



**CITY OF DENISON
CITY COUNCIL MEETING
AGENDA**

Monday, February 19, 2024

After determining that a quorum is present, the City Council of the City of Denison, Texas will convene in a Regular Meeting on **Monday, February 19, 2024 at 6:00 PM** in the Council Chambers at City Hall, 300 W. Main Street, Denison, Texas at which the following items will be considered:

1. INVOCATION, PLEDGE OF ALLEGIANCE AND TEXAS PLEDGE

2. PROCLAMATIONS AND PRESENTATION

A. Government Communicators Day Proclamation.

3. PUBLIC COMMENTS

Citizens may speak on items listed on the Agenda. A “Request to Speak Card” should be completed and returned to the City Clerk upon arrival, prior to the Council reaching the Public Comment section of the agenda. Citizen comments are limited to three (3) minutes, unless otherwise required by law. Comments related to the Public Hearings listed below will be heard when the specific hearing starts.

4. CONSENT AGENDA

A. Receive a report, hold a discussion and take action on approving the Minutes from the Regular City Council Meeting held on February 5, 2024.

B. Receive a report, hold a discussion and take action on approval of the DPD Contact Data Annual Report for 2023.

C. Receive a report, hold a discussion, and take action on a granting approval for the Interim City Manager, or his designee, to enter into various loan documents with Clayton Holdings, LLC, for the purchase of two Mack refuse trucks and bodies, traffic control equipment, and reimbursement for the purchase of 30-yard dumpsters, and a Mack truck with hoist.

D. Receive a report, hold a discussion, and take action on authorizing the Second Amendment to the Sublease Agreement between the City of Denison and Homeless Empowerment Action Team (HEAT).

E. Receive a report, hold a discussion and take action on the appointment of Angela J. Harwell, as a regular member, to the Planning and Zoning Commission, to serve a two-year term effective January 1, 2024.

- F. Receive a report, hold a discussion, and take action on the approval of the purchase of a Kubota tractor loader, with a total purchase amount of \$94,962.11, from Zimmerer Kubota & Equipment, Inc. and authorize the Interim City Manager to execute any associated documents.
- G. Receive a report, hold a discussion, and take action on the approval of the purchase of a Volvo wheeled excavator, with a total purchase amount of \$305,212.47, from ROMCO Equipment Company and authorize the Interim City Manager to execute any associated documents.
- H. Receive a report, hold a discussion, and take action on approval of a pavement condition assessment services purchase proposal in the amount of \$128,799.00 from Infrastructure Management Services, LP and authorize the Interim City Manager to execute any associated documents.
- I. Receive a report, hold a discussion and take action on the appointment of Jimmy Cravens and Braeden Wright, as regular members, to the Zoning Board of Adjustments and Appeals, each to serve a two-year term effective January 1, 2024.
- J. Receive a report, hold a discussion and take action on adopting a resolution authorizing membership in the Atmos Cities Steering Committee and authorizing the payment of \$.05 cents per capita to the Atmos Cities Steering Committee to fund regulatory and related activities related to Atmos Energy Corporation.

5. PUBLIC HEARINGS

- A. Receive a report, hold a discussion, conduct a public hearing, and take action on an Ordinance to rezone an approximately 2.94 acre tract identified as GCAD Property ID No. 141832, said property being legally described as Lots 1 through 16 and including the twenty (20) foot alley, Block 2 of Miller’s First Addition to the City of Denison, Grayson County, Texas, according to the deed recorded in Volume Y, Page 330, Deed Records of Grayson County, Texas; being commonly known as 715 W. Sears Street, to amend the current Planned Development Ordinance No. 5218 by changing the current zoning classification from Planned Development Overlay (PD) District with the base zoning of Single-Family Residential Attached (SF-TH) District to a Planned Development Overlay (PD) District with the base zoning of Multi-Family Residential (MF-2) District and Local Retail (LR) District for residential and retail use and amending Exhibit B “Development Standards” and Exhibit C “Concept Plan” of Ordinance No. 5218. (Case No. 2023-117PD).

6. ITEMS FOR INDIVIDUAL CONSIDERATION

- A. Receive a report, hold a discussion and take action on an ordinance considering all matters incident and related to the issuance, sale and delivery of “City of Denison, Texas Combination Tax and Limited Surplus Revenue Certificates of Obligation, Series 2024;” authorizing the issuance of the Certificates; approving and authorizing instruments and procedures relating to said Certificates; and enacting other provisions relating to the subject.

7. PROJECT UPDATES

- A. Receive a report and hold a discussion regarding an update on the Ike Hike Trail Project.

8. EXECUTIVE SESSION

Pursuant to Chapter 551, *Texas Government Code*, the Council reserves the right to convene in Executive Session(s), from time to time as deemed necessary during this meeting to receive legal advice from its attorney on any posted agenda item as permitted by law or to discuss the following:

- A. Consult with attorney on a matter in which the attorney's duty to the governmental body under the Texas Disciplinary Rules of Professional Conduct conflicts with this chapter and/or consult with attorney about pending or contemplated litigation or contemplated settlement of the same. Section 551.071.
- B. Discuss the possible purchase, exchange, lease or sale value of real property (public discussion of such would not be in the best interests of the City's bargaining position). Section 551.072.
- C. Discuss negotiated gifts or donations to the City (public discussion at this stage would have a detrimental effect on the City's bargaining position). Section 551.073.
- D. Discuss the appointment, employment, evaluation, reassignment of duties, discipline, or dismissal of or to hear a complaint against a public officer or employee. Section 551.074.**
 - 1. Alternate Municipal Judge.
- E. Discuss the commercial or financial information received from an existing business or business prospect with which the City is negotiating for the location or retention of a facility, or for incentives the City is willing to extend, or financial information submitted by the same. Section 551.087.
- F. Discuss the deployment or specific occasions for implementation of security personnel or devices. Section 551.076.
- G. Deliberations regarding economic development negotiations pursuant to Section 551.087.

Following the closed Executive Session, the Council will reconvene in open and public session and take any such action as may be desirable or necessary as a result of the closed deliberations.

CERTIFICATION

I do hereby certify that a copy of this Notice of Meeting was posted on the front window of City Hall readily accessible to the general public at all times, and posted on the City of Denison website on the 16th day of February 2024, before 6:00 p.m.

Christine Wallentine, City Clerk

In compliance with the Americans With Disabilities Act, the City of Denison will provide for reasonable accommodations for persons attending City Council meeting. To better serve you, requests should be received 48 hours prior to the meetings. Please contact the City Clerk's Office at [903-465-2720](tel:903-465-2720), Ext: 2437.



**CITY OF DENISON
CITY COUNCIL MEETING
MINUTES**

Monday, February 5, 2024

Announce the presence of a quorum.

Mayor Janet Gott called the meeting to order at 6:00 p.m. Council Members present were Mayor Pro Tem Robert Crawley, Brian Hander, Michael Courtright, James Thorne, and Aaron Thomas. Council Member Joshua Massey was absent. Staff present were City Manager, Bobby Atteberry, City Attorney, Julie Fort, City Clerk, Christine Wallentine and Deputy City Clerk, Karen Avery. Assistant City Manager, Renee Waggoner, was absent. Department Directors were also present.

1. INVOCATION, PLEDGE OF ALLEGIANCE AND TEXAS PLEDGE

Jeff Humphrey, Pastor of Parkside Baptist Church gave the invocation which was followed by the Pledge of Allegiance and Texas Pledge led by Denison Firefighters Bryan Forth and Chad Honeycutt and Captain James Robinson.

2. PUBLIC COMMENTS

Mayor Gott called for any public comments at this time and reminded those wanting to comment of the guidelines established by the City Council. Christine Wallentine, City Clerk, confirmed there were no Request to Speak Cards received by this point in the meeting. Therefore, no public comments were received.

3. CONSENT AGENDA

- A. Receive a report, hold a discussion and take action on approving the Minutes from the Regular City Council Meeting held on January 16, 2024.
- B. Receive a report, hold a discussion and take action on a Resolution adopting guidelines for an amnesty program prior to the 2024 Warrant Round Up.
- C. Receive a report, hold a discussion and take action on entering into Joint Election Agreements with Denison Independent School District (Contract No. 2024-0006) and the Grayson County Elections Administration (Contract No. 2024-0007) for the May 4, 2024 General and Special Elections, and authorize the Interim City Manager to execute the same.
- D. Receive a report, hold a discussion and take action on an ordinance calling a Special Election for the purpose of electing a City Council Member for Place 6, At-Large, and a Council Member for Place 4, Single Member District 4, each to serve the remainder of an unexpired term until the next regular City Council election in May 2025, in conjunction

with a General Election to be held jointly with the School District sharing polling locations only, on Saturday May 4, 2024, for the purpose of electing a Council Member for Single Member District 1, Place 1, a Council Member for Single Member District 2, Place 2 and Place 7 (Mayor), At-Large, each to serve a three year term.

- E. Receive a report, hold a discussion, and take action on a Professional Engineering Services Agreement with Huitt-Zollars Inc. (Contract No. 2024-0008) to conduct and prepare a City Facility Needs Assessment in the amount of \$189,000 and authorize the Interim City Manager to execute all related documents.
- F. Receive a report, hold a discussion, and take action on an agreement in the amount of \$990,765 with CobbFendley (Contract No. 2024-0009) for design and construction support of the Perrin Estates Utility Improvements project, and authorize the Interim City Manager to execute all related documents.
- G. Receive a report, hold a discussion and take action on denying the extraterritorial jurisdiction release petition received from Ray C. Davis and Linda B. Davis for property commonly known as 1421 US Highway 69, Denison, Texas more particularly described as G-0996 Rubio Ramon A-G0996, Acres 0.29, GCAD Property ID No. 113210.
- H. Receive a report, hold a discussion and take action on denying the extraterritorial jurisdiction release petition received from Ray C. Davis for property commonly known as 1335 US Highway 69, Denison, Texas more particularly described as G-0996 Rubio Ramon A-G0996, Acres 0.55, GCAD Property ID No. 113203.
- I. Receive a report, hold a discussion and take action on denying the extraterritorial jurisdiction release petition received from Ray C. Davis and Linda B. Davis for property commonly known as 1191 Highway 69, Denison, Texas more particularly described as G-1311 Wright William A-G1311, Acres 36.94, GCAD Property ID No. 113345.
- J. Receive a report, hold a discussion and take action on denying the extraterritorial jurisdiction release petition received from Ray C. Davis and Linda B. Davis for property commonly known as 411 Snow Road, Denison, Texas more particularly described as Delmar Estates, Lot 9, Acres 1.02, GCAD Property ID No. 113292.
- K. Receive a report, hold a discussion and take action on denying the extraterritorial jurisdiction release petition received from Vincent William McKeon, Jr., Lisa Kusch McKeon and Tressie Elizabeth McKeon for three parcels of land commonly known as 2705 Preston Road, Denison, Texas more particularly described as G-0062 Bennett D W & HRS A-G0062, Acres 123.593, GCAD Property ID No. 113436; 1173 Davy Lane, Denison, Texas more particularly described as G-0062 D W & HRS A-G0062, Acres 13.0, GCAD Property ID No. 113430; and 2705 Preston Road, Denison, Texas, more particularly described as G-0062 Bennett D W & HRS A-G0062, Acres 19.11, GCAD Property ID No. 445083.
- L. Receive a report, hold a discussion and take action on denying the extraterritorial jurisdiction release petition received from Ray C. Davis and Linda B. Davis for property located at Highway 69, Denison, Texas, more particularly described as Delmar Estates, Lot 11, Acres 3.66, GCAD Property ID No. 113294.

- M. Receive a report, hold a discussion and take action on denying the extraterritorial jurisdiction release petition received from Ray C. Davis and Linda B. Davis for property located at Highway 69, Denison, Texas, more particularly described as Delmar Estates, Lot 12, Acres 3.66, GCAD Property ID No. 113295.
- N. Receive a report, hold a discussion and take action on a resolution authorizing continued participation with the Steering Committee of cities served by Oncor and authorizing the payment of ten cents (\$0.10) per capita to the Steering Committee regulatory and legal proceedings and activities related to Oncor Electric Delivery Company, LLC.
- O. Receive a report, hold a discussion and take action on the reappointment of Jeff Thompson, as a regular member, to the Zoning Board of Adjustments and Appeals to serve a two-year term effective January 1, 2024.
- P. Receive a report, hold a discussion, and take action on the approval of the purchase of a CASE tractor loader, with a total purchase amount of \$105,842.00, from ASCO Equipment and authorize the Interim City Manager to execute any associated documents.
- Q. Receive a report, hold a discussion, and take action on the approval of the purchase of a new replacement engine for a Sanitation automatic residential collection truck, with a total purchase amount of \$65,007.92, from Bruckner Truck Sales and authorize the Interim City Manager to execute any associated documents.
- R. Receive a report, hold a discussion, and take action on the purchase of pump repair services from A.W. Chesterton for \$62,464.00 and authorize the Interim City Manager to execute all related documents.

Council Action

On motion by Mayor Pro Tem Crawley, seconded by Council Member Courtright, the City Council unanimously approved, **Ordinance No. 5336**, “AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DENISON, TEXAS, CALLING A JOINT GENERAL ELECTION, WITH GRAYSON COUNTY ON SATURDAY, MAY 4, 2024 FOR THE PURPOSE OF ELECTING A COUNCIL MEMBER, PLACE 1, SINGLE MEMBER DISTRICT 1, A COUNCIL MEMBER, PLACE 2, SINGLE MEMBER DISTRICT 2, AND PLACE 7 (MAYOR), AT LARGE, EACH FOR THREE (3) YEAR TERMS FOR SAID CITY; AND A SPECIAL ELECTION FOR THE PURPOSE OF ELECTING A CITY COUNCIL MEMBER, PLACE 6, AT LARGE, AND A COUNCIL MEMBER, PLACE 4, SINGLE MEMBER DISTRICT 4, EACH TO SERVE THE REMAINDER OF AN UNEXPIRED TERM UNTIL THE GENERAL ELECTION IN MAY 2025, ; PROVIDING RESIDENCY REQUIREMENTS FOR CANDIDATES; DESIGNATING THE POLLING PLACES, DATE, AND TIME OF SAID ELECTIONS AND VOTING PERIODS; PROVIDING FOR BALLOT APPLICATION PROCEDURES; DESIGNATING FILING DEADLINES; PROVIDING INFORMATION FOR EARLY VOTING; PROVIDING THAT SUCH ELECTION SHALL BE ADMINISTERED BY THE GRAYSON COUNTY ELECTIONS ADMINISTRATOR, PURSUANT TO A CONTRACT WITH THE CITY, THE TEXAS ELECTION CODE, AND THE TEXAS CONSTITUTION; PROVIDING INFORMATION FOR CANVASSING; ORDERING NOTICES OF ELECTION TO BE POSTED AND PUBLISHED AS PRESCRIBED BY LAW IN CONNECTION WITH SUCH ELECTION; PROVIDING A

SAVINGS/REPEALING CLAUSE AND SEVERABILITY CLAUSE; AND FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE WAS PASSED WAS OPEN TO THE PUBLIC AS REQUIRED BY LAW; AND PROVIDING AN EFFECTIVE DATE”; **Resolution No. 4152**, “A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DENISON, TEXAS ADOPTING GUIDELINES FOR AN AMNESTY PROGRAM PRIOR TO THE 2024 WARRANT ROUND-UP AND OTHER MATTERS IN CONNECTION THEREWITH; AND PROVIDING AN EFFECTIVE DATE”; **Resolution No. 4153**, “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”; and the rest of the Consent Agenda as presented.

4. PUBLIC HEARINGS

- A. Receive a report, hold a discussion, conduct a public hearing, and take action on an Ordinance to rezone an approximately 0.475-acre tract identified as GCAD Property ID No. 140644, said property being legally described as being situated in the M.C. Davis Survey, Abstract No. 336, according to the deed recorded in Volume 1138, Page 298, Deed Records of Grayson County, Texas; commonly known as 2713 W. Morton Street, from the SF-7.5, Single Family Residential District (SF-7.5) within the Highway Oriented and Corridor Overlay District (HO) to the Commercial (C) within the Highway Oriented and Corridor Overlay District (HO) to allow for commercial use. (Case No. 2023-126Z)

Council Action

Dianne York, Planner, introduced this agenda item. The applicant is requesting a rezone of the property located at 2713 W. Morton Street from the Single Family 7.5, within the Highway Oriented and Corridor Overlay District, to the Commercial with Highway Oriented to allow for commercial use. The property has been developed in a commercial manner. The existing structure was built sometime around 2006. The Future Land Use Plan suggests this area to be developed in a mixed commercial manner. So, the requested zoning is appropriate for the property. With this, staff recommends approval of the request as did the Planning and Zoning Commission at their meeting held on January 23, 2024.

Mayor Gott then asked if there was anyone present who wished to speak on this agenda item. Mr. came forward and provided the following information for the record:

Name: David Keese

Address: 7201 Darrow Drive
McKinney, TX

Mr. Keese stated he represents the applicant and as staff mentioned, this property was built in 2005 or 2006. At the time, both the City and the appraiser thought the property was zoned commercial, which is why the applicant did not come forward previously for a zoning change. The applicant respectfully requests that the Council approve the zoning change as requested.

Mayor Got then asked if there was anyone else present who wished to speak to this agenda item, to which there were none. With that, Mayor Gott closed the public hearing

There was no discussion or questions from Council.

On motion by Council Member Hander, seconded by Mayor Pro Tem Crawley, the City Council unanimously approved Ordinance No. 5337,"AN ORDINANCE OF THE CITY OF DENISON, TEXAS, AMENDING CHAPTER 28 OF THE CODE OF ORDINANCES OF THE CITY, THE SAME BEING THE COMPREHENSIVE ZONING ORDINANCE OF THE CITY, AND AMENDING THE OFFICIAL ZONING MAP OF THE CITY, BY CHANGING THE ZONING CLASSIFICATION ON AN APPROXIMATELY 0.475 ACRE TRACT OF LAND LEGALLY DESCRIBED AS BEING SITUATED IN THE M. C. DAVIS SURVEY, ABSTRACT NO. 336, ACCORDING TO THE DEED RECORDED IN VOLUME 1138, PAGE 298, DEED RECORDS OF GRAYSON COUNTY, TEXAS; IDENTIFIED AS GRAYSON CAD PROPERTY ID NO. 140644, AND COMMONLY REFERRED TO AS 2713 W MORTON STREET, DENISON, TEXAS, AND MORE PARTICULARLY DESCRIBED AND DEPICTED IN EXHIBIT "A", FROM ITS ZONING CLASSIFICATION OF SINGLE-FAMILY 7.5 (SF-7.5) RESIDENTIAL DISTRICT WITHIN THE HIGHWAY OVERLAY (HO) DISTRICT TO THE COMMERCIAL (C) DISTRICT WITHIN THE HIGHWAY OVERLAY (HO) DISTRICT; PROVIDING THAT SUCH TRACT OF LAND SHALL BE USED IN ACCORDANCE WITH THE REQUIREMENTS OF THE COMPREHENSIVE ZONING ORDINANCE AND ALL OTHER APPLICABLE ORDINANCES OF THE CITY; PROVIDING THAT THE ZONING MAP SHALL REFLECT THE COMMERCIAL (C) DISTRICT WITHIN THE HIGHWAY OVERLAY (HO) DISTRICT FOR THE PROPERTY; PROVIDING A PENALTY; PROVIDING REPEALING, SEVERABILITY, AND SAVINGS CLAUSES; PROVIDING FOR PUBLICATION AND AN EFFECTIVE DATE."

