613



# Economic Development



- AC Burleson, LLC is requesting an amendment to the 380 Agreement.
- AC Burleson is financing the construction of the development through the Small Business Administration.
- The request is due to the requirements of the SBA. One of the major requirements is the use of solar in the development.
- Due to this requirement AC Burleson needed to redesign the roof and electrical to support the weight and wind load of the solar panels.
- They are requesting the construction completion date, capital investment requirement date, relocation of the corporate headquarters date, and the opening date be pushed a year to August 1, 2024

# Alley Cats Obligations



- Completed the purchase of the property by June 30, 2022. **(Completed)**
- Commence construction of the development by July 31, 2022. **(Completed with the installation of environmental fencing and placement of job trailer)**
- Complete construction of the Development no later than August 1, 2023, with an approximate Capital Investment of no less than \$10 million dollars. **(August 2024)**
- Prospect agrees to relocate the corporate headquarters to the Burleson facility. The facility will have a separate entrance marked as corporate headquarters. **(August 2024)**
- Opening date of the Family Entertainment Center by August 1, 2023. **(August 2024)**





- Approve the 380 Amendment with AC Burleson, LLC.
- Deny the 380 Amendment with AC Burleson, LLC.



# Questions / Comments

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**FIRST AMENDMENT TO THE**  
**CHAPTER 380 AND ECONOMIC DEVELOPMENT AND PERFORMANCE**  
**AGREEMENT BETWEEN THE CITY OF BURLESON, THE BURLESON 4A**  
**ECONOMIC DEVELOPMENT CORPORATION, THE BURLESON COMMUNITY**  
**SERVICE DEVELOPMENT CORPORATION, AND AC BURLESON, LLC**

This First Amendment to the Chapter 380 Economic Development and Performance Agreement (the "Amendment") is made and entered into on this \_\_\_\_ day of February, 2023, by and between the City of Burleson, a Texas municipal corporation located in the Counties of Johnson and Tarrant, State of Texas ("City"), by and through its City Manager, the Burleson 4A Economic Development Corporation ("EDC"), a Texas municipal development corporation located in the City, by and through its Board President, the Burleson Community Service Development Corporation ("BCSDC") acting by and through its Board President, and AC Burleson, LLC ("Alley Cats"), a Texas limited liability company, acting by and through its manager. City, EDC, BCSDC, and Alley Cats are sometimes hereafter referred to individually as a "Party" and collectively as the "Parties."

**RECITALS:**

WHEREAS, on or about December 13, 2021, the City, the EDC, BCSDC and Alley Cats entered into that certain Chapter 380 Economic Development and Performance Agreement (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. Section 4.01 "Covenants Regarding Alley Cats Development and Operations" of the Agreement is hereby amended and replaced to read as follows:**

"4.01 Covenants Regarding Alley Cats Development and Operations. In consideration of City agreeing to pay Alley Cats the Grant Payments in accordance with the terms, provisions and conditions of this Agreement, Alley Cats agrees to the following, which are not obligations of Alley Cats, but are duties that must be fulfilled in order to receive Grant Payments and Incentives:

- (A) Design and construct the Development in conformance with the criteria and development standards set forth in the ordinances of the City of Burleson and applicable state and federal laws.
- (B) Design and construct the Development in substantial conformance with the Concept Plan.



- (C) Operate the Development in conformance with the criteria and development standards set forth in the ordinances of the City of Burleson and applicable state and federal laws.
- (D) Design and construct the Development to include the following amenities:
  - D.01 Bowling Lanes;
  - D.02 Secondary Bowling Lanes for corporate and other events, including parties;
  - D.03 Arcade;
  - D.04 Laser Tag;
  - D.05 Miniature Golf;
  - D.06 Batting Cages;
  - D.07 Go-Karts; and
  - D.08 Meeting Room with a seated capacity of at least 100 people.
- (E) Design and construct the Development to include an entrance to the Corporate Headquarters that is marked and signed as the corporate headquarters of Alley Cats and that is separate and distinct from the entrance to the Family Entertainment Center.
- (F) If Alley Cats does not own fee simple title to the Property as of the Effective Date, enter into a real estate contract to purchase fee simple title to the Property by December 31, 2021.
- (G) Complete a pre-development meeting with the City by December 31, 2021.
- (H) Complete platting and zoning approval by the City Council by April 30, 2022.
- (I) If Alley Cats does not own fee simple title to the Property as of the Effective Date, purchase and acquire fee simple title to the Property by June 30, 2022.
- (J) Commence construction of the Development no later than July 31, 2022.
- (K) Complete construction of the Development no later than **August 1, 2024**.
- (L) Make a minimum Capital Investment of no less than TEN MILLION AND NO/100 DOLLARS (\$10,000,000.00) in the Property no later than **August 1, 2024**.
- (M) Relocate the Alley Cats corporate headquarters to the Corporate Headquarters no later than **August 1, 2024**.



- (N) Opening Date for the Family Entertainment Center and Corporate Headquarters no later than **August 1, 2024**.
- (O) After the Opening Date, operate the Family Entertainment Center and Corporate Headquarters for the term of this Agreement subject to (i) Force Majeure, (ii) casualty and condemnation, and (iii) temporary closings for repair, renovations and/or alterations not to exceed ninety (90) consecutive days, in each event, subject to extensions for force majeure.
- (P) Alley Cats shall remain current and paid on all property taxes, subject to appeal rights in accordance with law and subject to a right to cure any delinquency as set forth herein."

2. **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]*

EXECUTED on the respective dates of acknowledgement, to be effective as of the date first set forth above.

**CITY OF BURLESON**

By: \_\_\_\_\_  
Bryan Langley, City Manager

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

STATE OF TEXAS  
COUNTY OF JOHNSON

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_ by Bryan Langley, known personally by me to be the City Manager of the City of Burleson, on behalf of said City.

[Notary Seal]

\_\_\_\_\_  
Notary Public, State of Texas



**BURLESON 4A ECONOMIC DEVELOPMENT  
CORPORATION**

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

Name: \_\_\_\_\_

Title: Board President

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

STATE OF TEXAS  
COUNTY OF \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_ by  
\_\_\_\_\_, known personally by me to be the Board President of the  
Burleson 4A Economic Development Corporation, on behalf of said entity.

[Notary Seal]

\_\_\_\_\_  
Notary Public, State  
of Texas

**BURLESON COMMUNITY SERVICES  
ECONOMIC DEVELOPMENT CORPORATION**

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

Name: \_\_\_\_\_

Title: Board President

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

STATE OF TEXAS  
COUNTY OF \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_ by  
\_\_\_\_\_, known personally by me to be the Board President of the  
Burleson Community Services Development Corporation, on behalf of said entity.

[Notary Seal]

\_\_\_\_\_  
Notary Public, State of Texas



AC BURLESON, LLC

By: 

Brian K. Smith, Manager

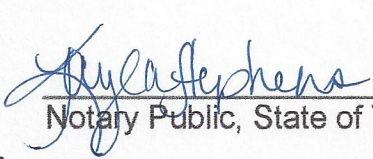
Date: 1-26-2023

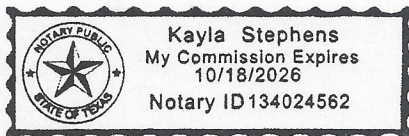
STATE OF TEXAS

COUNTY OF Tarrant

This instrument was acknowledged before me on Jan 26, 2023 by Brian K. Smith, known personally by me to be the Manager of AC Burleson, LLC, on behalf of said entity.

[Notary Seal]

 / Kayla Stephens  
Notary Public, State of Texas



**Exhibit A**  
**The Agreement**



**CHAPTER 380 AND ECONOMIC DEVELOPMENT AND PERFORMANCE  
AGREEMENT BETWEEN THE CITY OF BURLESON, THE BURLESON 4A  
ECONOMIC DEVELOPMENT CORPORATION, THE BURLESON COMMUNITY  
SERVICE DEVELOPMENT CORPORATION, AND AC BURLESON, LLC**

This Chapter 380 Economic Development and Performance Agreement (the "Agreement") is entered into as of December 13, 2021 (the "Effective Date") by and between the City of Burleson, a Texas municipal corporation located in the Counties of Johnson and Tarrant, State of Texas ("City"), by and through its City Manager, the Burleson 4A Economic Development Corporation ("EDC"), a Texas municipal development corporation located in the City, by and through its Board President, the Burleson Community Service Development Corporation ("BCSDC") acting by and through its Board President, and AC Burleson, LLC ("Alley Cats"), a Texas limited liability company, acting by and through its manager. City, EDC, BCSDC, and Alley Cats are sometimes hereafter referred to individually as a "Party" and collectively as the "Parties."

**WITNESSETH:**

**WHEREAS**, on May 27, 1993, the City adopted Resolution No. 583 establishing an Economic Development Program (the "Program") pursuant to Chapter 380 of the Texas Local Government Code; and

**WHEREAS**, Alley Cats desires to participate in the Program by entering into this Agreement; and

**WHEREAS**, the Burleson City Council finds and determines that this Agreement will effectuate the purposes set forth in the Program, and that Alley Cats's performance of its obligations herein will promote local economic development and stimulate business and commercial activity in the City; and

**WHEREAS**, the City is authorized by Article 52-a Texas Constitution, and Section 380 of the Texas Local Government Code to provide economic development grants to promote local economic development and to stimulate business and commercial activity in the City; and

**WHEREAS**, Alley Cats owns or has under contract to purchase and own certain real property in the City of Burleson, Johnson County, Texas, commonly known as 1258 SW Alsbury, Burleson, Texas, and more particularly described in Exhibit "A", attached hereto and incorporated herein by reference for all purposes (the "Property"); and

**WHEREAS**, Alley Cats proposes to operate a regional or national commercial headquarters and a family entertainment center on the Property; and

**WHEREAS**, the City has found the Development (hereinafter defined) will contribute to an increase in economic development in the City; and

**WHEREAS**, the EDC has determined and found that the incentives contemplated in this Agreement constitute a "Project" as defined by the Development Corporation Act, codified in Subtitle C-1 of Title 12 of the Texas Local Government Code, in Section 501.101, in that the expenditures fund the provision of land, buildings, equipment, facilities, expenditures, or targeted infrastructure and improvements that are for the creation or retention of primary jobs for regional or national corporate headquarters facilities; and

**WHEREAS**, the BCSDC has determined and found that the incentives contemplated in this Agreement constitute a "Project" as defined by the Development Corporation Act, codified in Subtitle C-1 of Title 12 of the Texas Local Government Code, in Section 501.101, in that the expenditures fund the provision of land, buildings, equipment, facilities, expenditures, or targeted infrastructure and improvements that are for the creation or retention of primary jobs for regional or national corporate headquarters facilities; and

**WHEREAS**, the BCSDC has further determined and found that the incentives contemplated in this Agreement constitute a "Project" as defined by the Development Corporation Act, codified in Subtitle C-1 of Title 12 of the Texas Local Government Code, in Section 505.152, in that the expenditures fund the provision of land, buildings, equipment, facilities, expenditures, or improvements that are required or suitable for use for athletic, entertainment, and tourist purposes; and

**WHEREAS**, the Property is not owned or leased by any member of the Burleson City Council or any member of the City Planning and Zoning Commission; and

**WHEREAS**, the Burleson City Council finds and determines that Alley Cats performance of its obligations herein will revitalize the John Jones corridor and promote local economic development and stimulate business and commercial activity in the City.

**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:

#### **ARTICLE 1.** **AUTHORIZATION**

The Burleson City Council finds and determines that this Agreement is authorized by Chapter 380 of the Texas Local Government Code and Chapters 501, 504, and 505 of the Texas Local Government Code.

#### **ARTICLE 2.** **DEFINITIONS**



- 2.01 The terms "Agreement," "Alley Cats," "BCSDC," "City," "EDC," "Effective Date," "Party," "Parties," "Program," and "Property," shall have the meanings provided, above.
- 2.02 "Affiliate" means any person or entity that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with Alley Cats.
- 2.03 "Available Sales Taxes" means the amount of Sales Tax actually and lawfully received by the City from the Texas Comptroller of Public Accounts attributable to gross taxable sales at the Family Entertainment Center during each calendar year or portion thereof during the Term of this Agreement.
- 2.04 "Capital Investment" means and shall include all costs incurred relating to the improvement of the Property, including the purchase price of the building and actual construction costs of all buildings, structures, infrastructure, utilities, landscaping and other onsite improvements, including all labor and materials, and shall include any third party funds borrowed by Alley Cats in furtherance thereof.
- 2.05 "City Sales Tax" means the tax authorized and levied pursuant to Section 321.101 of the Texas Tax Code and payable into the general fund, currently established at one percent (1%). City Sales Taxes shall not include sales and/or use taxes levied and collected exclusively for special purposes (such as a Type A or B Corporation) created and operating under the Development Corporation Act, codified in subtitle C1 of Title 12, Texas Local Government Code, transit districts. If the City, at its discretion ever elects to, or the voters choose to, reallocate the City Sales Tax and to levy less than a one percent (1%) sales tax, then "City Sales Taxes" shall mean the amount of sales taxes actually received by the City of Burleson arising from the actual City Sales Tax levied on gross taxable sales. Should the voters or the City set the City Sales Tax rate at more than one percent (1%), the City Sales Tax will not exceed one percent (1%).
- 2.06 "Concept Plan" means the plan depicted on **Exhibit "B"**.
- 2.07 "Corporate Headquarters" means the national corporate headquarters of Alley Cats, comprised of approximately 2,000 square feet and located on the Property.
- 2.08 "Development" means the construction of the Corporate Headquarters and Family Entertainment Center and related landscaping and onsite infrastructure on the Property.
- 2.09 "Event of Bankruptcy" means the dissolution or termination of Alley Cat's existence as a going business, insolvency, appointment of receiver for any part of Alley Cat's property and such appointment is not terminated within 90 days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Alley Cats and such proceeding is not dismissed within 90 days after the filing thereof.

- 2.10 "Family Entertainment Center" means an Alley Cats operated and branded facility comprised of approximately 50,000 square feet located on the Property operated in a manner substantially similar to the Alley Cats Entertainment located at 609 NE Loop 820 Hurst, Texas, that includes the following amenities: (1) bowling lanes; (2) secondary bowling lanes for corporate and other events including parties; (3) arcade; (4) laser tag; (5) miniature golf; (6) batting cages; (7) go-karts; and (8) a meeting room with a seated capacity of at least 100 people.
- 2.11 "Grant Payment(s)" means the periodic payments of a percentage of Available Sales Taxes as provided herein.
- 2.12 "Grant Payment Cap" has the meaning set forth in Section 5.02 of this Agreement.
- 2.13 "Incentives" mean the combined contributions, monetary or otherwise, of the City, EDC, and BCSDC towards completion of the Development, as required by this Agreement.
- 2.14 "Opening Date" means that date on which Alley Cats opens both the Family Entertainment Center and Corporate Headquarters.
- 2.15 "Sales Tax" shall mean the combination of the City Sales Tax, Type A Sales Tax, and Type B Sales Tax, the combination of which is currently established at two percent (2.0%).
- 2.16 "Type A Sales Tax" means the tax authorized, adopted, levied and/or collected by or on behalf of the City pursuant to Section 321.101(b) of the Texas Tax Code, as amended and/or replaced, currently established at one-half of one percent (0.5%), for use by the Burleson 4A Economic Development Corporation, a Type A economic development corporation, operating pursuant to Chapter 504 of the Texas Local Government Code, as amended and/or replaced. If the City, at its discretion ever elects to, or the voters choose to, reallocate the Type A Sales Tax and to levy less than a one-half of one percent (0.5%) sales tax, then "Type A Sales Taxes" shall mean the amount of sales taxes actually received by the City of Burleson arising from the actual Type A Sales Tax levied on gross taxable sales. Should the voters or the City set the Type A Sales Tax rate at more than one-half of one percent (0.5%), the Type A Sales Tax will not exceed one-half of one percent (0.5%).
- 2.17 "Type B Sales Tax" means the tax authorized, adopted, levied and/or collected by or on behalf of the City pursuant to Section 321.101(b) of the Texas Tax Code, as amended and/or replaced, currently established at one-half of one percent (0.5%), for use by the Burleson Community Service Development Corporation, a Type B economic development corporation, operating pursuant to Chapter 505 of the Texas Local Government Code, as amended and/or replaced. If the City, at its discretion ever elects to, or the voters choose to, reallocate the Type B Sales Tax and to levy less than a one-half of one percent (0.5%) sales tax, then "Type B Sales Taxes" shall mean the amount of sales taxes actually received by the City



of Burleson arising from the actual Type B Sales Tax levied on gross taxable sales. Should the voters or the City set the Type B Sales Tax rate at more than one-half of one percent (0.5%), the Type B Sales Tax will not exceed one-half of one percent (0.5%).

### **ARTICLE 3.**

#### **TERM**

The term of this Agreement shall commence on the Effective Date and will terminate ten years following the date Alley Cats receives a Certificate of Occupancy on the Property.

### **ARTICLE 4.**

#### **COVENANTS OF ALLEY CATS**

4.01 Covenants Regarding Alley Cats Development and Operations. In consideration of City agreeing to pay Alley Cats the Grant Payments in accordance with the terms, provisions and conditions of this Agreement, Alley Cats agrees to the following, which are not obligations of Alley Cats, but are duties that must be fulfilled in order to receive Grant Payments and Incentives:

- (A) Design and construct the Development in conformance with the criteria and development standards set forth in the ordinances of the City of Burleson and applicable state and federal laws.
- (B) Design and construct the Development in substantial conformance with the Concept Plan.
- (C) Operate the Development in conformance with the criteria and development standards set forth in the ordinances of the City of Burleson and applicable state and federal laws.
- (D) Design and construct the Development to include the following amenities:
  - D.01 Bowling Lanes;
  - D.02 Secondary Bowling Lanes for corporate and other events, including parties;
  - D.03 Arcade;
  - D.04 Laser Tag;
  - D.05 Miniature Golf;
  - D.06 Batting Cages;
  - D.07 Go-Karts; and

D.08 Meeting Room with a seated capacity of at least 100 people.

- (E) Design and construct the Development to include an entrance to the Corporate Headquarters that is marked and signed as the corporate headquarters of Alley Cats and that is separate and distinct from the entrance to the Family Entertainment Center.
- (F) If Alley Cats does not own fee simple title to the Property as of the Effective Date, enter into a real estate contract to purchase fee simple title to the Property by December 31, 2021.
- (G) Complete a pre-development meeting with the City by December 31, 2021.
- (H) Complete platting and zoning approval by the City Council by April 30, 2022.
- (I) If Alley Cats does not own fee simple title to the Property as of the Effective Date, purchase and acquire fee simple title to the Property by June 30, 2022.
- (J) Commence construction of the Development no later than July 31, 2022.
- (K) Complete construction of the Development no later than August 1, 2023.
- (L) Make a minimum Capital Investment of no less than TEN MILLION AND NO/100 DOLLARS (\$10,000,000.00) in the Property no later than August 1, 2023.
- (M) Relocate the Alley Cats corporate headquarters to the Corporate Headquarters no later than August 1, 2023.
- (N) Opening Date for the Family Entertainment Center and Corporate Headquarters no later than August 1, 2023.
- (O) After the Opening Date, operate the Family Entertainment Center and Corporate Headquarters for the term of this Agreement subject to (i) Force Majeure, (ii) casualty and condemnation, and (iii) temporary closings for repair, renovations and/or alterations not to exceed ninety (90) consecutive days, in each event, subject to extensions for force majeure.
- (P) Alley Cats shall remain current and paid on all property taxes, subject to appeal rights in accordance with law and subject to a right to cure any delinquency as set forth herein.

4.02 Verification of Capital Investment. Within 45 days following the receipt of a Certificate of Occupancy for the Development, Alley Cats shall provide written verification to the City that the Capital Investment made by Alley Cats meets or exceeds the requirements set forth in this Agreement. Alley Cats agrees that City shall not be required to make any Grant Payments under this Agreement until such

time that Alley Cats provides such written verification. The City may request, and Alley Cats hereby agrees that it will permit reasonable review of information that permits the City to verify that the Capital Investment made by Alley Cats for the Development meets or exceeds the requirements of this Agreement.

## **ARTICLE 5. PROGRAM GRANT**

- 5.01 Subject to Alley Cats complying with his duties and obligations under this Agreement, the City agrees that, subject to the terms and conditions contained herein, Alley Cats shall be entitled to receive Grant Payments and benefits according to the schedule set forth in this Article.
- 5.02 The maximum Grant Payments cumulatively available to Alley Cats over the term of this Agreement shall not exceed Seven Hundred Fifty Thousand Dollars (\$750,000.00).
- 5.03 The City shall make Grant Payments to Alley Cats in annual installments equal to one hundred percent (100%) of Available Sales Taxes received by the City for the prior calendar year of the Family Entertainment Center's operation.
- 5.04 The Grants Payments shall cease upon the earlier of:
- (A) The date upon which the Grant Payment is paid for the final twelve (12) month period ending five years following the date Alley Cats receives a Certificate of Occupancy on the Property; or
  - (B) The date upon which the Grant Payment Cap has been reached.
- 5.05 For each calendar year in which a grant payment is requested, Alley Cats agrees to provide a release to the City that will allow the Texas Comptroller of Public Accounts (the "Comptroller") to release information to the City that documents the amount of Available Sales Taxes collected by the Comptroller for the City from the Restaurant (the "Sales Tax Disclosure"). The City and Alley Cats shall rely on the Sales Tax Disclosure as accurate and definitive for purposes of this Agreement. City shall not be required to pay Alley Cats the Grant Payments under this Article until such time that Alley Cats provides the required release and the Comptroller provides the Sales Tax Disclosure.
- 5.06 Following receipt of the Sales Tax Disclosure and the receipt of Available Sales Taxes by City, City shall pay Alley Cats the annual installment of Grant Payments due hereunder, subject to the terms and provisions of this Agreement, within 60 days. Both parties acknowledge that as of the Effective Date of this Agreement, the Sales Tax Disclosure and disbursement of Available Sales Taxes for the prior calendar year to City by Comptroller is expected to occur no sooner than March 1 of each calendar year.

## **ARTICLE 6.**

## INCENTIVES

- 6.01 Subject to Alley Cats complying with its duties and obligations under this Agreement, the City agrees to the following Incentives: The City shall reimburse to Alley Cats a total amount not to exceed One Million Two Hundred Fifty Thousand Dollars (\$1,250,000.00) for expenses related to the Corporate Headquarters. The Incentives shall be paid in the incremental, scheduled amounts specified below upon completion of the following Development construction milestones:
- (A) Upon closing on the real estate contract and obtaining fee simple title to the Property, the Incentive due to Alley Cats shall be One Hundred Fifty-Six Thousand Two Hundred and Fifty Dollars (\$156,250);
  - (B) Upon receiving a building permit for construction of the Development, the Incentive due to Alley Cats shall be One Hundred Fifty-Six Thousand Two Hundred and Fifty Dollars (\$156,250);
  - (C) Upon completion of the construction of the entrance to the Corporate Headquarters, the Incentive due to Alley Cats shall be One Hundred Fifty-Six Thousand Two Hundred and Fifty Dollars (\$156,250);
  - (D) Upon completion of the construction of the meeting room with a seated occupancy of 100, the Incentive due to Alley Cats shall be Two Hundred Eight Thousand Three Hundred Thirty-Three Dollars (\$208,333);
  - (E) Upon completion of all public improvement infrastructure for the Development (and such public improvement infrastructure is accepted by the City, in its reasonable discretion), the Incentive due to Alley Cats shall be Two Hundred Eight Thousand Three Hundred Thirty-Three Dollars (\$208,333); and
  - (F) Upon receipt of a certificate of occupancy for both the Corporate Headquarters and Family Entertainment Center, the Incentive due to Alley Cats shall be Three Hundred Sixty-Four Thousand Five Hundred Eighty-Four Dollars (\$364,584).
- 6.02 The BCSDC authorizes the expenditure of up to Six Hundred Twenty-Five Thousand Dollars (\$625,000.00) for the Incentives. The BCSDC authorizes the City Manager to allocate such funds as permitted by law, and as necessary to meet the City obligations set forth in this Agreement.
- 6.03 The EDC authorizes the expenditure of up to Six Hundred Twenty-Five Thousand Dollars (\$625,000.00) for the Incentives. The EDC authorizes the City Manager to allocate such funds as permitted by law, and as necessary to meet the City obligations set forth in this Agreement.
- 6.04 Verification of Completion of the Development. Following the completion of each Development construction milestone specified in Section 6.01, Alley Cats shall provide written notice of such completion to the City and provide proof of costs reasonably satisfactory to the City. Alley Cats agrees that City shall not be required to make any Incentive payment under this Agreement until such time that Alley Cats provides such written notice and proof of costs. The City may request, and



Alley Cats hereby agrees that it will permit reasonable review of information that permits the City to verify that the costs made by Alley Cats for the Development meets or exceeds the requirements of this Agreement. Additionally, the City may request, and Alley Cats hereby agrees that it will permit reasonable inspection of the Property during normal business hours that permits the City to verify that the improvements made by Alley Cats for the Development meet or exceed the requirements of this Agreement. Following written notice of completion and proof of costs reasonably satisfactory to the City, City shall pay Alley Cats the Incentive amount specified in Section 6.01(A)-(F), as applicable, subject to the terms and provisions of this Agreement, within 60 days.

#### **ARTICLE 7.**

#### **REGULATIONS REGARDING BUILDING PRODUCTS, MATERIALS, OR METHODS**

The parties hereto find that the Property constitutes an area of architectural importance and significance and the City Council of the City of Burleson, Texas, hereby designates it as an area of architectural importance and significance for purposes of Chapter 3000 of the Texas Government Code (the "Code"). In consideration for the mutual covenants and conditions contained herein and pursuant to Section 3000.002(d) of the Code, Alley Cats voluntarily consents to the application of all City rules, charter provisions, ordinances, orders, building codes, and other regulations existing as of the Effective Date hereof (the "Regulations") that govern the use or installation of a building product or material in the construction, renovation, maintenance, or other alteration of a residential or commercial building on the Property regardless of whether a different building product or material is approved for use by a national model code published within the last three code cycles that applies to the construction, renovation, maintenance, or other alteration of the building. In addition, Alley Cats voluntarily consents to the application of the Regulations that establish a standard for a building product, material, or aesthetic method in construction, renovation, maintenance, or other alteration of a residential or commercial building, regardless of whether the standard is more stringent than a standard for the product, material, or aesthetic method under a national model code published within the last three code cycles that applies to the construction, renovation, maintenance, or other alteration of the building. The parties agree that: 1) the City will not issue any permits for the Property in violation of this Article; 2) the covenants contained within this Article constitute a material term of this Agreement; 3) Alley Cats's voluntary consent to the application of the Regulations to the Property, as described in this Article, constitutes a material inducement for the City to authorize the Incentives described herein; 4) the covenants contained herein shall run with the land and shall bind Alley Cats and all successors and assigns; and 5) this Article shall survive termination or expiration of this Agreement.

#### **ARTICLE 8.**

#### **AUTHORITY; COMPLIANCE WITH LAW**

- 8.01 Alley Cats hereby represents and warrants to the City that it has full lawful right, power and authority to execute and deliver and perform the terms and obligations

of this Agreement and that the execution and delivery of this Agreement has been duly authorized by all necessary action by Alley Cats and this Agreement constitutes the legal, valid and binding obligation of Alley Cats, and is enforceable in accordance with its terms and provisions, except as enforcement may be stayed or limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally.

- 8.02 Notwithstanding any other provision of this Agreement, Alley Cats shall comply with all federal, state, and local laws.
- 8.03 During the term of this Agreement, Alley Cats agrees not to knowingly employ any undocumented workers at the Development, and if convicted of a violation under 8 U.S.C. Section 1324a(f), Alley Cats shall repay the amount of the Incentives received by Alley Cats as of the date of such violation within 120 business days after the date Alley Cats is notified by the City of such violation, plus interest at the rate Burleson is paying on the most recent issuance of bonded indebtedness prior to Alley Cats's violation of this Article.

## **ARTICLE 9. DEFAULT AND REMEDIES**

9.01 Default by Alley Cats.

- (A) It shall be a default of this Agreement if: (i) Alley Cats fails to fulfill its obligations under Article 4 of this Agreement; (ii) Alley Cats has delinquent ad valorem or sales taxes owed to the City provided that Alley Cats retains the right to timely protest and/or contest any such taxes; (iii) Alley Cats materially breaches any of the material terms and conditions of this Agreement after the expiration of the notice and cure periods described herein, or (iv) Alley Cats experiences an Event of Bankruptcy. In the event of such a default, City shall give Alley Cats written notice of such breach and/or default, and if Alley Cats has not cured such breach or default within 90 days after receipt of such notice, the City may terminate this Agreement by written notice to Alley Cats, and the City shall have no further obligation to Alley Cats.
- (B) In the event Alley Cats fails to comply with Section 4.01 and closes or ceases operation prior to the end of the Term of this Agreement, Alley Cats shall not be entitled to any additional payments from City.

- 9.02 No waiver or any breach of any term or condition of this Agreement shall be construed to waive any subsequent breach of the same or any other term or condition of this Agreement. Any waiver of any term or condition of this Agreement must be in writing and approved by the City Council of Burleson.



- 9.03 If the Property is converted to a use other than the Corporate Headquarters and Family Entertainment Center within eight (8) years from the Opening Date or if Alley Cats does not open the Corporate Headquarters and Family Entertainment Center within three (3) years from the Effective Date of this Agreement, subject to extensions for force majeure, Alley Cats shall reimburse the City an amount equal to the total amount of the Incentive paid pursuant Section 6.01 less -\$156,250.00 for every full year Alley Cats remained on the Property in accordance this Agreement.

#### **ARTICLE 10.**

#### **RIGHT OF OFFSET**

Alley Cats agrees that, subject to the provision of Notice by City and 90-day period following receipt of Notice in which Alley Cats may respond or act, City may offset the amount of any compensation due to Alley Cats for any calendar year under this Agreement against any amount which is: (i) lawfully due to City from Alley Cats, and (ii) not subject to challenge by Alley Cats in a court of competent jurisdiction by Alley Cats.

#### **ARTICLE 11.**

#### **VENUE AND GOVERNING LAW**

This Agreement is performable in Johnson County, Texas and venue of any action arising out of this Agreement shall be exclusively in Johnson County, Texas. This Agreement shall be governed and construed in accordance with the Charter, ordinances, and resolutions of the City of Burleson, applicable federal and state laws, violation of which shall constitute a default of this Agreement. To the extent permitted by law, the laws of the State of Texas shall apply without regard to applicable principles of conflicts of law, and the parties submit to the jurisdiction of the state and federal courts in Burleson, Johnson County, Texas.

#### **ARTICLE 12.**

#### **FORCE MAJEURE**

Performance of Alley Cats's obligations under this Agreement shall be subject to extension due to delay by reason of events of force majeure, and Alley Cats's obligations shall be abated during any period of force majeure. Force majeure shall include, without limitation, damage or destruction by fire or other casualty, condemnation, strike, lockout, civil disorder, war, disease, endemic and/or pandemic (including any governmental measures taken in response thereto), issuance of any permit and/or legal authorization (including engineering approvals by any governmental entity), governmental approvals and permits, shortage or delay in shipment of materials or fuel occasioned by any event referenced herein, acts of God, unusually adverse weather or wet soil conditions or other causes beyond the parties' reasonable control, including but not limited to, any court or judgment resulting from any litigation affecting the Property or this Agreement.

### **ARTICLE 13.**

#### **GIFT TO PUBLIC SERVANT OR TO ALLEY CATS REPRESENTATIVE**

- 13.01 No Benefit. Each party hereto represents to the other that it has not offered, conferred, or agreed to confer and that it will not offer, confer or agree to confer in the future any benefit upon an employee or official of the other party. For purposes of this section, "benefit" means anything reasonably regarded as economic advantage, including benefit to any other person in whose welfare the beneficiary is interested, but does not include a contribution or expenditure made and reported in accordance with law.
- 13.02 Right of Reimbursement. Notwithstanding any other legal remedies, City may obtain reimbursement for any expenditure made to Alley Cats as a result of the improper offer, agreement to confer, or conferring of a benefit to a City employee or official.

### **ARTICLE 14.**

#### **ASSIGNMENT**

Alley Cats may not assign any part of this Agreement without consent or approval by the City Council. Alley Cats may assign this Agreement to an Affiliate of Alley Cats for the purpose of owning the Property upon the consent and approval by City Council, which consent shall not be unreasonably withheld, conditioned or delayed, provided that (i) Alley Cats or an Affiliate shall continue to occupy the Development as an owner or tenant of the Property, and (ii) the assignee assumes all of Alley Cats's obligations under this Agreement.

### **ARTICLE 15.**

#### **INDEMNIFICATION**

- 15.01 ALLEY CATS EXPRESSLY AGREES TO FULLY AND COMPLETELY DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, AND ITS OFFICERS, AND EMPLOYEES, AGAINST ANY AND ALL CLAIMS, LAWSUITS, LIABILITIES, JUDGMENTS, OUT-OF-POCKET COSTS, AND OUT-OF-POCKET EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM, DAMAGES OR LIABILITY FOR WHICH RECOVERY OF DAMAGES IS SOUGHT (COLLECTIVELY, "LOSSES"), SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY ANY NEGLIGENT, GROSSLY NEGLIGENT, WRONGFUL, OR STRICTLY LIABLE ACT OR OMISSION OF ALLEY CATS OR ITS AGENTS, EMPLOYEES, OR CONTRACTORS, ARISING OUT IN THE PERFORMANCE OF THIS CONTRACT; NOTWITHSTANDING THE FOREGOING, IN NO EVENT SHALL ALLEY CATS BE RESPONSIBLE FOR, NOR SHALL ITS INDEMNIFICATION OBLIGATIONS SET FORTH IN THIS SECTION 15.01 EXTEND TO, ANY LOSSES ARISING OUT OF OR OCCASIONED BY THE ACTS OR OMISSIONS OF THE CITY, ITS OFFICERS AND EMPLOYEES, THAT CONSTITUTE GROSS



**NEGLIGENCE OR WILLFUL MISCONDUCT.** Nothing in this paragraph may be construed as waiving any governmental immunity available to the City under state law. This provision is solely for the benefit of Alley Cats and the City and is not intended to create or grant any rights, contractual or otherwise, in or to any other person.

- 15.02 It is acknowledged and agreed by the parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the parties. The City (including its past, present and future officers, elected officials, directors, employees and agents of the City) does not assume any responsibility to any third party in connection with Alley Cats's construction of the Development.

## **ARTICLE 16.** **MISCELLANEOUS MATTERS**

- 16.01 Time is of Essence. Time is of the essence in this Agreement. The parties hereto will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation.
- 16.02 Agreement Subject to Law. This Agreement is made subject in accordance with the Burleson Home Rule Charter and ordinances of City, as amended, and all applicable State and federal laws.
- 16.03 Interpretation. Each of the parties have been represented by counsel of their choosing in the negotiation and preparation of this Agreement. In the event of any dispute regarding the interpretation of this Agreement, this Agreement will be interpreted fairly and reasonably and neither more strongly for nor against any party based on draftsmanship.
- 16.04 Counterparts Deemed Original. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.
- 16.05 Captions. The captions to the various clauses of this Agreement are for informational purposes only and shall not alter the substance of the terms and conditions of this Agreement.
- 16.06 Complete Agreement. This Agreement embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporary agreements between the parties and relating to matters in the Agreement, and except as otherwise provided herein cannot be modified without written agreement of the parties to be attached and made a part of this Agreement.

- 16.07 No Waiver. Nothing contained in this Agreement shall be construed as the granting of any permit or permission required by any City ordinance or regulation, or the waiver of any requirement of any City ordinance or regulation.
- 16.08 Notice. Any notice to be given or served hereunder or under any document or instrument executed pursuant hereto shall be in writing and shall be (i) delivered personally, with a receipt requested therefore; or (ii) sent by a nationally recognized overnight courier service; or (iii) delivered by United States certified mail, return receipt requested, postage prepaid. All notices shall be addressed to the respective party at its address set forth below, and shall be effective (a) upon receipt or refusal if delivered personally; (b) one business day after depositing, with such an overnight courier service or (c) two business days after deposit in the United States mails, if mailed. Any party hereto may change its address for receipt of notices by service of a notice of such change in accordance with this subsection.

**Alley Cats:** AC Burleson, LLC  
Attn: Brian Smith  
P.O. Box 152465  
Arlington, Texas 76015

With a copy to: Barlow Garsek & Simon, LLP  
Attn: Amanda Myers  
920 Foch Street  
Fort Worth, Texas 76107

**City:** City Manager  
City of Burleson, Texas  
141 West Renfro  
Burleson, Texas 76028

With a copy to: Betsy Elam  
Taylor, Olson, Adkins, Sralla & Elam, L.L.P.  
6000 Western Place  
Suite 200  
Fort Worth, Texas 76107

**EDC:** Burleson 4A Economic Development Corp.  
Attn: Board President  
141 West Renfro  
Burleson, Texas 76028

With a copy to: Betsy Elam  
Taylor, Olson, Adkins, Sralla & Elam, L.L.P.  
6000 Western Place  
Suite 200

Fort Worth, Texas 76107

**BCSDC:**

Burleson Community Services Development Corp.  
Attn: Board President  
141 West Renfro  
Burleson, Texas 76028

With a copy to:

Betsy Elam  
Taylor, Olson, Adkins, Sralla & Elam, L.L.P.  
6000 Western Place  
Suite 200  
Fort Worth, Texas 76107

16.09 Amendment. This Agreement may only be amended by the mutual written agreement of the parties.

16.10 Severability. In the event any section, subsection, paragraph, subparagraph, sentence, phrase, or word herein is held invalid, illegal, or unenforceable, the balance of this Agreement shall stand, shall be enforceable, and shall be read as if the parties intended at all times to delete said invalid section, subsection, paragraph, subparagraph, sentence, phrase, or word. In the event there shall be substituted for such deleted provision a provision as similar in terms and in effect to such deleted provision as may be valid, legal and enforceable.

*[Signature pages to follow]*

EXECUTED on the respective dates of acknowledgement, to be effective as of the date first set forth above.

**CITY OF BURLESON**

By: [Signature]  
Bryan Langley, City Manager

Date: 12/13/21

STATE OF TEXAS  
COUNTY OF JOHNSON

This instrument was acknowledged before me on Dec. 13, 2021 by Bryan Langley, known personally by me to be the City Manager of the City of Burleson, on behalf of said City.

[Notary Seal]

[Signature]  
Notary Public, State of Texas





BURLESON 4A ECONOMIC DEVELOPMENT  
CORPORATION

By: 

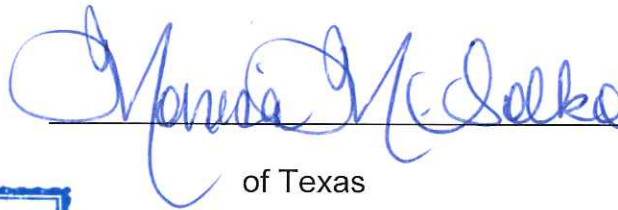
Name: Dan McClendon  
Title: Board President

Date: December 13, 2021

STATE OF TEXAS  
COUNTY OF Johnson

This instrument was acknowledged before me on Dec 13, 2021 by Dan McClendon, known personally by me to be the Board President of the Burleson 4A Economic Development Corporation, on behalf of said entity.

[Notary Seal]

  
of Texas

Notary Public, State



BURLESON COMMUNITY SERVICE  
DEVELOPMENT CORPORATION (4B)

By: 

Name: Dan McClendon

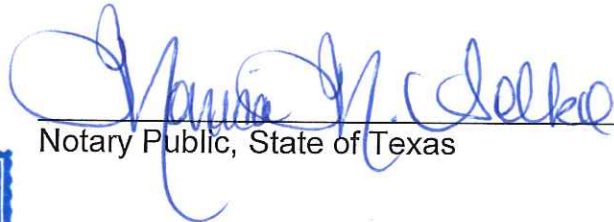
Title: Board President

Date: December 13, 2021

STATE OF TEXAS  
COUNTY OF Johnson

This instrument was acknowledged before me on Dec. 13, 2021 by Dan McClendon, known personally by me to be the Board President of the Burleson Community Services Development Corporation, on behalf of said entity.

[Notary Seal]

  
Notary Public, State of Texas



AC BURLESON, LLC

By: BK Smith  
Brian K. Smith, Manager

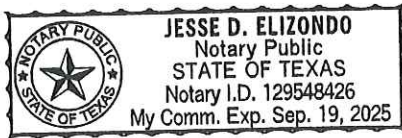
Date: 12-8-2021

STATE OF TEXAS  
COUNTY OF Tarrant / Johnson

This instrument was acknowledged before me on 8 DECEMBER 2021 by Brian K. Smith, known personally by me to be the Manager of AC Burleson, LLC, on behalf of said entity.

[Notary Seal]

Jesse Elizondo  
Notary Public, State of Texas



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## City Council Regular Meeting

**DEPARTMENT:** Economic Development

**FROM:** Alex Philips, Economic Development Director

**MEETING:** February 6, 2023

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**SUBJECT:**

Consider approval of a minute order ratifying the Burleson Community Service Development Corporation Board's actions taken on approval of an Amendment to the Chapter 380 Economic Development and Performance Agreement between the City of Burleson, Burleson 4A Economic Development Corporation, Burleson Community Service Development Corporation, and AC Burleson, LLC for a family entertainment facility located at 1258 SW Alsbury Blvd. *(Staff Presenter: Alex Philips, Economic Development Director)*

**SUMMARY:**

The City Council, Burleson 4A Economic Development Corporation, and Burleson Community Service Development Corporation approved a Chapter 380 Economic Development and Performance Agreement on December 13, 2021, with AC Burleson, LLC.

Alley Cats is a family owned establishment with locations in Arlington and Hurst. The family has been in business since 1964 operating the Putt-Putt Golf and games in the region. They offer a multitude of offerings including bowling, arcade. Laser tag, batting cages, go-carts and so much more.

Alley Cats Entertainment will be relocating their corporate office to Burleson within the development that is being proposed at 1258 SW Alsbury Boulevard. The development will be approximately 50,000 square feet and will include bowling lanes as well as lanes that will be for corporate and other events, arcade, miniature golf, batting cages, go-carts and a meeting room with a seated capacity of 100 people.

The amendment to the agreement is being requested due to the requirements of their financing. The Small Business Administration requires the use of green energy in the form of solar to be 15% of the electricity for the development. Due to this requirement AC Burleson, LLC, had to redesign the roof and electrical to support the solar panels that will be within the development to get the approval needed.

They are asking that the following dates be adjusted by one year to August 1, 2024, for the completion of the development:

- Complete construction of the Development no later than August 1, 2023.
- Make a minimum Capital Investment of no less than \$10,000,000 Dollars in the property no later than August 1, 2023.
- Opening Date for the Family Entertainment Center and Corporate Headquarters no later than August 1, 2023.
- Relocate the Alley Cats corporate headquarters to the Burleson location by August 1, 2023.

**OPTIONS:**

- 1) Approve as presented
- 2) Deny the Amendment

**RECOMMENDATION:**

Staff recommends the approval of the Amendment

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

Original Agreement was passed on December 13, 2021.

**FISCAL IMPACT:**

N/A

**STAFF CONTACT:**

Alex Philips  
Economic Development Director  
aphilips@burlesontx.com  
817-426-9613





# Economic Development



- AC Burleson, LLC is requesting an amendment to the 380 Agreement.
- AC Burleson is financing the construction of the development through the Small Business Administration.
- The request is due to the requirements of the SBA. One of the major requirements is the use of solar in the development.
- Due to this requirement AC Burleson needed to redesign the roof and electrical to support the weight and wind load of the solar panels.
- They are requesting the construction completion date, capital investment requirement date, relocation of the corporate headquarters date, and the opening date be pushed a year to August 1, 2024

# Alley Cats Obligations



- Completed the purchase of the property by June 30, 2022. **(Completed)**
- Commence construction of the development by July 31, 2022. **(Completed with the installation of environmental fencing and placement of job trailer)**
- Complete construction of the Development no later than August 1, 2023, with an approximate Capital Investment of no less than \$10 million dollars. **(August 2024)**
- Prospect agrees to relocate the corporate headquarters to the Burleson facility. The facility will have a separate entrance marked as corporate headquarters. **(August 2024)**
- Opening date of the Family Entertainment Center by August 1, 2023. **(August 2024)**





- Approve the 380 Amendment with AC Burleson, LLC.
- Deny the 380 Amendment with AC Burleson, LLC.



# Questions / Comments

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**FIRST AMENDMENT TO THE**  
**CHAPTER 380 AND ECONOMIC DEVELOPMENT AND PERFORMANCE**  
**AGREEMENT BETWEEN THE CITY OF BURLESON, THE BURLESON 4A**  
**ECONOMIC DEVELOPMENT CORPORATION, THE BURLESON COMMUNITY**  
**SERVICE DEVELOPMENT CORPORATION, AND AC BURLESON, LLC**

This First Amendment to the Chapter 380 Economic Development and Performance Agreement (the "Amendment") is made and entered into on this \_\_\_\_ day of February, 2023, by and between the City of Burleson, a Texas municipal corporation located in the Counties of Johnson and Tarrant, State of Texas ("City"), by and through its City Manager, the Burleson 4A Economic Development Corporation ("EDC"), a Texas municipal development corporation located in the City, by and through its Board President, the Burleson Community Service Development Corporation ("BCSDC") acting by and through its Board President, and AC Burleson, LLC ("Alley Cats"), a Texas limited liability company, acting by and through its manager. City, EDC, BCSDC, and Alley Cats are sometimes hereafter referred to individually as a "Party" and collectively as the "Parties."

**RECITALS:**

WHEREAS, on or about December 13, 2021, the City, the EDC, BCSDC and Alley Cats entered into that certain Chapter 380 Economic Development and Performance Agreement (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. Section 4.01 "Covenants Regarding Alley Cats Development and Operations" of the Agreement is hereby amended and replaced to read as follows:**

"4.01 Covenants Regarding Alley Cats Development and Operations. In consideration of City agreeing to pay Alley Cats the Grant Payments in accordance with the terms, provisions and conditions of this Agreement, Alley Cats agrees to the following, which are not obligations of Alley Cats, but are duties that must be fulfilled in order to receive Grant Payments and Incentives:

- (A) Design and construct the Development in conformance with the criteria and development standards set forth in the ordinances of the City of Burleson and applicable state and federal laws.
- (B) Design and construct the Development in substantial conformance with the Concept Plan.



- (C) Operate the Development in conformance with the criteria and development standards set forth in the ordinances of the City of Burleson and applicable state and federal laws.
- (D) Design and construct the Development to include the following amenities:
  - D.01 Bowling Lanes;
  - D.02 Secondary Bowling Lanes for corporate and other events, including parties;
  - D.03 Arcade;
  - D.04 Laser Tag;
  - D.05 Miniature Golf;
  - D.06 Batting Cages;
  - D.07 Go-Karts; and
  - D.08 Meeting Room with a seated capacity of at least 100 people.
- (E) Design and construct the Development to include an entrance to the Corporate Headquarters that is marked and signed as the corporate headquarters of Alley Cats and that is separate and distinct from the entrance to the Family Entertainment Center.
- (F) If Alley Cats does not own fee simple title to the Property as of the Effective Date, enter into a real estate contract to purchase fee simple title to the Property by December 31, 2021.
- (G) Complete a pre-development meeting with the City by December 31, 2021.
- (H) Complete platting and zoning approval by the City Council by April 30, 2022.
- (I) If Alley Cats does not own fee simple title to the Property as of the Effective Date, purchase and acquire fee simple title to the Property by June 30, 2022.
- (J) Commence construction of the Development no later than July 31, 2022.
- (K) Complete construction of the Development no later than **August 1, 2024**.
- (L) Make a minimum Capital Investment of no less than TEN MILLION AND NO/100 DOLLARS (\$10,000,000.00) in the Property no later than **August 1, 2024**.
- (M) Relocate the Alley Cats corporate headquarters to the Corporate Headquarters no later than **August 1, 2024**.



- (N) Opening Date for the Family Entertainment Center and Corporate Headquarters no later than **August 1, 2024**.
- (O) After the Opening Date, operate the Family Entertainment Center and Corporate Headquarters for the term of this Agreement subject to (i) Force Majeure, (ii) casualty and condemnation, and (iii) temporary closings for repair, renovations and/or alterations not to exceed ninety (90) consecutive days, in each event, subject to extensions for force majeure.
- (P) Alley Cats shall remain current and paid on all property taxes, subject to appeal rights in accordance with law and subject to a right to cure any delinquency as set forth herein."

2. **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]*

EXECUTED on the respective dates of acknowledgement, to be effective as of the date first set forth above.

**CITY OF BURLESON**

By: \_\_\_\_\_  
Bryan Langley, City Manager

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

STATE OF TEXAS  
COUNTY OF JOHNSON

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_ by Bryan Langley, known personally by me to be the City Manager of the City of Burleson, on behalf of said City.

[Notary Seal]

\_\_\_\_\_  
Notary Public, State of Texas



**BURLESON 4A ECONOMIC DEVELOPMENT  
CORPORATION**

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

Name: \_\_\_\_\_

Title: Board President

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

STATE OF TEXAS  
COUNTY OF \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_ by  
\_\_\_\_\_, known personally by me to be the Board President of the  
Burleson 4A Economic Development Corporation, on behalf of said entity.

[Notary Seal]

\_\_\_\_\_  
Notary Public, State  
of Texas



**BURLESON COMMUNITY SERVICES  
ECONOMIC DEVELOPMENT CORPORATION**

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

Name: \_\_\_\_\_

Title: Board President

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

STATE OF TEXAS  
COUNTY OF \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_ by  
\_\_\_\_\_, known personally by me to be the Board President of the  
Burleson Community Services Development Corporation, on behalf of said entity.

[Notary Seal]

\_\_\_\_\_  
Notary Public, State of Texas



AC BURLESON, LLC

By: 

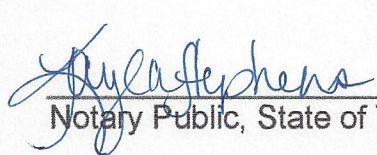
Brian K. Smith, Manager

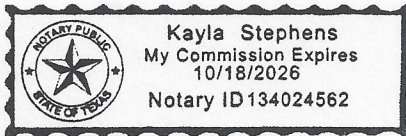
Date: 1-26-2023

STATE OF TEXAS  
COUNTY OF Tarrant

This instrument was acknowledged before me on Jan 26, 2023 by Brian K. Smith, known personally by me to be the Manager of AC Burleson, LLC, on behalf of said entity.

[Notary Seal]

 / Kayla Stephens  
Notary Public, State of Texas



**Exhibit A**  
**The Agreement**



**CHAPTER 380 AND ECONOMIC DEVELOPMENT AND PERFORMANCE  
AGREEMENT BETWEEN THE CITY OF BURLESON, THE BURLESON 4A  
ECONOMIC DEVELOPMENT CORPORATION, THE BURLESON COMMUNITY  
SERVICE DEVELOPMENT CORPORATION, AND AC BURLESON, LLC**

This Chapter 380 Economic Development and Performance Agreement (the "Agreement") is entered into as of December 13, 2021 (the "Effective Date") by and between the City of Burleson, a Texas municipal corporation located in the Counties of Johnson and Tarrant, State of Texas ("City"), by and through its City Manager, the Burleson 4A Economic Development Corporation ("EDC"), a Texas municipal development corporation located in the City, by and through its Board President, the Burleson Community Service Development Corporation ("BCSDC") acting by and through its Board President, and AC Burleson, LLC ("Alley Cats"), a Texas limited liability company, acting by and through its manager. City, EDC, BCSDC, and Alley Cats are sometimes hereafter referred to individually as a "Party" and collectively as the "Parties."

**WITNESSETH:**

**WHEREAS**, on May 27, 1993, the City adopted Resolution No. 583 establishing an Economic Development Program (the "Program") pursuant to Chapter 380 of the Texas Local Government Code; and

**WHEREAS**, Alley Cats desires to participate in the Program by entering into this Agreement; and

**WHEREAS**, the Burleson City Council finds and determines that this Agreement will effectuate the purposes set forth in the Program, and that Alley Cats's performance of its obligations herein will promote local economic development and stimulate business and commercial activity in the City; and

**WHEREAS**, the City is authorized by Article 52-a Texas Constitution, and Section 380 of the Texas Local Government Code to provide economic development grants to promote local economic development and to stimulate business and commercial activity in the City; and

**WHEREAS**, Alley Cats owns or has under contract to purchase and own certain real property in the City of Burleson, Johnson County, Texas, commonly known as 1258 SW Alsbury, Burleson, Texas, and more particularly described in Exhibit "A", attached hereto and incorporated herein by reference for all purposes (the "Property"); and

**WHEREAS**, Alley Cats proposes to operate a regional or national commercial headquarters and a family entertainment center on the Property; and

**WHEREAS**, the City has found the Development (hereinafter defined) will contribute to an increase in economic development in the City; and

**WHEREAS**, the EDC has determined and found that the incentives contemplated in this Agreement constitute a "Project" as defined by the Development Corporation Act, codified in Subtitle C-1 of Title 12 of the Texas Local Government Code, in Section 501.101, in that the expenditures fund the provision of land, buildings, equipment, facilities, expenditures, or targeted infrastructure and improvements that are for the creation or retention of primary jobs for regional or national corporate headquarters facilities; and

**WHEREAS**, the BCSDC has determined and found that the incentives contemplated in this Agreement constitute a "Project" as defined by the Development Corporation Act, codified in Subtitle C-1 of Title 12 of the Texas Local Government Code, in Section 501.101, in that the expenditures fund the provision of land, buildings, equipment, facilities, expenditures, or targeted infrastructure and improvements that are for the creation or retention of primary jobs for regional or national corporate headquarters facilities; and

**WHEREAS**, the BCSDC has further determined and found that the incentives contemplated in this Agreement constitute a "Project" as defined by the Development Corporation Act, codified in Subtitle C-1 of Title 12 of the Texas Local Government Code, in Section 505.152, in that the expenditures fund the provision of land, buildings, equipment, facilities, expenditures, or improvements that are required or suitable for use for athletic, entertainment, and tourist purposes; and

**WHEREAS**, the Property is not owned or leased by any member of the Burleson City Council or any member of the City Planning and Zoning Commission; and

**WHEREAS**, the Burleson City Council finds and determines that Alley Cats performance of its obligations herein will revitalize the John Jones corridor and promote local economic development and stimulate business and commercial activity in the City.

**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:

#### **ARTICLE 1.** **AUTHORIZATION**

The Burleson City Council finds and determines that this Agreement is authorized by Chapter 380 of the Texas Local Government Code and Chapters 501, 504, and 505 of the Texas Local Government Code.