There being no further business to come before the Council, the meeting was adjourned at 6:06 p.m.

JANET GOTT, Mayor

ATTEST:

Christine Wallentine, City Clerk

City Council Meeting Staff Report



Agenda Item

Receive a report, hold a discussion and take action on approval of the DPD Contact Data Annual Report for 2023.

Staff Contact

Mike Gudgel, Chief of Police
mgudgel@cityofdenison.com
903-465-2422, ext. 2303

Summary

- This is a required annual report done in accordance with the Texas Racial Profiling Law (S.B. No. 1074).
- This report covers the period of 1/01/2023 to 12/31/2023.
- Presentation of this report to council each year is required.

Staff Recommendation

Staff recommends approval of this report.

Recommended Motion

“I move to approve the DPD Contact Data Annual Report for 2023.”

Background Information and Analysis

Since January, 2002, the Denison Police Department, in accordance with the Texas Racial Profiling Law (S.B. No. 1074), has been collecting police contact data for the purpose of identifying and responding (if necessary) to concerns regarding racial profiling practices. It is my hope that the findings provided in this report will serve as evidence that the Denison Police Department continues to strive towards the goal of maintaining strong relations with the community.

In this report, the reader will encounter several sections designed at providing background information on the rationale and objectives of the Texas Racial Profiling Law. Other sections contain information relevant to the institutional policies adopted by the Denison Police Department banishing the practice of racial profiling among its officers.

The final components of this report provide statistical data relevant to the public contacts made during the period of 1/01/2023 to 12/31/2023. This information has been analyzed and compared to the Department of Public Safety data on licensed drivers residing in the Denison area. The analysis of the data and recommendations for future areas of research are also included. It is my sincere hope that the channels of communication between community leaders and the Denison Police Department continue to strengthen as we move forward to meet the challenges of the near future.

Financial Considerations

None

Prior Board or Council Action

Council last approved this report in February, 2023.

Alternatives

None

DENISON POLICE DEPARTMENT
Contact Data Annual Report
January 01, 2023 – December 31, 2023



I. Introduction

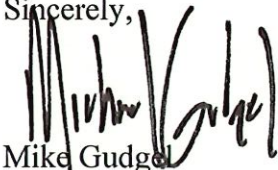
01-10-24

Since January 1, 2002, the Denison Police Department in accordance with the Texas Racial Profiling Law (S.B. No. 1074), has been collecting police contact data for the purpose of identify and responding (if necessary) to concerns regarding racial profiling practices. It is my hope that the findings provided in this report will serve as evidence that the Denison Police Department continues to strive towards the goal of maintaining strong relations with the community.

In this report, the reader will encounter several sections designed at providing background information on the rationale and objectives of the Texas Racial Profiling Law. Other sections contain information relevant to the institutional policies adopted by the Denison Police Department banishing the practice of racial profiling among its officers.

The final components of this report provide statistical data relevant to the public contacts made during the period of 1/1/23 and 12/31/23. This information has been analyzed and compared to the Department of Public Safety data on motorists residing in the Denison area. The analysis of the data and recommendations for future areas of research are also included. It is my sincere hope that the channels of communication between community leaders and the Denison Police Department continue to strengthen as we move forward to meet the challenges of the near future.

Sincerely,



Mike Gudge
Chief of Police

Police Contact Data Annual Report January 01, 2023---December 31, 2023

Table of Content

(I) Introduction

- a) Opening Statement Outlining Rationale and Objective of Report
- b) Table of Content
- c) The Texas Law on Racial Profiling (S.B. 1074) (S.B. 1849)
- d) Outline of Requirements Introduced by The Texas Racial Profiling Law

(II) Background

- a) Police Department's Background/Demographics
- b) Police Department's General Orders/Procedures (include organizational chart if available)
- c) Report on Inventory/Usage of Video/Audio Equipment in Police Vehicles

(III) Responding to the Texas Racial Profiling Law

- a) Institutional Policy on Racial Profiling (definition/prohibition of racial profiling)
- b) Implementation of Complaint Process Addressing Allegations of Racial Profiling Practices (includes efforts relevant to the implementation of an educational campaign aimed at informing the public on the complaint process)
- c) Training Administered to Law Enforcement Personnel
- d) Tables Depicting Police Contact Information (01/01/23—12/31/23). Include Tier 1 information (Comparative Analysis)
- e) Report on Complaints (if any) Filed Against Officers for Violating Racial Profiling Policy (includes institutional procedures/corrective action used when responding to racial profiling complaints)
- f) Analysis and Interpretation of Data (explain rationale for use of DPS data)

(IV) Summary of Findings

- a) Summary Statement Regarding Findings
- b) Check List/Contact Information

Racial Profiling Reporting to TCOLE

House Bill 3389 changed several portions of the Code of Criminal Procedures Article 2.131 – 2.138. The major change that is now in the law is that all agencies must report racial profiling data to TCOLE as well as their governing body.

The law changes require reporting beginning in 2011 reporting data collected during calendar year 2010.

The attached documents outline three options. Every law enforcement agency must select the option that applies to their particular situation.

These options are:

1. Law enforcement agencies that do not routinely make motor vehicle stops can be fully exempt from reporting.
2. Law enforcement agencies that routinely perform traffic stops or motor vehicle stops and who have their vehicles that routinely perform these stops equipped with video and audio equipment can report under CCP 2.135. (This is called Tier 1 reporting).
3. Law enforcement agencies that routinely perform traffic stops or motor vehicle stops and who do not equip their vehicles with video and audio equipment must report under CCP 2.133 and perform a analysis as required by CCP 2.134.

**RACIAL PROFILING REPORTING
AS REQUIRED BY HB 3389
OF THE 81ST LEGISLATURE
STATE OF TEXAS**

As a Chief Administrator of a Law Enforcement Agency you must submit one (1) of the following three (3) documents.

Please read the Code of Criminal Procedures, Article 2.131 – 2.138 and make a decision about which of the following three categories applies to your department.

Which ONE applies to you?

- Full Exemption from Racial Profiling Reporting – agency does not routinely make traffic stops.
- Tier 1 Partial Exemption from Racial Profiling Report because of video and audio equipment records motor vehicle stops.
- Tier 2 Fully Reporting with no recording video and audio equipment in vehicles performing motor vehicle stops.

By law, one of the above three must be submitted to TCOLE each year by March 1st. This will begin with the 2010 year's data submitted by March 1st, 2011.



**Partial Exemption Racial Profiling Reporting
(Tier 1)**

Department Name _____
Agency Number _____
Chief Administrator Name _____
Reporting Name _____
Contact Number _____
E-mail Address _____

Certification to Report 2.132 (Tier 1) – Partial Exemption

Policy Requirements (2.132(b) CCP):

Each law enforcement agency in this state shall adopt a detailed written policy on racial profiling. The policy must:

- (1) clearly define acts constituting racial profiling;
- (2) strictly prohibit peace officers employed by the agency from engaging in racial profiling;
- (3) implement a process by which an individual may file a complaint with the agency if the individual believes that a peace officer employed by the agency has engaged in racial profiling with respect to the individual;
- (4) provide public education relating to the agency's complaint process;
- (5) require appropriate corrective action to be taken against a peace officer employed by the agency who, after an investigation, is shown to have engaged in racial profiling in violation of the agency's policy adopted under this article;
- (6) require collection of information relating to motor vehicle stops in which a citation is issued and to arrests made as a result of those stops, including information relating to:
 - (A) the race or ethnicity of the individual detained;
 - (B) whether a search was conducted and, if so, whether the individual detained consented to the search; and
 - (C) whether the peace officer knew the race or ethnicity of the individual detained before detaining that individual; and
- (7) require the chief administrator of the agency, regardless of whether the administrator is elected, employed, or appointed, to submit an annual report of the information collected under Subdivision (6) to:
 - (A) the Commission on Law Enforcement Officer Standards and Education; and
 - (B) the governing body of each county or municipality served by the agency, if the agency is an agency of a county, municipality, or other political subdivision of the state.

These policies are in
effect

Chief Administrator

Date



**Partial Exemption Racial Profiling Reporting
(Tier 1)**

Video and Audio Equipment Exemption

Partial Exemption Claimed by (2.135(a) CCP):

all cars regularly used for motor vehicle stops are equipped with video camera and transmitter-activated equipment and each motor stop is recorded and the recording of the stop is retained for at least 90 days after the stop.

OR

In accordance with 2.135(a)(2) the agency has requested and not received funds to install the recording equipment

I claim this exemption

Chief Administrator

Date

AN ACT

relating to the prevention of racial profiling by certain peace officers.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 2, Code of Criminal Procedure, is amended by adding Articles 2.131 through 2.138 to read as follows:

Art. 2.131. RACIAL PROFILING PROHIBITED. A peace officer may not engage in racial profiling.

Art. 2.132. LAW ENFORCEMENT POLICY ON RACIAL PROFILING. (a) In this article:

(1) "Law enforcement agency" means an agency of the state, or of a county, municipality, or other political subdivision of the state, that employs peace officers who make traffic stops in the routine performance of the officers' official duties.

(2) "Race or ethnicity" means of a particular descent, including Caucasian, African, Hispanic, Asian, or Native American descent.

(b) Each law enforcement agency in this state shall adopt a detailed written policy on racial profiling. The policy must:

(1) clearly define acts constituting racial profiling;

(2) strictly prohibit peace officers employed by the agency from engaging in racial profiling;

(3) implement a process by which an individual may file a complaint with the agency if the individual believes that a peace officer employed by the agency has engaged in racial profiling with respect to the individual;

(4) provide public education relating to the agency's complaint process;

(5) require appropriate corrective action to be taken against a peace officer employed by the agency who, after an investigation, is shown to have engaged in racial profiling in violation of the agency's policy adopted under this article;

(6) require collection of information relating to traffic stops in which a citation is issued and to arrests resulting from those traffic stops, including information relating to:

(A) the race or ethnicity of the individual detained;

and

(B) whether a search was conducted and, if so, whether the person detained consented to the search; and

(7) require the agency to submit to the governing body of each county or municipality served by the agency an annual report of the information collected under Subdivision (6) if the agency is an agency of a county, municipality, or other political subdivision of the state.

(c) The data collected as a result of the reporting requirements of this article shall not constitute prima facie evidence of racial profiling.

(d) On adoption of a policy under Subsection (b), a law enforcement agency shall examine the feasibility of installing video camera and transmitter-activated equipment in each agency law enforcement motor vehicle regularly used to make traffic stops and transmitter-activated equipment in each agency law enforcement motorcycle regularly used to make traffic stops. If a law enforcement agency installs video or audio equipment as provided by this subsection, the policy adopted by the agency under Subsection (b) must include standards for reviewing video and audio documentation.

(e) A report required under Subsection (b)(7) may not include identifying information about a peace officer who makes a traffic stop or about an individual

who is stopped or arrested by a peace officer. This subsection does not affect the collection of information as required by a policy under Subsection (b)(6).

(f) On the commencement of an investigation by a law enforcement agency of a complaint described by Subsection (b)(3) in which a video or audio recording of the occurrence on which the complaint is based was made, the agency shall promptly provide a copy of the recording to the peace officer who is the subject of the complaint on written request by the officer.

Art. 2.133. REPORTS REQUIRED FOR TRAFFIC AND PEDESTRIAN STOPS. (a) In this article:

(1) "Race or ethnicity" has the meaning assigned by Article 2.132(a).

(2) "Pedestrian stop" means an interaction between a peace officer and an individual who is being detained for the purpose of a criminal investigation in which the individual is not under arrest.

(b) A peace officer who stops a motor vehicle for an alleged violation of a law or ordinance regulating traffic or who stops a pedestrian for any suspected offense shall report to the law enforcement agency that employs the officer information relating to the stop, including:

(1) a physical description of each person detained as a result of the stop, including:

(A) the person's gender; and

(B) the person's race or ethnicity, as stated by the person or, if the person does not state the person's race or ethnicity, as determined by the officer to the best of the officer's ability;

(2) the traffic law or ordinance alleged to have been violated or the suspected offense;

(3) whether the officer conducted a search as a result of the stop and, if so, whether the person detained consented to the search;

(4) whether any contraband was discovered in the course of the search and the type of contraband discovered;

(5) whether probable cause to search existed and the facts supporting the existence of that probable cause;

(6) whether the officer made an arrest as a result of the stop or the search, including a statement of the offense charged;

(7) the street address or approximate location of the stop;
and

(8) whether the officer issued a warning or a citation as a result of the stop, including a description of the warning or a statement of the violation charged.

Art. 2.134. COMPILATION AND ANALYSIS OF INFORMATION COLLECTED. (a) In this article, "pedestrian stop" means an interaction between a peace officer and an individual who is being detained for the purpose of a criminal investigation in which the individual is not under arrest.

(b) A law enforcement agency shall compile and analyze the information contained in each report received by the agency under Article 2.133. Not later than March 1 of each year, each local law enforcement agency shall submit a report containing the information compiled during the previous calendar year to the governing body of each county or municipality served by the agency in a manner approved by the agency.

(c) A report required under Subsection (b) must include:

(1) a comparative analysis of the information compiled under Article 2.133 to:

(A) determine the prevalence of racial profiling by peace officers employed by the agency; and

(B) examine the disposition of traffic and pedestrian stops made by officers employed by the agency, including searches resulting from the stops; and

(2) information relating to each complaint filed with the agency alleging that a peace officer employed by the agency has engaged in racial profiling.

(d) A report required under Subsection (b) may not include identifying information about a peace officer who makes a traffic or pedestrian stop or about an individual who is stopped or arrested by a peace officer. This subsection does not affect the reporting of information required under Article 2.133(b)(1).

(e) The Commission on Law Enforcement Officer Standards and Education shall develop guidelines for compiling and reporting information as required by this article.

(f) The data collected as a result of the reporting requirements of this article shall not constitute prima facie evidence of racial profiling.

Art. 2.135. EXEMPTION FOR AGENCIES USING VIDEO AND AUDIO EQUIPMENT. (a) A peace officer is exempt from the reporting requirement under Article 2.133 and a law enforcement agency is exempt from the compilation, analysis, and reporting requirements under Article 2.134 if:

(1) during the calendar year preceding the date that a report under Article 2.134 is required to be submitted:

(A) each law enforcement motor vehicle regularly used by an officer employed by the agency to make traffic and pedestrian stops is equipped with video camera and transmitter-activated equipment and each law enforcement motorcycle regularly used to make traffic and pedestrian stops is equipped with transmitter-activated equipment; and

(B) each traffic and pedestrian stop made by an officer employed by the agency that is capable of being recorded by video and audio or audio equipment, as appropriate, is recorded by using the equipment; or

(2) the governing body of the county or municipality served by the law enforcement agency, in conjunction with the law enforcement agency, certifies to the Department of Public Safety, not later than the date specified by rule by the department, that the law enforcement agency needs funds or video and audio equipment for the purpose of installing video and audio equipment as described by Subsection (a)(1)(A) and the agency does not receive from the state funds or video and audio equipment sufficient, as determined by the department, for the agency to accomplish that purpose.

(b) Except as otherwise provided by this subsection, a law enforcement agency that is exempt from the requirements under Article 2.134 shall retain the video and audio or audio documentation of each traffic and pedestrian stop for at least 90 days after the date of the stop. If a complaint is filed with the law enforcement agency alleging that a peace officer employed by the agency has engaged in racial profiling with respect to a traffic or pedestrian stop, the agency shall retain the video and audio or audio record of the stop until final disposition of the complaint.

(c) This article does not affect the collection or reporting requirements under Article 2.132.

Art. 2.136. LIABILITY. A peace officer is not liable for damages arising from an act relating to the collection or reporting of information as required by Article 2.133 or under a policy adopted under Article 2.132.

Art. 2.137. PROVISION OF FUNDING OR EQUIPMENT. (a) The Department of Public Safety shall adopt rules for providing funds or video and audio equipment to law enforcement agencies for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A), including specifying criteria to prioritize funding or equipment provided to law enforcement agencies. The criteria may include consideration of tax

effort, financial hardship, available revenue, and budget surpluses. The criteria must give priority to:

(1) law enforcement agencies that employ peace officers whose primary duty is traffic enforcement;

(2) smaller jurisdictions; and

(3) municipal and county law enforcement agencies.

(b) The Department of Public Safety shall collaborate with an institution of higher education to identify law enforcement agencies that need funds or video and audio equipment for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A). The collaboration may include the use of a survey to assist in developing criteria to prioritize funding or equipment provided to law enforcement agencies.

(c) To receive funds or video and audio equipment from the state for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A), the governing body of a county or municipality, in conjunction with the law enforcement agency serving the county or municipality, shall certify to the Department of Public Safety that the law enforcement agency needs funds or video and audio equipment for that purpose.

(d) On receipt of funds or video and audio equipment from the state for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A), the governing body of a county or municipality, in conjunction with the law enforcement agency serving the county or municipality, shall certify to the Department of Public Safety that the law enforcement agency has installed video and audio equipment as described by Article 2.135(a)(1)(A) and is using the equipment as required by Article 2.135(a)(1).

Art. 2.138. RULES. The Department of Public Safety may adopt rules to implement Articles 2.131-2.137.

SECTION 2. Chapter 3, Code of Criminal Procedure, is amended by adding Article 3.05 to read as follows:

Art. 3.05. RACIAL PROFILING. In this code, "racial profiling" means a law enforcement-initiated action based on an individual's race, ethnicity, or national origin rather than on the individual's behavior or on information identifying the individual as having engaged in criminal activity.

SECTION 3. Section 96.641, Education Code, is amended by adding Subsection (j) to read as follows:

(j) As part of the initial training and continuing education for police chiefs required under this section, the institute shall establish a program on racial profiling. The program must include an examination of the best practices for:

(1) monitoring peace officers' compliance with laws and internal agency policies relating to racial profiling;

(2) implementing laws and internal agency policies relating to preventing racial profiling; and

(3) analyzing and reporting collected information.

SECTION 4. Section 1701.253, Occupations Code, is amended by adding Subsection (e) to read as follows:

(e) As part of the minimum curriculum requirements, the commission shall establish a statewide comprehensive education and training program on racial profiling for officers licensed under this chapter. An officer shall complete a program established under this subsection not later than the second anniversary of the date the officer is licensed under this chapter or the date the officer applies for an intermediate proficiency certificate, whichever date is earlier.