#### **ARTICLE 2.** **DEFINITIONS**



- 2.01 The terms "Agreement," "Alley Cats," "BCSDC," "City," "EDC," "Effective Date," "Party," "Parties," "Program," and "Property," shall have the meanings provided, above.
- 2.02 "Affiliate" means any person or entity that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with Alley Cats.
- 2.03 "Available Sales Taxes" means the amount of Sales Tax actually and lawfully received by the City from the Texas Comptroller of Public Accounts attributable to gross taxable sales at the Family Entertainment Center during each calendar year or portion thereof during the Term of this Agreement.
- 2.04 "Capital Investment" means and shall include all costs incurred relating to the improvement of the Property, including the purchase price of the building and actual construction costs of all buildings, structures, infrastructure, utilities, landscaping and other onsite improvements, including all labor and materials, and shall include any third party funds borrowed by Alley Cats in furtherance thereof.
- 2.05 "City Sales Tax" means the tax authorized and levied pursuant to Section 321.101 of the Texas Tax Code and payable into the general fund, currently established at one percent (1%). City Sales Taxes shall not include sales and/or use taxes levied and collected exclusively for special purposes (such as a Type A or B Corporation) created and operating under the Development Corporation Act, codified in subtitle C1 of Title 12, Texas Local Government Code, transit districts. If the City, at its discretion ever elects to, or the voters choose to, reallocate the City Sales Tax and to levy less than a one percent (1%) sales tax, then "City Sales Taxes" shall mean the amount of sales taxes actually received by the City of Burleson arising from the actual City Sales Tax levied on gross taxable sales. Should the voters or the City set the City Sales Tax rate at more than one percent (1%), the City Sales Tax will not exceed one percent (1%).
- 2.06 "Concept Plan" means the plan depicted on **Exhibit "B"**.
- 2.07 "Corporate Headquarters" means the national corporate headquarters of Alley Cats, comprised of approximately 2,000 square feet and located on the Property.
- 2.08 "Development" means the construction of the Corporate Headquarters and Family Entertainment Center and related landscaping and onsite infrastructure on the Property.
- 2.09 "Event of Bankruptcy" means the dissolution or termination of Alley Cat's existence as a going business, insolvency, appointment of receiver for any part of Alley Cat's property and such appointment is not terminated within 90 days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Alley Cats and such proceeding is not dismissed within 90 days after the filing thereof.

- 2.10 "Family Entertainment Center" means an Alley Cats operated and branded facility comprised of approximately 50,000 square feet located on the Property operated in a manner substantially similar to the Alley Cats Entertainment located at 609 NE Loop 820 Hurst, Texas, that includes the following amenities: (1) bowling lanes; (2) secondary bowling lanes for corporate and other events including parties; (3) arcade; (4) laser tag; (5) miniature golf; (6) batting cages; (7) go-karts; and (8) a meeting room with a seated capacity of at least 100 people.
- 2.11 "Grant Payment(s)" means the periodic payments of a percentage of Available Sales Taxes as provided herein.
- 2.12 "Grant Payment Cap" has the meaning set forth in Section 5.02 of this Agreement.
- 2.13 "Incentives" mean the combined contributions, monetary or otherwise, of the City, EDC, and BCSDC towards completion of the Development, as required by this Agreement.
- 2.14 "Opening Date" means that date on which Alley Cats opens both the Family Entertainment Center and Corporate Headquarters.
- 2.15 "Sales Tax" shall mean the combination of the City Sales Tax, Type A Sales Tax, and Type B Sales Tax, the combination of which is currently established at two percent (2.0%).
- 2.16 "Type A Sales Tax" means the tax authorized, adopted, levied and/or collected by or on behalf of the City pursuant to Section 321.101(b) of the Texas Tax Code, as amended and/or replaced, currently established at one-half of one percent (0.5%), for use by the Burleson 4A Economic Development Corporation, a Type A economic development corporation, operating pursuant to Chapter 504 of the Texas Local Government Code, as amended and/or replaced. If the City, at its discretion ever elects to, or the voters choose to, reallocate the Type A Sales Tax and to levy less than a one-half of one percent (0.5%) sales tax, then "Type A Sales Taxes" shall mean the amount of sales taxes actually received by the City of Burleson arising from the actual Type A Sales Tax levied on gross taxable sales. Should the voters or the City set the Type A Sales Tax rate at more than one-half of one percent (0.5%), the Type A Sales Tax will not exceed one-half of one percent (0.5%).
- 2.17 "Type B Sales Tax" means the tax authorized, adopted, levied and/or collected by or on behalf of the City pursuant to Section 321.101(b) of the Texas Tax Code, as amended and/or replaced, currently established at one-half of one percent (0.5%), for use by the Burleson Community Service Development Corporation, a Type B economic development corporation, operating pursuant to Chapter 505 of the Texas Local Government Code, as amended and/or replaced. If the City, at its discretion ever elects to, or the voters choose to, reallocate the Type B Sales Tax and to levy less than a one-half of one percent (0.5%) sales tax, then "Type B Sales Taxes" shall mean the amount of sales taxes actually received by the City



of Burleson arising from the actual Type B Sales Tax levied on gross taxable sales. Should the voters or the City set the Type B Sales Tax rate at more than one-half of one percent (0.5%), the Type B Sales Tax will not exceed one-half of one percent (0.5%).

### **ARTICLE 3.**

#### **TERM**

The term of this Agreement shall commence on the Effective Date and will terminate ten years following the date Alley Cats receives a Certificate of Occupancy on the Property.

### **ARTICLE 4.**

#### **COVENANTS OF ALLEY CATS**

4.01 Covenants Regarding Alley Cats Development and Operations. In consideration of City agreeing to pay Alley Cats the Grant Payments in accordance with the terms, provisions and conditions of this Agreement, Alley Cats agrees to the following, which are not obligations of Alley Cats, but are duties that must be fulfilled in order to receive Grant Payments and Incentives:

- (A) Design and construct the Development in conformance with the criteria and development standards set forth in the ordinances of the City of Burleson and applicable state and federal laws.
- (B) Design and construct the Development in substantial conformance with the Concept Plan.
- (C) Operate the Development in conformance with the criteria and development standards set forth in the ordinances of the City of Burleson and applicable state and federal laws.
- (D) Design and construct the Development to include the following amenities:
  - D.01 Bowling Lanes;
  - D.02 Secondary Bowling Lanes for corporate and other events, including parties;
  - D.03 Arcade;
  - D.04 Laser Tag;
  - D.05 Miniature Golf;
  - D.06 Batting Cages;
  - D.07 Go-Karts; and

D.08 Meeting Room with a seated capacity of at least 100 people.

- (E) Design and construct the Development to include an entrance to the Corporate Headquarters that is marked and signed as the corporate headquarters of Alley Cats and that is separate and distinct from the entrance to the Family Entertainment Center.
- (F) If Alley Cats does not own fee simple title to the Property as of the Effective Date, enter into a real estate contract to purchase fee simple title to the Property by December 31, 2021.
- (G) Complete a pre-development meeting with the City by December 31, 2021.
- (H) Complete platting and zoning approval by the City Council by April 30, 2022.
- (I) If Alley Cats does not own fee simple title to the Property as of the Effective Date, purchase and acquire fee simple title to the Property by June 30, 2022.
- (J) Commence construction of the Development no later than July 31, 2022.
- (K) Complete construction of the Development no later than August 1, 2023.
- (L) Make a minimum Capital Investment of no less than TEN MILLION AND NO/100 DOLLARS (\$10,000,000.00) in the Property no later than August 1, 2023.
- (M) Relocate the Alley Cats corporate headquarters to the Corporate Headquarters no later than August 1, 2023.
- (N) Opening Date for the Family Entertainment Center and Corporate Headquarters no later than August 1, 2023.
- (O) After the Opening Date, operate the Family Entertainment Center and Corporate Headquarters for the term of this Agreement subject to (i) Force Majeure, (ii) casualty and condemnation, and (iii) temporary closings for repair, renovations and/or alterations not to exceed ninety (90) consecutive days, in each event, subject to extensions for force majeure.
- (P) Alley Cats shall remain current and paid on all property taxes, subject to appeal rights in accordance with law and subject to a right to cure any delinquency as set forth herein.

4.02 Verification of Capital Investment. Within 45 days following the receipt of a Certificate of Occupancy for the Development, Alley Cats shall provide written verification to the City that the Capital Investment made by Alley Cats meets or exceeds the requirements set forth in this Agreement. Alley Cats agrees that City shall not be required to make any Grant Payments under this Agreement until such

time that Alley Cats provides such written verification. The City may request, and Alley Cats hereby agrees that it will permit reasonable review of information that permits the City to verify that the Capital Investment made by Alley Cats for the Development meets or exceeds the requirements of this Agreement.

## **ARTICLE 5. PROGRAM GRANT**

- 5.01 Subject to Alley Cats complying with his duties and obligations under this Agreement, the City agrees that, subject to the terms and conditions contained herein, Alley Cats shall be entitled to receive Grant Payments and benefits according to the schedule set forth in this Article.
- 5.02 The maximum Grant Payments cumulatively available to Alley Cats over the term of this Agreement shall not exceed Seven Hundred Fifty Thousand Dollars (\$750,000.00).
- 5.03 The City shall make Grant Payments to Alley Cats in annual installments equal to one hundred percent (100%) of Available Sales Taxes received by the City for the prior calendar year of the Family Entertainment Center's operation.
- 5.04 The Grants Payments shall cease upon the earlier of:
- (A) The date upon which the Grant Payment is paid for the final twelve (12) month period ending five years following the date Alley Cats receives a Certificate of Occupancy on the Property; or
  - (B) The date upon which the Grant Payment Cap has been reached.
- 5.05 For each calendar year in which a grant payment is requested, Alley Cats agrees to provide a release to the City that will allow the Texas Comptroller of Public Accounts (the "Comptroller") to release information to the City that documents the amount of Available Sales Taxes collected by the Comptroller for the City from the Restaurant (the "Sales Tax Disclosure"). The City and Alley Cats shall rely on the Sales Tax Disclosure as accurate and definitive for purposes of this Agreement. City shall not be required to pay Alley Cats the Grant Payments under this Article until such time that Alley Cats provides the required release and the Comptroller provides the Sales Tax Disclosure.
- 5.06 Following receipt of the Sales Tax Disclosure and the receipt of Available Sales Taxes by City, City shall pay Alley Cats the annual installment of Grant Payments due hereunder, subject to the terms and provisions of this Agreement, within 60 days. Both parties acknowledge that as of the Effective Date of this Agreement, the Sales Tax Disclosure and disbursement of Available Sales Taxes for the prior calendar year to City by Comptroller is expected to occur no sooner than March 1 of each calendar year.

## **ARTICLE 6.**



## INCENTIVES

- 6.01 Subject to Alley Cats complying with its duties and obligations under this Agreement, the City agrees to the following Incentives: The City shall reimburse to Alley Cats a total amount not to exceed One Million Two Hundred Fifty Thousand Dollars (\$1,250,000.00) for expenses related to the Corporate Headquarters. The Incentives shall be paid in the incremental, scheduled amounts specified below upon completion of the following Development construction milestones:
- (A) Upon closing on the real estate contract and obtaining fee simple title to the Property, the Incentive due to Alley Cats shall be One Hundred Fifty-Six Thousand Two Hundred and Fifty Dollars (\$156,250);
  - (B) Upon receiving a building permit for construction of the Development, the Incentive due to Alley Cats shall be One Hundred Fifty-Six Thousand Two Hundred and Fifty Dollars (\$156,250);
  - (C) Upon completion of the construction of the entrance to the Corporate Headquarters, the Incentive due to Alley Cats shall be One Hundred Fifty-Six Thousand Two Hundred and Fifty Dollars (\$156,250);
  - (D) Upon completion of the construction of the meeting room with a seated occupancy of 100, the Incentive due to Alley Cats shall be Two Hundred Eight Thousand Three Hundred Thirty-Three Dollars (\$208,333);
  - (E) Upon completion of all public improvement infrastructure for the Development (and such public improvement infrastructure is accepted by the City, in its reasonable discretion), the Incentive due to Alley Cats shall be Two Hundred Eight Thousand Three Hundred Thirty-Three Dollars (\$208,333); and
  - (F) Upon receipt of a certificate of occupancy for both the Corporate Headquarters and Family Entertainment Center, the Incentive due to Alley Cats shall be Three Hundred Sixty-Four Thousand Five Hundred Eighty-Four Dollars (\$364,584).
- 6.02 The BCSDC authorizes the expenditure of up to Six Hundred Twenty-Five Thousand Dollars (\$625,000.00) for the Incentives. The BCSDC authorizes the City Manager to allocate such funds as permitted by law, and as necessary to meet the City obligations set forth in this Agreement.
- 6.03 The EDC authorizes the expenditure of up to Six Hundred Twenty-Five Thousand Dollars (\$625,000.00) for the Incentives. The EDC authorizes the City Manager to allocate such funds as permitted by law, and as necessary to meet the City obligations set forth in this Agreement.
- 6.04 Verification of Completion of the Development. Following the completion of each Development construction milestone specified in Section 6.01, Alley Cats shall provide written notice of such completion to the City and provide proof of costs reasonably satisfactory to the City. Alley Cats agrees that City shall not be required to make any Incentive payment under this Agreement until such time that Alley Cats provides such written notice and proof of costs. The City may request, and

Alley Cats hereby agrees that it will permit reasonable review of information that permits the City to verify that the costs made by Alley Cats for the Development meets or exceeds the requirements of this Agreement. Additionally, the City may request, and Alley Cats hereby agrees that it will permit reasonable inspection of the Property during normal business hours that permits the City to verify that the improvements made by Alley Cats for the Development meet or exceed the requirements of this Agreement. Following written notice of completion and proof of costs reasonably satisfactory to the City, City shall pay Alley Cats the Incentive amount specified in Section 6.01(A)-(F), as applicable, subject to the terms and provisions of this Agreement, within 60 days.

#### **ARTICLE 7.**

#### **REGULATIONS REGARDING BUILDING PRODUCTS, MATERIALS, OR METHODS**

The parties hereto find that the Property constitutes an area of architectural importance and significance and the City Council of the City of Burleson, Texas, hereby designates it as an area of architectural importance and significance for purposes of Chapter 3000 of the Texas Government Code (the "Code"). In consideration for the mutual covenants and conditions contained herein and pursuant to Section 3000.002(d) of the Code, Alley Cats voluntarily consents to the application of all City rules, charter provisions, ordinances, orders, building codes, and other regulations existing as of the Effective Date hereof (the "Regulations") that govern the use or installation of a building product or material in the construction, renovation, maintenance, or other alteration of a residential or commercial building on the Property regardless of whether a different building product or material is approved for use by a national model code published within the last three code cycles that applies to the construction, renovation, maintenance, or other alteration of the building. In addition, Alley Cats voluntarily consents to the application of the Regulations that establish a standard for a building product, material, or aesthetic method in construction, renovation, maintenance, or other alteration of a residential or commercial building, regardless of whether the standard is more stringent than a standard for the product, material, or aesthetic method under a national model code published within the last three code cycles that applies to the construction, renovation, maintenance, or other alteration of the building. The parties agree that: 1) the City will not issue any permits for the Property in violation of this Article; 2) the covenants contained within this Article constitute a material term of this Agreement; 3) Alley Cats's voluntary consent to the application of the Regulations to the Property, as described in this Article, constitutes a material inducement for the City to authorize the Incentives described herein; 4) the covenants contained herein shall run with the land and shall bind Alley Cats and all successors and assigns; and 5) this Article shall survive termination or expiration of this Agreement.

#### **ARTICLE 8.**

#### **AUTHORITY; COMPLIANCE WITH LAW**

- 8.01 Alley Cats hereby represents and warrants to the City that it has full lawful right, power and authority to execute and deliver and perform the terms and obligations



of this Agreement and that the execution and delivery of this Agreement has been duly authorized by all necessary action by Alley Cats and this Agreement constitutes the legal, valid and binding obligation of Alley Cats, and is enforceable in accordance with its terms and provisions, except as enforcement may be stayed or limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally.

- 8.02 Notwithstanding any other provision of this Agreement, Alley Cats shall comply with all federal, state, and local laws.
- 8.03 During the term of this Agreement, Alley Cats agrees not to knowingly employ any undocumented workers at the Development, and if convicted of a violation under 8 U.S.C. Section 1324a(f), Alley Cats shall repay the amount of the Incentives received by Alley Cats as of the date of such violation within 120 business days after the date Alley Cats is notified by the City of such violation, plus interest at the rate Burleson is paying on the most recent issuance of bonded indebtedness prior to Alley Cats's violation of this Article.

## **ARTICLE 9. DEFAULT AND REMEDIES**

9.01 Default by Alley Cats.

- (A) It shall be a default of this Agreement if: (i) Alley Cats fails to fulfill its obligations under Article 4 of this Agreement; (ii) Alley Cats has delinquent ad valorem or sales taxes owed to the City provided that Alley Cats retains the right to timely protest and/or contest any such taxes; (iii) Alley Cats materially breaches any of the material terms and conditions of this Agreement after the expiration of the notice and cure periods described herein, or (iv) Alley Cats experiences an Event of Bankruptcy. In the event of such a default, City shall give Alley Cats written notice of such breach and/or default, and if Alley Cats has not cured such breach or default within 90 days after receipt of such notice, the City may terminate this Agreement by written notice to Alley Cats, and the City shall have no further obligation to Alley Cats.
- (B) In the event Alley Cats fails to comply with Section 4.01 and closes or ceases operation prior to the end of the Term of this Agreement, Alley Cats shall not be entitled to any additional payments from City.

- 9.02 No waiver or any breach of any term or condition of this Agreement shall be construed to waive any subsequent breach of the same or any other term or condition of this Agreement. Any waiver of any term or condition of this Agreement must be in writing and approved by the City Council of Burleson.

- 9.03 If the Property is converted to a use other than the Corporate Headquarters and Family Entertainment Center within eight (8) years from the Opening Date or if Alley Cats does not open the Corporate Headquarters and Family Entertainment Center within three (3) years from the Effective Date of this Agreement, subject to extensions for force majeure, Alley Cats shall reimburse the City an amount equal to the total amount of the Incentive paid pursuant Section 6.01 less -\$156,250.00 for every full year Alley Cats remained on the Property in accordance this Agreement.

#### **ARTICLE 10.**

#### **RIGHT OF OFFSET**

Alley Cats agrees that, subject to the provision of Notice by City and 90-day period following receipt of Notice in which Alley Cats may respond or act, City may offset the amount of any compensation due to Alley Cats for any calendar year under this Agreement against any amount which is: (i) lawfully due to City from Alley Cats, and (ii) not subject to challenge by Alley Cats in a court of competent jurisdiction by Alley Cats.

#### **ARTICLE 11.**

#### **VENUE AND GOVERNING LAW**

This Agreement is performable in Johnson County, Texas and venue of any action arising out of this Agreement shall be exclusively in Johnson County, Texas. This Agreement shall be governed and construed in accordance with the Charter, ordinances, and resolutions of the City of Burleson, applicable federal and state laws, violation of which shall constitute a default of this Agreement. To the extent permitted by law, the laws of the State of Texas shall apply without regard to applicable principles of conflicts of law, and the parties submit to the jurisdiction of the state and federal courts in Burleson, Johnson County, Texas.

#### **ARTICLE 12.**

#### **FORCE MAJEURE**

Performance of Alley Cats's obligations under this Agreement shall be subject to extension due to delay by reason of events of force majeure, and Alley Cats's obligations shall be abated during any period of force majeure. Force majeure shall include, without limitation, damage or destruction by fire or other casualty, condemnation, strike, lockout, civil disorder, war, disease, endemic and/or pandemic (including any governmental measures taken in response thereto), issuance of any permit and/or legal authorization (including engineering approvals by any governmental entity), governmental approvals and permits, shortage or delay in shipment of materials or fuel occasioned by any event referenced herein, acts of God, unusually adverse weather or wet soil conditions or other causes beyond the parties' reasonable control, including but not limited to, any court or judgment resulting from any litigation affecting the Property or this Agreement.



### **ARTICLE 13.**

#### **GIFT TO PUBLIC SERVANT OR TO ALLEY CATS REPRESENTATIVE**

- 13.01 No Benefit. Each party hereto represents to the other that it has not offered, conferred, or agreed to confer and that it will not offer, confer or agree to confer in the future any benefit upon an employee or official of the other party. For purposes of this section, "benefit" means anything reasonably regarded as economic advantage, including benefit to any other person in whose welfare the beneficiary is interested, but does not include a contribution or expenditure made and reported in accordance with law.
- 13.02 Right of Reimbursement. Notwithstanding any other legal remedies, City may obtain reimbursement for any expenditure made to Alley Cats as a result of the improper offer, agreement to confer, or conferring of a benefit to a City employee or official.

### **ARTICLE 14.** **ASSIGNMENT**

Alley Cats may not assign any part of this Agreement without consent or approval by the City Council. Alley Cats may assign this Agreement to an Affiliate of Alley Cats for the purpose of owning the Property upon the consent and approval by City Council, which consent shall not be unreasonably withheld, conditioned or delayed, provided that (i) Alley Cats or an Affiliate shall continue to occupy the Development as an owner or tenant of the Property, and (ii) the assignee assumes all of Alley Cats's obligations under this Agreement.

### **ARTICLE 15.** **INDEMNIFICATION**

- 15.01 ALLEY CATS EXPRESSLY AGREES TO FULLY AND COMPLETELY DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, AND ITS OFFICERS, AND EMPLOYEES, AGAINST ANY AND ALL CLAIMS, LAWSUITS, LIABILITIES, JUDGMENTS, OUT-OF-POCKET COSTS, AND OUT-OF-POCKET EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM, DAMAGES OR LIABILITY FOR WHICH RECOVERY OF DAMAGES IS SOUGHT (COLLECTIVELY, "LOSSES"), SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY ANY NEGLIGENT, GROSSLY NEGLIGENT, WRONGFUL, OR STRICTLY LIABLE ACT OR OMISSION OF ALLEY CATS OR ITS AGENTS, EMPLOYEES, OR CONTRACTORS, ARISING OUT IN THE PERFORMANCE OF THIS CONTRACT; NOTWITHSTANDING THE FOREGOING, IN NO EVENT SHALL ALLEY CATS BE RESPONSIBLE FOR, NOR SHALL ITS INDEMNIFICATION OBLIGATIONS SET FORTH IN THIS SECTION 15.01 EXTEND TO, ANY LOSSES ARISING OUT OF OR OCCASIONED BY THE ACTS OR OMISSIONS OF THE CITY, ITS OFFICERS AND EMPLOYEES, THAT CONSTITUTE GROSS



**NEGLIGENCE OR WILLFUL MISCONDUCT.** Nothing in this paragraph may be construed as waiving any governmental immunity available to the City under state law. This provision is solely for the benefit of Alley Cats and the City and is not intended to create or grant any rights, contractual or otherwise, in or to any other person.

- 15.02 It is acknowledged and agreed by the parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the parties. The City (including its past, present and future officers, elected officials, directors, employees and agents of the City) does not assume any responsibility to any third party in connection with Alley Cats's construction of the Development.

## **ARTICLE 16.** **MISCELLANEOUS MATTERS**

- 16.01 Time is of Essence. Time is of the essence in this Agreement. The parties hereto will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation.
- 16.02 Agreement Subject to Law. This Agreement is made subject in accordance with the Burleson Home Rule Charter and ordinances of City, as amended, and all applicable State and federal laws.
- 16.03 Interpretation. Each of the parties have been represented by counsel of their choosing in the negotiation and preparation of this Agreement. In the event of any dispute regarding the interpretation of this Agreement, this Agreement will be interpreted fairly and reasonably and neither more strongly for nor against any party based on draftsmanship.
- 16.04 Counterparts Deemed Original. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.
- 16.05 Captions. The captions to the various clauses of this Agreement are for informational purposes only and shall not alter the substance of the terms and conditions of this Agreement.
- 16.06 Complete Agreement. This Agreement embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporary agreements between the parties and relating to matters in the Agreement, and except as otherwise provided herein cannot be modified without written agreement of the parties to be attached and made a part of this Agreement.

- 16.07 No Waiver. Nothing contained in this Agreement shall be construed as the granting of any permit or permission required by any City ordinance or regulation, or the waiver of any requirement of any City ordinance or regulation.
- 16.08 Notice. Any notice to be given or served hereunder or under any document or instrument executed pursuant hereto shall be in writing and shall be (i) delivered personally, with a receipt requested therefore; or (ii) sent by a nationally recognized overnight courier service; or (iii) delivered by United States certified mail, return receipt requested, postage prepaid. All notices shall be addressed to the respective party at its address set forth below, and shall be effective (a) upon receipt or refusal if delivered personally; (b) one business day after depositing, with such an overnight courier service or (c) two business days after deposit in the United States mails, if mailed. Any party hereto may change its address for receipt of notices by service of a notice of such change in accordance with this subsection.

**Alley Cats:** AC Burleson, LLC  
Attn: Brian Smith  
P.O. Box 152465  
Arlington, Texas 76015

With a copy to: Barlow Garsek & Simon, LLP  
Attn: Amanda Myers  
920 Foch Street  
Fort Worth, Texas 76107

**City:** City Manager  
City of Burleson, Texas  
141 West Renfro  
Burleson, Texas 76028

With a copy to: Betsy Elam  
Taylor, Olson, Adkins, Sralla & Elam, L.L.P.  
6000 Western Place  
Suite 200  
Fort Worth, Texas 76107

**EDC:** Burleson 4A Economic Development Corp.  
Attn: Board President  
141 West Renfro  
Burleson, Texas 76028

With a copy to: Betsy Elam  
Taylor, Olson, Adkins, Sralla & Elam, L.L.P.  
6000 Western Place  
Suite 200

Fort Worth, Texas 76107

**BCSDC:**

Burleson Community Services Development Corp.  
Attn: Board President  
141 West Renfro  
Burleson, Texas 76028

With a copy to:

Betsy Elam  
Taylor, Olson, Adkins, Sralla & Elam, L.L.P.  
6000 Western Place  
Suite 200  
Fort Worth, Texas 76107

16.09 Amendment. This Agreement may only be amended by the mutual written agreement of the parties.

16.10 Severability. In the event any section, subsection, paragraph, subparagraph, sentence, phrase, or word herein is held invalid, illegal, or unenforceable, the balance of this Agreement shall stand, shall be enforceable, and shall be read as if the parties intended at all times to delete said invalid section, subsection, paragraph, subparagraph, sentence, phrase, or word. In the event there shall be substituted for such deleted provision a provision as similar in terms and in effect to such deleted provision as may be valid, legal and enforceable.

*[Signature pages to follow]*

EXECUTED on the respective dates of acknowledgement, to be effective as of the date first set forth above.

**CITY OF BURLESON**

By: [Signature]  
Bryan Langley, City Manager

Date: 12/13/21

STATE OF TEXAS  
COUNTY OF JOHNSON

This instrument was acknowledged before me on Dec. 13, 2021 by Bryan Langley, known personally by me to be the City Manager of the City of Burleson, on behalf of said City.

[Notary Seal]

[Signature]  
Notary Public, State of Texas





BURLESON 4A ECONOMIC DEVELOPMENT  
CORPORATION

By: 

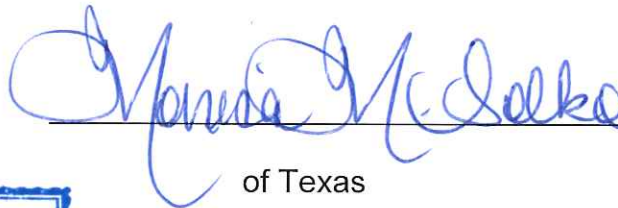
Name: Dan McClendon  
Title: Board President

Date: December 13, 2021

STATE OF TEXAS  
COUNTY OF Johnson

This instrument was acknowledged before me on Dec 13, 2021 by Dan McClendon, known personally by me to be the Board President of the Burleson 4A Economic Development Corporation, on behalf of said entity.

[Notary Seal]

  
of Texas

Notary Public, State





BURLESON COMMUNITY SERVICE  
DEVELOPMENT CORPORATION (4B)

By: 

Name: Dan McClendon

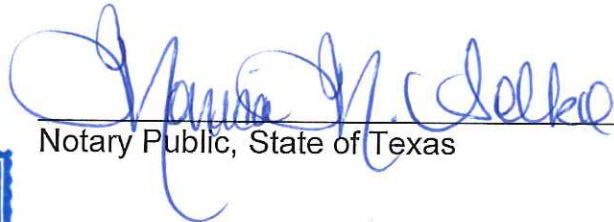
Title: Board President

Date: December 13, 2021

STATE OF TEXAS  
COUNTY OF Johnson

This instrument was acknowledged before me on Dec. 13, 2021 by Dan McClendon, known personally by me to be the Board President of the Burleson Community Services Development Corporation, on behalf of said entity.

[Notary Seal]

  
Notary Public, State of Texas



AC BURLESON, LLC

By: BK Smith  
Brian K. Smith, Manager

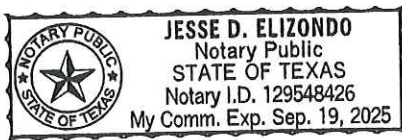
Date: 12-8-2021

STATE OF TEXAS  
COUNTY OF Tarrant / Johnson

This instrument was acknowledged before me on 8 DECEMBER 2021 by Brian K. Smith, known personally by me to be the Manager of AC Burleson, LLC, on behalf of said entity.

[Notary Seal]

Jesse Elizondo  
Notary Public, State of Texas



---

## City Council Regular Meeting

**DEPARTMENT:** Economic Development  
**FROM:** Alex Philips, Economic Development  
**MEETING:** February 6, 2023

---

**SUBJECT:**

Consider approval of a minute order ratifying the 4A Economic Development Corporation Board's actions taken on the approval of a Performance Agreement between the Burleson 4A Economic Development Corporation and 2525 FTG – Tulsa, LLC. for a development located at 700, 708, 712, 714, 716, and 720 SW Wilshire Blvd in Burleson, Texas (*Staff Contact: Alex Philips, Economic Development Director*)

**SUMMARY:**

The Retail Connection (TRC), also known as 2525 FTG – Tulsa, LLC., is under contract for property generally located at Wilshire Blvd and Summercrest Blvd. The property currently has three vacant businesses. TRC desires to redevelop the entire two-acre site to have two, new retail buildings. The new buildings will be the home of four new-to-market businesses; Fatburger, Cool Greens, Hawaiian Bros. and Athletico (physical therapy). In order for the site to be viable, considerable site improvements are needed. TRC will be required to raze and clean the site including environmental cleanup, improve drainage through site, and reengineer access with shared access. Staff believe these site improvements will greatly decrease flooding, traffic impacts and clean up the aesthetics of the Wilshire corridor.

TRC has requested \$850,000 in economic incentives to help accomplish the needed site improvements.

In order to receive the proposed incentives, TRC will be required to adhere to the following conditions:

- Design and construct the Development in substantial conformance with the criteria and development standards set forth in the ordinances of the City of Burleson and applicable state and federal laws.
- Design and construct the Development in substantial conformance with the Concept Plan included in the agreement
- Operate the Development in substantial conformance with the criteria and development standards set forth in the ordinances of the City of Burleson and applicable state and federal laws
- Complete a zoning application and file with the City by May 31, 2023

- Commence construction (i.e., obtain a building permit from the City and start rough grading) on the Development no later than September 30, 2024
- Substantially Complete construction of the Development no later than December 31, 2024
- Make a minimum Capital Investment of no less than Four Million Dollars (\$4,000,000.00) in the Property no later than December 31, 2024
- Recruit to the Development at least four (4) new-to-market retail, office, or restaurant tenants, with each of the four tenants receiving a certificate of occupancy in the Development no later than December 31, 2025
- TRC shall remain current and paid on all property taxes, subject to appeal rights in accordance with law and subject to a right to cure any delinquency as set forth herein

As performance measures are met, TRC would receive the following incentives:

- Upon Substantial Completion of the Development, the Incentive due to TRC shall be a reimbursement of TRC's expenses related to TRC's construction of the Site Improvements up to Four Hundred Twenty-Five Thousand Dollars (\$425,000.00)
- Upon receipt of a Certificate of Occupancy from four (4) new-to-market retail, office, or restaurant tenants in the Development, the Incentive due to TRC shall be a reimbursement of TRC's expenses related to TRC's construction of the Site Improvements up to Four Hundred Twenty-Five Thousand Dollars (\$425,000.00)

#### **OPTIONS:**

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

#### **RECOMMENDATION:**

Staff recommends approving a Performance Agreement between the Burleson 4A Economic Development Corporation and 2525 FTG – Tulsa, LLC. for a development located at 700, 708, 712, 714, 716, and 720 SW Wilshire Blvd in Burleson, Texas

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

N/A

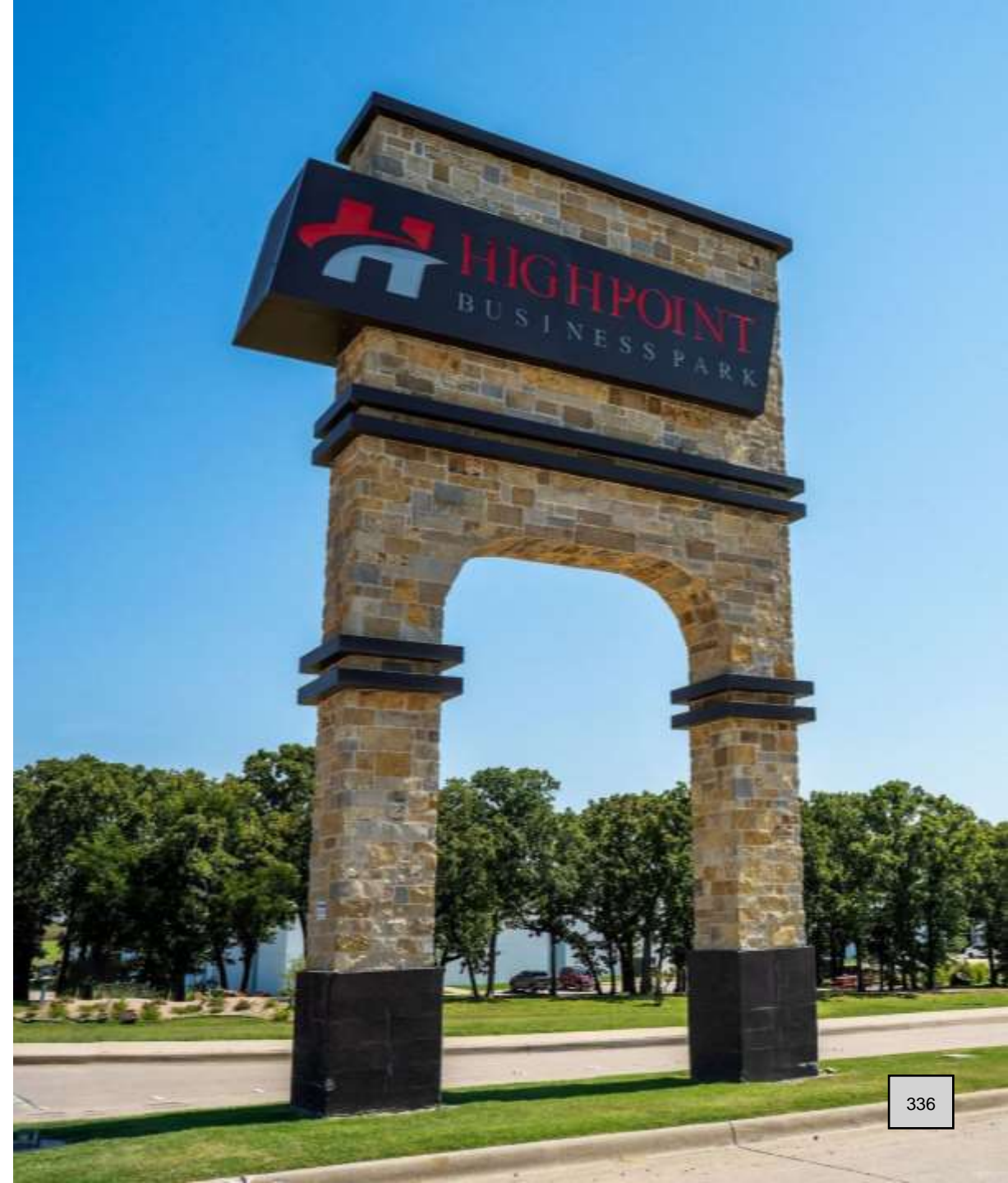
#### **FISCAL IMPACT:**

#### **STAFF CONTACT:**

Alex Philips  
Economic Development Director  
[aphilips@burlesontx.com](mailto:aphilips@burlesontx.com)  
817-426-9613

# The Retail Connection

## Proposed Performance Agreement





# The Retail Connection

- Approximately 2 acre site
- It is 4 lots that have been vacant for over a year



- Developer will do the environmental and demolition of the site
- Developer is proposing 3 new to market sales tax users and a primary job tenant.

# Proposed Development

- Developer is proposing 3 new to market sales tax users and a primary job tenant.
  - Fatburger
  - Cool Greens
  - Hawaiian Bros.
  - Athletico – Physical Therapy
- This site improvement would include the following:
  - Access (Shared Drive)
  - Environmental Cleanup
  - Drainage
  - Aesthetics
  - New to market users
- Developer is asking for \$850,000 in economic incentives





# Proposed Development

- Hawaiian Brothers
  - Hawaiian inspired cuisine
  - Rapidly growing since 2018
- Fatburger
  - Been in business since 1952
  - This will be the 6<sup>th</sup> location in DFW
- Cool Greens
  - Salads, wraps, grain bowls and sandwiches
  - 4<sup>th</sup> location in DFW
- Athletico
  - Physical Therapy Office



# The Retail Connection

Project Facelift	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2042
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 20
CAPEX	\$ 4,000,000.00	\$ 4,120,000.00	\$ 4,243,600.00	\$ 4,370,908.00	\$ 4,502,035.24	\$ 4,637,096.30	\$ 4,776,209.19	\$ 4,919,495.46	\$ 5,067,080.33	\$ 5,219,092.74	\$ 7,014,024.21
Appraised Value (70% of CAPEX)	\$ 2,800,000.00	\$ 2,884,000.00	\$ 2,970,520.00	\$ 3,059,635.60	\$ 3,151,424.67	\$ 3,245,967.41	\$ 3,343,346.43	\$ 3,443,646.82	\$ 3,546,956.23	\$ 3,653,364.91	\$ 4,909,816.95
Revenue											
Cumulative	\$ 140,000.00	\$ 140,000.00	\$ 160,000.00	\$ 160,000.00	\$ 160,000.00	\$ 160,000.00	\$ 160,000.00	\$ 160,000.00	\$ 160,000.00	\$ 160,000.00	\$ 160,000.00
Property Tax	\$ 20,160.00	\$ 20,764.80	\$ 21,387.74	\$ 22,029.38	\$ 22,690.26	\$ 23,370.97	\$ 24,072.09	\$ 24,794.26	\$ 25,538.08	\$ 26,304.23	\$ 35,350.68
Expenses											
Sales Rebate											
Utility											
Demo & Env.	\$ (425,000.00)	\$ (425,000.00)									
Annual	\$ (264,840.00)	\$ (264,235.20)	\$ 181,387.74	\$ 182,029.38	\$ 182,690.26	\$ 183,370.97	\$ 184,072.09	\$ 184,794.26	\$ 185,538.08	\$ 186,304.23	\$ 195,350.68
Cumulative		\$ (529,075.20)	\$ (347,687.46)	\$ (165,658.08)	\$ 17,032.18	\$ 200,403.14	\$ 384,475.24	\$ 569,269.49	\$ 754,807.58	\$ 941,111.81	\$ 2,851,706.75

Projected Sales      \$ 7,000,000.00    \$ 7,000,000.00    \$ 8,000,000.00    \$ 8,000,000.00    \$ 8,000,000.00    \$ 8,000,000.00    \$ 8,000,000.00    \$ 8,000,000.00    \$ 8,000,000.00    \$ 8,000,000.00    \$ 8,000,000.00    \$ 8,000,000.00

- 10 YR Return – 111%
- 20 YR Return – 335%

# Tonight's Action

- Approve or Deny a Performance Agreement between the Burleson 4A Economic Development Corporation and 2525 FTG - Tulsa, LLC.(The Retail Connection) for a development located at 700, 708, 712, 714, 716, and 720 SW Wilshire Blvd in Burleson, Texas



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## City Council Regular Meeting

**DEPARTMENT:** Public Works

**FROM:** Errick Thompson, Deputy Director of Public Works

**MEETING:** February 6, 2023

**SUBJECT:**

**4139 S Burleson Blvd (Case 22-139):** Hold a public hearing and consider a resolution approving a waiver to Section 5.5.E “Parking Lot/Site Layout Design Criteria” of the Design Standards Manual as amended by Resolution R-1175-10 for the parking lot design within 4139 S. Burleson Blvd. *(Staff Presenter: Errick Thompson, Deputy Director of Public Works) (The Planning and Zoning Commission motion for approval passed 5-1)*

**SUMMARY:**

On January 9, 2023 the City Council approved an item rezoning the subject property from Agriculture Zoning to Planned Development. During the rezoning process, staff notified the property owner the current parking lot material did not meet current city standards and if a Certificate of Occupancy (CO) was required in the future, the parking lot would need to be brought up to current standards utilizing one of the following sections –

- Six inches of asphalt on six inches of stabilized soil
- Five inches of concrete on six inches of stabilized soil

Where parking lot drive aisles serve as fire lanes, the fire lane standard included in the City’s Design Manual shall apply.

The property owner submitted an application requesting a waiver to the required parking lot section. The existing parking lot consists of twelve inches of flexbase material. Flexbase consists of crushed concrete, limestone, asphalt ect. Flexbase typically can be used as a base material for roadways, temporary roadways, parking lots, or areas for storage of material. The property owner provided a geotechnical engineering report indicating the existing parking lot and drive will support a fire truck (80,000 lb) which is a requirement for development.

**OPTIONS:**

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

**RECOMMENDATION:**

Staff recommends approval of the waiver with the following conditions:

1. Provides a site plan demonstrating the required number of parking stalls for the proposed use at time of Certificate of Occupancy.

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

January 17, 2023: The Planning and Zoning Commission recommended approval by a vote of 5-1.

**PUBLIC NOTIFICATION:**

Notice was mailed to surrounding property owners within 200 feet of the acreage proposed for this waiver and published in the newspaper in accordance with City ordinances and State law.

At this time staff has not received any formal opposition regarding this case.

**FISCAL IMPACT:**

None

**STAFF CONTACT:**

Errick Thompson  
Deputy Director of Public Works  
[ethompson@burlesontx.com](mailto:ethompson@burlesontx.com)  
817-426-9610

# Waiver Request – Parking Lot Standards

4139 S. Burleson Blvd.

## Location:

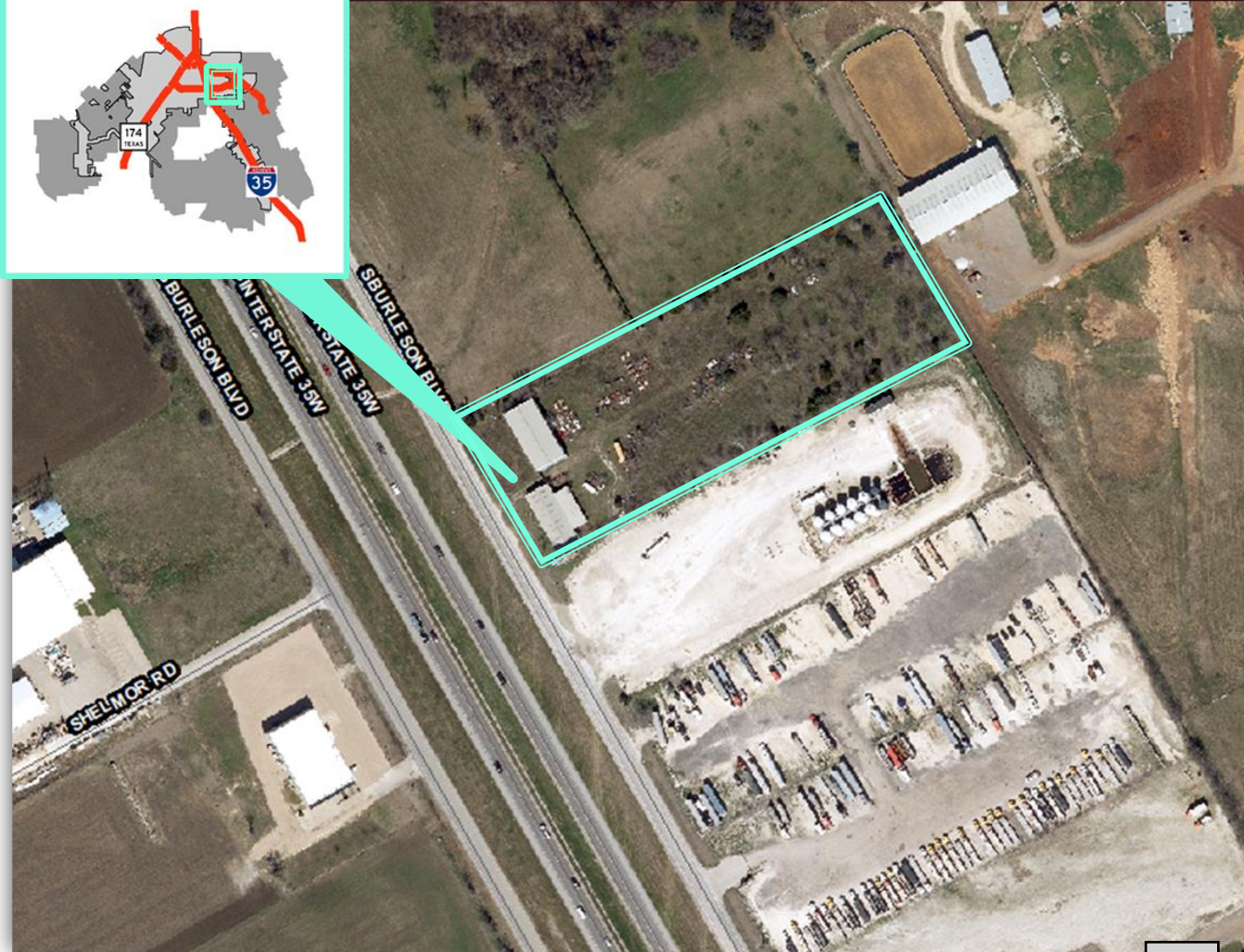
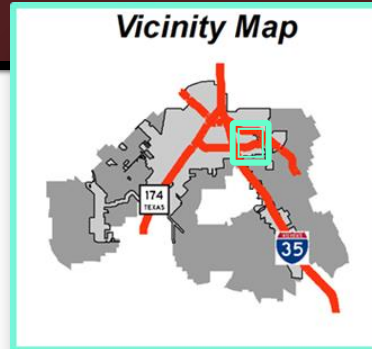
- 4.13 acres
- Located north of the intersection of Asher Rd. and S. Burleson Blvd.

## Applicant and Property Owner:

Daniel Welling, Welling Investments, LLC

## Item for approval:

Waiver to Section 5.5.E “Parking Lot/Site Layout Design Criteria” of the Design Standards Manual as amended by Resolution R-1175-10



# Waiver Request – Parking Lot Standards

4139 S. Burleson Blvd.

## Background:

- City Council approved Resolution amending Design Standards Manual on June 21, 2010 to include parking lot pavement standards
  - 6" Hot-Mix Asphalt Concrete-HMAC on 6" Lime or Cement stabilized soil
  - 5" Reinforced Portland Cement Concrete on 6" Lime or Cement stabilized soil
- Property owner informed current parking lot material did not meet current standards
  - Submitted request for waiver to current standards
  - Provided geotechnical report showing existing parking lot consists of 12 inches of flexbase material and will support a fire truck (80,000 lb) which is a requirement for development
- Flexbase Material and Uses
  - Consists of compacted crushed concrete, limestone, asphalt, etc
  - Base for roadways, temporary roadways, parking lots

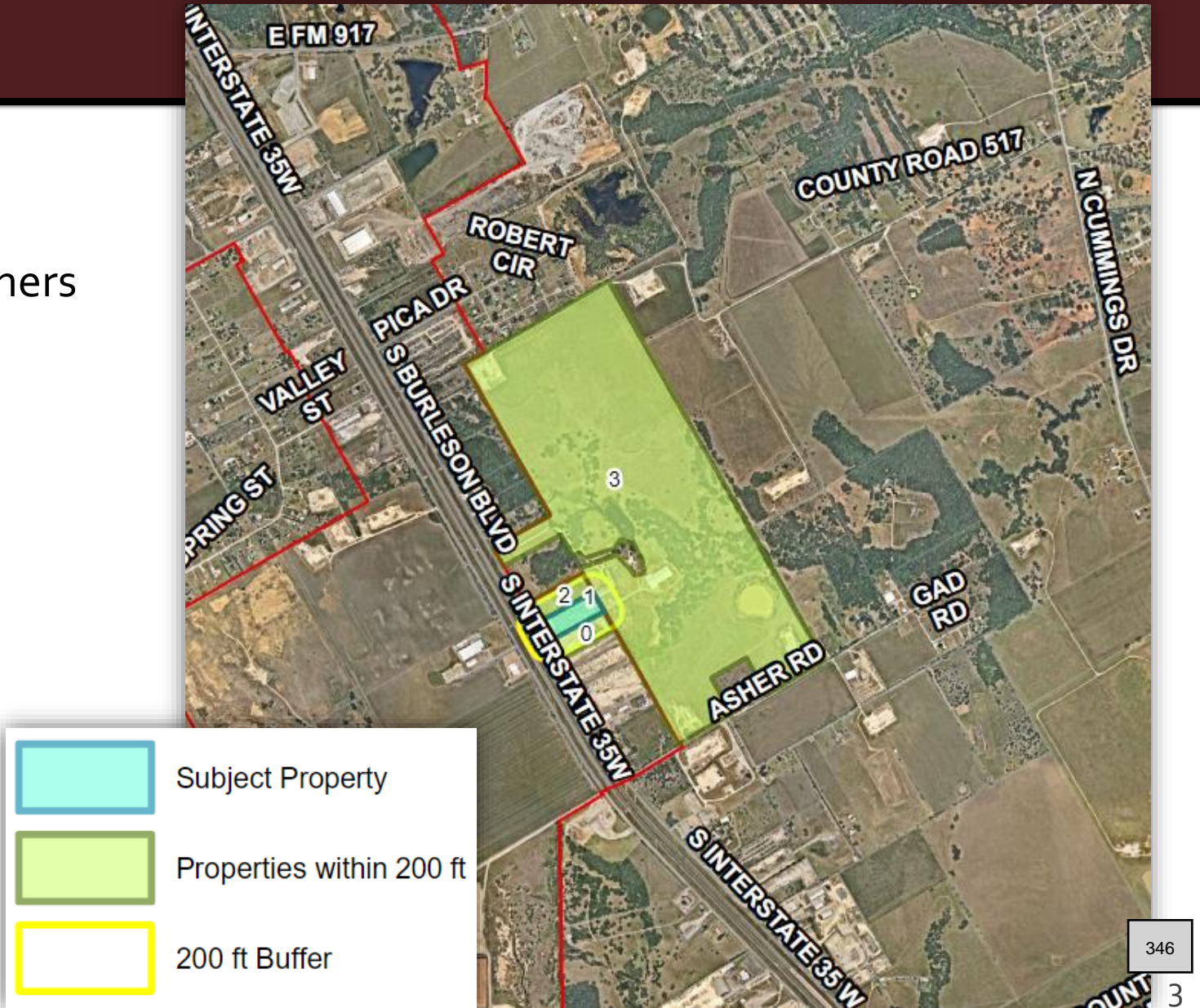


# Waiver Request – Parking Lot Standards

4139 S. Burleson Blvd.

## Notification:

- Public notices mailed to property owners within 200 feet of subject property
- Published in newspaper
- Staff has received no inquiries concerning this request.





# Waiver Request – Parking Lot Standards

3808 S. Burleson Blvd.

## P&Z Summary

### Vote

Recommended approval by a vote of 5 - 1

### Discussion

Clarification was requested regarding the standards being waived.

### Speakers

None

# Waiver Request – Parking Lot Standards

4139 S. Burleson Blvd.

## Staff's Recommendation

## Questions/Discussion

Staff recommends approval of a waiver to Section 5.5.E “Parking Lot/Site Layout Design Criteria” of the Design Standards Manual as amended by Resolution R-1175-10 for the parking lot located at 4139 S. Burleson Blvd with the following conditions. (Case 22-139)

- Provides a site plan demonstrating the required number of parking stalls for the proposed use at time of Certificate of Occupancy

## **RESOLUTION**

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BURLESON, TEXAS, FOR A VARIANCE TO SECTION 5.5.E “PARKING LOT/SITE LAYOUT DESIGN CRITERIA” OF THE DESIGN STANDARDS MANUAL AS AMENDED BY RESOLUTION R-1175-10 FOR THE PARKING LOT DESIGN WITHIN 4139 S. BURLESON BLVD.**

**WHEREAS**, the City of Burleson, Texas (“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 Local Government Code; and

**WHEREAS**, Section 5.5.E “Parking Lot/Site Layout Design Criteria” of the Design Standards Manual as amended by Resolution R-1175-10 regulates parking lot design within the jurisdiction of the City; and

**WHEREAS**, on October 3, 2022, an application was submitted by Daniel Welling with Welling Investments Inc. for a waiver to maintain the existing flexbase in lieu of bringing the parking lot up to six inches of asphalt on six inches of stabilized soil or five inches of concrete on six inches of stabilized soil for the parking lot section at 4139 S Burleson Blvd, under case number 22-139; and

**WHEREAS**, on February 6, 2023, the City Council made an inquiry into the matter and reviewed all the relevant information at a duly called public meeting, and

**WHEREAS**, City Council has determine that Special conditions exist that are peculiar to the land, structure or building involved and are not applicable to other lands, buildings or structures in the same vicinity; and

**WHEREAS**, the strict interpretation of the chapter would deprive the applicant of rights commonly enjoyed by other properties in the vicinity under the terms of this chapter; and

**WHEREAS**, special conditions and circumstances do not result from the actions of the applicant(s) and such conditions and circumstances do not merely constitute pecuniary hardship or inconveniences; and

**WHEREAS**, City Council has determined that granting the variance will meet the objectives of the ordinance and not be injurious to the adjoining property owners or otherwise detrimental to the public welfare; and

**WHEREAS**, City Council has determined that the request will be the minimum variance necessary to alleviate the special hardship or practical difficulties faced by the applicant in meeting the requirements of this chapter; and

**WHEREAS**, City Council has determined that granting the variance will be in harmony with the spirit and purpose of this chapter.

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

**Section 1.**

City Council grants a variance to Section 5.5.E “Parking Lot/Site Layout Design Criteria” of the Design Standards Manual as amended by Resolution R-1175-10 for the parking lot design within 4139 S. Burleson Blvd with the following condition:

1. Provides a site plan demonstrating the required number of parking stalls for the proposed use at time of Certificate of Occupancy.

Except as otherwise specified above, all other conditions, regulations, procedures, and rules of Section 5.5.E “Parking Lot/Site Layout Design Criteria” of the Design Standards Manual as amended by Resolution R-1175-10, shall apply to the parking lot design within 4139 S Burleson Blvd.