SECTION 5. Section 1701.402, Occupations Code, is amended by adding Subsection (d) to read as follows:

(d) As a requirement for an intermediate proficiency certificate, an officer must complete an education and training program on racial profiling established by the commission under Section 1701.253(e).

SECTION 6. Section 543.202, Transportation Code, is amended to read as follows:

Sec. 543.202. FORM OF RECORD. (a) In this section, "race or ethnicity" means of a particular descent, including Caucasian, African, Hispanic, Asian, or Native American descent.

(b) The record must be made on a form or by a data processing method acceptable to the department and must include:

(1) the name, address, physical description, including race or ethnicity, date of birth, and driver's license number of the person charged;

(2) the registration number of the vehicle involved;

(3) whether the vehicle was a commercial motor vehicle as defined by Chapter 522 or was involved in transporting hazardous materials;

(4) the person's social security number, if the person was operating a commercial motor vehicle or was the holder of a commercial driver's license or commercial driver learner's permit;

(5) the date and nature of the offense, including whether the offense was a serious traffic violation as defined by Chapter 522;

(6) whether a search of the vehicle was conducted and whether consent for the search was obtained;

(7) the plea, the judgment, and whether bail was forfeited;

(8) [(7)] the date of conviction; and

(9) [(8)] the amount of the fine or forfeiture.

SECTION 7. Not later than January 1, 2002, a law enforcement agency shall adopt and implement a policy and begin collecting information under the policy as required by Article 2.132, Code of Criminal Procedure, as added by this Act. A local law enforcement agency shall first submit information to the governing body of each county or municipality served by the agency as required by Article 2.132, Code of Criminal Procedure, as

added by this Act, on March 1, 2003. The first submission of information shall consist of information compiled by the agency during the period beginning January 1, 2002, and ending December 31, 2002.

SECTION 8. A local law enforcement agency shall first submit information to the governing body of each county or municipality served by the agency as required by Article 2.134, Code of Criminal Procedure, as added by this Act, on March 1, 2004. The first submission of information shall consist of information compiled by the agency during the period beginning January 1, 2003, and ending December 31, 2003.

SECTION 9. Not later than January 1, 2002:

(1) the Commission on Law Enforcement Officer Standards and Education shall establish an education and training program on racial profiling as required by Subsection (e), Section 1701.253, Occupations Code, as added by this Act; and

(2) the Bill Blackwood Law Enforcement Management Institute of Texas shall establish a program on racial profiling as required by Subsection (j), Section 96.641, Education Code, as added by this Act.

SECTION 10. A person who on the effective date of this Act holds an intermediate proficiency certificate issued by the Commission on Law Enforcement Officer Standards and Education or has held a peace officer license issued by the Commission on Law Enforcement Officer Standards and Education for at least two years shall complete an education and training program on racial profiling established under Subsection (e), Section 1701.253, Occupations Code, as added by this Act, not later than September 1, 2003.

SECTION 11. An individual appointed or elected as a police chief before the effective date of this Act shall complete a program on racial profiling established under Subsection (j), Section 96.641, Education Code, as added by this Act, not later than September 1, 2003.

SECTION 12. This Act takes effect September 1, 2001.

S.B. No. 1074

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1074 passed the Senate on April 4, 2001, by the following vote: Yeas 28, Nays 2; May 21, 2001, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 22, 2001, House granted request of the Senate; May 24, 2001, Senate adopted Conference Committee Report by a viva-voce vote.

Secretary of the Senate

I hereby certify that S.B. No. 1074 passed the House, with amendments, on May 15, 2001, by a non-record vote; May 22, 2001, House granted request of the Senate for appointment of Conference Committee; May 24, 2001, House adopted Conference Committee Report by a non-record vote.

Chief Clerk of the House

S.B. No. 1074

Approved:

Date

Governor

S.B. No. 1849

AN ACT

relating to interactions between law enforcement and individuals detained or arrested on suspicion of the commission of criminal offenses, to the confinement, conviction, or release of those individuals, and to grants supporting populations that are more likely to interact frequently with law enforcement.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. SHORT TITLE

SECTION 1.01. SHORT TITLE. This Act shall be known as the Sandra Bland Act, in memory of Sandra Bland.

ARTICLE 2. IDENTIFICATION AND DIVERSION OF AND SERVICES FOR PERSONS SUSPECTED OF HAVING A MENTAL ILLNESS, AN INTELLECTUAL DISABILITY, OR A SUBSTANCE ABUSE ISSUE

SECTION 2.01. Article 16.22, Code of Criminal Procedure, is amended to read as follows:

Art. 16.22. EARLY IDENTIFICATION OF DEFENDANT SUSPECTED OF HAVING MENTAL ILLNESS OR INTELLECTUAL DISABILITY [~~MENTAL RETARDATION~~]. (a) (1) Not later than 12 [~~72~~] hours after receiving credible information that may establish reasonable cause to believe that a defendant committed to the sheriff's custody has a mental illness or is a person with an intellectual disability [~~mental retardation~~], including observation of the defendant's behavior immediately before, during, and after the defendant's arrest and the results of any previous assessment of the defendant, the sheriff shall provide written or electronic notice of the information to the magistrate. On a determination that there is reasonable cause to believe that the defendant has a mental illness or is a person with an intellectual disability [~~mental retardation~~], the magistrate, except as provided by Subdivision (2), shall order the local mental health or intellectual and developmental disability [~~mental retardation~~] authority or another qualified mental health or intellectual disability [~~mental retardation~~] expert to:

(A) collect information regarding whether the defendant has a mental illness as defined by Section 571.003, Health and Safety Code, or is a person with an intellectual disability [~~mental retardation~~] as defined by Section 591.003, Health and Safety Code, including information obtained from any previous assessment of the defendant; and

(B) provide to the magistrate a written assessment of the information collected under Paragraph (A).

(2) The magistrate is not required to order the collection of information under Subdivision (1) if the defendant in the year preceding the defendant's applicable date of arrest has been determined to have a mental illness or to be a person with an intellectual disability [~~mental retardation~~] by the local mental health or intellectual and developmental disability [~~mental retardation~~] authority or another mental health or intellectual disability [~~mental retardation~~] expert described by Subdivision (1). A court that elects to use the results of that previous determination may proceed under Subsection (c).

(3) If the defendant fails or refuses to submit to the collection of information regarding the defendant as required under Subdivision (1), the magistrate may order the defendant to submit to an examination in a mental health facility determined to be

appropriate by the local mental health or intellectual and developmental disability [~~mental retardation~~] authority for a reasonable period not to exceed 21 days. The magistrate may order a defendant to a facility operated by the Department of State Health Services or the Health and Human Services Commission [~~Department of Aging and Disability Services~~] for examination only on request of the local mental health or intellectual and developmental disability [~~mental retardation~~] authority and with the consent of the head of the facility. If a defendant who has been ordered to a facility operated by the Department of State Health Services or the Health and Human Services Commission [~~Department of Aging and Disability Services~~] for examination remains in the facility for a period exceeding 21 days, the head of that facility shall cause the defendant to be immediately transported to the committing court and placed in the custody of the sheriff of the county in which the committing court is located. That county shall reimburse the facility for the mileage and per diem expenses of the personnel required to transport the defendant calculated in accordance with the state travel regulations in effect at the time.

(b) A written assessment of the information collected under Subsection (a) (1) (A) shall be provided to the magistrate not later than the 30th day after the date of any order issued under Subsection (a) in a felony case and not later than the 10th day after the date of any order issued under that subsection in a misdemeanor case, and the magistrate shall provide copies of the written assessment to the defense counsel, the prosecuting attorney, and the trial court. The written assessment must include a description of the procedures used in the collection of information under Subsection (a) (1) (A) and the applicable expert's observations and findings pertaining to:

(1) whether the defendant is a person who has a mental illness or is a person with an intellectual disability [~~mental retardation~~];

(2) whether there is clinical evidence to support a belief that the defendant may be incompetent to stand trial and should undergo a complete competency examination under Subchapter B, Chapter 46B; and

(3) recommended treatment.

(c) After the trial court receives the applicable expert's written assessment relating to the defendant under Subsection (b) or elects to use the results of a previous determination as described by Subsection (a) (2), the trial court may, as applicable:

(1) resume criminal proceedings against the defendant, including any appropriate proceedings related to the defendant's release on personal bond under Article 17.032;

(2) resume or initiate competency proceedings, if required, as provided by Chapter 46B or other proceedings affecting the defendant's receipt of appropriate court-ordered mental health or intellectual disability [~~mental retardation~~] services, including proceedings related to the defendant's receipt of outpatient mental health services under Section 574.034, Health and Safety Code; or

(3) consider the written assessment during the punishment phase after a conviction of the offense for which the defendant was arrested, as part of a presentence investigation report, or in connection with the impositions of conditions following placement on community supervision, including deferred adjudication community supervision.

(d) This article does not prevent the applicable court from, before, during, or after the collection of information regarding the defendant as described by this article:

(1) releasing a defendant who has a mental illness [mentally ill] or is a person with an intellectual disability [mentally retarded defendant] from custody on personal or surety bond; or

(2) ordering an examination regarding the defendant's competency to stand trial.

SECTION 2.02. Chapter 16, Code of Criminal Procedure, is amended by adding Article 16.23 to read as follows:

Art. 16.23. DIVERSION OF PERSONS SUFFERING MENTAL HEALTH CRISIS OR SUBSTANCE ABUSE ISSUE. (a) Each law enforcement agency shall make a good faith effort to divert a person suffering a mental health crisis or suffering from the effects of substance abuse to a proper treatment center in the agency's jurisdiction if:

(1) there is an available and appropriate treatment center in the agency's jurisdiction to which the agency may divert the person;

(2) it is reasonable to divert the person;

(3) the offense that the person is accused of is a misdemeanor, other than a misdemeanor involving violence; and

(4) the mental health crisis or substance abuse issue is suspected to be the reason the person committed the alleged offense.

(b) Subsection (a) does not apply to a person who is accused of an offense under Section 49.04, 49.045, 49.05, 49.06, 49.065, 49.07, or 49.08, Penal Code.

SECTION 2.03. Section 539.002, Government Code, is amended to read as follows:

Sec. 539.002. GRANTS FOR ESTABLISHMENT AND EXPANSION OF COMMUNITY COLLABORATIVES. (a) To the extent funds are appropriated to the department for that purpose, the department shall make grants to entities, including local governmental entities, nonprofit community organizations, and faith-based community organizations, to establish or expand community collaboratives that bring the public and private sectors together to provide services to persons experiencing homelessness, substance abuse issues, or [and] mental illness. [~~The department may make a maximum of five grants, which must be made in the most populous municipalities in this state that are located in counties with a population of more than one million.~~] In awarding grants, the department shall give special consideration to entities:

(1) establishing [a] new collaboratives; or

(2) establishing or expanding collaboratives that serve two or more counties, each with a population of less than 100,000 [collaborative].

(b) The department shall require each entity awarded a grant under this section to:

(1) leverage additional funding from private sources in an amount that is at least equal to the amount of the grant awarded under this section; [~~and~~]

(2) provide evidence of significant coordination and collaboration between the entity, local mental health authorities, municipalities, local law enforcement agencies, and other community stakeholders in establishing or expanding a community collaborative funded by a grant awarded under this section; and

(3) provide evidence of a local law enforcement policy to divert appropriate persons from jails or other detention facilities to an entity affiliated with a community collaborative for the purpose of providing services to those persons.

SECTION 2.04. Chapter 539, Government Code, is amended by adding Section 539.0051 to read as follows:

Sec. 539.0051. PLAN REQUIRED FOR CERTAIN COMMUNITY

COLLABORATIVES. (a) The governing body of a county shall develop and make public a plan detailing:

(1) how local mental health authorities, municipalities, local law enforcement agencies, and other community stakeholders in the county could coordinate to establish or expand a community collaborative to accomplish the goals of Section 539.002;

(2) how entities in the county may leverage funding from private sources to accomplish the goals of Section 539.002 through the formation or expansion of a community collaborative; and

(3) how the formation or expansion of a community collaborative could establish or support resources or services to help local law enforcement agencies to divert persons who have been arrested to appropriate mental health care or substance abuse treatment.

(b) The governing body of a county in which an entity that received a grant under Section 539.002 before September 1, 2017, is located is not required to develop a plan under Subsection (a).

(c) Two or more counties, each with a population of less than 100,000, may form a joint plan under Subsection (a).

ARTICLE 3. BAIL, PRETRIAL RELEASE, AND COUNTY JAIL STANDARDS

SECTION 3.01. The heading to Article 17.032, Code of Criminal Procedure, is amended to read as follows:

Art. 17.032. RELEASE ON PERSONAL BOND OF CERTAIN [MENTALLY ILL] DEFENDANTS WITH MENTAL ILLNESS OR INTELLECTUAL DISABILITY.

SECTION 3.02. Articles 17.032(b) and (c), Code of Criminal Procedure, are amended to read as follows:

(b) A magistrate shall release a defendant on personal bond unless good cause is shown otherwise if the:

(1) defendant is not charged with and has not been previously convicted of a violent offense;

(2) defendant is examined by the local mental health or intellectual and developmental disability [~~mental retardation~~] authority or another mental health expert under Article 16.22 [~~of this code~~];

(3) applicable expert, in a written assessment submitted to the magistrate under Article 16.22:

(A) concludes that the defendant has a mental illness or is a person with an intellectual disability [~~mental retardation~~] and is nonetheless competent to stand trial; and

(B) recommends mental health treatment or intellectual disability treatment for the defendant, as applicable; and

(4) magistrate determines, in consultation with the local mental health or intellectual and developmental disability [~~mental retardation~~] authority, that appropriate community-based mental health or intellectual disability [~~mental retardation~~] services for the defendant are available through the [~~Texas~~] Department of State [~~Mental~~] Health Services [~~and Mental Retardation~~] under Section 534.053, Health and Safety Code, or through another mental health or intellectual disability [~~mental retardation~~] services provider.

(c) The magistrate, unless good cause is shown for not requiring treatment, shall require as a condition of release on personal bond under this article that the defendant submit to outpatient or inpatient mental health or intellectual disability [~~mental retardation~~] treatment as recommended by the local mental health or intellectual and developmental disability [~~mental retardation~~] authority if the defendant's:

(1) mental illness or intellectual disability [~~mental~~]

retardation] is chronic in nature; or

(2) ability to function independently will continue to deteriorate if the defendant is not treated.

SECTION 3.03. Article 25.03, Code of Criminal Procedure, is amended to read as follows:

Art. 25.03. IF ON BAIL IN FELONY. When the accused, in case of felony, is on bail at the time the indictment is presented, ~~[it is not necessary to serve him with a copy, but]~~ the clerk shall ~~[on request]~~ deliver a copy of the indictment ~~[same]~~ to the accused or the accused's ~~[his]~~ counsel~~[7]~~ at the earliest possible time.

SECTION 3.04. Article 25.04, Code of Criminal Procedure, is amended to read as follows:

Art. 25.04. IN MISDEMEANOR. In misdemeanors, the clerk shall deliver a copy of the indictment or information to the accused or the accused's counsel at the earliest possible time before trial ~~[it shall not be necessary before trial to furnish the accused with a copy of the indictment or information; but he or his counsel may demand a copy, which shall be given as early as possible].~~

SECTION 3.05. Section 511.009(a), Government Code, as amended by Chapters 281 (H.B. 875), 648 (H.B. 549), and 688 (H.B. 634), Acts of the 84th Legislature, Regular Session, 2015, is reenacted and amended to read as follows:

(a) The commission shall:

(1) adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails;

(2) adopt reasonable rules and procedures establishing minimum standards for the custody, care, and treatment of prisoners;

(3) adopt reasonable rules establishing minimum standards for the number of jail supervisory personnel and for programs and services to meet the needs of prisoners;

(4) adopt reasonable rules and procedures establishing minimum requirements for programs of rehabilitation, education, and recreation in county jails;

(5) revise, amend, or change rules and procedures if necessary;

(6) provide to local government officials consultation on and technical assistance for county jails;

(7) review and comment on plans for the construction and major modification or renovation of county jails;

(8) require that the sheriff and commissioners of each county submit to the commission, on a form prescribed by the commission, an annual report on the conditions in each county jail within their jurisdiction, including all information necessary to determine compliance with state law, commission orders, and the rules adopted under this chapter;

(9) review the reports submitted under Subdivision (8) and require commission employees to inspect county jails regularly to ensure compliance with state law, commission orders, and rules and procedures adopted under this chapter;

(10) adopt a classification system to assist sheriffs and judges in determining which defendants are low-risk and consequently suitable participants in a county jail work release program under Article 42.034, Code of Criminal Procedure;

(11) adopt rules relating to requirements for segregation of classes of inmates and to capacities for county jails;

(12) require that the chief jailer of each municipal lockup submit to the commission, on a form prescribed by the commission, an annual report of persons under 17 years of age

securely detained in the lockup, including all information necessary to determine compliance with state law concerning secure confinement of children in municipal lockups;

(13) at least annually determine whether each county jail is in compliance with the rules and procedures adopted under this chapter;

(14) require that the sheriff and commissioners court of each county submit to the commission, on a form prescribed by the commission, an annual report of persons under 17 years of age securely detained in the county jail, including all information necessary to determine compliance with state law concerning secure confinement of children in county jails;

(15) schedule announced and unannounced inspections of jails under the commission's jurisdiction using the risk assessment plan established under Section 511.0085 to guide the inspections process;

(16) adopt a policy for gathering and distributing to jails under the commission's jurisdiction information regarding:

(A) common issues concerning jail administration;

(B) examples of successful strategies for maintaining compliance with state law and the rules, standards, and procedures of the commission; and

(C) solutions to operational challenges for jails;

(17) report to the Texas Correctional Office on Offenders with Medical or Mental Impairments on a jail's compliance with Article 16.22, Code of Criminal Procedure;

(18) adopt reasonable rules and procedures establishing minimum requirements for jails to:

(A) determine if a prisoner is pregnant; and
 (B) ensure that the jail's health services plan addresses medical and mental health care, including nutritional requirements, and any special housing or work assignment needs for persons who are confined in the jail and are known or determined to be pregnant;

(19) provide guidelines to sheriffs regarding contracts between a sheriff and another entity for the provision of food services to or the operation of a commissary in a jail under the commission's jurisdiction, including specific provisions regarding conflicts of interest and avoiding the appearance of impropriety; ~~and~~

(20) adopt reasonable rules and procedures establishing minimum standards for prisoner visitation that provide each prisoner at a county jail with a minimum of two in-person, noncontact visitation periods per week of at least 20 minutes duration each;

(21) ~~[(20)]~~ require the sheriff of each county to:

(A) investigate and verify the veteran status of each prisoner by using data made available from the Veterans Reentry Search Service (VRSS) operated by the United States Department of Veterans Affairs or a similar service; and

(B) use the data described by Paragraph (A) to assist prisoners who are veterans in applying for federal benefits or compensation for which the prisoners may be eligible under a program administered by the United States Department of Veterans Affairs;

(22) ~~[(20)]~~ adopt reasonable rules and procedures regarding visitation of a prisoner at a county jail by a guardian, as defined by Section 1002.012, Estates Code, that:

(A) allow visitation by a guardian to the same

extent as the prisoner's next of kin, including placing the guardian on the prisoner's approved visitors list on the guardian's request and providing the guardian access to the prisoner during a facility's standard visitation hours if the prisoner is otherwise eligible to receive visitors; and

(B) require the guardian to provide the sheriff with letters of guardianship issued as provided by Section 1106.001, Estates Code, before being allowed to visit the prisoner; and

(23) adopt reasonable rules and procedures to ensure the safety of prisoners, including rules and procedures that require a county jail to:

(A) give prisoners the ability to access a mental health professional at the jail through a telemental health service 24 hours a day;

(B) give prisoners the ability to access a health professional at the jail or through a telehealth service 24 hours a day or, if a health professional is unavailable at the jail or through a telehealth service, provide for a prisoner to be transported to access a health professional; and

(C) if funding is available under Section 511.019, install automated electronic sensors or cameras to ensure accurate and timely in-person checks of cells or groups of cells confining at-risk individuals.