**Section 2.**

This resolution shall take effect immediately from and after its passage.

**PASSED, APPROVED, AND SO RESOLVED** by the City Council of the City of Burleson, Texas, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Chris Fletcher, Mayor  
City of Burleson, Texas

ATTEST:

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
Amanda Campos, City Secretary

\_\_\_\_\_  
E. Allen Taylor, Jr., City Attorney

**GEOTECHNICAL ENGINEERING STUDY  
PROPOSED PARKING LOT AND DRIVES  
4139 SOUTH BURLESON BOULEVARD  
ALVARADO, TEXAS**

Presented To:  
**Welling Investments, Inc.**

December 2022

**PROJECT NO. 3048-22-01**



December 7, 2022  
Report No. 3048-22-01

Welling Investments, Inc.  
1250 S. Capital of Texas Highway  
Building 3, Suite 400  
Austin, Texas 78746

Attn: Mr. Daniel Welling

**GEOTECHNICAL ENGINEERING STUDY  
PROPOSED PARKING LOT AND DRIVES  
4139 SOUTH BURLESON BOULEVARD  
ALVARADO, TEXAS**

Dear Mr. Welling:

Submitted here are the results of a geotechnical engineering study for the referenced project. This study was performed in general accordance with CMJ Proposal 22-8895 dated November 3, 2022. The geotechnical services were authorized by Mr. Daniel Welling on November 3, 2022.


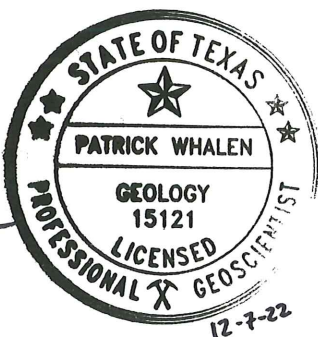
Engineering analyses and recommendations are contained in the text section of the report. The results of our field and laboratory services are included in the appendix of the report. We would appreciate the opportunity to be considered for providing construction material testing services during the construction phase of this project.

We appreciate the opportunity to be of service to Welling Investments, Inc. Please contact us if you have any questions or if we may be of further service at this time.

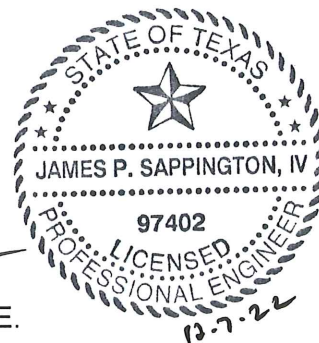
Respectfully submitted,  
**CMJ ENGINEERING, INC.**  
TBPELS REGISTRATION No. F-9177  
TBPG REGISTRATION No. 50644



Patrick J. Whalen, P.G.  
Project Geologist  
Texas No. 15121



James P. Sappington IV, P.E.  
President  
Texas No. 97402



copies submitted: (2) Mr. Daniel Welling; Welling Investments, Inc. (mail and email)

**CMJ Engineering**  
p: 817.284.9400  
f: 817.589.9993

7636 Pebble Drive  
Fort Worth, TX 76118  
[www.cmjengr.com](http://www.cmjengr.com)

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## APPENDIX A

	<u>Plate</u>
Plan of Borings-----	A.1
Unified Soil Classification System-----	A.2
Key to Classification and Symbols -----	A.3
Logs of Borings -----	A.4 – A.5
Soluble Sulfate Test Results-----	A.6

## **1.0 INTRODUCTION**

### **1.1 Project Description**

The site is located at 4139 South Burleson Boulevard, approximately 1,800 feet northwest of Asher Road in Alvarado, Texas. The project consists of new parking lots and drives to support heavy truck traffic. Plate A.1, Plan of Borings, presents the project vicinity and approximate locations of the exploration borings.

### **1.2 Purpose and Scope**

The purpose of this geotechnical engineering study has been to determine the general subsurface conditions, evaluate the engineering characteristics of the subsurface materials encountered, provide pavement subgrade and earthwork recommendations, and provide pavement design guidelines.

To accomplish its intended purposes, the study has been conducted in the following phases: (1) drilling sample borings to determine the general subsurface conditions and to obtain samples for testing; (2) performing laboratory tests on appropriate samples to determine pertinent engineering properties of the subsurface materials; and (3) performing engineering analyses, using the field and laboratory data, to develop geotechnical recommendations for the proposed construction.

The design is currently in progress. Once the final design is near completion (80-percent to 90-percent stage), it is recommended that CMJ Engineering, Inc. be retained to review those portions of the construction documents pertaining to the geotechnical recommendations, as a means to determine that our recommendations have been interpreted as intended.

### **1.3 Report Format**

The text of the report is contained in Sections 1 through 7. All plates and large tables are contained in Appendix A. The alpha-numeric plate and table numbers identify the appendix in which they appear. Small tables of less than one page in length may appear in the body of the text and are numbered according to the section in which they occur.

Units used in the report are based on the English system and may include tons per square foot (tsf), kips (1 kip = 1,000 pounds), kips per square foot (ksf), pounds per square foot (psf), pounds per cubic foot (pcf), and pounds per square inch (psi).

## **2.0 FIELD EXPLORATION AND LABORATORY TESTING**

### **2.1 Field Exploration**

Subsurface materials were explored by two (2) borings drilled in the existing pavement areas to a depth of 10 feet using continuous flight augers at the approximate locations shown on the Plan of Borings, Plate A.1. The boring logs are included on Plates A.4 and A.5 and keys to classifications and symbols used on the logs are provided on Plates A.2 and A.3.

Undisturbed samples of cohesive soils were obtained with nominal 3-inch diameter thin-walled (Shelby) tube samplers at the locations shown on the logs of borings. The Shelby tube sampler consists of a thin-walled steel tube with a sharp cutting edge connected to a head equipped with a ball valve threaded for rod connection. The tube is pushed into the soil by the hydraulic pulldown of the drilling rig. The soil specimens were extruded from the tube in the field, logged, tested for consistency with a hand penetrometer, sealed, and packaged to limit loss of moisture.

The consistency of cohesive soil samples was evaluated in the field using a calibrated hand penetrometer. In this test, a 0.25-inch diameter piston is pushed into the relatively undisturbed sample at a constant rate to a depth of 0.25 inch. The results of these tests, in tsf, are tabulated at respective sample depths on the logs. When the capacity of the penetrometer is exceeded, the value is tabulated as 4.5+.

Groundwater observations during and after completion of the borings are shown on the upper right of the boring log. Upon completion of the borings, the bore holes were backfilled with soil cuttings and tamped at the surface.

### **2.2 Laboratory Testing**

Laboratory soil tests were performed on selected representative samples recovered from the borings. In addition to the classification tests (liquid limits and plastic limits), moisture content, unit weight, and unconfined compressive strength tests were performed. Results of the laboratory classification tests, moisture content, unit weight, and unconfined compressive strength tests conducted for this project are included on the boring logs.

Soluble sulfate tests were conducted on selected soil samples recovered from the borings. The sulfate testing was conducted to help identify lime-induced heaving potential of the soils. Lime-

induced heaving can cause detrimental volumetric changes to a lime-stabilized subgrade. The results of the sulfate tests are presented on Plate A.6.

The above laboratory tests were performed in general accordance with applicable ASTM procedures, or generally accepted practice.

### **3.0 SUBSURFACE CONDITIONS**

#### **3.1 Site Geology**

The Dallas Sheet of the Geologic Atlas of Texas indicates the project site is located in the Eagle Ford Formation of the Upper Cretaceous age. The Eagle Ford Formation is composed primarily of dark shales with an occasional very thin sandstone or limestone stratum. Calcareous concretions, roughly spherical and up to 18 inches in diameter are found throughout this formation. The Eagle Ford weathers to a tan or tan and gray shaly clay with a dark brown to black residual soil, both of which are highly active.

#### **3.2 Soil Conditions**

Specific types and depths of subsurface strata encountered at the boring locations are shown on the boring logs in Appendix A. The generalized subsurface stratigraphy encountered in the borings is discussed below. Note that depths on the borings refer to the depth from the existing grade or ground surface present at the time of the investigation, and the boundaries between the various soil types are approximate.

Crushed rock base material is present at the surface in Borings B-1 and B-2 with thicknesses of 5 to 8 inches. Concrete with a thickness of 6 inches is present beneath the crushed rock material in Boring B-2.

Natural soils encountered beneath the paving materials consists of dark brown clays overlying light brown and gray shaly clays. Ironstone nodules and occasional calcareous nodules and pebbles are present within the soils. Occasional sand seams are noted above 4 feet in Boring B-2, and occasional sandstone seams are noted below a depth of 10 feet within the shaly clays in Boring B-2. The borings were terminated within the various natural soils at a depth of 10 feet.



The various soils encountered in the borings had Liquid Limits (LL) ranging from 54 to 71 with Plasticity Indices (PI) ranging from 36 to 49 and are classified as CH by the USCS. The various clayey (cohesive) soils are generally soft to stiff (soil basis) in consistency with pocket penetrometer readings of 0.75 to 2.25 tsf. Tested unit weight values varied from 88 to 95 pcf and tested unconfined compressive strengths were 2,000 to 3,010 psf.

The Atterberg Limits tests indicate the various clays encountered at this site are highly active with respect to moisture-induced volume changes. Active clays can experience volume changes (expansion or contraction) with fluctuations in their moisture content.

### **3.3 Groundwater Observations**

The borings were drilled using continuous flight augers in order to observe groundwater seepage during drilling. No groundwater seepage was encountered during drilling and the borings were dry at drilling completion.

While it is not possible to accurately predict the magnitude of subsurface water fluctuation that might occur based upon these short-term observations, it should be recognized that groundwater conditions will vary with fluctuations in rainfall.

Fluctuations of the groundwater level can occur due to seasonal variations in the amount of rainfall; site topography and runoff; hydraulic conductivity of soil strata; and other factors not evident at the time the borings were performed. During wet periods of the year, seepage can occur in joints in the clays or via more permeable strata. The possibility of groundwater level fluctuations should be considered when developing the design and construction plans for the project.

## **4.0 PAVEMENTS**

### **4.1 General Pavement Considerations**

The subgrade soil encountered in the borings consists of primarily highly plastic clays. The success of the pavement subgrade is subgrade soil strength and control of water. Adequate subgrade performance can be achieved by stabilizing existing soils and fills used to construct the pavement subgrade. Stabilization of the clay subgrade soils can be accomplished with the addition of hydrated lime.

On-site soils are highly plastic and subject to expansive movement with soil wetting and drying. Estimates of expansive movement potential are on the order of 4 to 5 inches. Movements in excess of this estimate can occur if poor drainage, excessive water collection, leaking pipelines, etc. occur. Any such excessive water conditions should be rectified as soon as possible. In order to minimize rainwater infiltration through the pavement surface, and thereby minimizing future upward movement of the pavement slabs, all cracks and joints in the pavement should be sealed on a routine basis after construction.

## **4.2 Lime-Induced Heaving**

Soluble sulfate tests were conducted to check for lime-induced heaving potential. Lime-induced heaving is caused when hydrated lime is added to a soil with a high sulfate concentration. The lime reacts with the sulfates when water is present to cause potentially large volumetric changes in the soil.

Soluble sulfate levels in soils on the order of 2,000 parts-per-million (ppm) or less are usually of low concern and warrant only observation of the subgrade during the stabilization process. Soluble sulfate levels on the order of 2,000 to 6,000 ppm usually warrant a double lime process, with the first treatment of lime consisting of  $\frac{1}{2}$  the recommended concentration and a second lime treatment consisting of the full recommended concentration. Sulfate levels on the order of 6,000+ ppm may require a double-lime process, with the two full-concentration lime treatments.

The soluble sulfate levels of the tested samples were less than 100 ppm. Since the samples tested were below 2,000 ppm, a single-lime process is recommended at this time. The single-lime treatment is described in Section 4.3. In addition, it is recommended that during the curing period of the lime treatment, the subgrade be supplied with ample moisture and it should be checked for any volumetric changes that may indicate a lime-induced heaving condition.

## **4.3 Pavement Subgrade Preparation**

The highly plastic clays are subject to loss in support value with the moisture increases which occur beneath pavement sections. They react with hydrated lime, which serves to improve and maintain their support value. Treatment of these soils with hydrated lime will improve their subgrade characteristics to support area paving. Lime treatment is recommended for all subgrade areas.

Alternatively, in lieu of a lime-stabilized subgrade, a minimum of 6-inch thick crushed stone flexible base meeting TxDOT Item 247, Type A, Grade 1/2 may be utilized on an equal basis and placed atop a properly compacted subgrade. The option of using a flexible base in lieu of lime stabilizing the subgrade presents a relatively quick, straight forward solution to preparing the subgrade prior to pavement placement.

Prior to lime stabilization or compaction, the subgrade should be proofrolled with heavy pneumatic equipment. Any soft or pumping areas should be undercut to a firm subgrade and properly backfilled as described in the Earthwork section. The subgrade should be scarified to a minimum depth of 6 inches and uniformly compacted to a minimum of 95 percent of Standard Proctor density (ASTM D 698), to minus 2 to plus 4 percentage points of the optimum moisture content determined by that test. It should then be protected and maintained in a moist condition until the pavement is placed. The presence of ironstone nodules, pebbles, and calcareous nodules in the surficial soils can complicate mixing of the soil and lime.

We recommend a minimum of 8 percent hydrated lime be used to modify the clay subgrade soils. The amount of hydrated lime required to stabilize the subgrade should be on the order of 36 pounds per square yard for a 6-inch depth based on a dry unit weight of 100 pcf. The hydrated lime should be thoroughly mixed and blended with the upper 6 inches of the clay subgrade (TxDOT Item 260). The hydrated lime should meet the requirements of Item 260 (Type A) in the Texas Department of Transportation (TxDOT) Standard Specifications for Construction of Highways, Streets and Bridges, 2014 Edition. Lime treatment should extend beyond exposed pavement edges to reduce the effects of shrinkage and associated loss of subgrade support.

We recommend that subgrade stabilization extend to at least one foot beyond pavement edges to aid in reducing pavement movements and cracking along the curb line due to seasonal moisture variations after construction. Each construction area should be shaped to allow drainage of surface water during earthwork operations, and surface water should be pumped immediately from each construction area after each rain and a firm subgrade condition maintained. Water should not be allowed to pond in order to prevent percolation and subgrade softening, and lime should be added to the subgrade after removal of all surface vegetation and debris. Sand should be specifically prohibited beneath pavement areas, since these more porous soils can allow water inflow, resulting in heave and strength loss of subgrade soils (lime-stabilized soil will be allowed for fine grading).

After fine grading each area in preparation for paving, the subgrade surface should be lightly moistened, as needed, and recompact to obtain a tight non-yielding subgrade.

Surface drainage is critical to the performance of this pavement. Water should be allowed to exit the pavement surface quickly. All pavement construction should be performed in accordance with the following procedures.

#### **4.4 Pavement Sections**

The project will include the construction of parking and drives subject to heavy-duty trucks, to include vehicles with anticipated loads of 80,000 lbs., with on the order of 2 passes per week. The pavement sections below and in Section 4.5 are presented for an approximate 20-year design life based on our experience with similar facilities.

We recommend that rigid pavements be utilized at this project whenever possible, since they tend to provide better long-term performance when subjected to significant slow moving and turning traffic.

If asphaltic concrete pavement is used, we recommend a full depth asphaltic concrete section having a minimum total thickness of 6 inches for paving subject to 80-kip trucks. A minimum surface course thickness of 2 inches is recommended for asphaltic concrete pavements.

If Portland cement concrete pavement is used, a minimum thickness of 6 inches for paving subject to 80-kip trucks.

In the event a lime-stabilized subgrade is not used in conjunction with a PCC pavement section, the total concrete thickness should be increased by 2 inches for a total of 8 inches.

A California Bearing Ratio or other strength tests were not performed because they were not within the scope of our services on this project. A subgrade modulus of 100 psi was considered appropriate for the near-surface soils. If heavier vehicles are planned, the above cross sections can be confirmed by performing strength tests on the subgrade materials once the traffic characteristics are established. Periodic maintenance of pavement structures normally improves the durability of the overall pavement and enhances its expected life.

The above sections should be considered minimum pavement thicknesses and higher traffic volumes and heavy trucks may require thicker pavement sections. These recommendations must

be reviewed once traffic volumes and loads are known. Periodic maintenance should be anticipated for minimum pavement thickness. This maintenance should consist of sealing cracks and timely repair of isolated distressed areas.

#### **4.5 All-Weather Surface**

For an all-weather surface for the proposed parking and drives, we recommend a minimum of 12 inches of flexible base over a properly compacted subgrade to support an 80-kip truck. Flexible base material should meet the requirements of TxDOT Item 247, Type A, Grade 1/2 and should be compacted to a minimum of 95 percent of ASTM D 698 and at a moisture content between minus 2 to plus 5 percentage points of the optimum moisture value. The section may alternatively consist of a minimum of 8 inches of flexible base placed atop a geotechnical grid, Tensar TriAx Geogrid TX140 or equivalent overlying a properly compacted subgrade. Placement of the geogrid should be installed in accordance with the manufacturer's specifications. The above section is intended to support the given 80,000 lb. truck only. Increased traffic and/or wheel loads may cause undue rutting and distress. Regardless, the owner should anticipate and preserve a regular maintenance budget and schedule when utilizing a flexible base pavement section.

This pavement section should not be considered equivalent to full-depth concrete or asphalt sections and will result in higher maintenance costs. More frequent pavement maintenance in these areas should be anticipated and regularly scheduled. More frequent heavy vehicles and/or tractor trailer traffic may cause significant rutting and shoving of this pavement section and should be expected if so exposed. Particular attention should be given to proper drainage at the interface of concrete or asphalt sections at the flexible base section should this be planned. The underlying clay subgrade is subject to strength loss with increases in moisture content. It is very difficult to provide a proper water-tight seal between two different pavement types. Water infiltrates at this joint between the two pavement types with pavement distress typically occurring at this joint.

Surface drainage is critical to the performance of this pavement. Water should be allowed to exit the pavement surface quickly.

#### **4.6 Pavement Material Requirements**

Reinforced Portland Cement Concrete: Reinforced Portland cement concrete pavement should consist of Portland cement concrete having a 28-day compressive strength of at least 3,500 psi. The mix should be designed in accordance with the ACI Code 318 using 3 to 6 percent air entrainment.



The pavement should be adequately reinforced with temperature steel and all construction joints or expansion/contraction joints should be provided with load transfer dowels. The spacing of the joints will depend primarily on the type of steel used in the pavement. We recommend using No. 3 steel rebar spaced at 18 inches on center in both the longitudinal and transverse direction. Control joints formed by sawing are recommended every 12 to 15 feet in both the longitudinal and transverse directions. The cutting of the joints should be performed as soon as the concrete has “set-up” enough to allow for sawing operations.

Hot Mix Asphaltic Concrete Surface Course: Item 340, Type D, Texas Department of Transportation Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges, 2014 Edition.

Hot Mix Asphaltic Concrete Base Course: Item 340, Type A or B, Texas Department of Transportation Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges, 2014 Edition.

Lime Stabilized Subgrade: Lime treatment for the base course (road mix) - Item 260, Texas Department of Transportation Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges, 2014 Edition.

Flexible Base: Crushed Stone Flexible Base – Item 247, Type A, Grade 1/2, Texas Department of Transportation Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges, 2014 Edition.

## **5.0 EARTHWORK**

### **5.1 Site Preparation**

The subgrade should be firm and able to support the construction equipment without displacement. Soft or yielding subgrade should be corrected and made stable before construction proceeds. The subgrade should be proof rolled to detect soft spots, which if exist, should be reworked to provide a firm and otherwise suitable subgrade. Proof rolling should be performed using a heavy pneumatic tired roller, loaded dump truck, or similar piece of equipment. The proof rolling operations should be observed by the project geotechnical engineer or his/her representative. Prior to fill placement, the

subgrade should be scarified to a minimum depth of 6 inches, its moisture content adjusted, and recompacted to the moisture and density recommended for fill.

The on-site soils are suitable for use in general site grading. Imported fill material should be clean soil with a Liquid Limit less than 60 and no rock greater than 4 inches in maximum dimension. The fill materials should be free of vegetation and debris.

## **5.2 Placement and Compaction**

Fill material should be placed in loose lifts not exceeding 8 inches in uncompacted thickness. The uncompacted lift thickness should be reduced to 4 inches for structure backfill zones requiring hand-operated power compactors or small self-propelled compactors. The fill material should be uniform with respect to material type and moisture content. Clods and chunks of material should be broken down and the fill material mixed by disking, blading, or plowing, as necessary, so that a material of uniform moisture and density is obtained for each lift. Water required for sprinkling to bring the fill material to the proper moisture content should be applied evenly through each layer.

The fill material should be compacted to a minimum of 95 percent of the maximum dry density determined by the Standard Proctor test, ASTM D 698. In conjunction with the compacting operation, the fill material should be brought to the proper moisture content. The moisture content for general earth fill should range from 2 percentage points below optimum to 5 percentage points above optimum (-2 to +5). These ranges of moisture contents are given as maximum recommended ranges. For some soils and under some conditions, the contractor may have to maintain a more narrow range of moisture content (within the recommended range) in order to consistently achieve the recommended density.

Field density tests should be taken as each lift of fill material is placed. As a guide, one field density test per lift for each 5,000 square feet of compacted area is recommended. For small areas or critical areas the frequency of testing may need to be increased to one test per 2,500 square feet. A minimum of 2 tests per lift should be required. The earthwork operations should be observed and tested on a continuing basis by an experienced geotechnician working in conjunction with the project geotechnical engineer.

Each lift should be compacted, tested, and approved before another lift is added. The purpose of the field density tests is to provide some indication that uniform and adequate compaction is being

obtained. The actual quality of the fill, as compacted, should be the responsibility of the contractor and satisfactory results from the tests should not be considered as a guarantee of the quality of the contractor's filling operations.

### **5.3 Excavation**

The side slopes of excavations through the overburden soils should be made in such a manner to provide for their stability during construction. Existing structures, pipelines or other facilities, which are constructed prior to or during the currently proposed construction and which require excavation, should be protected from loss of end bearing or lateral support.

Temporary construction slopes and/or permanent embankment slopes should be protected from surface runoff water. Site grading should be designed to allow drainage at planned areas where erosion protection is provided, instead of allowing surface water to flow down unprotected slopes.

Trench safety recommendations are beyond the scope of this report. The contractor must comply with all applicable safety regulations concerning trench safety and excavations including, but not limited to, OSHA regulations.

### **5.4 Acceptance of Imported Fill**

Any soil imported from off-site sources should be tested for compliance with the recommendations for the particular application and approved by the project geotechnical engineer prior to the materials being used. The owner should also require the contractor to obtain a written, notarized certification from the landowner of each proposed off-site soil borrow source stating that to the best of the landowner's knowledge and belief there has never been contamination of the borrow source site with hazardous or toxic materials. The certification should be furnished to the owner prior to proceeding to furnish soils to the site. Soil materials derived from the excavation of underground petroleum storage tanks should not be used as fill on this project.

### **5.5 Erosion and Sediment Control**

All disturbed areas should be protected from erosion and sedimentation during construction, and all permanent slopes and other areas subject to erosion or sedimentation should be provided with permanent erosion and sediment control facilities. All applicable ordinances and codes regarding erosion and sediment control should be followed.

## **6.0 CONSTRUCTION OBSERVATIONS**

In any geotechnical investigation, the design recommendations are based on a limited amount of information about the subsurface conditions. In the analysis, the geotechnical engineer must assume the subsurface conditions are similar to the conditions encountered in the borings. However, quite often during construction anomalies in the subsurface conditions are revealed. Should such anomalies be discovered Welling Investments, Inc. or their consultants should immediately notify CMJ Engineering, Inc. before proceeding further with construction to allow CMJ Engineering, Inc. to reconsider its recommendations as necessary. It is also recommended that Welling Investments, Inc. retain CMJ Engineering, Inc. to observe earthwork and foundation installation and perform materials evaluation during the construction phase of the project. This enables the geotechnical engineer to stay abreast of the project and to be readily available to evaluate unanticipated conditions, to conduct additional tests if required and, when necessary, to recommend alternative solutions to unanticipated conditions. Until these construction phase services are performed by the project geotechnical engineer, the recommendations contained in this report on such items as final foundation bearing elevations, proper soil moisture condition, and other such subsurface-related recommendations shall only be considered as preliminary, and not final, recommendations.

It is proposed that construction phase observation and materials testing commence by the project geotechnical engineer at the outset of the project. Experience has shown that the most suitable method for procuring these services is for the owner or the owner's design engineers to contract directly with the project geotechnical engineer. This results in a clear, direct line of communication between the owner and the owner's design engineers and the geotechnical engineer.

## **7.0 REPORT CLOSURE**

The boring logs shown in this report contain information related to the types of soil encountered at specific locations and times and show lines delineating the interface between these materials. The logs also contain our field representative's interpretation of conditions that are believed to exist in those depth intervals between the actual samples taken. Therefore, these boring logs contain both factual and interpretive information. Laboratory soil classification tests were also performed on samples from selected depths in the borings. The results of these tests, along with visual-manual procedures were used to generally classify each stratum. Therefore, it should be understood that the classification data on the logs of borings represent visual estimates of classifications for those portions of each stratum on which the full range of laboratory soil classification tests were not

performed. It is not implied that these logs are representative of subsurface conditions at other locations and times.

With regard to groundwater conditions, this report presents data on groundwater levels as they were observed during the course of the field work. In particular, water level readings have been made in the borings at the times and under conditions stated in the text of the report and on the boring logs. It should be noted that fluctuations in the level of the groundwater table can occur with the passage of time due to variations in rainfall, temperature, and other factors. Also, this report does not include quantitative information on rates of flow of groundwater into excavations, on pumping capacities necessary to dewater the excavations, or on methods of dewatering excavations. Unanticipated soil conditions at a construction site are commonly encountered and cannot be fully predicted by mere soil samples, test borings, or test pits. Such unexpected conditions frequently require that additional expenditures be made by the owner to attain a properly designed and constructed project. Therefore, provision for some contingency fund is recommended to accommodate such potential extra cost.

The analyses, conclusions, and recommendations contained in this report are based on site conditions as they existed at the time of our field investigation and further on the assumption that the exploratory borings are representative of the subsurface conditions throughout the site; that is, the subsurface conditions everywhere are not significantly different from those disclosed by the borings at the time they were completed. If during construction, different subsurface conditions from those encountered in our borings are observed, or appear to be present in excavations, we must be advised promptly so that we can review these conditions and reconsider our recommendations where necessary. If there is a substantial lapse of time between submission of this report and the start of the work at the site (more than twelve months is considered a substantial lapse of time; however, depending on the circumstances, less than six months may be considered a substantial lapse of time), if conditions have changed due either to natural causes or to construction operations at or adjacent to the site, or if structure locations, structural loads or finish grades are changed, we urge that we be promptly informed and retained to review our report to determine the applicability of the conclusions and recommendations, considering the changed conditions and/or time-lapse. In this regard, if (a) construction at the site does not start within twelve months of the date of this report and (b) CMJ Engineering, Inc. is not present at the site when construction starts to confirm that conditions have not changed since the date of this report, the information in this report cannot be relied upon or used for any purpose.



Further, it is urged that CMJ Engineering, Inc. be retained to review those portions of the plans and specifications for this particular project that pertains to earthwork and foundations as a means to determine whether the plans and specifications are consistent with the recommendations contained in this report. In addition, we are available to observe construction, particularly the compaction of structural fill, or backfill and the construction of foundations as recommended in the report, and such other field observations as might be necessary.

The scope of our services did not include any environmental assessment or investigation for the presence or absence of wetlands or hazardous or toxic materials in the soil, surface water, groundwater, or air, on or below or around the site.

This report has been prepared for use in developing an overall design concept and is a preliminary document. Paragraphs, statements, test results, boring logs, diagrams, etc. should not be taken out of context, nor utilized without knowledge and awareness of their intent within the overall concept of this report. The reproduction of this report, or any part thereof, supplied to persons other than the owner, should indicate that this study was made for design purposes only and that verification of the subsurface conditions for purposes of determining the difficulty of excavation, trafficability, etc. are responsibilities of the contractor.

This report has been prepared for the exclusive use of Welling Investments, Inc. and their consultants for specific application to design of this project only, and not for additions or modifications to the project. The only warranty made by us in connection with the services provided is that we have used that degree of care and skill ordinarily exercised under similar conditions by reputable members of our profession practicing in the same or similar locality. No other warranty, expressed or implied, is made or intended.

\* \* \* \*

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Date: 11/08/22

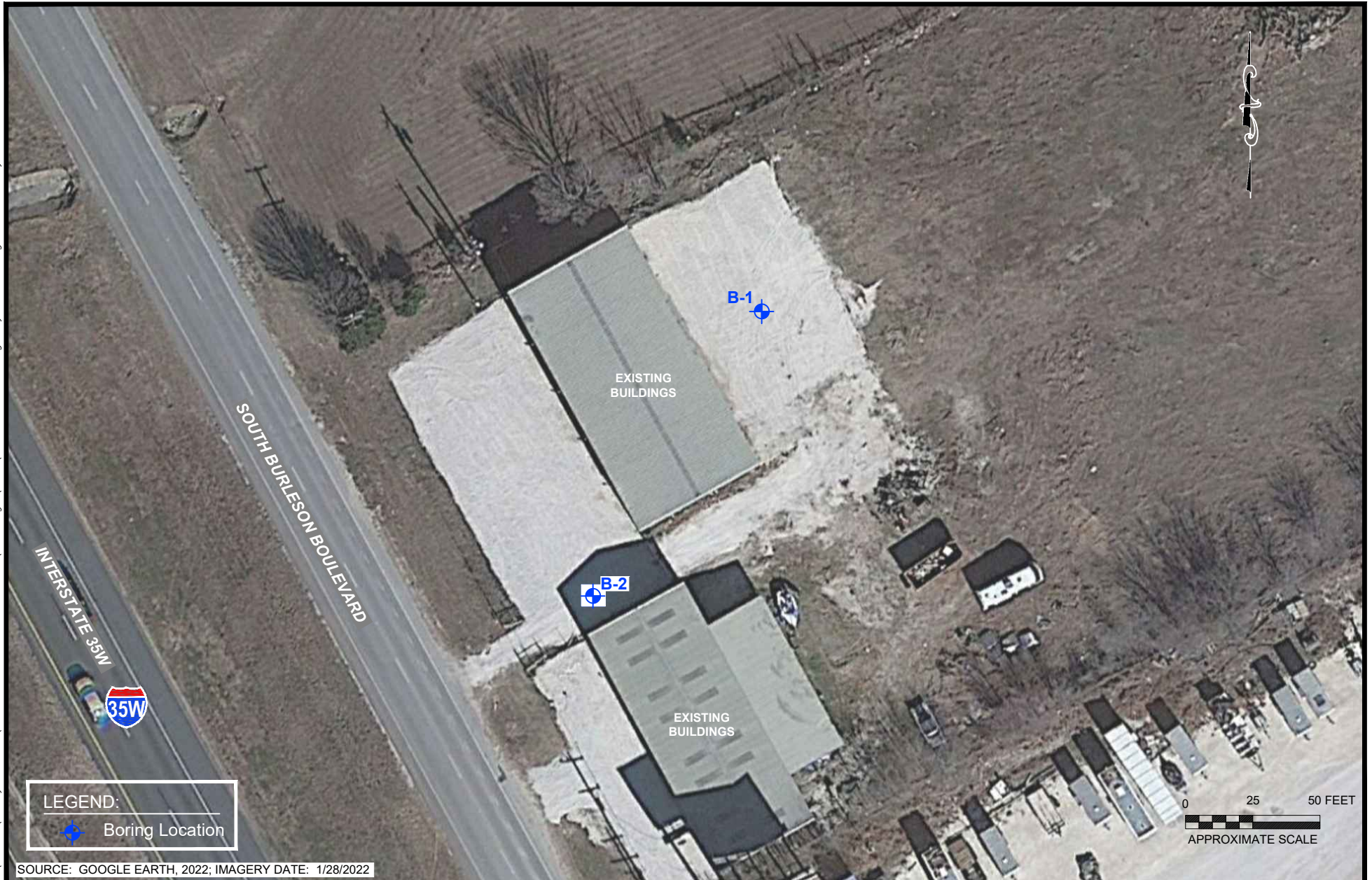


PLATE  
A.1

## PLAN OF BORINGS

PARKING LOT AND DRIVES  
ALVARADO, TEXAS

 **CMJ** ENGINEERING, INC.

CMJ PROJECT No. 3048-22-01

Major Divisions			Grp. Sym.	Typical Names	Laboratory Classification Criteria			
Coarse-grained soils (more than half of the material is larger than No. 200 sieve size)	Gravels (More than half of coarse fraction is larger than No. 4 sieve size)	Clean gravels (Little or no fines)	GW	Well-graded gravels, gravel-sand mixtures, little or no fines	Determine percentages of sand and gravel from grain size curve. Depending on percentage of fines (fraction smaller than No. 200 sieve size), coarse-grained soils are classified as follows:  Less than 5 percent.....GW, GP, SW, SP More than 12 percent.....GM, GC, SM, SC 5 to 12 percent.....Borderline cases requiring dual symbols	$C_u = \frac{D_{60}}{D_{10}}$ greater than 4: $C_c = \frac{(D_{30})^2}{D_{10} \times D_{60}}$ between 1 and 3		
			GP	Poorly graded gravels, gravel-sand mixtures, little or no fines		Not meeting all gradation requirements for GW		
		Gravels with fines (Appreciable amount of fines)	GM	Silty gravels, gravel-sand-silt mixtures		Liquid and Plastic limits below "A" line or P.I. greater than 4	Liquid and plastic limits plotting in hatched zone between 4 and 7 are borderline cases requiring use of dual symbols	
			GC	Clayey gravels, gravel-sand-clay mixtures		Liquid and Plastic limits above "A" line with P.I. greater than 7		
	Sands (More than half of coarse fraction is smaller than No. 4 sieve size)	Clean sands (Little or no fines)	SW	Well-graded sands, gravelly sands, little or no fines		$C_u = \frac{D_{60}}{D_{10}}$ greater than 6: $C_c = \frac{(D_{30})^2}{D_{10} \times D_{60}}$ between 1 and 3		
			SP	Poorly graded sands; gravelly sands, little or no fines		Not meeting all gradation requirements for SW		
		Sands with fines (Appreciable amount of fines)	SM	Silty sands, sand-silt mixtures		Liquid and Plastic limits below "A" line or P.I. less than 4	Liquid and plastic limits plotting between 4 and 7 are borderline cases requiring use of dual symbols	
			SC	Clayey sands, sand-clay mixtures		Liquid and Plastic limits above "A" line with P.I. greater than 7		
	Fine-grained soils (More than half of material is smaller than No. 200 sieve)	Silts and clays (Liquid limit less than 50)	ML	Inorganic silts and very fine sands, rock flour, silty or clayey fine sands, or clayey silts with slight plasticity		<p>Plasticity Chart</p>		
			CL	Inorganic clays of low to medium plasticity, gravelly clays, sandy clays, silty clays, and lean clays				
OL			Organic silts and organic silty clays of low plasticity					
Silts and clays (Liquid limit greater than 50)		MH	Inorganic silts, micaceous or diatomaceous fine sandy or silty soils, elastic silts					
		CH	Inorganic clays of high plasticity, fat clays					
		OH	Organic clays of medium to high plasticity, organic silts					
Highly Organic soils		Pt	Peat and other highly organic soils					

SOIL OR ROCK TYPES											
	GRAVEL		LEAN CLAY		LIMESTONE						
	SAND		SANDY		SHALE						
	SILT		SILTY		SANDSTONE						
	HIGHLY PLASTIC CLAY		CLAYEY		CONGLOMERATE	Shelby Tube	Auger	Split Spoon	Rock Core	Cone Pen	No Recovery
TERMS DESCRIBING CONSISTENCY, CONDITION, AND STRUCTURE OF SOIL											
Fine Grained Soils (More than 50% Passing No. 200 Sieve)											
Descriptive Item		Penetrometer Reading, (tsf)									
Soft		0.0 to 1.0									
Firm		1.0 to 1.5									
Stiff		1.5 to 3.0									
Very Stiff		3.0 to 4.5									
Hard		4.5+									
Coarse Grained Soils (More than 50% Retained on No. 200 Sieve)											
Penetration Resistance		Descriptive Item		Relative Density							
(blows/foot)											
0 to 4		Very Loose		0 to 20%							
4 to 10		Loose		20 to 40%							
10 to 30		Medium Dense		40 to 70%							
30 to 50		Dense		70 to 90%							
Over 50		Very Dense		90 to 100%							
Soil Structure											
Calcareous		Contains appreciable deposits of calcium carbonate; generally nodular									
Slickensided		Having inclined planes of weakness that are slick and glossy in appearance									
Laminated		Composed of thin layers of varying color or texture									
Fissured		Containing cracks, sometimes filled with fine sand or silt									
Interbedded		Composed of alternate layers of different soil types, usually in approximately equal proportions									
TERMS DESCRIBING PHYSICAL PROPERTIES OF ROCK											
Hardness and Degree of Cementation											
Very Soft or Plastic		Can be remolded in hand; corresponds in consistency up to very stiff in soils									
Soft		Can be scratched with fingernail									
Moderately Hard		Can be scratched easily with knife; cannot be scratched with fingernail									
Hard		Difficult to scratch with knife									
Very Hard		Cannot be scratched with knife									
Poorly Cemented or Friable		Easily crumbled									
Cemented		Bound together by chemically precipitated material; Quartz, calcite, dolomite, siderite, and iron oxide are common cementing materials.									
Degree of Weathering											
Unweathered		Rock in its natural state before being exposed to atmospheric agents									
Slightly Weathered		Noted predominantly by color change with no disintegrated zones									
Weathered		Complete color change with zones of slightly decomposed rock									
Extremely Weathered		Complete color change with consistency, texture, and general appearance approaching soil									
KEY TO CLASSIFICATION AND SYMBOLS										PLATE A.	







## **SOLUBLE SULFATE TEST RESULTS**

Project: Proposed Parking Lot and Drives  
4139 South Burleson Boulevard – Alvarado, Texas

Project No.: 3048-22-01

<b>Boring No.</b>	<b>Depth (ft.)</b>	<b>Material</b>	<b>Soluble Sulfates (ppm)</b>
B-1	8"–2	Clay	<100
B-2	2–4	Clay	<100

Note: Test Method TxDOT Tex 145-E.

## City Council Regular Meeting

**DEPARTMENT:** Development Services

**FROM:** Tony McIlwain, Director

**MEETING:** February 6, 2023

**SUBJECT:**

**2825 S Burleson (Case 22-152):** Hold a public hearing and consider approval of an ordinance for a zoning change request from "A", Agriculture to "C" Commercial. *(First and Final Reading) (Staff Presenter: Tony McIlwain, Development Services Director) (The Planning and Zoning Commission recommended approval by unanimous vote)*

**SUMMARY:**

On November 14, 2022, an application for a zoning change request was submitted by Andrew Feghali (owner) for a zoning change of approximately 2.66 acres for laboratory research in an existing industrial/commercial building.

**Development Overview:**

The property is currently in the IH-35 corridor overly and is zoned "A", Agriculture, with a commercial building that appears to have been vacant for several years. The applicant has requested to rezone the property to "C", Commercial, for aerospace laboratory research and testing. The applicant's personal narrative and request are attached as Exhibit 4. The uses and any future site improvements will occur in accordance with City of Burleson Code of Ordinances, "C" Commercial district zoning, and IH-35 design standards.

**Zoning and Land Use Table**

	Zoning	Use
Subject Site	"A", Agriculture	Vacant commercial building
North	"A", Agriculture	Undeveloped
East	"A", Agriculture	Undeveloped
South	"C", Commercial	Commercial building
West	IH-35/ Business Park	Interstate

**This site is designated in the Comprehensive Plan as Employment Growth.**

This land use category is intended for uses with important employment opportunities and potential for upward mobility of skilled workers. Corresponding zoning districts include C, Commercial; I, Industrial; and BP, Business Park.

*Staff supports a zoning change request to “C” Commercial district based on the adjacent uses, proximity to IH-35, and conformance with the Comprehensive Plan.*

**Engineering:**

The applicant intends to utilize the current structure. Future expansion of the site or building will require platting and engineering reviews.

**OPTIONS:**

- 1) Approve the ordinance for a zoning change request to “C” Commercial; or
- 2) Approve the ordinance for a zoning change request to an alternative zoning district; or
- 3) Deny the ordinance for a zoning change request;

**RECOMMENDATION:**

Approve an ordinance for a zoning change to “C” Commercial (Case 22-152).

**FISCAL IMPACT:**

None.

**STAFF CONTACT:**

Tony McIlwain  
Development Services Director  
[tmcilwain@burlesontx.com](mailto:tmcilwain@burlesontx.com)  
817-426-9686

# ZC - 2825 S Burleson

## Location:

- 2825 S Burleson
- 2.66 acres

## Applicant:

Andrew Feghali  
Property Owner

## Item for approval:

Zoning Change from "A"  
Agriculture to "C" Commercial  
(Case22-152)





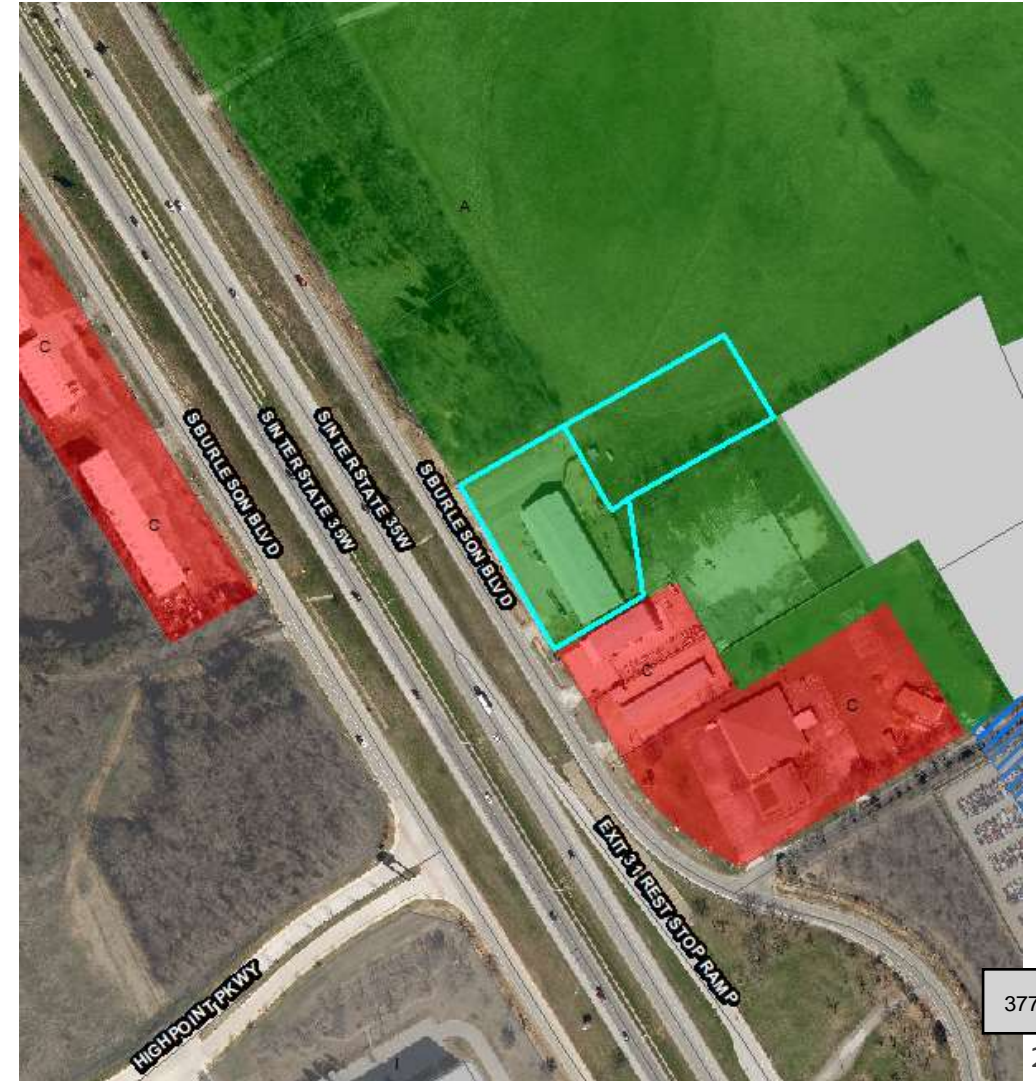
# Comprehensive Plan

Employment Growth



# Zoning

A, Agriculture  
IH-35 Overlay





# ZC - 2825 S Burleson

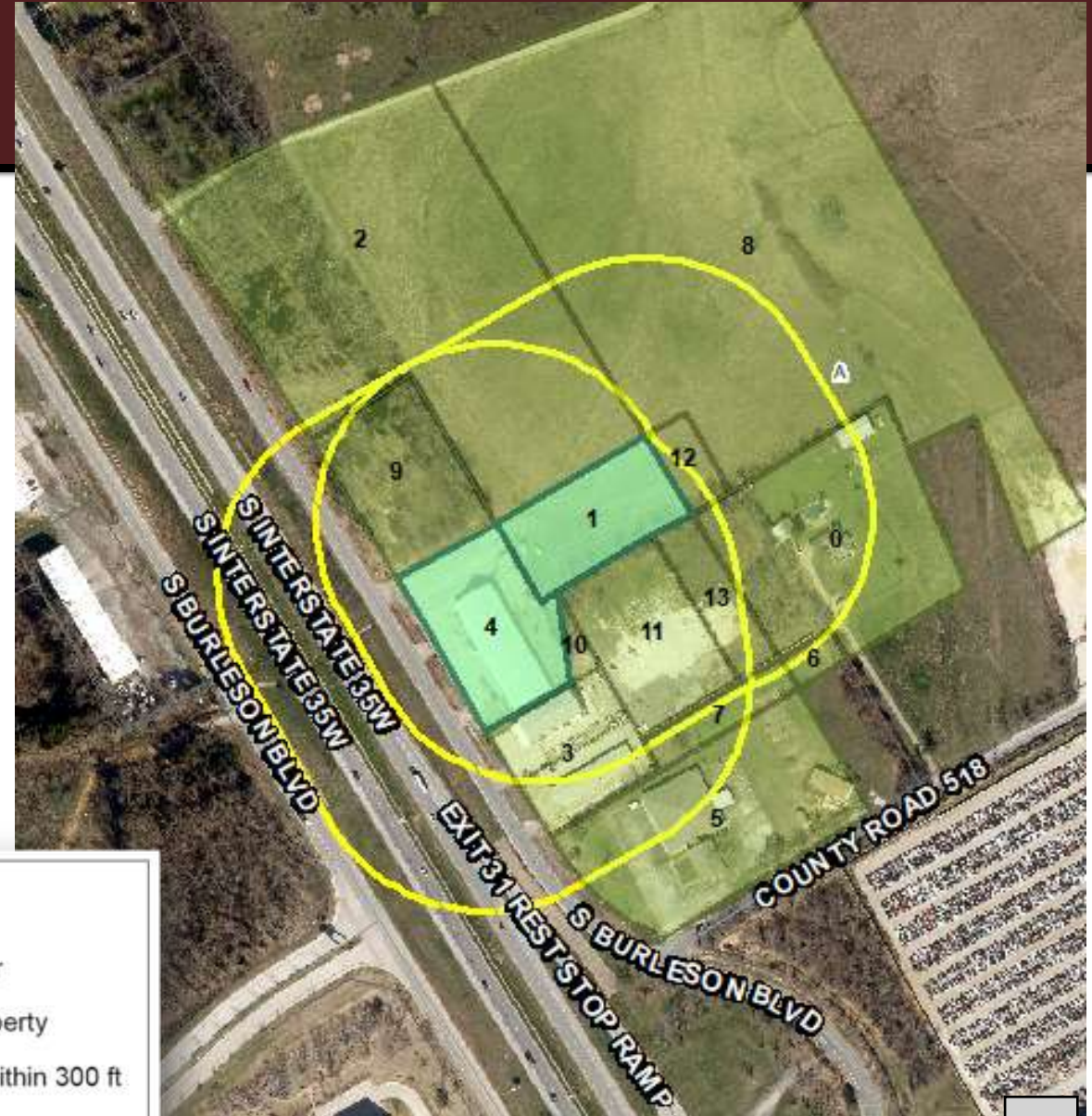
**Applicant intends to use currently existing structure on the site. Future expansions to the building and/or site are subject to platting and applicable engineer and building department reviews.**



# ZC - 2825 S Burleson

Public Hearing Notice Public notices mailed to property owners within 300 feet of subject property.

Published in newspaper  
Signs Posted on the property



## Legend

- 300 ft. Buffer
- Subject Property
- Properties within 300 ft
- Burleson



# ZC - 2825 S Burleson

## P&Z Summary

### Vote

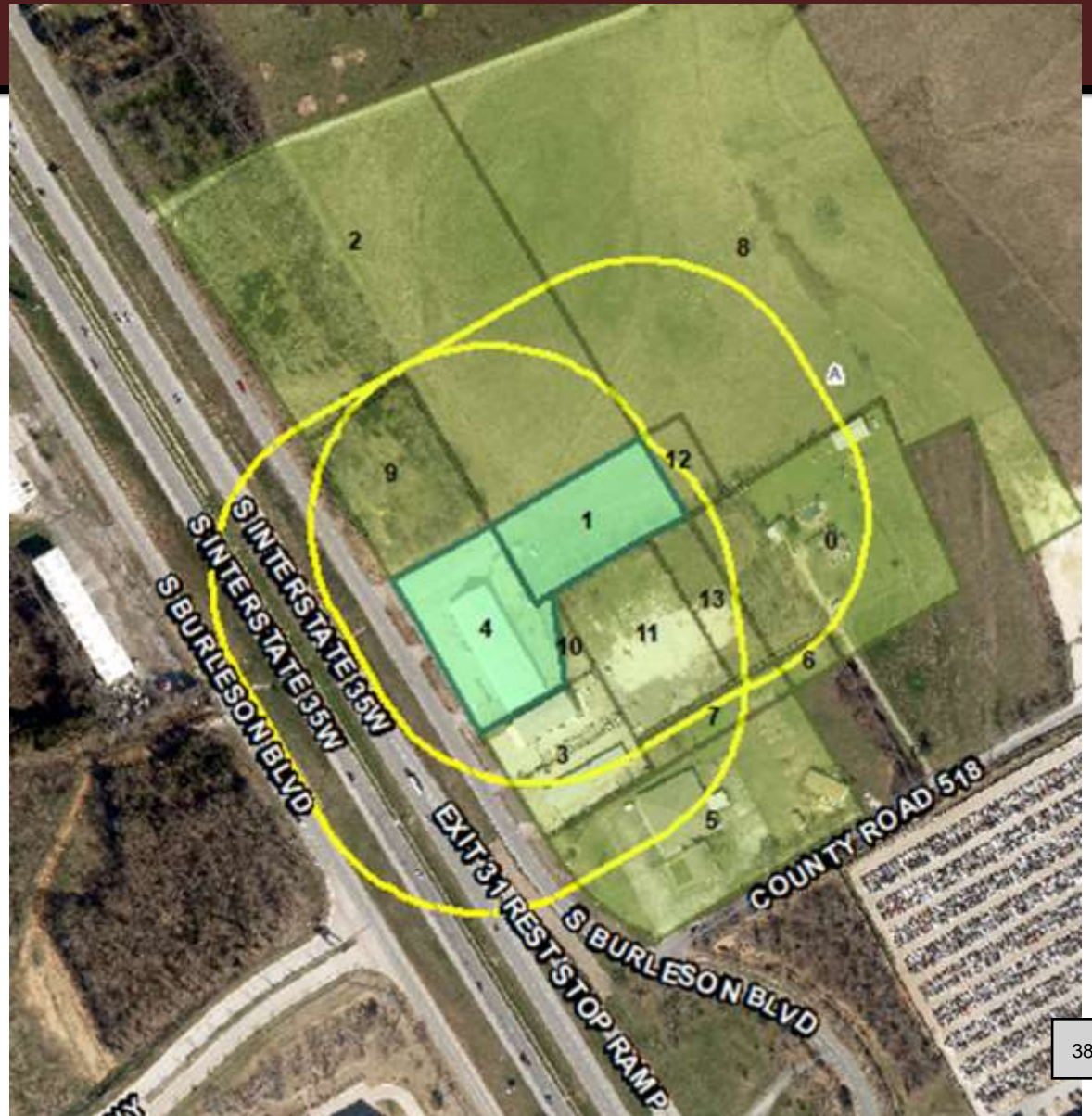
Recommended approval unanimously

### Discussion

- Enforcement of City Ordinances if use changes or with future expansion of the site
- Commercial versus Industrial zoning

### Speakers

Adjacent property owner (Mr. Reed) spoke about nuisances at other adjacent sites.