SECTION 3.06. Section 511.009, Government Code, is amended by adding Subsection (d) to read as follows:

(d) The commission shall adopt reasonable rules and procedures establishing minimum standards regarding the continuity of prescription medications for the care and treatment of prisoners. The rules and procedures shall require that a qualified medical professional shall review as soon as possible any prescription medication a prisoner is taking when the prisoner is taken into custody.

SECTION 3.07. Chapter 511, Government Code, is amended by adding Sections 511.019, 511.020, and 511.021 to read as follows:

Sec. 511.019. PRISONER SAFETY FUND. (a) The prisoner safety fund is a dedicated account in the general revenue fund.

(b) The prisoner safety fund consists of:

(1) appropriations of money to the fund by the legislature; and

(2) gifts, grants, including grants from the federal government, and other donations received for the fund.

(c) Money in the fund may be appropriated only to the commission to pay for capital improvements that are required under Section 511.009(a)(23).

(d) The commission by rule may establish a grant program to provide grants to counties to fund capital improvements described by Subsection (c). The commission may only provide a grant to a county for capital improvements to a county jail with a capacity of not more than 96 prisoners.

Sec. 511.020. SERIOUS INCIDENTS REPORT. (a) On or before the fifth day of each month, the sheriff of each county shall report to the commission regarding the occurrence during the preceding month of any of the following incidents involving a prisoner in the county jail:

(1) a suicide;

(2) an attempted suicide;

(3) a death;

(4) a serious bodily injury, as that term is defined by Section 1.07, Penal Code;

(5) an assault;

(6) an escape;
(7) a sexual assault; and
(8) any use of force resulting in bodily injury, as
that term is defined by Section 1.07, Penal Code.

(b) The commission shall prescribe a form for the report
required by Subsection (a).

(c) The information required to be reported under
Subsection (a) (8) may not include the name or other identifying
information of a county jailer or jail employee.

(d) The information reported under Subsection (a) is public
information subject to an open records request under Chapter 552.

Sec. 511.021. INDEPENDENT INVESTIGATION OF DEATH OCCURRING
IN COUNTY JAIL. (a) On the death of a prisoner in a county jail,
the commission shall appoint a law enforcement agency, other than
the local law enforcement agency that operates the county jail, to
investigate the death as soon as possible.

(b) The commission shall adopt any rules necessary relating
to the appointment of a law enforcement agency under Subsection
(a), including rules relating to cooperation between law
enforcement agencies and to procedures for handling evidence.

SECTION 3.08. The changes in law made by this article to
 Article 17.032, Code of Criminal Procedure, apply only to a
 personal bond that is executed on or after the effective date of
 this Act. A personal bond executed before the effective date of
 this Act is governed by the law in effect when the personal bond was
 executed, and the former law is continued in effect for that
 purpose.

SECTION 3.09. Not later than January 1, 2018, the
 Commission on Jail Standards shall:

(1) adopt the rules and procedures required by Section
 511.009(d), Government Code, as added by this article, and the
 rules required by Section 511.021(b), Government Code, as added by
 this article; and

(2) prescribe the form required by Section 511.020(b),
 Government Code, as added by this article.

SECTION 3.10. Not later than September 1, 2018, the
 Commission on Jail Standards shall adopt the rules and procedures
 required by Section 511.009(a)(23), Government Code, as added by
 this article. On and after September 1, 2020, a county jail shall
 comply with any rule or procedure adopted by the Commission on Jail
 Standards under that subdivision.

SECTION 3.11. To the extent of any conflict, this Act
 prevails over another Act of the 85th Legislature, Regular Session,
 2017, relating to nonsubstantive additions to and corrections in
 enacted codes.

ARTICLE 4. PEACE OFFICER AND COUNTY JAILER TRAINING

SECTION 4.01. Chapter 511, Government Code, is amended by
 adding Section 511.00905 to read as follows:

Sec. 511.00905. JAIL ADMINISTRATOR POSITION; EXAMINATION
REQUIRED. (a) The Texas Commission on Law Enforcement shall
develop and the commission shall approve an examination for a
person assigned to the jail administrator position overseeing a
county jail.

(b) The commission shall adopt rules requiring a person,
other than a sheriff, assigned to the jail administrator position
overseeing a county jail to pass the examination not later than the
180th day after the date the person is assigned to that position.
The rules must provide that a person who fails the examination may
be immediately removed from the position and may not be reinstated
until the person passes the examination.

(c) The sheriff of a county shall perform the duties of the

jail administrator position at any time there is not a person available who satisfies the examination requirements of this section.

(d) A person other than a sheriff may not serve in the jail administrator position of a county jail unless the person satisfies the examination requirement of this section.

SECTION 4.02. Section 1701.253, Occupations Code, is amended by amending Subsection (j) and adding Subsection (n) to read as follows:

(j) As part of the minimum curriculum requirements, the commission shall require an officer to complete a 40-hour statewide education and training program on de-escalation and crisis intervention techniques to facilitate interaction with persons with mental impairments. An officer shall complete the program not later than the second anniversary of the date the officer is licensed under this chapter or the date the officer applies for an intermediate proficiency certificate, whichever date is earlier. An officer may not satisfy the requirements of this subsection [~~section~~] or Section 1701.402(g) by taking an online course on de-escalation and crisis intervention techniques to facilitate interaction with persons with mental impairments.

(n) As part of the minimum curriculum requirements, the commission shall require an officer to complete a statewide education and training program on de-escalation techniques to facilitate interaction with members of the public, including techniques for limiting the use of force resulting in bodily injury.

SECTION 4.03. Section 1701.310(a), Occupations Code, is amended to read as follows:

(a) Except as provided by Subsection (e), a person may not be appointed as a county jailer, except on a temporary basis, unless the person has satisfactorily completed a preparatory training program, as required by the commission, in the operation of a county jail at a school operated or licensed by the commission. The training program must consist of at least eight hours of mental health training approved by the commission and the Commission on Jail Standards.

SECTION 4.04. Section 1701.352(b), Occupations Code, is amended to read as follows:

(b) The commission shall require a state, county, special district, or municipal agency that appoints or employs peace officers to provide each peace officer with a training program at least once every 48 months that is approved by the commission and consists of:

(1) topics selected by the agency; and
 (2) for an officer holding only a basic proficiency certificate, not more than 20 hours of education and training that contain curricula incorporating the learning objectives developed by the commission regarding:

(A) civil rights, racial sensitivity, and cultural diversity;

(B) de-escalation and crisis intervention techniques to facilitate interaction with persons with mental impairments; [~~and~~]

(C) de-escalation techniques to facilitate interaction with members of the public, including techniques for limiting the use of force resulting in bodily injury; and

(D) unless determined by the agency head to be inconsistent with the officer's assigned duties:

(i) the recognition and documentation of cases that involve child abuse or neglect, family violence, and

sexual assault; and

(ii) issues concerning sex offender characteristics.

SECTION 4.05. Section 1701.402, Occupations Code, is amended by adding Subsection (n) to read as follows:

(n) As a requirement for an intermediate proficiency certificate or an advanced proficiency certificate, an officer must complete the education and training program regarding de-escalation techniques to facilitate interaction with members of the public established by the commission under Section 1701.253(n).

SECTION 4.06. Not later than March 1, 2018, the Texas Commission on Law Enforcement shall develop and the Commission on Jail Standards shall approve the examination required by Section 511.00905, Government Code, as added by this article.

SECTION 4.07. (a) Not later than March 1, 2018, the Texas Commission on Law Enforcement shall establish or modify training programs as necessary to comply with Section 1701.253, Occupations Code, as amended by this article.

(b) The minimum curriculum requirements under Section 1701.253(j), Occupations Code, as amended by this article, apply only to a peace officer who first begins to satisfy those requirements on or after April 1, 2018.

SECTION 4.08. (a) Section 1701.310, Occupations Code, as amended by this article, takes effect January 1, 2018.

(b) A person in the position of county jailer on September 1, 2017, must comply with Section 1701.310(a), Occupations Code, as amended by this article, not later than August 31, 2021.

ARTICLE 5. MOTOR VEHICLE STOPS, RACIAL PROFILING, AND ISSUANCE OF CITATIONS

SECTION 5.01. Article 2.132, Code of Criminal Procedure, is amended by amending Subsections (b) and (d) and adding Subsection (h) to read as follows:

(b) Each law enforcement agency in this state shall adopt a detailed written policy on racial profiling. The policy must:

- (1) clearly define acts constituting racial profiling;
- (2) strictly prohibit peace officers employed by the agency from engaging in racial profiling;
- (3) implement a process by which an individual may file a complaint with the agency if the individual believes that a peace officer employed by the agency has engaged in racial profiling with respect to the individual;
- (4) provide public education relating to the agency's compliment and complaint process, including providing the telephone number, mailing address, and e-mail address to make a compliment or complaint with respect to each ticket, citation, or warning issued by a peace officer;
- (5) require appropriate corrective action to be taken against a peace officer employed by the agency who, after an investigation, is shown to have engaged in racial profiling in violation of the agency's policy adopted under this article;
- (6) require collection of information relating to motor vehicle stops in which a ticket, citation, or warning is issued and to arrests made as a result of those stops, including information relating to:
 - (A) the race or ethnicity of the individual detained;
 - (B) whether a search was conducted and, if so, whether the individual detained consented to the search; ~~and~~
 - (C) whether the peace officer knew the race or ethnicity of the individual detained before detaining that

individual;

(D) whether the peace officer used physical force that resulted in bodily injury, as that term is defined by Section 1.07, Penal Code, during the stop;

(E) the location of the stop; and

(F) the reason for the stop; and

(7) require the chief administrator of the agency, regardless of whether the administrator is elected, employed, or appointed, to submit an annual report of the information collected under Subdivision (6) to:

(A) the Texas Commission on Law Enforcement; and

(B) the governing body of each county or municipality served by the agency, if the agency is an agency of a county, municipality, or other political subdivision of the state.

(d) On adoption of a policy under Subsection (b), a law enforcement agency shall examine the feasibility of installing video camera and transmitter-activated equipment in each agency law enforcement motor vehicle regularly used to make motor vehicle stops and transmitter-activated equipment in each agency law enforcement motorcycle regularly used to make motor vehicle stops. The agency also shall examine the feasibility of equipping each peace officer who regularly detains or stops motor vehicles with a body worn camera, as that term is defined by Section 1701.651, Occupations Code. If a law enforcement agency installs video or audio equipment or equips peace officers with body worn cameras as provided by this subsection, the policy adopted by the agency under Subsection (b) must include standards for reviewing video and audio documentation.

(h) A law enforcement agency shall review the data collected under Subsection (b)(6) to identify any improvements the agency could make in its practices and policies regarding motor vehicle stops.

SECTION 5.02. Article 2.133, Code of Criminal Procedure, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) A peace officer who stops a motor vehicle for an alleged violation of a law or ordinance shall report to the law enforcement agency that employs the officer information relating to the stop, including:

(1) a physical description of any person operating the motor vehicle who is detained as a result of the stop, including:

(A) the person's gender; and

(B) the person's race or ethnicity, as stated by the person or, if the person does not state the person's race or ethnicity, as determined by the officer to the best of the officer's ability;

(2) the initial reason for the stop;

(3) whether the officer conducted a search as a result of the stop and, if so, whether the person detained consented to the search;

(4) whether any contraband or other evidence was discovered in the course of the search and a description of the contraband or evidence;

(5) the reason for the search, including whether:

(A) any contraband or other evidence was in plain view;

(B) any probable cause or reasonable suspicion existed to perform the search; or

(C) the search was performed as a result of the towing of the motor vehicle or the arrest of any person in the motor vehicle;

(6) whether the officer made an arrest as a result of the stop or the search, including a statement of whether the arrest was based on a violation of the Penal Code, a violation of a traffic law or ordinance, or an outstanding warrant and a statement of the offense charged;

(7) the street address or approximate location of the stop; [and]

(8) whether the officer issued a verbal or written warning or a ticket or citation as a result of the stop; and

(9) whether the officer used physical force that resulted in bodily injury, as that term is defined by Section 1.07, Penal Code, during the stop.

(c) The chief administrator of a law enforcement agency, regardless of whether the administrator is elected, employed, or appointed, is responsible for auditing reports under Subsection (b) to ensure that the race or ethnicity of the person operating the motor vehicle is being reported.

SECTION 5.03. Article 2.134(c), Code of Criminal Procedure, is amended to read as follows:

(c) A report required under Subsection (b) must be submitted by the chief administrator of the law enforcement agency, regardless of whether the administrator is elected, employed, or appointed, and must include:

(1) a comparative analysis of the information compiled under Article 2.133 to:

(A) evaluate and compare the number of motor vehicle stops, within the applicable jurisdiction, of persons who are recognized as racial or ethnic minorities and persons who are not recognized as racial or ethnic minorities; [and]

(B) examine the disposition of motor vehicle stops made by officers employed by the agency, categorized according to the race or ethnicity of the affected persons, as appropriate, including any searches resulting from stops within the applicable jurisdiction; and

(C) evaluate and compare the number of searches resulting from motor vehicle stops within the applicable jurisdiction and whether contraband or other evidence was discovered in the course of those searches; and

(2) information relating to each complaint filed with the agency alleging that a peace officer employed by the agency has engaged in racial profiling.

SECTION 5.04. Article 2.137, Code of Criminal Procedure, is amended to read as follows:

Art. 2.137. PROVISION OF FUNDING OR EQUIPMENT. (a) The Department of Public Safety shall adopt rules for providing funds or video and audio equipment to law enforcement agencies for the purpose of installing video and audio equipment in law enforcement motor vehicles and motorcycles or equipping peace officers with body worn cameras [~~as described by Article 2.135(a)(1)(A)~~], including specifying criteria to prioritize funding or equipment provided to law enforcement agencies. The criteria may include consideration of tax effort, financial hardship, available revenue, and budget surpluses. The criteria must give priority to:

(1) law enforcement agencies that employ peace officers whose primary duty is traffic enforcement;

(2) smaller jurisdictions; and

(3) municipal and county law enforcement agencies.

(b) The Department of Public Safety shall collaborate with an institution of higher education to identify law enforcement agencies that need funds or video and audio equipment for the purpose of installing video and audio equipment in law enforcement

motor vehicles and motorcycles or equipping peace officers with body worn cameras [as described by Article 2.135(a)(1)(A)]. The collaboration may include the use of a survey to assist in developing criteria to prioritize funding or equipment provided to law enforcement agencies.

(c) To receive funds or video and audio equipment from the state for the purpose of installing video and audio equipment in law enforcement motor vehicles and motorcycles or equipping peace officers with body worn cameras [as described by Article 2.135(a)(1)(A)], the governing body of a county or municipality, in conjunction with the law enforcement agency serving the county or municipality, shall certify to the Department of Public Safety that the law enforcement agency needs funds or video and audio equipment for that purpose.

(d) On receipt of funds or video and audio equipment from the state for the purpose of installing video and audio equipment in law enforcement motor vehicles and motorcycles or equipping peace officers with body worn cameras [as described by Article 2.135(a)(1)(A)], the governing body of a county or municipality, in conjunction with the law enforcement agency serving the county or municipality, shall certify to the Department of Public Safety that the law enforcement agency has taken the necessary actions to use and is using [installed] video and audio equipment and body worn cameras for those purposes [as described by Article 2.135(a)(1)(A)] ~~and is using the equipment as required by Article 2.135(a)(1)]~~.

SECTION 5.05. Article 2.1385(a), Code of Criminal Procedure, is amended to read as follows:

(a) If the chief administrator of a local law enforcement agency intentionally fails to submit the incident-based data as required by Article 2.134, the agency is liable to the state for a civil penalty in an [the] amount not to exceed \$5,000 [of \$1,000] for each violation. The attorney general may sue to collect a civil penalty under this subsection.

SECTION 5.06. Article 2.135, Code of Criminal Procedure, is repealed.

SECTION 5.07. Articles 2.132 and 2.134, Code of Criminal Procedure, as amended by this article, apply only to a report covering a calendar year beginning on or after January 1, 2018.

SECTION 5.08. Not later than September 1, 2018, the Texas Commission on Law Enforcement shall:

(1) evaluate and change the guidelines for compiling and reporting information required under Article 2.134, Code of Criminal Procedure, as amended by this article, to enable the guidelines to better withstand academic scrutiny; and

(2) make accessible online:

(A) a downloadable format of any information submitted under Article 2.134(b), Code of Criminal Procedure, that is not exempt from public disclosure under Chapter 552, Government Code; and

(B) a glossary of terms relating to the information to make the information readily understandable to the public.

ARTICLE 6. EFFECTIVE DATE

SECTION 6.01. Except as otherwise provided by this Act, this Act takes effect September 1, 2017.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1849 passed the Senate on May 11, 2017, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 1849 passed the House on May 20, 2017, by the following vote: Yeas 137, Nays 0, one present not voting.

Chief Clerk of the House

Approved:

Date

Governor

Guidelines for Compiling and Reporting Data under Senate Bill 1074

Background

Senate Bill 1074 of the 77th Legislature established requirements in the Texas Code of Criminal Procedure (TCCP) for law enforcement agencies. The Commission developed this document to assist agencies in complying with the statutory requirements.

The guidelines are written in the form of standards using a style developed from accreditation organizations including the Commission on Accreditation for Law Enforcement Agencies (CALEA). The standards provide a description of *what* must be accomplished by an agency but allows wide latitude in determining *how* the agency will achieve compliance with each applicable standard.