# ZC - 2825 S Burleson

## Staff's Recommendation

- Staff recommends approval of an ordinance for the zoning change request to "C" Commercial
- Conformance with the Comprehensive Plan; and
- Compatibility with adjacent uses; and
- Proximity to IH-35





## ORDINANCE

AN ORDINANCE AMENDING ORDINANCE B-582, THE ZONING ORDINANCE AND MAP OF THE CITY OF BURLESON, TEXAS, BY AMENDING THE OFFICIAL ZONING MAP AND CHANGING THE ZONING ON APPROXIMATELY 2.66 ACRES OF LOCATED IN THE J.W. RAWLS SURVEY ABST NO. 728 AND THE S. MYERS SURVEY ABST. NO. 627, DEED RECORDS, JOHNSON COUNTY, TEXAS (D.R.J.C.T.), FROM AGRICULTURE (A) TO COMMERCIAL (C), MAKING THIS ORDINANCE CUMULATIVE OF PRIOR ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR THE VIOLATION OF THIS ORDINANCE; PROVIDING A PENALTY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Burleson, Texas (“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 Local Government Code; and

WHEREAS, the City Council passed, approved, and adopted Ordinance B-582, being the Zoning Ordinance and Map of the City of Burleson, Texas, showing the locations and boundaries of certain districts, as amended, and codified in Appendix B of the City of Burleson Code of Ordinances (2005) (the “Zoning Ordinance and Map”); and

WHEREAS, an application for a zoning change was filed by **Andrew Feghali (property owner)** on **November 14, 2022**, under **Case Number 22-152**, on property described herein below filed application with the City petitioning an amendment of the Zoning Ordinance and Map so as to rezone and reclassify said property from its current zoning classification; and

WHEREAS, the Planning and Zoning Commission of Burleson, Texas, held a public hearing on said application after at least one sign was erected upon the property on which the change of classification is proposed in accordance with the Zoning Ordinance and Map, and after written notice of such public hearing before the Planning and Zoning Commission on the proposed rezoning had been sent to owners of real property lying within 300 feet of the property on which the change of classification is proposed, said notice having been given not less than ten (10) days before the date set for hearing to all such owners who rendered their said property for City taxes as the ownership appears on the last approved City Tax Roll, and such notice being served by depositing the same, properly addressed and postage paid, in the U.S. mail; and

WHEREAS, after consideration of said application, the Planning and Zoning Commission of the City of Burleson, Texas voted **7 to 0** to recommend to the City Council of Burleson, Texas, that the hereinafter described property be rezoned from its classification of **Agriculture (A)** to **Commercial (C)**; and

WHEREAS, notice was given of a further public hearing to be held by the City Council of the City of Burleson, Texas, to consider the advisability of amending the Zoning Ordinance and Map as recommended by the Planning and Zoning Commission, and all citizens and parties at interest

were notified that they would have an opportunity to be heard, such notice of the time and place of such hearing having been given at least fifteen (15) days prior to such hearing by publication in the Fort Worth Star Telegram, Fort Worth, Texas, a newspaper of general circulation in such municipality; and

WHEREAS, all citizens and parties at interest have been given an opportunity to be heard on all the matter of the proposed rezoning and the City Council of the City of Burleson, Texas, being informed as to the location and nature of the use proposed on said property, as well as the nature and usability of surrounding property, have found and determined that the property in question, as well as other property within the city limits of the City of Burleson, Texas, has changed in character since the enactment of its classification of **Agriculture (A)**; and, by reason of changed conditions, does consider and find that this amendatory Ordinance should be enacted since its provisions are in the public interest and will promote the health, safety and welfare of the community; and

WHEREAS, the City Council of the City of Burleson, Texas, may consider and approve certain ordinances or ordinance amendments at only one meeting in accordance with Section 2-4 of the City of Burleson Code of Ordinances (2005); and

WHEREAS, the City Council of the City of Burleson, Texas, finds that this Ordinance may be considered and approved in only one meeting because the provisions of this Ordinance concern an individual zoning case that does not propose a change to the language of the City of Burleson Code of Ordinances.

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

#### **Section 1**

The Zoning Ordinance and Map is hereby amended insofar as it relates to certain land described as **2.66 acres of land located in the J.W. Rawls Survey ABST NO. 728 and the S. Myers Survey ABST. NO. 627, deed records, Johnson County, Texas (D.R.J.C.T.)**, as shown on the attached Exhibit A incorporated herein by reference, by changing the zoning of said property from **Agriculture (A)** to **Commercial (C)**.

#### **Section 2.**

The findings and recitals set forth above in the preamble of this ordinance are incorporated into the body of this ordinance as if fully set forth herein.

#### **Section 3.**

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 4.**

This ordinance shall be cumulative of all provisions of ordinances of the City of Burleson, Texas, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances, in which event the conflicting provisions of such ordinances are hereby repealed. To the extent that the provisions of the City of Burleson's various development ordinances conflict with this ordinance, the terms of this ordinance shall control.

#### **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 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 6.**

An offense committed before the effective date of this ordinance is governed by the prior law and the provisions of the Code of Ordinances, as amended, in effect when the offense was committed, and the former law is continued in effect for that purpose.

#### **Section 7.**

Any person, firm, association of persons, company, corporation, or their agents, its servants, or employees violating or failing to comply with any of the provisions of this article shall be fined, upon conviction, not less than one dollar (\$1.00) nor more than two thousand dollars (\$2,000.00), and each day any violation of noncompliance continues shall constitute a separate and distinct offense. The penalty provided herein shall be cumulative of other remedies provided by State Law, and the power of injunction as provided in Texas Local Government Code 54.012 and as may be amended, may be exercised in enforcing this article whether or not there has been a complaint filed.

#### **Section 8.**

This ordinance shall be in full force and effect from and after its passage and publication as provided by law.

**PASSED AND APPROVED:**

**First and Final Reading:** the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_

Chris Fletcher, Mayor  
City of Burleson, Texas

ATTEST:

APPROVED AS TO FORM:

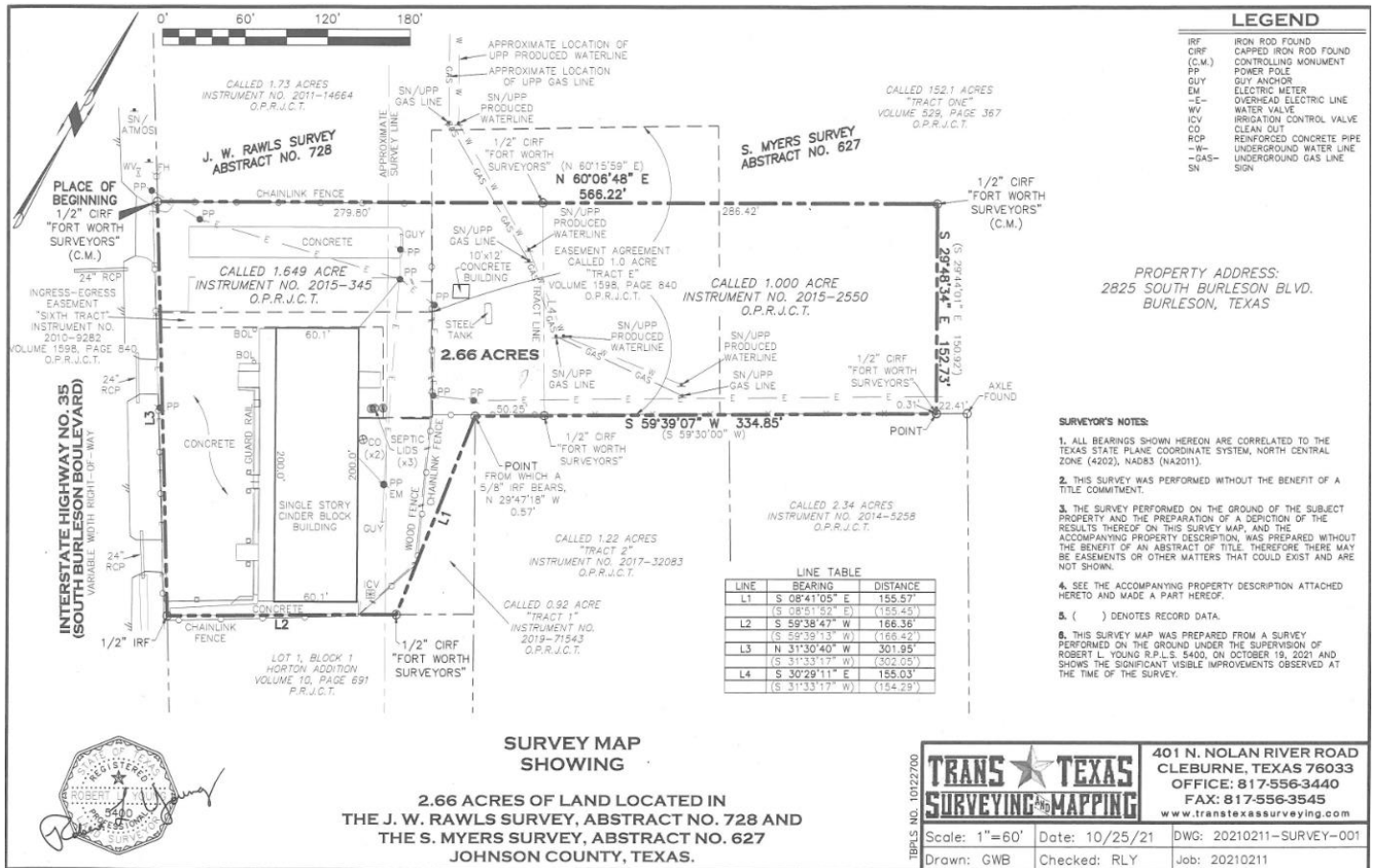
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Amanda Campos, City Secretary

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E. Allen Taylor, Jr., City Attorney

# EXHIBIT "A"





Dear City of Burleson Zoning Department,

My name is Andrew Feghali. My wife (Holly) and I started a business a few years ago in the Alliance area of Fort Worth. We moved to Burleson this year and want to move our business down here as well.



← That's us

We purchased the property located at 2825 S Burleson Blvd which is currently zoned as Agricultural. We are requesting a zoning change to Industrial.

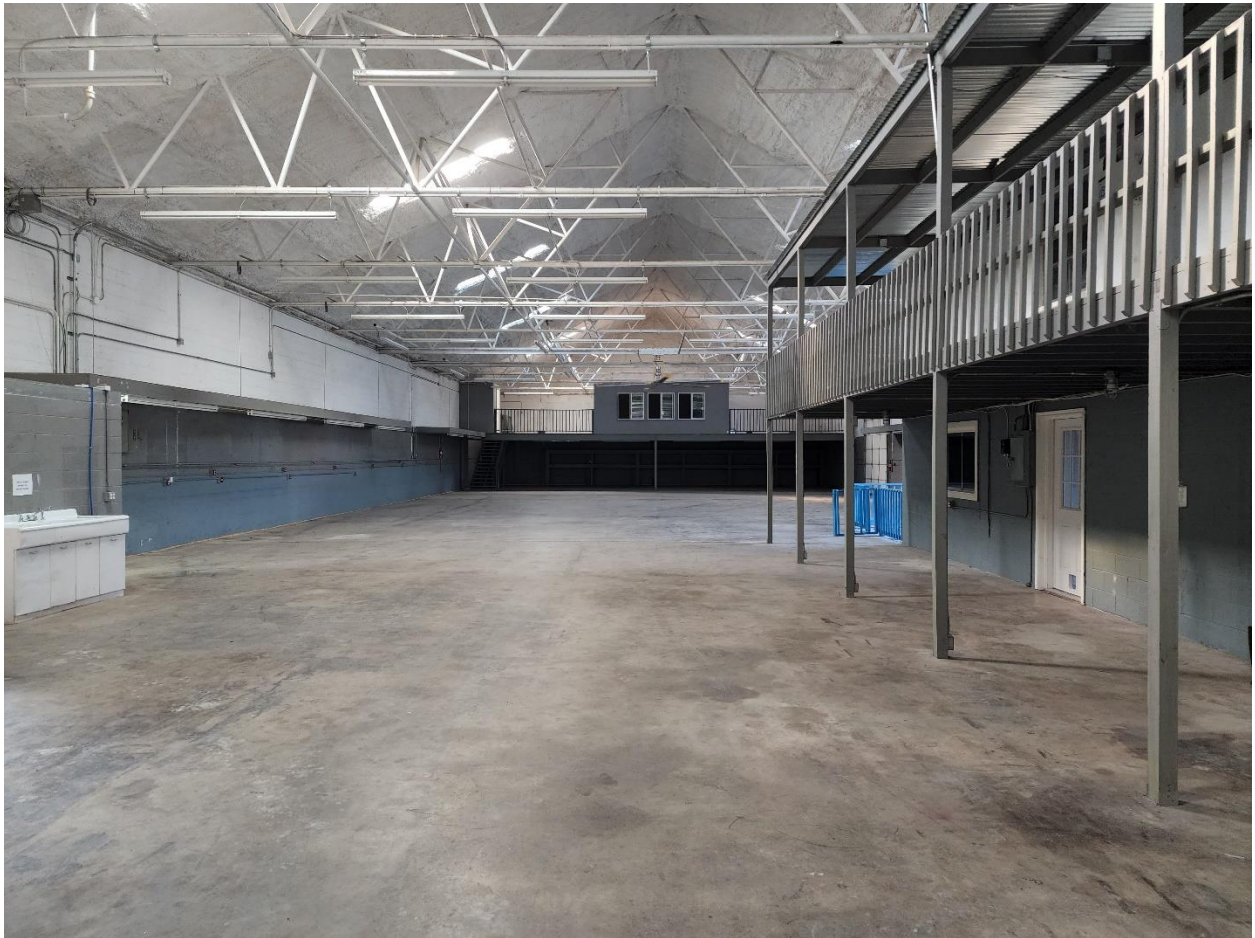
We do not have much information on the history of this building. In speaking with the previous owner, we learned that at one point it was an auction house. The previous owner purchased it with plans for an automotive shop, but that never came to fruition and the property has been vacant for the past 7+ years.

Our proposed use for this site is Laboratory Testing. Our business is Aeroblaze Laboratory. We provide testing, certification, and research & development services for the aerospace industry. We perform a wide array of tests, including flammability, bird strike, flotation, slip-resistance, and other safety tests in aviation.

We look forward to moving our business to Burleson and establishing our new life here!

Best regards,

Andrew Feghali







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## City Council Regular Meeting

**DEPARTMENT:** City Secretary's Office  
**FROM:** Amanda Campos, City Secretary  
**MEETING:** February 6, 2023

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**SUBJECT:**

Consider approval of a Resolution ordering a General Election to be held on May 6, 2023 for the purpose of electing 4 council positions; Mayor, Place 2, Place 4, and Place 6 for full terms.  
(Staff Presenter: Amanda Campos, City Secretary)

**SUMMARY:**

The City of Burleson elects councilmembers including the Mayor to serve 3 year terms and follow state election law on establishing the date of the election. The state has established the 1<sup>st</sup> Saturday in May as the date of the general election for municipalities holding a May election. This year the 1<sup>st</sup> Saturday is May 6, 2023. The Mayor, Place 2, Place 4, and Place 6 were elected in 2020 to serve 3 years with the term ending in May 2023. This requires the city council to order a general election for Mayor, Place 2, Place 4, and Place 6 to be held May 6, 2023.

Texas Election Code requires a local government to order an election in an open meeting, by formal action, no later than the 78<sup>th</sup> day before election date (general election), and state the following:

- Date of the election
- Offices or measures
- Location of the main early voting location
- Early Voting Clerk information
- Any Saturday or Sunday voting hours

**OPTIONS:**

- 1) Approve the Resolution

**RECOMMENDATION:**

Approval of the Resolution as required by state law.

**FISCAL IMPACT:**

All election costs are budgeted each year in the budget ordinance approved by city council. The cost is within budget.

**STAFF CONTACT:**

Name: Amanda Campos  
Title: City Secretary  
[acampos@burlesontx.com](mailto:acampos@burlesontx.com)  
817-426-9665



## **RESOLUTION**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BURLESON, TEXAS, ORDERING A GENERAL ELECTION TO BE HELD ON MAY 6, 2023 FOR MAYOR, COUNCIL PLACE 2, COUNCIL PLACE 4, AND COUNCIL PLACE 6 FOR FULL TERMS; APPOINTING EARLY VOTING CLERK AND DESIGNATING MAIN EARLY VOTING POLLING PLACE; STATING ANY WEEKEND HOURS OF VOTING; ESTABLISHING THE TIME, MANNER, AND PROCEDURES FOR THAT ELECTION; AND PROVIDING: AN OPEN MEETINGS CLAUSE; A SEVERABILITY CLAUSE; FOR THE INCORPORATION OF THE RECITALS; AND 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 of Burleson City Charter Article II establishes the terms of the city council and Article IX sets forth the dates of municipal elections;

**WHEREAS**, the City Charter states the city will hold elections on uniform election dates set by state law; and

**WHEREAS**, state law has established the 1<sup>st</sup> Saturday in May as the date for general municipal elections; and

**WHEREAS**, by this resolution, it is the intention of the City Council to call the 2023 general election, appointing early voting clerk, designating main early voting polling locations, stating any weekend hours; and establish and set forth procedures for conducting the election.

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

### **Section 1. Election Order for General Election.**

A general election shall be held in the City of Burleson, Texas, on Saturday, May 6, 2023, at which the following officials will be elected for full 3 year terms:

Mayor  
Councilmember Place 2  
Councilmember Place 4  
Councilmember Place 6

**Section 2.**  
**Early Voting and Ballots by Mail.**

**A. Early Voting Clerk – Johnson County.** The Election Administrator, Patty Bourgeois is hereby designated as the Early Voting Clerk for the Johnson County portion of the City of Burleson and may appoint the necessary deputy clerks as required for early voting.

**B. Early Voting by Personal Appearance – Johnson County.** Early voting by personal appearance shall be conducted at the location listed in Exhibit A. All eligible Johnson County City of Burleson voters may vote early at the Burleson Sub-Courthouse; 247 Elk Dr., Burleson, Texas 76028 and Johnson County Elections, 103 S. Walnut St., Cleburne, Texas 76033. Johnson County Elections, 103 S Walnut St., Cleburne, Texas, 76033 is here by designated as the Main Early Voting location. Early voting by personal appearance will begin on April 24, 2023, and will end on May 2, 2023. There will be voting on Saturdays, Sundays, or legal holidays.

**C. Voting by Mail – Johnson County.** All voted ballots by mail that are returned on or before Election Day shall be counted. Voted ballots received on the next business day after Election Day will also be counted if they have been postmarked by Election Day. Voted ballots mailed from U.S. citizens residing outside the United States may be counted if clearly postmarked on or before Election Day and received not later than the fifth day after Election Day.

**Applications for Ballot by Mail.** Applications for a ballot by mail may be submitted beginning January 1, 2023. The physical and mailing address of the Early Voting Clerk – Johnson County is 103 S Walnut St., Cleburne, Texas 76033. Early Voting clerk phone number 817-556-6197.

**D. Early Voting Clerk – Tarrant County.** The Election Administrator, Heider Garcia is hereby designated as the Early Voting Clerk for the Tarrant County portion of the City of Burleson and may appoint the necessary deputy clerks as required for early voting.

**E. Early Voting by Personal Appearance – Tarrant County.** Early voting by personal appearance shall be conducted at the locations listed in Exhibit B. All eligible Tarrant County City of Burleson voters may vote early at the Tarrant County Election Center, 2700 Premier St., Fort Worth, Texas 76111 and Crouch Event Center in Bicentennial Park, 900 E. Glendale St., Crowley, Texas, 76036. Tarrant County Elections Center, 2700 Premier St., Fort Worth, Texas, 76033 is here by designated as the Main Early Voting location. Early voting by personal appearance will begin on April 24, 2023, and will end on May 2, 2023. There will be voting on Saturdays, Sundays, or legal holidays.

**F. Voting by Mail – Tarrant County.** All voted ballots by mail that are returned on or before Election Day shall be counted. Voted ballots received on the next business day after Election Day will also be counted if they have been postmarked by Election Day. Voted ballots mailed from U.S. citizens residing outside the United States may be counted if clearly postmarked on or before Election Day and received not later than the fifth day after Election Day.

**Applications for Ballot by Mail.** Applications for a ballot by mail may be submitted beginning January 1, 2023. The physical address of the Early Voting Clerk – Tarrant County is 2700 Premier St., Fort Worth, Texas, 76111. Early Voting clerk phone number 817-831-8683. The Mailing address: PO Box 961011, Fort Worth, TX 76161-0011

**Section 3.**  
**Filing Dates.**

In accordance with the Code, eligible persons wishing to become candidates must file application with the City Secretary of the City of Burleson at 141 W. Renfro, Burleson, Texas 76028 beginning at 8:00 a.m., Wednesday, January 18, 2023, and continuing through Friday, February 17, 2023, until 5:00 p.m. Each application shall be on a form meeting the requirements of Section 141.031 of the Code, and the Charter of the City of Burleson.

**Section 4.**  
**Ballots.**

The order in which the names of the candidates are to be printed on the ballot will be determined by a drawing by the City Secretary on a form prescribed by the Code.

**Section 5.**  
**Contract with Johnson County and Tarrant County.**

The City of Burleson will enter into a joint contract for election services with both Johnson County and Tarrant County pursuant to Texas election code; Section 31.093.

**Section 6.**  
**Governing Law and Qualified Voters.**

The election shall be held in accordance with the Constitution of the State of Texas and the Code, and all resident qualified voters of the City shall be eligible to vote at the election.

**Section 7.**  
**Publication and Posting of Notice of Election.**

Notice of the election shall be given as required by Chapter 4 of the Code, and the Charter of the City of Burleson.

**Section 8.**  
**Submission to the United States Justice Department.**

If needed, the City Secretary of the City of Burleson, Texas, or her designee, is authorized to make a submission to the United States Justice Department to seek pre-clearance as required by law.

**Section 9.**  
**Delivery of Returns.**

In accordance with the Code, immediately after the closing of the polls, the election officers named in this resolution shall make and deliver the returns of the election as follows: one copy shall be retained by the Presiding Election Judge and one copy shall be delivered to the Mayor of the City; All election records and supplies shall be preserved by the county election administrators in accordance with the Code.

**Section 10**  
**Run-off**

Any candidate receiving a majority of all the votes cast for the office for which he or she is a candidate shall be elected to such office. In the event no candidate receives a majority of all votes cast for the office sought, a run-off election shall be held on the 10<sup>th</sup> day of June, 2023 between the hours of 7:00 am to 7:00 pm. At such election, the names of the two candidates receiving the highest number of votes for such office or offices, as the case may be, in the first election at which no one was elected by majority vote, shall be printed on the run-off ballot. The order of names on the ballot shall be the same as the first election on May 6, 2023 in accordance with Texas Election Code. Johnson County Election and Tarrant County Election shall conduct the run-off election in accordance with the Texas Election Code and the contracts executed for election services.

**Section 10.**  
**Governing Law.**

The election shall be held as set forth in the City Charter and the Code.

**Section 11.**  
**Open Meetings Clause.**

It is hereby officially found and determined that the meeting at which this resolution 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 12.**  
**Severability Clause.**

If any section, subsection, sentence, phrase or word of this resolution be found to be illegal, invalid or unconstitutional, the adjudication shall not affect any other section, sentence, phrase, word, paragraph or provision of this resolution or the application of any other section, sentence, phrase, word, paragraph, or provision of any other resolution of the City. The City Council declares that it would have adopted the valid portion and applications of this resolution without the invalid part, and to this end the provisions of this resolution are declared to be severable.

**Section 13.**  
**Incorporation of Recitals.**

The findings, determinations, and recitations set out in the preambles of this resolution are found to be true and correct and they are hereby adopted by the City Council and made a part hereof for all purposes.

**Section 14.**  
**Effective Date.**

This resolution shall be effective upon its adoption.

**DULY RESOLVED** by the City Council of the City of Burleson, Texas, on the \_\_\_\_\_  
day of \_\_\_\_\_, 2023.

(Seal)

\_\_\_\_\_  
Chris Fletcher, Mayor  
City of Burleson, Texas

ATTEST:

APPROVED AS TO FORM & LEGALITY:

\_\_\_\_\_  
Amanda Campos, City Secretary

\_\_\_\_\_  
E. Allen Taylor, Jr., City Attorney





# May 6, 2026 General Election

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PRESENTED TO THE CITY COUNCIL ON  
FEBRUARY 6, 2023

# Election Overview

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- ❑ Mayor, Council Places 2, 4, & 6 terms will end May 2023 following the Uniform Election Day
- ❑ Uniform Election Day is 1<sup>st</sup> Saturday in May – May 6, 2023
- ❑ The governing body of the city is required to order Election 78 day prior to the election date – February 17, 2023
- ❑ Resolution ordering election in an open meeting is required
- ❑ Contract with Johnson County Elections and Tarrant County Elections



# Contracting with County for Election

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- ☐ City last contracted with the counties in 2020
- ☐ Must contract with both Johnson and Tarrant county for services
- ☐ City would still be responsible for candidate filing, posting all elections notices and publishing the legal notices
- ☐ Johnson County voters would go to Burleson Sub-Courthouse for both early and election day voting
- ☐ Tarrant County voters would go to ANY Tarrant County location both early and election day voting

# Paying for the election

---

- ❑ Johnson county contract is on this agenda for consideration = Not to exceed \$35,000
- ❑ Tarrant county contract will be on an agenda in March = their calculations are directly related to how many entities contract with them. ( Mansfield typically pays \$15,000)
- ❑ Cost will be under budget amount: average cost to conduct our own is \$40,000 to \$60,000



# Johnson County - voting dates and locations

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## ☐ Dates/ Hours

### **Early voting by personal appearance**

Monday, April 24, 2023 – Friday, April 28, 2023 hours: 8:00 am until 5:00 pm

Saturday April 29, 2023, 7:00 am to 7:00 pm

Monday, May 1, 2023 – Tuesday, May 2, 2023 hours: 7:00 am until 7:00 pm

### **Election day voting**

Saturday, May 6, 2023 – 7:00 am to 7:00 pm

## ☐ Location

Burleson Sub-courthouse – 247 Elk Drive, Burleson, Texas 76028

Main Early voting place – 103 S Walnut, Cleburne, Texas 76033

### **Ballot by Mail**

Johnson County Elections  
103 S Walnut St  
Cleburne, TX 76033

[Vote@johnsoncountytexas.org](mailto:Vote@johnsoncountytexas.org)  
817-556-6197



# Tarrant County - voting dates and locations

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## ☐ Dates/ Hours

### Early voting by personal appearance

April 24 - 28- Monday - Friday 8:00 a.m. – 5:00 p.m.

April 29 - Saturday 7:00 a.m. – 7:00 p.m.

April 30 - Sunday 10:00 a.m. – 4:00 p.m.

May 1 - 2 - Monday – Tuesday 7:00 a.m. – 7:00 p.m.

### Election day

May 6 – Saturday 7:00 am to 7:00 pm

## ☐ Location

Crouch Event Center in Bicentennial Park, 900 E. Glendale St., Crowley, Texas 76036

Main Early voting place – 2700 Premier St., Fort Worth, Texas 76111

**\* Tarrant County has 45 voting centers throughout the county and our voters can use any location**

### Ballot by Mail

Mailing address:

PO Box 961011

Fort Worth, TX 76161-0011

[votebymail@tarrantcounty.com](mailto:votebymail@tarrantcounty.com)

**817-831-8683**

# Run-Off Election

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In the event of a Run-off Election Johnson and Tarrant County will conduct the elections.

The contracts have provisions to extend the contract.

Run-off date is June 10, 2023 with early voting dates of May 30 to June 6.

# QUESTIONS / COMMENTS



**EXHIBIT A**

**CITY OF BURLESON GENERAL ELECTION  
MAY 6, 2023  
EARLY VOTING POLLING LOCATION  
(ELECCIÓN GENERAL CITY OF BURLESON  
6 DE MAYO DEL 2023  
CENTRO PARA VOTACIÓN ADELANTADA)**

April 24, 2023 through May 2, 2023 is the period for early voting by personal appearance (Sec. 85.001). Any voter qualified to vote in the May 6, 2023, City of Burleson General Election is eligible for early voting by personal appearance.

Early voting by personal appearance will be conducted the following location:

Monday, April 24, 2023 – Friday, April 28, 2023 hours: 8:00 am until 5:00 pm

Monday, May 1, 2023 – Tuesday, May 2, 2023 hours: 7:00 am until 7:00 pm

*(El plazo para la votación adelantada en persona es desde el 24 de Abril, 2023*

*hasta el 2 de Mayo del 2023 (Sec. 85.001). Cualquier votante calificado para votar en la Elección General City of Burleson del 6 de Mayo del 2023, es elegible para la votación adelantada en persona.*

*La votación adelantada en persona se llevará a cabo en el siguiente lugar:*

*Lunes, 24 de Abril del 2023 – Viernes, 28 de Abril del 2023; horas: 8:00 am hasta 5:00 pm*

*Lunes, 1 de Mayo del 2023 – Martes, 2 de Mayo del 2023; horas: 7:00 am hasta 7:00 pm)*

**Hours for additional weekend early voting will be extended at the early voting location to include:**

**Saturday April 29, 2023, 7:00 am to 7:00 pm.**

*(Las horas adicionales para la votación adelantada durante el fin de semana serán extendidas en la ubicación para votación adelantada incluyendo:*

*Sábado, 29 de Abril del 2023, 7:00 am hasta 7:00 pm*

**Early Voting Main**

**Johnson County Election**

*(Elecciones del condado de Johnson)*

103 S Walnut St.

Cleburne, Texas 76033

**Early Voting**

**Burleson Sub-Courthouse**

*(Sub-juzgado de Burleson)*

247 Elk Dr. Rm. 212

Burleson, Texas 76028

**CITY OF BURLESON GENERAL  
ELECTION MAY 6, 2023  
EARLY VOTING POLLING LOCATION  
(*ELECCIÓN GENERAL CITY OF BURLESON  
6 DE MAYO DEL 2023  
CENTRO PARA VOTACIÓN ADELANTADA*)**

**Election Day**

**Burleson Sub-Courthouse**  
*(Sub-juzgado de Burleson)*  
247 Elk Dr. Rm 212  
Burleson, Texas 76028



TARRANT COUNTY EARLY VOTING  
(VOTACION ADELANTADA DEL CONDADO DE TARRANT)  
(BẦU CỬ SỚM CỦA QUẬN TARRANT)

MAY 6, 2023  
(6 DE MAYO DE 2023)  
(NGÀY 6 THÁNG 5, NĂM 2023)

JOINT GENERAL AND SPECIAL ELECTIONS  
(ELECCIONES GENERALES CONJUNTAS Y ESPECIALES)  
(KẾT HỢP TỔNG TUYỂN CỬ VÀ BẦU CỬ ĐẶC BIỆT)

This schedule of early voting locations, dates and times applies to voters in the following cities, towns, schools, library, and water districts: (Este horario de casetas de votación adelantada, sus fechas y tiempos aplican a los votantes en las siguientes ciudades, pueblos, escuelas, bibliotecas y distritos de la agua) (Đây là lịch trình của những địa điểm, ngày tháng và thời gian cho bầu cử sớm áp dụng cho các cử tri ở trong những điều sau đây: các thành phố, thị xã, trường học, thư viện và cơ quan thủy cục): Arlington, Azle, Bedford, Blue Mound, Burleson, Colleyville, Crowley, Dalworthington Gardens, Edgecliff Village, Euless, Everman, Flower Mound, Forest Hill, Fort Worth, Grand Prairie, Grapevine, Haltom City, Haslet, Hurst, Keller, Kennedale, Lake Worth, Lakeside, Mansfield, North Richland Hills, Pantego, Pelican Bay, Richland Hills, River Oaks, Roanoke, Saginaw, Sansom Park, Southlake, Trophy Club, Watauga, Westlake, Westworth Village, White Settlement, Aledo ISD, Arlington ISD, Azle ISD, Birdville ISD, Burleson ISD, Carroll ISD, Castleberry ISD, Crowley ISD, Eagle Mountain-Saginaw ISD, Everman ISD, Fort Worth ISD, Grapevine-Colleyville ISD, Hurst-Euless-Bedford ISD, Keller ISD, Kennedale ISD, Lewisville ISD, Mansfield ISD, Northwest ISD, White Settlement ISD, Forest Hill Library District, Tarrant County College District and Tarrant Regional Water District.

EARLY VOTING BY PERSONAL APPEARANCE DAYS AND HOURS  
(DÍAS Y HORAS DE VOTACIÓN TEMPRANO POR APARICIÓN PERSONAL)  
(Ngày và giờ đi bầu cử sớm)

April (Abril) (Tháng Tư) 24 - 28	Monday - Friday (Lunes – Viernes) (Thứ Hai – Thứ Sáu)	8:00 a.m. – 5:00 p.m.
April (Abril) (Tháng Tư) 29	Saturday (Sábado) (Thứ Bảy)	7:00 a.m. – 7:00 p.m.
April (Abril) (Tháng Tư) 30	Sunday (Domingo) (Chủ Nhật)	10:00 a.m. – 4:00 p.m.
May (Mayo) (Tháng Năm) 1 - 2	Monday – Tuesday (Lunes – Martes) (Thứ Hai – Thứ Ba)	7:00 a.m. – 7:00 p.m.

	Location (Ubicación) (Địa điểm)	Address (Dirección) (Địa chỉ)	City (Ciudad) (Thành phố)	Zip Code (Código postal) (Mã Bưu Điện)
1	Bob Duncan Center	2800 S Center Street	Arlington	76014
2	Elzie Odom Athletic Center	1601 NE Green Oaks Boulevard	Arlington	76006
3	Center for Community Service Junior League of Arlington	4002 W Pioneer Parkway	Arlington	76013
4	City of Arlington South Service Center	1100 SW Green Oaks Boulevard	Arlington	76017
5	Tarrant County Sub-Courthouse in Arlington	700 E Abram Street	Arlington	76010
6	Tarrant County College Southeast Campus EMB - Portable Building (edificio móvil) (Nhà Di Động) C	2100 Southeast Parkway	Arlington	76018
7	Azle ISD Instructional Support Center	483 Sandy Beach Road, Suite C	Azle	76020
8	Bedford Public Library	2424 Forest Ridge Drive	Bedford	76021
9	Blue Mound Community Center	1824 Fagan Drive	Blue Mound	76131
10	Colleyville Public Library	110 Main Street	Colleyville	76034
11	Crouch Event Center in Bicentennial Park	900 E Glendale Street	Crowley	76036
12	Euless Family Life Senior Center	300 W Midway Drive	Euless	76039
13	Forest Hill Civic & Convention Center	6901 Wichita Street	Forest Hill	76140
14	Como Community Center	4660 Horne Street	Fort Worth	76107
15	Diamond Hill/Jarvis Branch Library	1300 NE 35 <sup>th</sup> Street	Fort Worth	76106
16	Golden Triangle Branch Library	4264 Golden Triangle Boulevard	Fort Worth	76244
17	Griffin-Poly Sub-Courthouse	3212 Miller Avenue	Fort Worth	76119
18	Handley-Meadowbrook Community Center	6201 Beaty Street	Fort Worth	76112
19	James Avenue Service Center	5001 James Avenue	Fort Worth	76115
20	Northside Community Center	1100 NW 18 <sup>th</sup> Street	Fort Worth	76164
21	Southside Community Center	959 E Rosedale Street	Fort Worth	76104
22	Southwest Regional Library	4001 Library Lane	Fort Worth	76109
23	Southwest Sub-Courthouse	6551 Granbury Road	Fort Worth	76133
24	Summerglen Branch Library	4205 Basswood Boulevard	Fort Worth	76137
25	Tarrant County College Northwest Campus WFSC 1403A	4801 Marine Creek Parkway	Fort Worth	76179
26	Tarrant County Elections Center Main Early Voting Site (Principal sitio de votación adelantada) (Trung Tâm Bầu Cử Sớm)	2700 Premier Street	Fort Worth	76111
27	Tarrant County Plaza Building	201 Burnett Street	Fort Worth	76102
28	Worth Heights Community Center	3551 New York Avenue	Fort Worth	76110
29	Asia Times Square	2625 W Pioneer Parkway	Grand Prairie	75051
30	Grapevine Public Library	1201 Municipal Way	Grapevine	76051
31	Haltom City Library	4809 Haltom Road	Haltom City	76117
32	Haltom City Senior Center	3201 Friendly Lane	Haltom City	76117
33	Legacy Learning Center Northwest ISD	501 School House Road	Haslet	76052

TARRANT COUNTY EARLY VOTING  
(VOTACION ADELANTADA DEL CONDADO DE TARRANT)  
(BẦU CỬ SỚM CỦA QUẬN TARRANT)

MAY 6, 2023  
(6 DE MAYO DE 2023)  
(NGÀY 6 THÁNG 5, NĂM 2023)

JOINT GENERAL AND SPECIAL ELECTIONS  
(ELECCIONES GENERALES CONJUNTAS Y ESPECIALES)  
(KẾT HỢP TỔNG TUYỂN CỬ VÀ BẦU CỬ ĐẶC BIỆT)

34	Brookside Center	1244 Brookside Drive	Hurst	76053
35	Keller Town Hall	1100 Bear Creek Parkway	Keller	76248
36	Kennedale Community Center	316 W 3rd Street	Kennedale	76060
37	Sheriff’s Office North Patrol Division	6651 Lake Worth Boulevard	Lake Worth	76135
38	Mansfield Sub-Courthouse	1100 E Broad Street	Mansfield	76063
39	Vernon Newsom Stadium	3700 E Broad Street	Mansfield	76063
40	Former Bursey Road Senior Adult Center	7301 Bursey Road	N Richland Hills	76182
41	North Richland Hills Public Library	9015 Grand Avenue	N Richland Hills	76180
42	River Oaks Annex Old Library Building	4900 River Oaks Boulevard	River Oaks	76114
43	Former Eagle Mountain-Saginaw ISD Building	1200 N Old Decatur Road	Saginaw	76179
44	Southlake Town Hall	1400 Main Street	Southlake	76092
45	White Settlement Public Library	8215 White Settlement Road	White Settlement	76108

Application for a Ballot by Mail may be downloaded from our website: [elections.tarrantcounty.com/ballotbymail](https://elections.tarrantcounty.com/ballotbymail)  
(Solicitud para Boleta por Correo se puede descargar de nuestro sitio web): [elections.tarrantcounty.com/ballotbymail](https://elections.tarrantcounty.com/ballotbymail)  
(Có thể tải Đơn xin lá Phiếu Bầu qua Thư trên trang mạng của chúng tôi): [elections.tarrantcounty.com/ballotbymail](https://elections.tarrantcounty.com/ballotbymail)

Information by phone: Tarrant County Elections Administration, 817-831-8683  
(Información por teléfono): (Administración de Elecciones del Condado de Tarrant 817-831-8683)  
(Thông tin qua điện thoại) (Điều Hành Bầu Cử Quận Tarrant, 817-831-8683)

Applications for a Ballot by Mail must be submitted between January 1, 2023 and April 25, 2023 by mail, fax or email to:  
**Note: effective December 1, 2017** - If an Application for Ballot by Mail is submitted by fax or e-mail the original application must also be mailed and received by the Early Voting Clerk no later than the 4<sup>th</sup> business day after receipt of the faxed or e-mailed copy.

(Solicitudes para una Boleta por Correo pueden ser sometidas entre el 1 de Enero de 2023 y 25 de Abril de 2023 por correo, fax o por correo electrónico a:  
**Nota: efectivo el 1 de Diciembre de 2017** - Si una solicitud de boleta por correo se envía por fax o por correo electrónico la solicitud original también debe ser enviada por correo y recibida por el Secretario de Votación Anticipada no más tarde del cuarto día hábil después de recibir la copia enviada por fax o por correo electrónico.)

(Đơn xin lá phiếu bầu qua thư phải được gửi vào giữa Ngày 1 Tháng 1, Năm 2023 và Ngày 25 Tháng 4, Năm 2023 bằng thư, fax hoặc email đến:  
**Lưu ý: có hiệu lực từ ngày 1 tháng 12 năm 2017** - Nếu Đơn Xin Lá Phiếu bầu qua thư được gửi bằng fax hoặc e-mail, đơn xin bản gốc cũng phải được gửi bằng thư đến và nhận bởi Thư Ký Phụ Trách Bỏ Phiếu Sớm không muộn hơn ngày làm việc thứ tư kể từ ngày nhận được bản sao từ fax hoặc e-mail.)

Early Voting Clerk (Secretario De Votación Adelantada) (Nhân Viên Phụ Trách Bỏ Phiếu Sớm)  
PO Box 961011  
Fort Worth TX 76161-0011  
Fax: 817-850-2344  
Email: [votebymail@tarrantcounty.com](mailto:votebymail@tarrantcounty.com)

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## City Council Regular Meeting

**DEPARTMENT:** City Secretary's Office  
**FROM:** Amanda Campos, City Secretary  
**MEETING:** February 6, 2023

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**SUBJECT:**

Consider approval of a contract with Johnson County for election services for the May 6, 2023 general election in an amount not to exceed \$35,000. (*Staff Presenter: Amanda Campos, City Secretary*)

**SUMMARY:**

Texas election code Chapter 31 Section 31.093 allows for a political subdivision to contract with a county election administrator for election services. The political subdivision must reside inside the boundaries of the county for contract election services. The City of Burleson resides inside two counties, Johnson and Tarrant therefore the city must contract with both counties for election services.

There are nontransferable functions that a political subdivision (City Secretary) must retain. The City Secretary must be the filing authority for applications for places on the ballot, Title 15 filings, and maintaining office hours 50 days before the election for at least 3 hours each day. The City Secretary shall maintain the responsibility to post all required notices for the election.

Johnson County shall provide the following:

- Designate voting locations.
- Appoint, notify, compensate, and train the presiding judges and alternate judges and clerks. Provide all necessary supplies and information to the presiding judges
- Transport voting equipment to and from each polling location.
- Preparation of programs, give proper notice, and test materials for tabulation of the ballots to be used with electronic voting equipment in accordance with the provisions of the Texas Election Code and of this Agreement.
- Conduct all voting including mail ballots
- Appointed Early Voting Clerk
- Prepare necessary reporting to the State of Texas
- Records Custodian for the May 6, 2023 election

**OPTIONS:**

- 1) Approve the contract as presented with Johnson County
- 2) Approve with modifications
- 3) Deny the contract as presented with Johnson County

**RECOMMENDATION:**

Approve the contract with Johnson County

**FISCAL IMPACT:**

All expenses are budgeted in the City Secretary's Office budget adopted for FY 2022-2023

**STAFF CONTACT:**

Name: Amanda Campos  
Title: City Secretary  
[acampos@burlesontx.com](mailto:acampos@burlesontx.com)  
817-426-9665

**ELECTION AGREEMENT  
FOR JOHNSON COUNTY AND CITY OF BURLESON  
MAY 6, 2023**

**THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_ 2023, by and between the COUNTY OF JOHNSON, TEXAS, acting by and through the JOHNSON COUNTY ELECTIONS ADMINISTRATOR (hereinafter referred to as "COUNTY") and CITY OF BURLESON, acting by and through its Mayor or his designee (hereinafter referred to as "CITY").**

**WHEREAS, the COUNTY will be conducting the "CITY" General Election on May 6, 2023 for registered voters of Johnson County, Texas residing within City; and**

**WHEREAS, pursuant to Sec. 31.093, Texas Elections Code, the County Elections Administrator is required to enter into a contract with CITY to conduct and furnish election services for this May 6, 2023 General Election of CITY: and**

**WHEREAS, CITY desires that the Johnson County Elections Administrator conduct and coordinate this election; NOW THEREFORE,**

**FOR AND IN CONSIDERATION of the mutual project referenced herein, the parties hereto agree to hold an election on May 6, 2023 from 7:00 a.m. until 7:00 p.m., in accordance with Section 271.002, Texas Election Code, and that said election to be conducted pursuant to the terms of this agreement.**

**I. AGREEMENT**

**GENERAL TERMS:**

- 1.01 On May 6, 2023, the election shall be held from 7:00 AM until 7:00 PM, that day, at the location listed on Exhibit B.
- 1.02 The political subdivision participating in the election on May 6, 2023, shall have and use the election Judges and ES&S AutoMark voting equipment.



## **II. JOHNSON COUNTY**

- 2.01 The COUNTY agrees to coordinate, supervise, and conduct the Election, pursuant to the provisions of the Texas Election Code unless specifically provided otherwise in this Agreement with the understanding that the Election is only for the registered voters of Johnson County, Texas residing within the CITY
- 2.02 The Elections Administrator shall perform the following duties:
- a. Designate voting locations and contact the owners or custodians of public (or if unavailable, private) buildings and arrange for their use. Such voting locations shall be furnished to CITY as soon as possible.
  - b. Appoint, notify, and train the presiding judges and alternate judges and clerks. The names and addresses of each judge and alternate judge and clerk shall be furnished to the CITY at a later date.
  - c. Compensate election judges, alternate judges and clerks.
  - d. Transport voting equipment to and from each polling location.
  - e. Rent, if necessary, voting locations.
  - f. Provide lists of registered voters to the election judges.
  - g. Preparation of programs and test materials for tabulation of the ballots to be used with electronic voting equipment in accordance with the provisions of the Texas Election Code and of this Agreement.
  - h. Publish notice of the date, time, and place of the testing of the electronic tabulation equipment and conduct such testing.

## **III. EARLY VOTING AND ELECTION DAY VOTING**

### **3.01 Early Voting by Personal Appearance**

- a. The Elections Administrator, Patty Bourgeois shall serve as Early Voting Judge for the CITY General Election and other judges and clerks shall be appointed by her as needed.

- b. Early Voting by personal appearance shall be conducted at the location listed on Exhibit A. All eligible voters in the City of Burleson may vote early at the Burleson Sub-Courthouse; 247 Elk Dr., Burleson, Texas 76028 and Johnson County Elections, 103. S Walnut St., Cleburne, Texas 76033.
- c. Early Voting by personal appearance will begin on April 24, 2023, and will end on May 2, 2023. There will be early voting on Saturdays, Sundays, or legal holidays, unless otherwise agreed to by the parties.
- d. Temporary extended hours at those sites listed as in sec: 85.005 of the Election Code.

### 3.02 Early Voting By Mail:

- a. The COUNTY shall be responsible for early voting ballot requests by mail.
- b. CITY shall forward any requests by mail applications to the COUNTY.
- c. The COUNTY shall be responsible for all preparation of mail ballots including mailing ballot to voter.

### 3.03 The Ballot Board Judge for the CITY shall be as designated by the COUNTY. The Early Voting Ballot Board's duties will include:

- (1) Serve as Signature Verification Committee
- (2) Prepare the mail ballots for tabulation.
- (3) Convene to count provisional ballots and late ballots from out of the country, if any. (7<sup>th</sup> day or earlier after Election Day).

### 3.04 Election Day Voting:

The COUNTY shall be responsible for the following:

- a. Procure, prepare, and distribute supplies and the ES&S AutoMark and other election equipment for personal appearance on Election Day.
- b. Procure, prepare, and distribute Election Day supplies, tables, chairs if needed, and equipment, including ballots.
- c. Supervise the handling and disposition of election returns, tabulate unofficial returns, and assist in preparing the tabulation for the official canvass.

- d. Prepare the canvass report after all precincts have been counted and make available a copy of the appropriate part of the tabulation report.
  - e. Conduct the manual count.
- 3.05 Serve as custodian of election records and store election records as provided by Section 66.058 of the Texas Election Code for a period of 22 months.

#### **IV. CITY**

CITY shall have the following responsibilities in conducting this election on May 6, 2023

- 4.01 Prepare any election orders, resolutions, notices, writ of election, and other pertinent documents for adoption for execution by the appropriate officer; and take all actions required by law for calling the election, handling contests, canvassing the returns, and declaring the results of the election.
- 4.02 Prepare and publish information for the required election notice.
- 4.03 Deliver to the Elections Administrator the official wording, including Spanish translation, to be printed on the optical scan ballot. All documents must be delivered to the County Elections office by the 13th day of February 2023. If the documents are not received by the above date this Election Agreement will be terminated and County will have no obligations regarding the above referenced election.
- 4.04 Approve final optical scan ballot wording for content, form, and spelling.
- 4.05 Prepare and publish the Notice of Election, which is the required and described method of giving notice in accordance to Texas Election Code (Sec 4.003(a) (1).
- 4.06 Provide maps and other reference guides.
- 4.07 Assist the Election Administrator with providing Election Personnel.
- 4.08 Pursuant to Texas Election Code Sec. 67.003, canvass the official results between the 3<sup>rd</sup> and 11<sup>th</sup> day following the election.

## **V. PAYMENT FOR SERVICES**

- 5.01 In consideration for the services and expenses provided by the County for conducting this election, the County shall be reimbursed for the optical scan ballots, ballot layout, media, coding the ES&S AutoMark equipment, M650 optical scan equipment, voting supplies, Election Judges, Clerks, Central Count, Ballot board, a 10 % administration fee, and any other expenses listed on Exhibit C.
- 5.02 Should a recount be required, those costs associated with the recount, if any, shall be in accordance with the provisions of the Texas Election Code.
- 5.03 The official for parties to contact for all purposes shall be listed at the end of the Agreement. All notices and other deliveries under the Agreement shall be delivered to said individual so listed.

## **VI. RUN-OFF ELECTION**

- 6.01 In the event there is a run-off election, this Agreement shall be extended for the time necessary to conduct the run-off election and the CITY and COUNTY agree to continue to perform their respective responsibilities as set forth in this Agreement as are applicable to a run-off election. CITY will be responsible for any and all additional costs associated with the run-off election incurred by COUNTY. Any additional costs owed to COUNTY by CITY will be invoiced by COUNTY and CITY agrees to pay said invoiced amount within thirty (30) days of receipt of the invoice from COUNTY.

## **VII. TERMINATION IF ELECTION IS CANCELED**

- 7.01 In the event that the election is canceled due to all candidates being unopposed, County and CITY agree that this Agreement will be terminated and CITY will owe a cancellation fee of \$75.00 to be paid by CITY within thirty (30) days of said cancellation.

**ACCEPTANCE:**

On behalf of Johnson County Elections Administration, I hereby accept the terms of the Agreement.

Signed the \_\_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Patty Bourgeois  
Elections Administrator  
Johnson County, Texas

On behalf of City of Burleson, I hereby accept the terms of this Agreement.

Signed the \_\_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Bryan Langley, City of Burleson  
City Manager

IN WITNESS WHEREOF, the above Agreement was adopted at a meeting of the Commissioner's Court of Johnson County on the \_\_\_\_\_ day of \_\_\_\_\_, 2023.

**COUNTY OF JOHNSON**

\_\_\_\_\_  
County Judge  
Johnson County Commissioners  
Court

Officials for notice:  
Patty Bourgeois  
Elections Administrator  
Johnson County  
P.O. Box 895  
Cleburne, Texas 76033

Bryan Langley, City of Burleson  
City Manager  
141 W. Renfro St.  
Burleson, Texas 76028



**EXHIBIT A**

**CITY OF BURLESON GENERAL ELECTION  
MAY 6, 2023  
EARLY VOTING POLLING LOCATION  
(ELECCIÓN GENERAL CITY OF BURLESON  
6 DE MAYO DEL 2023  
CENTRO PARA VOTACIÓN ADELANTADA)**

April 24, 2023 through May 2, 2023 is the period for early voting by personal appearance (Sec. 85.001). Any voter qualified to vote in the May 6, 2023, City of Burleson General Election is eligible for early voting by personal appearance.

Early voting by personal appearance will be conducted the following location:

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Monday, May 1, 2023 – Tuesday, May 2, 2023 hours: 7:00 am until 7:00 pm

*(El plazo para la votación adelantada en persona es desde el 24 de Abril, 2023*

*hasta el 2 de Mayo del 2023 (Sec. 85.001). Cualquier votante calificado para votar en la Elección General City of Burleson del 6 de Mayo del 2023, es elegible para la votación adelantada en persona.*

*La votación adelantada en persona se llevará a cabo en el siguiente lugar:*

*Lunes, 24 de Abril del 2023 – Viernes, 28 de Abril del 2023; horas: 8:00 am hasta 5:00 pm*

*Lunes, 1 de Mayo del 2023 – Martes, 2 de Mayo del 2023; horas: 7:00 am hasta 7:00 pm)*

**Hours for additional weekend early voting will be extended at the early voting location to include:**

**Saturday April 29, 2023, 7:00 am to 7:00 pm.**

*(Las horas adicionales para la votación adelantada durante el fin de semana serán extendidas en la ubicación para votación adelantada incluyendo:*

*Sábado, 29 de Abril del 2023, 7:00 am hasta 7:00 pm*

**Early Voting Main**

**Johnson County Election**

*(Elecciones del condado de Johnson)*

103 S Walnut St.

Cleburne, Texas 76033

**Early Voting**

**Burleson Sub-Courthouse**

*(Sub-juzgado de Burleson)*

247 Elk Dr. Rm. 212

Burleson, Texas 76028

**CITY OF BURLESON GENERAL  
ELECTION MAY 6, 2023  
EARLY VOTING POLLING LOCATION  
(*ELECCIÓN GENERAL CITY OF BURLESON  
6 DE MAYO DEL 2023  
CENTRO PARA VOTACIÓN ADELANTADA*)**

**Election Day**

**Burleson Sub-Courthouse**  
*(Sub-juzgado de Burleson)*  
247 Elk Dr. Rm 212  
Burleson, Texas 76028

**Exhibit C**

COST OF SERVICE. The City of Burleson shall pay for services , supplies, and equipment in accordance with the following estimated cost schedule. The City of Burleson will be liable to pay all the expense that have endured; and a 10% administration fee.

**THE CITY OF BURLESON: 2023 MAY 6th**

**Contracted Election with Johnson County/Separate Ballots 2 EV & 1 ED Location.**

**Pct. 2, 3, 4, 5, 7, 10, 11, 12, 31, 32, 33, 34, 38, 39, 40 & 41**

<b>1. VOTING EQUIPMENT, TABULATION NOTICE, AND BUILDING RENTAL</b>	<b>Estimated Cost</b>
--	-----------------------

<u>(X) Rental M650 Optical Scanner</u>	\$500.00
<u>(X) Rental ES&amp;S Auto-Mark for HAVA</u>	\$700.00
<u>(X) Programming Charges/Coding/Media/ shipping for 650 Central count &amp; Auto-marks</u>	\$1,000.00
<u>(X) Printing Ballots/Layout/Spanish Coding/ shipping</u>	\$7,000.00
<u>(X) Publish Notice of Tabulation Test</u>	\$125.00
<u>(X) Building Rental</u>	\$0.00

**2. CENTRAL COUNT EXPENSES**

<u>(X) CC Station Manager</u>	\$125.00
<u>(X) Tabulation Supervisor</u>	\$150.00
<u>(X) Assistant Tabulation Supervisor</u>	\$150.00
<u>(X) Assistant Tabulation</u>	\$100.00
<u>(X) CCS Judge</u>	\$75.00
<u>(X) CCS Alt. Judge</u>	\$75.00
<u>(X) Early Voting Ballot Board Judge</u>	\$240.00
<u>(X) Early Voting Ballot Board Alt. Judge</u>	\$228.00
<u>(X) Early Voting Ballot Board Personnel</u>	\$408.00
<u>(X) Provisional/Late Ballot Board Judge</u>	\$80.00
<u>(X) Provisional/Late Ballot Board Alt. Judge</u>	\$76.00
<u>(X) Provisional/Late Ballot Board Clerks</u>	\$136.00
<u>(X) Security</u>	\$180.00

**3. ESTIMATED EARLY VOTING COSTS**

<u>(X) Judge's Kit Early Voting</u>	\$100.00
<u>(X) Ballot by Mail BUC</u>	\$500.00
<u>(X) Early Voting Judge</u>	\$4,560.00
<u>(X) Early Voting Alt. Judge</u>	\$4,332.00
<u>(X) Early Voting Clerks</u>	\$7,276.00
<u>(X) Early Voting Mileage Reimbursement</u>	\$100.00
<u>(X) Early Voting Pick up &amp; delivery fee</u>	\$25.00

Exhibit C

4. ESTIMATED ELECTION DAY COSTS

<u>(X) Judge's Kit Election Day</u>	\$50.00
<u>(X) Election Day Judge</u>	\$320.00
<u>(X) Election Day Alt. Judge</u>	\$304.00
<u>(X) Election Day Clerks</u>	\$476.00
<u>(X) Election Day Pick up &amp; delivery fee</u>	\$25.00
<u>(X) Supplies</u>	\$500.00

Subtotal ..... \$29,916.00

5. CONTRACT ADMINISTRATIVE FEE & TOTAL COST

<u>10% of Subtotal</u>	\$2,991.60
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**TOTAL COST ..... \$32,907.60**

**\* Per section: 7.01**

If the Election is canceled there will be a fee of \$75.00 to be paid by **CITY** within (30) days of said cancellation.