Each standard is composed of two parts: the standard statement and the commentary. The *standard statement* is a declarative sentence that places a clear-cut requirement, or multiple requirements, on an agency. The commentary supports the standard statement but is not binding. The commentary can serve as a prompt, as guidance to clarify the intent of the standard, or as an example of one possible way to comply with the standard.

Standard 1

Each law enforcement agency has a detailed written directive that:

- clearly defines acts that constitute racial profiling;
- strictly prohibits peace officers employed by the agency from engaging in racial profiling;
- implements a process by which an individual may file a complaint with the agency if the individual believes a peace officer employed by the agency has engaged in racial profiling with respect to the individual filing the complaint;
- provides for public education relating to the complaint process;
- requires appropriate corrective action to be taken against a peace officer employed by the agency who, after investigation, is shown to have engaged in racial profiling in violation of the agency's written racial profiling policy; and
- requires the collection of certain types of data for subsequent reporting.

Commentary

Article 2.131 of the TCCP prohibits officers from engaging in racial profiling, and article 2.132 of the TCCP now requires a written policy that contains the elements listed in this standard. The article also specifically defines a law enforcement agency as it applies to this statute as an "agency of the state, or of a county, municipality, or other political subdivision of the state, that employs peace officers who make traffic stops in the routine performance of the officers' official duties."

The article further defines race or ethnicity as being of "a particular descent, including Caucasian, African, Hispanic, Asian, or Native American." The statute does not limit the required policies to just these ethnic groups.

This written policy is to be adopted and implemented no later than January 1, 2002.

Standard 2

Each peace officer who stops a motor vehicle for an alleged violation of a law or ordinance regulating traffic, or who stops a pedestrian (**pedestrian has been omitted**) for any suspected offense reports to the employing law enforcement agency information relating to the stop, to include:

- a physical description of each person detained, including gender and the person's race or ethnicity, as stated by the person, or, if the person does not state a race or ethnicity, as determined by the officer's best judgment;
- the traffic law or ordinance alleged to have been violated or the suspected offense;
- whether the officer conducted a search as a result of the stop and, if so, whether the person stopped consented to the search;
- whether any contraband was discovered in the course of the search, and the type of contraband discovered;
- whether probable cause to search existed, and the facts supporting the existence of that probable cause;
- whether the officer made an arrest as a result of the stop or the search, including a statement of the offense charged;
- the street address or approximate location of the stop; and
- whether the officer issued a warning or citation as a result of the stop, including a description of the warning or a statement of the violation charged.

Commentary

The information required by 2.133 TCCP is used to complete the agency reporting requirements found in Article 2.134. A peace officer and an agency may be exempted from this requirement under Article 2.135 TCCP Exemption for Agencies Using Video and Audio Equipment. An agency may be exempt from this reporting requirement by applying for the funds from the Department of Public Safety for video and audio equipment and the State does not supply those funds. Section 2.135 (a)(2) states, "the governing body of the county or municipality served by the law enforcement agency, in conjunction with the law enforcement agency, certifies to the Department of Public Safety, not later than the date specified by rule by the department, that the law enforcement agency needs funds or video and audio equipment for the purpose of installing video and audio equipment as described by Subsection (a) (1) (A) and the agency does not receive from the state funds for video and audio equipment sufficient, as determined by the department, for the agency to accomplish that purpose."

Standard 3

The agency compiles the information collected under 2.132 and 2.133 and analyzes the information identified in 2.133.

Commentary

Senate Bill 1074 from the 77th Session of the Texas Legislature created requirements for law enforcement agencies to gather specific information and to report it to each county or municipality served. New sections of law were added to the Code of Criminal Procedure regarding the reporting of traffic and pedestrian stops. Detained is defined as when a person stopped is not free to leave.

Article 2.134 TCCP requires the agency to compile and provide an analysis of the information collected by peace officer employed by the agency. The report is provided to the governing body of the municipality or county no later than March 1 of each year and covers the previous calendar year.

There is data collection and reporting required based on Article 2.132 CCP (tier one) and Article 2.133 CCP (tier two).

The minimum requirements for “tier one” data for traffic stops in which a citation results are:

- 1) the race or ethnicity of individual detained (race and ethnicity as defined by the bill means of “a particular descent, including Caucasian, African, Hispanic, Asian, or Native American”);
- 2) whether a search was conducted, and if there was a search, whether it was a consent search or a probable cause search; and
- 3) whether there was a custody arrest.

The minimum requirements for reporting on “tier two” reports include traffic and pedestrian stops. Tier two data include:

- 1) the detained person’s gender and race or ethnicity;
- 2) the type of law violation suspected, e.g., hazardous traffic, non-hazardous traffic, or other criminal investigation (the Texas Department of Public Safety publishes a categorization of traffic offenses into hazardous or non-hazardous);
- 3) whether a search was conducted, and if so whether it was based on consent or probable cause;
- 4) facts supporting probable cause;
- 5) the type, if any, of contraband that was collected;
- 6) disposition of the stop, e.g., arrest, ticket, warning, or release;
- 7) location of stop; and
- 8) statement of the charge, e.g., felony, misdemeanor, or traffic.

Tier one reports are made to the TCOLE and governing body of each county or municipality served by the agency an annual report of information if the agency is an agency of a county, municipality, or other political subdivision of the state. Tier one and two reports are reported to the county or municipality and TCOLE not later than March 1 for the previous calendar year beginning March 1, 2003. Tier two reports include a comparative analysis between the race and ethnicity of persons detained to see if a differential pattern of treatment can be discerned based on the disposition of stops including searches resulting from the stops. The reports also include information relating to each complaint filed with the agency alleging that a peace officer employed by the agency has engaged in racial profiling. An agency may be exempt from the tier two reporting requirement by applying for the funds from the Department of Public Safety for video and audio equipment and the State does not supply those funds [See 2.135 (a)(2) TCCP].

Reports should include both raw numbers and percentages for each group. Caution should be exercised in interpreting the data involving percentages because of statistical distortions caused by very small numbers in any particular category, for example, if only one American Indian is stopped and searched, that stop would not provide an accurate comparison with 200 stops among Caucasians with 100 searches. In the first case, a 100% search rate would be skewed data when compared to a 50% rate for Caucasians.

Standard 4

If a law enforcement agency has video and audio capabilities in motor vehicles regularly used for traffic stops, or audio capabilities on motorcycles regularly used to make traffic stops, the agency:

- adopts standards for reviewing and retaining audio and video documentation; and
- promptly provides a copy of the recording to a peace officer who is the subject of a complaint on written request by the officer.

Commentary

The agency should have a specific review and retention policy. Article 2.132 TCCP specifically requires that the peace officer be promptly provided with a copy of the audio or video recordings if the officer is the subject of a complaint and the officer makes a written request.

Standard 5

Agencies that do not currently have video or audio equipment must examine the feasibility of installing such equipment.

Commentary

None

Standard 6

Agencies that have video and audio recording capabilities are exempt from the reporting requirements of Article 2.134 TCCP and officers are exempt from the reporting requirements of Article 2.133 TCCP provided that:

- the equipment was in place and used during the proceeding calendar year; and
- video and audio documentation is retained for at least 90 days.

Commentary

The audio and video equipment and policy must have been in place during the previous calendar year. Audio and video documentation must be kept for at least 90 days or longer if a complaint has been filed. The documentation must be retained until the complaint is resolved. Peace officers are not exempt from the requirements under Article 2.132 TCCP.

Standard 7

Agencies have citation forms or other electronic media that comply with Section 543.202 of the Transportation Code.

Commentary

Senate Bill 1074 changed Section 543.202 of the Transportation Code requiring citations to include:

- race or ethnicity, and
- whether a search of the vehicle was conducted and whether consent for the search was obtained.

II. Background

Police Department Background

The Denison Police Department was founded in the late 1880's. At the time, the Denison Police Department was only made up of a chief and three patrolmen. Today, the Denison Police Department (DPD) is made up of 53 commissioned officers, to include 2 School Resource Officers (SRO's), 1 canine and 19 civilian members. The DPD officers are committed to performing their jobs in a professional manner while serving the community members of Denison and its surrounding areas.

The department promotes, to all its members, to engage in community-policing practices in order to provide quality service to all residents of the community. In 2002, the Denison Police Department adopted a policy, in accordance to the Texas Law on Racial Profiling, banishing racial profiling practices among all DPD officers.

Oath of Office

Each member and volunteer of the Denison Police Department shall subscribe to and abide by the Oath of Office:

I _____ do solemnly swear or affirm that I will faithfully execute the duties of a Police Officer of the City of Denison, Grayson County, Texas, and will to the best of my ability preserve, protect and defend the Constitution and Laws of the United States, and of this State, and of this City; and I furthermore solemnly swear or affirm that I have not directly nor indirectly paid, offered, or promised to pay, contributed, nor promised to contribute, any money or valuable thing to receive my appointment.

So Help Me God.

Upon swearing to the Oath of Office, a signed copy is placed in the employee's personnel file.

Code of Ethics

Each member of the Denison Police Department shall subscribe to and abide by the Code of Ethics:

As a Law Enforcement Officer, my fundamental duty is to serve humanity; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against violence or disorder; and to respect the Constitutional Rights of all people to liberty, equality and justice.

I will keep my private life unsullied as an example to all; maintain courageous calm in the face of danger, scorn, or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in obeying the laws of the land and the regulations of my Department. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept ever secret unless revelation is necessary in the performance of my duty.

I will never act officiously or permit personal feelings, prejudices, animosities, or friendships to influence my decisions. With no compromise for crime and with relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear or favor, malice or violence and never accepting gratuities.

I recognize the badge of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am true to ethics of Law Enforcement. I will constantly strive to achieve these objectives and ideals, dedicating myself to my chosen profession . . . Law Enforcement.

The newly sworn member shall be given one copy of the Code of Ethics.

Equal Opportunity/Affirmative Action

The policy of the Denison Police Department is to be fair and impartial in all of its relations with its employees or applicants for employment while adhering to the concept of equal employment opportunity and affirmative action as a necessary element of basic merit system principles. In order to achieve this goal, the Denison Police Department hereby reaffirms its official policy that discrimination on the basis of race, sex, color, religion, national origin, age, mental or physical handicap, disabled or veteran status is prohibited by all employees of the Denison Police Department. This policy will apply and is not limited to recruitment, promotion, hiring, layoff, termination, demotion, transfer, training, rates of pay, fringe benefits, or other forms of compensation, use of facilities, and other terms, conditions and privileges of employment for all job classifications. The City of Denison will take the necessary steps in its employment policies, practices and procedures and make reasonable accommodations in order to assure that appropriate equal employment opportunities are available to all persons.

DENISON, TEXAS POLICE DEPARTMENT
GENERAL ORDERS MANUAL

<i>Effective Date</i> October 19, 2012		<i>Amended Date</i> March 17, 2017		<i>Directive</i> 2.01.1	
<i>Subject</i> Bias and Racial Based Profiling					
<i>Reference</i>					
<i>Distribution</i> All Personnel City Manager City Attorney		<i>TPCA Best Practices Recognition Program Reference</i> 2.01.1 Bias Based Profiling		<i>Review Date</i>	
				<i>Pages</i> 5	

SECTION 1 PURPOSE

The purpose of this order is to provide general guidance on reducing the presence of bias in law enforcement actions, to identify key contexts in which bias may influence these actions, and emphasize the importance of the constitutional guidelines within which we operate.

SECTION 2 POLICY

Denison Police Department is committed to a respect for constitutional rights in the performance of our duties. Our success is based on the respect we give to our communities, and the respect members of the community observe toward law enforcement. To this end, we shall exercise our sworn duties, responsibilities, and obligations in a manner that does not discriminate on the basis of race, sex, gender, sexual orientation, national origin, ethnicity, age, or religion. Respect for diversity and equitable enforcement of the law are essential to Denison Police Department's mission.

All enforcement actions shall be based on the standards of reasonable suspicion or probable cause as required by the Fourth Amendment to the U. S. Constitution and by statutory authority. In all enforcement decisions, officers shall be able to articulate specific facts, circumstances, and conclusions that support probable cause or reasonable suspicion for arrests, searches, seizures, and stops of individuals. Officers shall not stop, detain, arrest, search, or attempt to search anyone based solely upon the person's race, ethnic background, gender, sexual orientation, religion, economic status, age, cultural group, or any other identifiable group.

All departmental orders are informed and guided by this directive. Nothing in this order limits non-enforcement contacts between officers and the public.

SECTION 3 DEFINITIONS

Most of the following terms appear in this policy statement. In any case, these terms appear in the larger public discourse about alleged biased enforcement behavior and in other orders. These definitions are intended to facilitate on-going discussion and analysis of our enforcement practices.

Bias- Prejudice or partiality based on preconceived ideas, a person's upbringing, culture, experience, or education.

Biased policing- Stopping, detaining, searching, or attempting to search, or using force against a person based upon his or her race, ethnic background, gender, sexual orientation, religion, economic status, age, cultural group, or any other identifiable group.

Ethnicity- A cluster of characteristics that may include race but also cultural characteristics or traits that are shared by a group with a common experience or history.

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Gender- Unlike sex, a psychological classification based on cultural characteristics or traits.

Probable cause- Facts or apparent facts and circumstances within an officer's knowledge and of which the officer had reasonable, trustworthy information to lead a reasonable person to believe that an offense has been or is being committed, and that the suspect has committed it.

Race- A category of people of a particular decent, including Caucasian, African, Hispanic, Asian, Middle Eastern, or Native American descent. As distinct from ethnicity, race refers only to physical characteristics sufficiently distinctive to group people under a classification.

Racial profiling- A law-enforcement initiated action based on an individual's race, ethnicity, or national origin rather than on the individual's behavior or on information identifying the individual as having engaged in criminal activity.

Reasonable suspicion- Articulate, objective facts that lead an experienced officer to suspect that a person has committed, is committing, or may be about to commit a crime. A well-founded suspicion is based on the totality of the circumstances and does not exist unless it can be articulated. Reasonable suspicion supports a stop of a person. Courts require that stops based on reasonable suspicion be "objectively reasonable."

Sex- A biological classification, male or female, based on physical and genetic characteristics.

Stop- An investigative detention. The detention of a subject for a brief period of time, based on reasonable suspicion.

SECTION 4 PROCEDURES

A. General responsibilities

1. Officers are prohibited from engaging in bias-based profiling or stopping, detaining, searching, arresting, or taking any enforcement action including seizure or forfeiture activities, against any person based solely on the person's race, ethnic background, gender, sexual orientation, religion, economic status, age, cultural group, or any other identifiable group. These characteristics, however, may form part of reasonable suspicion or probable cause when officers are seeking a suspect with one or more of these attributes.
2. Investigative detentions, traffic stops, arrests, searches, and property seizures by officers will be based on a standard of reasonable suspicion or probable cause in accordance with the Fourth Amendment of the U.S. Constitution. Officers must be able to articulate specific facts and circumstances that support reasonable suspicion or probable cause for investigative detentions, traffic stops, subject stops, arrests, nonconsensual searches, and property seizures. Except as provided in number 3 below, officers shall not consider race/ethnicity in establishing either reasonable suspicion or probable cause. Similarly, except as provided below, officers shall not consider race/ethnicity in deciding to initiate even those nonconsensual encounters that do not amount to legal detentions or to request consent to search.
3. Officers may take into account the reported race or ethnicity of a specific suspect or suspects based on trustworthy, locally relevant information that links a person or

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persons of a specific race/ethnicity to a particular unlawful incident(s). Race/ethnicity can never be used as the sole basis for probable cause or reasonable suspicion. Except as provided above, reasonable suspicion or probable cause shall form the basis for any enforcement actions or decisions. Individuals shall be subjected to stops, seizures, or detentions only upon reasonable suspicion that they have committed, are committing, or are about to commit an offense. Officers shall document the elements of reasonable suspicion and probable cause in appropriate reports.

4. Officers shall observe all constitutional safeguards and shall respect the constitutional rights of all persons.
 - a. As traffic stops furnish a primary source of bias-related complaints, officers shall have a firm understanding of the warrantless searches allowed by law, particularly the use of consent. How the officer disengages from a traffic stop may be crucial to a person's perception of fairness or discrimination.
 - b. Officers shall not use the refusal or lack of cooperation to justify a search of the person or vehicle or a prolonged detention once reasonable suspicion has been dispelled.
2. All personnel shall treat everyone with the same courtesy and respect that they would have others observe to department personnel. To this end, personnel are reminded that the exercise of courtesy and respect engenders a future willingness to cooperate with law enforcement.
 - a. Personnel shall facilitate an individual's access to other governmental services whenever possible, and shall actively provide referrals to other appropriate agencies.
3. When feasible, personnel shall offer explanations of the reasons for enforcement actions or other decisions that bear on the individual's well-being unless the explanation would undermine an investigation or jeopardize an officer's safety.
4. When feasible, all personnel shall identify themselves by name. When a person requests the information, personnel shall give their departmental identification number, name of the immediate supervisor, or any other reasonable information.

B. Supervisory responsibilities

1. Supervisors shall be held accountable for the observance of constitutional safeguards during the performance of their duties. Supervisors shall identify and correct instances of bias in the work of their subordinates.
2. Supervisors shall use the disciplinary mechanisms of the department to ensure compliance with this order and the constitutional requirements of law enforcement.
3. Supervisors shall be mindful that in accounting for the actions and performance of subordinates, supervisors are key to maintaining community trust in law enforcement. Supervisors shall continually reinforce the ethic of impartial

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enforcement of the laws, and shall ensure that personnel, by their actions, maintain the community's trust in law enforcement.

4. Supervisors are reminded that biased enforcement of the laws engenders not only mistrust of law enforcement, but increases safety risks to personnel. Lack of control over bias also exposes the department to liability consequences.
5. Supervisors shall be held accountable for repeated instances of biased enforcement of their subordinates.
6. Supervisors shall ensure that all enforcement actions are duly documented per departmental policy. Supervisors shall ensure that all reports show adequate documentation of reasonable suspicion and probable cause, if applicable.
7. Supervisors will randomly review at least three video tapes per officer (either body camera and/or in-car camera video) per quarter. For this policy a "quarter" is defined as a 3-month period of time. Supervisors are not required to watch each incident of an entire shift; however, reviewing the footage in a manner intended to gain an understanding of that officer's performance and adherence to policy and law is required. Supervisors will document the random review of the video in their daily activity logs and any violations of policy or law will be addressed through the use of existing internal affairs policy.
8. Section 7 above applies only to first-line uniformed officers and their immediate supervisors. In the absence of a first-line supervisor this responsibility will move to patrol lieutenants.

SECTION 5 TRAINING

Officers are responsible for adhering to all Texas Commission on Law Enforcement (TCOLE) training and the Law Enforcement Management Institute of Texas (LEMIT) requirements as mandated by law. All officers shall complete a TCOLE training and education program on bias-based profiling not later than the second anniversary of the date the officer is licensed under Chapter 1701 of the Texas Occupations Code or the date the officer applies for an intermediate proficiency certificate, whichever date is earlier. The Chief of Police, as part of the initial training and continued education for such appointment, will be required to attend the LEMIT program on bias-based profiling.

SECTION 6 COMPLAINT INVESTIGATION

The department shall accept complaints from any person who believes he or she has been stopped or searched based on racial, ethnic or national origin profiling. No person shall be discouraged, intimidated or coerced from filing a complaint, nor discriminated against because he or she filed such a complaint. Refer to General Orders Chapters 2.4.1 through 2.10.1 for the complaint and investigation process.

SECTION 7 PUBLIC EDUCATION

This department will inform the public of its policy against racial and bias based profiling and the complaint process. Methods that may be utilized to inform the public are the news media, radio, service or civic presentations, the Internet, as well as governing board meetings. Additionally, information will be made available as appropriate in languages other than English, if necessary.

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SECTION 8 USE OF VIDEO AND AUDIO EQUIPMENT

Each motor vehicle regularly used by this department to make traffic and pedestrian stops is equipped with a video camera and transmitter-activated equipment, and each motorcycle regularly used by this department to make traffic and pedestrian stops is equipped with transmitter-activated equipment.

Each traffic and pedestrian stop made by an officer of this department that is capable of being recorded by video and audio, or audio, as appropriate, is recorded.

This department shall retain any video and/or audio recordings of each traffic and pedestrian stop for at least ninety (90) days after the date of the stop. If a complaint is filed with this department alleging that one of our officers has engaged in racial profiling with respect to a traffic or pedestrian stop, this department shall retain the video and/or audio recordings of the stop until final disposition of the complaint.

Supervisors will ensure officers of this department are recording their traffic and pedestrian stops. A recording of each officer will be reviewed at least once every ninety (90) days.

If the equipment used to record audio and/or video of traffic or pedestrian stops is malfunctioning or otherwise not operable, the officer making the stop may properly record and report the information to the equipment officer as soon as possible but no later than the end of the shift. If another unit is available which is equipped with properly functioning video and/or audio equipment, then the officer will change to the other unit.

SECTION 9 RESPONSIBILITY

1. All members of the Department shall know and comply with all aspects of this directive.
2. All Division Commanders and supervisory personnel are responsible for ensuring compliance with the provisions and intent of this directive.

III. Responding to the Texas Racial Profiling Law

Filing a Complaint with The Denison Police Department

*** The following information has been disseminated to the public as part of an educational campaign aimed at informing community members of the complaint process relevant to violations of the Texas Racial Profiling Law. The following Citizen Complaint Process has been posted in the foyer of the police department and has been added to the Denison Police Department's portion of the City of Denison website. This process is also aired on the local television advertisement network.



POLICE

CITIZEN COMPLAINT FORM

**A message from Mike Gudgel, Chief of Police
Denison Police Department**

The employees of the Denison Police Department are committed to delivering the highest level of public safety services possible to our citizens and visitors to our community. We hold ourselves to high standards of conduct and the expectation is for our employees to always perform their duties with integrity, respect and in a professional manner.

I realize that sometimes we will make mistakes. While the number of these mistakes should be few, it is important that I am aware of any complaints toward our efforts in providing the best level of service possible. I would also like to know of any instances where our employees should be recognized or receive a commendation for a job well done.

If you do have a complaint, please complete the attached form to allow our agency to evaluate our employee's actions based on the facts of the incident. As your Chief of Police, I have a responsibility to you and the members of this department to ensure that any complaints of alleged misconduct are properly and thoroughly investigated, and discipline and/or training is provided when appropriate.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Gudgel".

Mike Gudgel, Chief of Police
Denison Police Department
108 W. Main Street
Denison, Texas 75021

Attachments: Denison Police Department
Complaint Form

**DENISON POLICE DEPARTMENT
COMPLAINT AGAINST EMPLOYEE
ADMINISTRATIVE INVESTIGATIONS
STATEMENT NOTIFICATION**

This filing of a formal complaint against an employee of the Denison Police Department by you institutes an administrative investigation, which could result in disciplinary action being taken against the employee(s).

Therefore, a person who makes a false statement under oath concerning a complaint filed (as required by Section 614.022, Texas Government Code) against a law enforcement officer, with intent to deceive and with knowledge of the statement's meaning, is guilty of **Aggravated Perjury** under Section 37.03 of the Texas Penal Code, if he/she has knowledge of the content of the complaint, the purpose of its filing, and the official character of the investigation conducted in connection therewith, and if the statement is material.

I acknowledge that I have read the above notification prior to or at the conclusion of my statement.

COMPLAINANT

DATE

WITNESS

Today is _____, the _____ day of _____, 20__.

I am submitting a formal complaint against the following named employee(s) of the Denison Police Department:

1) _____ 2) _____

3) _____ 4) _____

I do not know the employee(s) name. I can describe the employee as:

1) ___ Male ___ Female ___ White ___ Black ___ Hispanic ___ Asian
___ Height ___ Weight ___ Hair Color _____

2) ___ Male ___ Female ___ White ___ Black ___ Hispanic ___ Asian
___ Height ___ Weight ___ Hair Color _____

My complete name is: _____.

My complete address is: _____ Zip _____.

My birthday is: _____.

My Driver's license number is: _____.

My Social Security number is: _____.

Telephone numbers where I may be reached are:

() _____
Home

() _____
Work

() _____
Cell

Tell your story in your own words using the narrative on the next page(s). Include as much detail as possible. Please include name(s), places, times, witnesses and descriptions. When you have completed the narrative, return the complaint form to the Police Department.

If there are witnesses, do not take statements from them. The Internal Affairs Lieutenant will interview them. If you need additional pages, number and initial the bottom of each additional page.

When you have completed preparing your complaint, you are required to call the Internal Affairs Lieutenant (903-465-2422 ext. 2316) to schedule an appointment to meet with him personally. Do not leave your complaint with the receptionist. The I.A. Lieutenant must review your complaint with you present. The complaint will then be notarized by the I.A. Lieutenant once signed.

If the I.A. Lieutenant is on an extended absence (vacation etc.), ask the receptionist to call any police supervisor to meet you in the lobby. After a police supervisor has reviewed your complaint with you, the receptionist must notarize your signature and will forward your complaint to the I.A. Lieutenant.

DO NOT sign page 7 of the complaint unless your complaint has first been reviewed; in person; by either the I.A. Lieutenant or another police supervisor.

A complaint should be made in a timely manner after the incident so that the details are readily available to the investigating supervisor and prompt attention can be focused to correct and/or discipline an officer acting in an unacceptable manner.

According to state law, the Police Department's receipt of the complaint, investigation, and beginning of discipline of the officer must be completed within 180 days after the occurrence of the act. For criminal matters, the time frame is 180 days from the discovery of the act.

NOTARIZATION

On this, the _____ day of _____, 20____ personally appeared before me, the undersigned authority, _____ who, after being duly sworn by me deposes and says:

The statements contained in this report, made by me, are true and correct to the best of my knowledge.

Signature: _____ Date: _____, 20____.

Sworn and subscribed to before me, a Notary Public, in and for the State of Texas on this the _____ day of _____, 20____.

Notary Signature: _____.

(stamp)

Denison Police Department General Orders

The following section establishes the mission, vision, values, goals, objectives, oath, ethics, and employment practices of the Denison Police Department. Each of these components is often reviewed in order to ensure it adequately addresses the emerging needs of the department, the city, and the residents of the Denison community.

Mission Statement

The Denison Police Department is committed to serving and protecting while partnering with our community to enhance public safety and quality of life within the city.

Motto

Serving and Protecting

Values

SERVICE - We strive to meet or exceed the expectations for those in need of law enforcement assistance.

HONESTY - We adhere to the facts with fairness and straightforwardness of conduct.

INTEGRITY - We are committed to the highest standards of ethical conduct, with strict adherence to moral values and principles.

STACI – City of Denison Core Values

- Service
- Team Work
- Accountability
- Commitment
- Integrity

Training

In compliance with the Texas Racial Profiling Law, the Denison Police Department has asked that all its officers adhere to all Texas Commission on Law Enforcement (TCOLE) training and the Law Enforcement Management Institute of Texas (LEMIT) requirements as mandated by law.

All officers from the Denison Police Department have been asked to complete TCOLE training and education program on racial profiling not later than the second anniversary of the date the officer is licensed under Chapter 1701 of the Texas Occupations Code or the date the officer applies for an intermediate proficiency certificate, whichever date is earlier. A person, who on September 1, 2001, held a TCOLE intermediate proficiency certificate or who had held a peace officer license issued by TCOLE for at least two years, will complete a TCOLE training and education program on racial profiling not later than September 1, 2003.

The Chief of Police, as part of the initial training and continued education for such appointment, attended the LEMIT program on racial profiling. This fulfills the training requirement as specified in the Education Code (96.641) of the Texas Racial Profiling Training law.

Denison, TX PD

Jan 1, 2023 - Dec 31, 2023

Texas TCOLE SB1187 Racial Profiling Report (2022)

PLEASE NOTE: This report is based on the format provided by the Texas Commission on Law Enforcement (TCOLE), current as of Dec. 14, 2022.

01. Total Traffic Stops		
		8,863
		8,863

02. Location of Stop		
CITY STREET	96.73%	8,573
COUNTY ROAD	0.16%	14
PRIVATE PROPERTY OR OTHER	0.29%	26
STATE HIGHWAY	1.13%	100
US HIGHWAY	1.69%	150
Total	100.00%	8,863

03. Was Race Known Prior to Stop?		
N	95.71%	8,483
Y	4.29%	380
Total	100.00%	8,863

04. Race or Ethnicity		
ALASKA NATIVE/AMERICAN INDIAN	0.23%	20
ASIAN/PACIFIC ISLANDER	0.49%	43
BLACK	13.36%	1,184
HISPANIC/LATINO	9.32%	826
WHITE	76.61%	6,790
Total	100.00%	8,863

05. Gender			
FEMALE	ALASKA NATIVE/AMERICAN INDIAN	0.06%	2
	ASIAN/PACIFIC ISLANDER	0.56%	19
	BLACK	11.71%	398
	HISPANIC/LATINO	6.97%	237
	WHITE	80.70%	2,743
		100.00%	3,399
MALE	ALASKA NATIVE/AMERICAN INDIAN	0.33%	18

	ASIAN/Pacific Islander	0.44%	13
	BLACK	14.39%	786
	HISPANIC/LATINO	10.78%	589
	WHITE	74.07%	4,047
		100.00%	5,464
Total			8,863

06. Reason for Stop?

MOVING TRAFFIC VIOLATION	ALASKA NATIVE/AMERICAN INDIAN	0.26%	12
	ASIAN/PACIFIC ISLANDER	0.57%	26
	BLACK	12.08%	548
	HISPANIC/LATINO	10.36%	470
	WHITE	76.71%	3,479
		100.00%	4,535
PRE EXISTING KNOWLEDGE	ASIAN/PACIFIC ISLANDER	0.67%	1
	BLACK	12.08%	18
	HISPANIC/LATINO	9.40%	14
	WHITE	77.85%	116
		100.00%	149
VEHICLE TRAFFIC VIOLATION	ALASKA NATIVE/AMERICAN INDIAN	0.19%	6
	ASIAN/PACIFIC ISLANDER	0.35%	11
	BLACK	14.95%	471
	HISPANIC/LATINO	8.12%	256
	WHITE	76.39%	2,407
		100.00%	3,151
VIOLATION OF LAW	ALASKA NATIVE/AMERICAN INDIAN	0.19%	2
	ASIAN/PACIFIC ISLANDER	0.49%	5
	BLACK	14.30%	147
	HISPANIC/LATINO	8.37%	86
	WHITE	76.65%	788
		100.00%	1,028
Total			8,863

07. Was a Search Conducted?

N	ALASKA NATIVE/AMERICAN INDIAN	0.24%	20
	ASIAN/PACIFIC ISLANDER	0.51%	43
	BLACK	12.90%	1,093
	HISPANIC/LATINO	9.52%	807
	WHITE	76.84%	6,513
		100.00%	8,476
Y	BLACK	23.51%	91
	HISPANIC/LATINO	4.91%	19
	WHITE	71.58%	277
		100.00%	387

8863

08. Reason for Search?			
CONSENT	BLACK	11.61%	13
	HISPANIC/LATINO	3.57%	4
	WHITE	84.82%	95
		100.00%	112
CONTRABAND IN PLAIN VIEW	BLACK	18.75%	3
	HISPANIC/LATINO	18.75%	3
	WHITE	62.50%	10
		100.00%	16
INCIDENT TO ARREST	BLACK	14.29%	1
	WHITE	85.71%	6
		100.00%	7
INVENTORY	BLACK	22.73%	5
	HISPANIC/LATINO	9.09%	2
	WHITE	68.18%	15
		100.00%	22
NO SEARCH	ALASKA NATIVE/AMERICAN INDIAN	0.24%	20
	ASIAN/PACIFIC ISLANDER	0.51%	43
	BLACK	12.90%	1,093
	HISPANIC/LATINO	9.52%	807
	WHITE	76.84%	6,513
		100.00%	8,476
PROBABLE CAUSE	BLACK	30.00%	69
	HISPANIC/LATINO	4.35%	10
	WHITE	65.65%	151
		100.00%	230
Total			8,863

09. Was Contraband Discovered?			
N	BLACK	19.84%	25
	HISPANIC/LATINO	3.17%	4
	WHITE	76.98%	97
		100.00%	126
Y	BLACK	25.29%	66
	HISPANIC/LATINO	5.75%	15
	WHITE	68.97%	180
		100.00%	261
Total			387

10. Description of Contraband			
ALCOHOL	BLACK	13.51%	5
	HISPANIC/LATINO	16.22%	6
	WHITE	70.27%	26
		100.00%	37

<i>Currency</i>	<i>White</i>	100.00%	1
DRUGS	BLACK	29.19%	61
	HISPANIC/LATINO	4.78%	10
	WHITE	66.03%	138
		100.00%	209
OTHER	BLACK	9.38%	3
	HISPANIC/LATINO	3.12%	1
	WHITE	87.50%	28
		100.00%	32
STOLEN PROPERTY	WHITE	100.00%	4
		100.00%	4
WEAPONS	BLACK	50.00%	1
	WHITE	50.00%	1
		100.00%	2
Total			285

11. Result of the Stop

CITATION	ALASKA NATIVE/AMERICAN INDIAN	0.21%	6
	ASIAN/PACIFIC ISLANDER	0.38%	11
	BLACK	13.67%	396
	HISPANIC/LATINO	14.23%	412
	WHITE	71.51%	2,071
		100.00%	2,896
CITATION AND ARREST	BLACK	24.00%	6
	HISPANIC/LATINO	8.00%	2
	WHITE	68.00%	17
		100.00%	25
WRITTEN WARNING	ALASKA NATIVE/AMERICAN INDIAN	0.24%	14
	ASIAN/PACIFIC ISLANDER	0.54%	32
	BLACK	13.13%	777
	HISPANIC/LATINO	6.96%	412
	WHITE	79.12%	4,681
		100.00%	5,916
WRITTEN WARNING AND ARREST	BLACK	19.23%	5
	WHITE	80.77%	21
		100.00%	26
Total			8,863

12. Arrest Based On

OUTSTANDING WARRANT	BLACK	35.00%	7
	WHITE	65.00%	13
		100.00%	20
VIOLATION OF PENAL CODE	BLACK	16.67%	4
	HISPANIC/LATINO	4.17%	1

White

79.17%

19

		100.00%	24
VIOLATION OF TRAFFIC LAW	HISPANIC/LATINO	14.29%	1
	WHITE	85.71%	6
		100.00%	7
Total			51

13. Was Physical Force Used?

N	ALASKA NATIVE/AMERICAN INDIAN	0.23%	20
	ASIAN/PACIFIC ISLANDER	0.49%	43
	BLACK	13.35%	1,183
	HISPANIC/LATINO	9.32%	826
	WHITE	76.61%	6,788
		100.00%	8,860
Y	BLACK	33.33%	1
	WHITE	66.67%	2
		100.00%	3
Total			8,863

Was Arrest Due to Contraband Found?

N	BLACK	25.81%	8
	HISPANIC/LATINO	6.45%	2
	WHITE	67.74%	21
		100.00%	31
Y	BLACK	15.00%	3
	WHITE	85.00%	17
		100.00%	20

Racial Profiling Report - Del Carmen (w/ Resident)

PLEASE NOTE: The official form does not allow for Other and Unknown in the Race or Ethnicity boxes on the TCOLE website. Please contact TCOLE for instructions on how to resolve these issues. This report only includes traffic stops resulting in a citation, traffic stops resulting in a citation with an arrest, traffic stops resulting in a warning with an arrest, and field interviews that resulted in an arrest. This report does not include any stops from traffic collisions.

Table 1. (Motor Vehicle Contacts Including Tickets, Citations and Warnings) - COUNT						
	WRITTEN WARNING	WRITTEN WARNING AND ARREST	CITATION AND ARREST	CITATION		Total
	Resident - N	Resident - N	Resident - N	Resident - N		
A	32	0	0	11	0	43
B	777	5	6	396	0	1,184
H	412	0	2	412	0	826
I	14	0	0	6	0	20
W	4,681	21	17	2,070	1	6,790
Total	5,916	26	25	2,895	1	8,863

Table 1. (Motor Vehicle Contacts Including Tickets, Citations and Warnings) - %						
	WRITTEN WARNING	WRITTEN WARNING AND ARREST	CITATION AND ARREST	CITATION		Total
	Resident - N	Resident - N	Resident - N	Resident - N		
A	0.36%	0.00%	0.00%	0.12%	0.00%	0.48%
B	8.76%	0.05%	0.07%	4.46%	0.00%	13.35%
H	4.66%	0.00%	0.02%	4.63%	0.00%	9.30%
I	0.16%	0.00%	0.00%	0.07%	0.00%	0.22%
W	52.84%	0.24%	0.19%	23.36%	0.01%	76.64%
Total	66.78%	0.29%	0.28%	32.63%	0.01%	100.00%

(II) Comparative Analysis

Table 1. Comparison of Self-Initiated Stops of Contacts and DPS Resident Data

Race/Ethnicity*	Contacts		DPS Data		Variance	
	N	%	N	%	N	%
Caucasian**	6790	76.6	42545	86.8	N/A	10.2
African	1184	13.4	3590	7.3	N/A	-6.1
Asian	43	.5	495	1.0	N/A	.5
Native American	20	.2	796	1.6	N/A	1.4
Other	826	9.3	1585	3.3	N/A	-6.0
Total	8863	100%	49011	100%		

* Race/Ethnicity are defined by Senate Bill 1074 as being of a “particular descent, including Caucasian, African, Hispanic, Asian, Middle Eastern or Native American”.

** In this table, Hispanics have been added to the Caucasian population and the Middle Easterners have been added to the “Other” population.

This has been done in order to correspond with DPS data collection methods.

According to DPS, Hispanics are combined, in their data reports, with the Caucasian population and the Middle Easterners in the “Other” population.

Corrective Action

It is the policy of the Denison Police Department that any officer who, after an internal investigation, has been found guilty of engaging in racial profiling, that one of the following series of disciplinary measures is taken (as per the recommendation of the chief of police):

- 1) Officer is retrained in racial sensitivity issues.
- 2) Officer is suspended and as a condition of further involvement with the police department is asked to undergo racial sensitivity training.
- 3) Officer is terminated.

Data on Corrective Action

The following table contains data regarding officers that have been the subject of a complaint, during the period of 01/01/23---12/31/23, based on allegations outlining possible violations related to the Texas Racial Profiling Law. The final disposition of the case is also included.

Check above if the Denison Police Department has not received any complaints on any members of its police force, for having violated the Texas Racial Profiling Law during the period of 01/01/23 ---- 12/31/23.

Complaints Filed for Possible Violations of S.B. 1074 (The Texas Racial Profiling Law)

Complaint No.	Alleged Violation			Disposition of the Case

Additional Comments:

Analysis

The data presented in this report contains valuable information regarding police contacts with the public between 01/01/23 and 12/31/23. Despite its value, the raw data does not present much information relevant to racial profiling trends.

Thus, it is felt that further analysis of the data is warranted. As such, data was obtained through the Texas Department of Public Safety (DPS), via a public information request. The data obtained from DPS included the race and gender of drivers in the city of Denison during the 2023 calendar year. The decision to obtain DPS data was made since, according to experts, census data presents challenges to any effort made at establishing a fair and accurate analysis. That is, census data contains information of all residents of a particular community, regardless of the fact they may or may not be among the driving population. Further, census data, when used as a benchmark of comparison, presents the challenge that it captures information related to city residents only. Thus, excluding individuals who may have come in contact with the Denison Police Department, but reside outside city limits. This has a tendency of inflating the overall figures; thus, providing an inaccurate representation of police contacts with the public. Therefore, it is felt that DPS data relevant to city residents, if compared only to the portion of individuals who reside in the city of Denison and have come in contact with the police during a given year, will offer a more accurate representation and provide further insights than other sources including census data.

For example: When comparing the city residents who came in contact with the Denison Police Department during 2023 with those who, according to DPS, were residents of the city during that time and held a valid driver's license, the data produced interesting findings. That is, the number of police contacts with White drivers, when compared to the number of White city residents who held a valid drivers license, demonstrated that the number of contacts with the police were under-represented. It must be noted that Hispanics were grouped with Caucasians for purposes of this analysis since DPS does not collect information related to the ethnicity of drivers. In fact, according to their own language, DPS considers the number of Hispanic drivers but not their gender.

IV. Summary Findings

Summary Statement

The findings suggest that the Denison Police Department does not currently experience a problem regarding racial profiling practices. This is supported by the fact that we have not received any written formal complaints from community members regarding officers misconduct associated with racial profiling practices. Even though the comparison data indicates a higher rate for African Americans, this is due to the fact the comparison was totaled with resident and non-resident contacts.

The continuing effort to collect police contact data will assure an on-going evaluation of the Denison Police Department practices and allow for the citizens of the Denison community to benefit from professional and courteous service from their police department.

Checklist

(I) The following requirements ***must*** be met by all law enforcement agencies in the State of Texas:

- Clearly defined act of actions that constitute racial profiling.
- Statement indicating prohibition of any peace officer employed by the Denison Police Department from engaging in racial profiling.
- Implement a process by which an individual may file a complaint regarding racial profiling violations.
- Provide public education related to the complaint process.
- Implement disciplinary guidelines for officer found in violation of the Texas Racial Profiling Law.
- Collect data (Tier 1) that includes information on:
 - a) Race and ethnicity of individual detained
 - b) Whether a search was conducted
 - c) If there was a search, whether it was a consent search or a probable cause search
 - d) Whether a custody arrest took place
- Produce an annual report on police contacts (Tier 1) and present this to local governing body and TCOLE by March 1, 2024.
- Adopt a policy, if video/audio equipment is installed, on standards for reviewing video and audio documentation.

(II) Report and stats compiled by Asst. Chief Joe Clapp.

(III) For additional questions regarding the information presented in this report, please contact:

Chief Mike Gudgel
108 West Main St.
Denison, Texas 75021
(903) 465-2422

City Council Meeting

Staff Report

February 19, 2024



Agenda Item

Receive a report, hold a discussion, and take action on a granting approval for the Interim City Manager, or his designee, to enter into various loan documents with Clayton Holdings, LLC, for the purchase of two Mack refuse trucks and bodies, traffic control equipment, and reimbursement for the purchase of 30-yard dumpsters, and a Mack truck with hoist.

Staff Contact

Amber Pilcher, Finance Controller
apilcher@cityofdenison.com
(903) 465-2720, Ext. 2443

Summary

- At the December 12, 2022, Council meeting the purchase of three new sanitation trucks, one Mack Terrapro TE64 with 40-year front load body, one Mack Granite GR64B with Champion Body side load, and one Mack Granite GR64B with Galbreth U-75 Hoist roll off in the amount of \$814,015 from East Texas Mack was authorized.
- At the August 21, 2023, Council meeting the purchase of a school flasher equipment upgrade package in the amount of \$121,043.00 was approved.
- The lease purchase of equipment was approved during the FY2023 budget process, but the final quote for the flasher equipment was not received in time to finalize lease in FY2023. Lease is being finalized in FY2024.
- Requests for quotes were sent out on January 5, 2024.
- Quotes were received and tabulated.
- Presentation to Council requesting approval of purchasing and reimbursing resolutions to move forward with financing.

Staff Recommendation

Staff recommends approval of the purchase and reimbursing resolutions.

Recommended Motion

“I move to adopt the resolution granting approval for the Interim City Manager, or his designee, to enter into various loan documents with Clayton Holdings, LLC for the purchase of two Mack refuse trucks and bodies, traffic control equipment, and reimbursement for the purchase of 30-yard dumpsters, and a Mack truck with hoist, subject to final legal review and approval.”

Background Information and Analysis

The Sanitation division currently operates six days a week collecting residential and commercial refuse and transporting loads approximately 50 miles round trip to the TASWA landfill. The ability to operate a reliable fleet is critical to the division’s ability to provide this service to our customers and staff have been pleased with the reliability of the Mack brand trucks. Redundancy is also important so that trucks can be taken out of service for maintenance and repairs without requiring staff to hand load containers into a truck. With the additional side load, front load, and roll off trucks, staff will have the ability to

do more routine maintenance to extend the life of the fleet and will be able to continue providing reliable service to our customers.

The school zone flashers at Houston Elementary, Mayes Elementary, Terrell Elementary, Hyde Park Elementary, and B McDaniel Intermediate school need an upgrade due to various issues with the school flashers including inconsistent signage, manual operation with no remote monitoring, inconsistency in power sources and battery backup, and inconsistency in meeting state and local requirements. Staff has worked with Kimley Horn Engineering to develop a standard school zone flasher assembly that does meet state and local requirements and then to develop an overall upgrade to all school zones within the City. This proposed school flasher equipment upgrade package purchase from Consolidated Traffic Control will allow staff to begin implementing the design that was completed by Kimley Horn by upgrading the existing school zone flashers bringing them into compliance. The equipment package will also provide the City with all solar powered flashers that include battery backup, remote monitoring and control via cellular communications, standardization in signage and design across all existing zones, and LED beacons with increased longevity. The proposed purchase price includes installation services by Consolidated Traffic Controls.

Financial Considerations

Total principal amount is \$1,042,546 with a 7-year loan at 4.43% interest rate.

Prior Board or Council Action

Council approved the purchase of equipment on December 12, 2022, and August 21, 2023, and, again, during the FY2023 budget process.

Alternatives

Council could choose not to approve the resolution to move forward with the loan document as requested. In doing so, the equipment would be purchase directly from General Fund reserves.

City of Denison, Texas
Quote Tabulation
Municipal Lease Financing
\$1,042,546
Various Refuse Equipment & Solar Flasher Lights

FINANCING VENDOR	INTEREST RATE	ANNUAL PAYMENT	TOTAL INTEREST	TERM LENGTH
Clayton Holdings, LLC	4.43%	\$ 172,538.53	\$ 165,223.71	7 years
Simmons Bank	4.57%	\$ 173,524.17	\$ 172,123.19	7 years
US Bancorp	4.69%	\$ 173,919.32	\$ 174,889.24	7 years
Republic First National	5.45%	\$ 177,956.35	\$ 203,148.45	7 years
Cadence Equipment Finance	6.21%	\$ 183,231.45	\$ 240,074.15	7 years
KS State Bank	6.55%	\$ 184,147.82	\$ 255,758.00	7 years
First United Bank	6.59%	Not Provided	Not Provided	7 years
American National Leasing Co.	6.25%**	\$ 182,862.28	\$ 237,489.96	7 years

**Disqualified- Rate is guaranteed through 2/24/2024. Must be guaranteed through 2/26/2024.

Resolution Approving Financing Terms

WHEREAS: The City of Denison, Texas (“Borrower”) has previously determined to undertake a project for the financing of a Mack Terrapro TE64 with 40-yard front load body, a Mack Granite GR64B with Champion Body, and traffic control, enforcement, and signal equipment, and reimbursement for the purchase of nineteen 30-yard dumpsters, and a Mack Granite GR64B with Galbreath U-75 Hoist (the “Project”), and the finance officer (the “Finance Officer”) has now presented a proposal for the financing of such Project.

BE IT THEREFORE RESOLVED, as follows:

1. The Borrower hereby determines to finance the Project through Clayton Holdings, LLC (“Lender”) in accordance with the proposal February 9, 2024. The amount financed will not exceed \$1,042,546, the annual interest rate (in the absence of default or change in tax status) will not exceed 4.43 %, and the financing term will not exceed seven years from closing.

2. All financing contracts and all related documents for the closing of the financing (the “Financing Documents”) will be consistent with the foregoing terms. All officers and employees of the Borrower are hereby authorized and directed to execute and deliver any Financing Documents, and to take all such further action as they may consider necessary or desirable, to carry out the financing of the Project as contemplated by the proposal and this resolution.

3. The Finance Officer is hereby authorized and directed to hold executed copies of the Financing Documents until the conditions for the delivery of the Financing Documents have been completed to such officer's satisfaction. The Finance Officer is authorized to approve changes to any Financing Documents previously signed by Borrower officers or employees, provided that such changes will not substantially alter the intent of such documents or certificates from the intent expressed in the forms executed by such officers. The Financing Documents will be in such final forms as the Finance Officer will approve, with the Finance Officer’s release of any Financing Document for delivery constituting conclusive evidence of such officer's final approval of the Document’s final form.

4. The Borrower will not take or omit to take any action the taking or omission of which will cause its interest payments on this financing to be includable in the gross income for federal income tax purposes of the registered owners of the interest payment obligations.

5. The Borrower intends that the adoption of this resolution will be a declaration of the Borrower’s official intent to reimburse expenditures for the Project that are to be financed from the proceeds of the Lender financing described above. The Borrower intends that funds that have been advanced, or that may be advanced, from the Borrower’s general fund or any other Borrower fund related to the Project, for project costs may be reimbursed from the financing proceeds.

6. All prior actions of Borrower officers in furtherance of the purposes of this resolution are hereby ratified, approved, and confirmed. All other resolutions (or parts thereof) in conflict with this resolution are hereby repealed, to the extent of the conflict. This resolution will take effect immediately.

Approved this _____ day of _____, 2024.

JANET GOTT, Mayor
City of Denison, TX

Christine Wallentine, City Clerk
City of Denison, Texas

Compound Period: Annual

Nominal Annual Rate: 4.430%

CASH FLOW DATA

Event	Date	Amount	Number	Period	End Date
1 Loan	2/26/2024	1,042,546.00	1		
2 Payment	8/15/2024	172,538.53	7	Annual	8/15/2030

AMORTIZATION SCHEDULE - Normal Amortization, 360 Day Year

Date	Payment	Interest	Principal	Balance
Loan 2/26/2024				1,042,546.00
1 8/15/2024	172,538.53	21,937.77	150,600.76	891,945.24
2024 Totals	172,538.53	21,937.77	150,600.76	
2 8/15/2025	172,538.53	39,513.17	133,025.36	758,919.88
2025 Totals	172,538.53	39,513.17	133,025.36	
3 8/15/2026	172,538.53	33,620.15	138,918.38	620,001.50
2026 Totals	172,538.53	33,620.15	138,918.38	
4 8/15/2027	172,538.53	27,466.07	145,072.46	474,929.04
2027 Totals	172,538.53	27,466.07	145,072.46	
5 8/15/2028	172,538.53	21,039.36	151,499.17	323,429.87
2028 Totals	172,538.53	21,039.36	151,499.17	
6 8/15/2029	172,538.53	14,327.94	158,210.59	165,219.28
2029 Totals	172,538.53	14,327.94	158,210.59	
7 8/15/2030	172,538.53	7,319.25	165,219.28	0.00
2030 Totals	172,538.53	7,319.25	165,219.28	
Grand Totals	1,207,769.71	165,223.71	1,042,546.00	

Last interest amount increased by 0.04 due to rounding.

City Council Meeting Staff Report



Agenda Item

Receive a report, hold a discussion, and take action on authorizing the Second Amendment to the Sublease Agreement between the City of Denison and Homeless Empowerment Action Team (HEAT).

Staff Contact

Mary Tate, Director of Development Services

mtate@cityofdenison.com

903.465.2720 ext. 2521

Summary

- The City's original agreement with HEAT for the homeless shelter on 1030 W. Crawford Street expired on March 12th, 2022.
- The First Amendment to the Sublease Agreement will expire on March 12th, 2024, and therefore, the Second Amendment will extend the agreement for an additional year.
- Base Rent will increase from \$2,860 to \$3,066 to cover the lease payment and an increase in the insurance premium.
- The proposed agreement will ensure the original terms are extended and acknowledged by all parties.

Staff Recommendation

Staff recommends approval of this Second Amendment to the Sublease Agreement.

Recommended Motion

"I move to approve the Second Amendment to the Sublease Agreement between the City of Denison and Homeless Empowerment Action Team as defined in the Agreement."

Background Information and Analysis

In March of 2021, the City entered into a Land Lease, also defined as the Master Lease, with Texas Northwestern Railroad for lease of the structure located at 1030 W. Crawford Street for use as a homeless shelter to provide meals, three showers, and three washers and dryers.

Following the execution of the Master Lease, a Sublease Agreement was executed between the City and Homeless Empowerment Action Team (HEAT). The agreement defines the lease terms including, length, dollar amount, and use.

The original agreement expired on March 12, 2022. During the plan review and permitting process, it was discovered that the agreement had not been extended nor executed. To mitigate this, the Legal staff drafted an agreement which extended the agreement until March 12, 2024. The proposed agreement extends the agreement for another year.

It has come to the attention of City staff that the sewer line servicing HEAT is in dire need of replacement due to the deterioration of the pipes and the capacity needed to properly service the

facility. The Public Works Department has been in contact with HEAT leadership to inform them of the timeline for project completion. HEAT is expected to have all inspections completed within the next two weeks. The City anticipates that the facility will open according to HEAT's planned timeline.

Financial Considerations

Per the Master Lease, the City pays two thousand, one hundred dollars (\$2,100) to the railroad. The City also pays the annual insurance in the amount of seven hundred sixty dollars (\$760). The City invoices HEAT the \$2,860 to cover the lease payment and the insurance. Due to insurance premiums increasing, the City will be invoicing HEAT for \$3,066, a difference of \$206.00.

The lease payment and insurance are coded to City Manager/Professional Fees, and the money paid by HEAT is logged as revenue. Due to obligations under the Master Lease, the City is required to pay these amounts and budgets them as an expense.

Prior Board or Council Action

On or around March 12th, 2021, the City entered into a Land Lease, also defined as the Master Lease, with Texas Northwestern Railroad for lease of the structure located at 1030 W. Crawford Street for use as a homeless shelter to provide meals, three showers, and three washers and dryers.

Following the execution of the Master Lease, a Sublease Agreement was executed between the City and Homeless Empowerment Action Team (HEAT).

SECOND AMENDMENT TO SUBLEASE AGREEMENT

THIS SECOND AMENDMENT TO SUBLEASE AGREEMENT (“**Second Amendment**”), is entered into by and between the CITY OF DENISON, TEXAS, a municipality of the State of Texas (“**Sublandlord**” or “**City**”), and HOMELESS EMPOWERMENT ACTION TEAM (HEAT), a Texas nonprofit corporation (“**Subtenant**”), each individually a “Party” and collectively the “Parties.”

RECITALS

WHEREAS, on or about March 12, 2021, the City entered into a Land Lease (the “**Master Lease**”) with Texas Northwestern Railroad, a division of Mid-Michigan Railroad, Inc. (“**Owner**”) for lease of the Premises (as defined in the Master Lease) for a Homeless Shelter to provide meals, three (3) showers, and three (3) washers and dryers, and no other purpose whatsoever; and

WHEREAS, on or about March 12, 2021, following execution of the Master Lease between the City and Owner, the City and Subtenant entered into a Sublease Agreement (the “**Agreement**”), whereby Subtenant leased the Premises from the City pursuant to the terms and conditions set forth in the Agreement and with the consent of the Owner; and

WHEREAS, the Initial Term of the Agreement (as defined therein) expired on March 12, 2022. Pursuant to Section 1.11 of the Agreement, and following the Initial Term, the Parties may extend the Agreement for successive one (1) year periods if the Parties agree in writing (each an “Extended Term”); and

WHEREAS, the Parties acknowledge the continuation of the Agreement and desire to ratify the renewal of the Agreement through the Extended Term of March 12, 2023, through March 12, 2024; and

WHEREAS, the City and Subtenant now mutually desire to amend the Agreement to extend the Agreement for a third successive one (1) year period as set forth below, accordingly; and

WHEREAS, the Parties hereby agree to an amendment to Section 1.11 of the Agreement to revise the conditions for Extended Terms as set forth below, accordingly; and

WHEREAS, the Parties hereby agree to an amendment to Section 1.10 of the Agreement to revise the Base Rent amount as set forth below.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Subtenant agree that the recitals set forth above are incorporated herein as if set forth in their entirety, and further agree as follows:

AGREEMENT

1. Ratification of Prior Extended Term. On March 12th, 2021, the City Council of Denison approved an annual budget with line item(s) for the costs of the City described in the Master Lease, such that the Master Lease would continue for a term through March 12, 2022 to

March 12, 2023. The City remains in the Master Lease through the Effective Date of this First Amendment. Despite the Parties not executing an amendment to the Agreement for an Extended Term of March 12, 2022 to March 12, 2023, the Parties hereby agree that the Agreement remains in effect, having been in effect for the Extended Term of March 12, 2022, through March 12, 2023, with the approval of payment for rent under the Master Lease having been approved by the City Council of Denison in the annual budget.

2. Second Extended Term. The second successive Extended Term shall be effective from March 12, 2023, and terminate on March 12, 2024.
3. Third Extended Term. The third successive Extended Term shall be effective from March 12, 2024, and terminate on March 12, 2025.
4. Amendment to Section 1.10 of the Agreement. The Parties hereby agree to an increase in the Base Rent as defined in the Agreement. Base Rent will increase to Three Thousand Sixty-Six Dollars (\$3,066.00).
5. Amendment to Section 1.11 of the Agreement. The Parties hereby agree to revise the conditions for Extended Terms such that the Agreement shall continue for successive one-year Extended Terms unless and until either Party provides sixty (60) days prior written notice to the other Party before any Extended Term is to begin, to discontinue the Agreement and not enter into such Extended Term. However, the Agreement shall not extend beyond the term of the Master Lease (as may be extended).
6. Other Terms and Conditions Remain. In the event of any inconsistencies between the Agreement and this Second Amendment, the terms of this Second Amendment shall control. Except as expressly set forth in this Second Amendment, the Agreement otherwise is unmodified and remains in full force and effect. Each reference in the Agreement to itself shall be deemed also to refer to this Second Amendment.
7. Capitalized Terms. All capitalized terms used but not defined herein shall have the same meanings as defined in the Agreement.

IN WITNESS WHEREOF, the parties have executed this Second Amendment on the dates set forth below.

SUBLANDLORD:

CITY OF DENISON, TEXAS

By: _____
Bobby Atteberry, Interim City Manager

Date: _____

ATTEST:

Christine M. Wallentine, City Clerk

SUBTENANT:

HOMELESS EMPOWERMENT ACTION
TEAM (HEAT), a Texas nonprofit
corporation

By: _____

Name: _____

Its: _____

Date: _____

FIRST AMENDMENT TO SUBLEASE AGREEMENT

THIS FIRST AMENDMENT TO SUBLEASE AGREEMENT (“**First Amendment**”), is entered into by and between the CITY OF DENISON, TEXAS, a municipality of the State of Texas (“**Sublandlord**” or “**City**”), and HOMELESS EMPOWERMENT ACTION TEAM (HEAT), a Texas nonprofit corporation (“**Subtenant**”), each individually a “Party” and collectively the “Parties.”

RECITALS

WHEREAS, on or about March 12, 2021, the City entered into a Land Lease (the “**Master Lease**”) with Texas Northwestern Railroad, a division of Mid-Michigan Railroad, Inc. (“**Owner**”) for lease of the Premises (as defined in the Master Lease) for a Homeless Shelter to provide meals, three (3) showers, and three (3) washers and dryers, and no other purpose whatsoever; and

WHEREAS, on or about March 12, 2021, following execution of the Master Lease between the City and Owner, the City and Subtenant entered into a Sublease Agreement (the “**Agreement**”), whereby Subtenant leased the Premises from the City pursuant to the terms and conditions set forth in the Agreement and with the consent of the Owner; and

WHEREAS, the Initial Term of the Agreement (as defined therein) expired on March 12, 2022. Pursuant to Section 1.11 of the Agreement, and following the Initial Term, the Parties may extend the Agreement for successive one (1) year periods if the Parties agree in writing (each an “**Extended Term**”); and

WHEREAS, the Parties acknowledge the continuation of the Agreement and desire to ratify the renewal of the Agreement through the Extended Term of March 12, 2022, through March 12, 2023; and

WHEREAS, the City and Subtenant now mutually desire to amend the Agreement to extend the Agreement for a second successive one (1) year period as set forth below, accordingly; and

WHEREAS, the Parties hereby agree to an amendment to Section 1.11 of the Agreement to revise the conditions for Extended Terms as set forth below, accordingly.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Subtenant agree that the recitals set forth above are incorporated herein as if set forth in their entirety, and further agree as follows:

AGREEMENT

1. Ratification of Prior Extended Term. On September 7, 2021, the City Council of Denison approved an annual budget with line item(s) for the costs of the City described in the Master Lease, such that the Master Lease would continue for a term through March 12, 2022, to March 12, 2023. The City remains in the Master Lease through the Effective Date of this First Amendment. Despite the Parties not executing an amendment to the Agreement for an Extended Term of March 12, 2022 to March 12, 2023, the Parties hereby agree that the

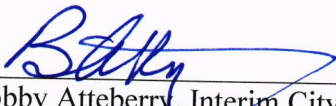
Agreement remains in effect, having been in effect for the Extended Term of March 12, 2022, through March 12, 2023, with the approval of payment for rent under the Master Lease having been approved by the City Council of Denison in the annual budget.

2. Second Extended Term. The second successive Extended Term shall be effective from March 12, 2023, and terminate on March 12, 2024.
3. Amendment to Section 1.11 of the Agreement. The Parties hereby agree to revise the conditions for Extended Terms such that the Agreement shall continue for successive one-year Extended Terms unless and until either Party provides sixty (60) days prior written notice to the other Party before any Extended Term is to begin, to discontinue the Agreement and not enter into such Extended Term. However, the Agreement shall not extend beyond the term of the Master Lease (as may be extended).
4. Other Terms and Conditions Remain. In the event of any inconsistencies between the Agreement and this First Amendment, the terms of this First Amendment shall control. Except as expressly set forth in this First Amendment, the Agreement otherwise is unmodified and remains in full force and effect. Each reference in the Agreement to itself shall be deemed also to refer to this First Amendment.
5. Capitalized Terms. All capitalized terms used but not defined herein shall have the same meanings as defined in the Agreement.

IN WITNESS WHEREOF, the parties have executed this First Amendment on the dates set forth below.

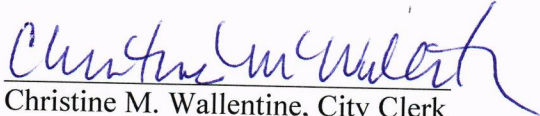
SUBLANDLORD:

CITY OF DENISON, TEXAS

By: 
Bobby Atteberry, Interim City Manager

Date: 2/8/2023

ATTEST:


Christine M. Wallentine, City Clerk

SUBTENANT:

HOMELESS EMPOWERMENT ACTION
TEAM (HEAT), a Texas nonprofit
corporation

By: Barbara Bailey

Name: Barbara Bailey

Its: President of Board

Date: 2-8-2023

SUBLEASE AGREEMENT

THIS SUBLEASE AGREEMENT (this "Sublease") is made and entered into this 12/12/21 day of March, 2021, by and between the City of Denison, Texas, a municipality of the State of Texas, ("Sublandlord" or "City"), and Homeless Empowerment Action Team (HEAT), a Texas nonprofit corporation ("Subtenant"), each individually a "Party" and collectively the "Parties".

RECITALS

A. Sublandlord, is the lessee under a Land Lease Agreement dated MARCH 12, 2020, (the "Master Lease") with Texas Northeastern Railroad, A division of Mid-Michigan Railroad, Inc. (the "Owner"), as the lessor; and

B. Pursuant to the Master Lease, Sublandlord leases the following described property for a Homeless Shelter to provide meals, three (3) showers, and three (3) washers and dryers and no other purpose whatsoever, to wit:

That 6,170 square feet parcel of land located thereon at milepost 659.76, DENISON INDUSTRIAL Subdivision, City of DENISON, County of GRAYSON, State of TX, as shown on the print marked Exhibit "A", attached hereto and made a part hereof (the "Premises"); and

C. Sublandlord wishes to sublease the Premises to the Subtenant, and Subtenant wishes to sublease the Premises from Sublandlord, all on the terms and conditions set forth herein, and with the consent of Owner.

For and in consideration of rent or fees or other sums of money hereinafter agreed to be paid by Subtenant to Sublandlord, and of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Section 1. General Provisions.

1.01 This Sublease is, and shall be at all times, subject and subordinate to the Master Lease, which is attached to this Sublease as Exhibit B. During the Term (as defined below), except as otherwise provided herein, Subtenant hereby covenants and agrees to fully comply with, or cause to comply with, and abide by all terms and conditions set forth in the Master Lease with respect to the Premises as if Subtenant were the tenant thereunder and this Sublease were the lease thereunder. Except as otherwise provided herein, the Parties agree that all the terms, covenants and conditions contained in the Master Lease with respect to the Premises shall be applicable to this Sublease. Except as otherwise provided herein, Subtenant hereby expressly assumes and agrees to be bound by and to fully comply with each and every obligation, liability, responsibility and duty of Sublandlord under the Master Lease (including, without limitation, any and all increases in rent and other charges thereunder).

1.02 The Parties further agree that, except as otherwise provided herein, the Subtenant shall have each and every of the rights and privileges of the Sublandlord under the Master Lease. For the purposes of this Sublease, wherever in the Master Lease the word "Landlord" or "Railroad" is used it shall be deemed to mean the Sublandlord herein and wherever in the Master Lease the term "Lessee" is used it shall be deemed to mean the Subtenant herein, unless otherwise provided herein.

1.03 **SUBTENANT SHALL FULLY RELEASE, INDEMNIFY, PROTECT, DEFEND AND HOLD SUBLANDLORD AND OWNER (INDIVIDUALLY AND COLLECTIVELY REFERRED TO AS AN "INTERESTED PARTY") HARMLESS AGAINST ANY AND ALL LIABILITIES (INCLUDING STRICT LIABILITY), PERSONAL INJURY INCLUDING DEATH, ACTIONS, DEMANDS, PENALTIES, LOSSES, OR COSTS OF ANY SETTLEMENT OR JUDGMENT AND CLAIMS OF ANY KIND WHATSOEVER, including but not limited to a release of claims against the Interested Party for its negligence or strict liability, WHICH MAY NOW OR IN THE FUTURE BE PAID, INCURRED, OR SUFFERED BY, OR ASSERTED AGAINST SUBTENANT BY ANY PERSON OR ENTITY OR GOVERNMENT AGENCY (INCLUDING SUBLANDLORD) FOR, WITH RESPECT TO, OR AS A DIRECT OR INDIRECT RESULT OF, ANY USE OF THE PREMISES BY SUBTENANT OR ANY FAILURE OF SUBTENANT TO PROMPTLY AND FAITHFULLY SATISFY ITS OBLIGATIONS UNDER THIS SUBLEASE, OR ANY OTHER FAULT OF SUBTENANT AND ITS OFFICERS, EMPLOYEES, AGENTS, VOLUNTEERS OR INVITEES, THAT IS FOUND TO BE IN CONNECTION WITH (A) THIS SUBLEASE; (B) THE MASTER LEASE FROM AND AFTER THE COMMENCEMENT DATE (DEFINED BELOW) UNTIL THE EXPIRATION OF THE TERM; AND (C) THE USE BY SUBTENANT (OR ANY PARTIES CLAIMING UNDER SUBTENANT) OF THE PREMISES DURING THE TERM IN VIOLATION OF THE TERMS OF THIS SUBLEASE OR OF THE MASTER LEASE WITH RESPECT TO THE PREMISES. This Section 1.03 is intended to be construed as broadly as possible, and to include, but not be limited to, a release of any claims or liability due to the negligence or contributory negligence of the Interested Party.** The representation, covenants, warranties, and indemnifications contained in the paragraph shall survive the termination of this Sublease.

The rights and obligations of Sublandlord and Subtenant to each other under this Sublease shall be the rights and obligations of the Owner and Sublandlord to each other under the Master Lease with respect to the Premises, which is incorporated herein by reference, except for those provisions in the Master Lease which are directly contradicted by this Sublease (in which event the terms of this Sublease shall control over the Master Lease).

1.04 Subtenant shall defend, indemnify, and hold harmless Sublandlord and Owner from any and all liabilities (including strict liability), actions, demands, penalties, losses, or costs of any settlement or judgment and claims of any kind whatsoever which may now or in the future be paid, incurred, or suffered by, or asserted against Sublandlord by any person or entity or government agency for, with respect to, or as a direct or indirect result of, the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission, or release from the Premises of any hazardous materials or any hazardous materials contamination, or arise out of or result from the

environmental condition of the Premises or the applicability of any governmental requirements relating to hazardous materials (including, without limitation to, CERCLA or any federal, state, or local so-called "Superfund" or "Superlien" laws, statute, law, ordinance, code, rule, regulation, order, or degree), caused by or within the control of Subtenant. The representation, covenants, warranties, and indemnifications contained in the paragraph shall survive the termination of this Sublease.

1.05 In case any person or entity to whom any sum is directly payable by Subtenant under any of the provisions of this Sublease shall refuse to accept payment of such sum from Subtenant, Subtenant shall thereupon give written notice of such fact to Sublandlord and shall pay such sum directly to Sublandlord at the address specified in Section 3.04 hereof (or such other address as Sublandlord may designate in writing), and Sublandlord shall thereupon pay such sums to such person or entity.

1.06 This Sublease is not an assignment of the Master Lease by Sublandlord to Subtenant, and Subtenant does not assume and shall not be liable to any person or entity for obligations arising under the Master Lease or this Sublease with respect to any period not included in the Term of this Sublease.

1.07 Sublandlord hereby authorizes Subtenant to deal directly with the Owner and any other Interested Party with respect to any and all matters arising under the Master Lease; provided that Subtenant shall keep Sublandlord apprised, in a timely fashion, of all such dealings.

1.08 Notwithstanding anything in this Sublease to the contrary, Subtenant shall not have the benefit of nor be entitled to any holdover provisions and rights set forth in the Master Lease.

1.09 Subtenant does not assume or agree to perform, pay, or discharge the following matters in the Master Lease, except to the extent that any matter is caused by the acts or omissions of Subtenant: (i) any fines, penalties, late charges, costs, or interest on delinquent amounts that may be due under the Master Lease; (ii) any obligation to remove or discharge any mechanics liens or make payment therefor; (iii) any liability or obligation with respect to accelerated rent or any other amounts attributable to any period not included in the Term of this Sublease; (iv) any obligation for taxes, impositions, or additional rent not accruing during the Term of this Sublease; (v) any environmental covenants and any obligation to replace, repair, or restore any condition caused by a casualty, condemnation, or a breach of an environmental covenant or to expend any funds in excess of insurance proceeds therefor, nor shall any provision of the Master Lease restrict in any way Subtenant's right to terminate this Sublease as provided herein; (vi) any obligation to indemnify, defend, or hold harmless another party except as expressly provided in this Sublease; and (vii) any obligation concerning any real or personal property that is, or may in the future be, a part of the leased property under the Master Lease or subject thereto other than the Premises. Subtenant does not hereby grant or consent to any security interest or encumbrance in any of its income, accounts receivable, or revenue derived from the operation of the Premises during the Term of this Sublease, any of its personal property not located at the Premises, or any resident records, admission agreements, and provider agreements regarding the Premises. Sublandlord agrees to provide Subtenant with a copy of any and all notices of default that may be received pursuant to the Master Lease or from any lender under any credit agreement or loan agreement, each such copy to be delivered within seven (7) days of Sublandlord's receipt.

1.10 Beginning on the Commencement Date, Subtenant shall pay, or cause to be paid, to Sublandlord an annual rent in the fixed amount of TWO THOUSAND EIGHT HUNDRED SIXTY and 00/100 Dollars (\$2,860.00) per year, payable in advance with the first annual base fee to be divided equally between Sublandlord and Subtenant with each Party paying ONE THOUSAND FOUR HUNDRED THIRTY and 00/100 Dollars (\$1,430.00), which sum shall be due within five (5) calendar days of the execution of this Sublease. On or before the anniversary of each new term thereafter, Subtenant shall be responsible for the full annual rent in the amount of TWO THOUSAND EIGHT HUNDRED SIXTY and 00/100 Dollars (\$2,860.00) ("Base Rent") which shall be paid by Sublandlord. Within five (5) days after the Base Rent is paid by Sublandlord, Subtenant shall reimburse Sublandlord the amount of the Base Rent. Subtenant shall also pay any Additional Rent due under the Master Lease with respect to the Premises (collectively with the Base Rent, the "Rent"). Subtenant agrees and acknowledges that Base Rent may escalate annually pursuant to the terms and provisions of the Master Lease.

1.11 The term of this Sublease shall commence on March 12, 2021 (the "Commencement Date"), and continue until March 12, 2022 unless sooner terminated in accordance with the provisions hereof (the "Initial Term"). The Parties may extend the Sublease for successive one (1) year periods ("Extended Terms") if the Parties agree in writing at least sixty (60) days prior to the expiration of the Initial or any Extended Term; provided, however, this Sublease shall not extend beyond the term of the Master Lease (as such term may be extended pursuant to the terms and provisions of the Master Lease). The Initial Term and all Extended Terms, if any, are referred to herein as the "Term."

1.12 Sublandlord represents and warrants that it has full right and authority to enter into this Sublease. Subtenant, while fully performing Subtenant's covenants and agreements set forth herein, shall quietly have, hold and enjoy the Premises for the term of this Sublease without interference from Sublandlord, subject to the terms and conditions of this Sublease and the Master Lease.

1.13 Subtenant shall obtain all licenses and permits necessary for Subtenant's use of the Premises. Subtenant shall operate the Premises in compliance with all applicable federal and state statutes, ordinances, rules, regulations, orders, covenants, conditions and restrictions of record, and requirements in effect.

1.14 If either Party fails to keep, perform or observe any of its covenants, agreements, terms or provisions contained in this Sublease, then the other Party's sole and exclusive remedy shall be to terminate this Sublease as provided in Section 2 of this Sublease, in which event Subtenant shall surrender possession of the Premises in accordance with Section 2.03; **provided, however,** that the foregoing limitation shall not apply to enforcement of: (i) Subtenant's indemnification obligations set forth in Section 1.02 of this Sublease or (ii) Sublandlord's obligations set forth in Sections 2.01(b) and 2.01(c) of this Sublease.

1.15 A. During the Term, Subtenant will carry, at its own cost and expense, the following insurance: (i) workers' compensation insurance as required by law; and (ii) commercial general liability (CGL) insurance with respect to its activities on the Premises, such insurance to afford protection of up to One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) general aggregate, based on Insurance Services Office (ISO) Form CG 00 01

or a substitute form providing substantially equivalent coverage. Subtenant's CGL insurance shall contain a provision including Sublandlord as an additional insured. Such policies shall be endorsed to provide a Waiver of Subrogation in favor of Sublandlord. All insurance shall be placed with insurance companies licensed to do business in the state of Texas, with a current Best's Insurance Guide Rating of A- and Class VIII, or better. All coverages shall be primary and non-contributory to any insurance coverages maintained by Sublandlord.

B. Subtenant shall cause all such policies of insurance to comply with the following and be specifically endorsed as follows:

(i) The Sublandlord and its respective past and present officials, officers, employees and agents shall be named as additional insureds, or loss payees as the case may be, except with respect to the professional liability policies and workers compensation insurance;

(ii) All insurance policies shall be endorsed to the effect that the Sublandlord will receive at least sixty (60) days written notice prior to cancellation or non-renewal of the insurance (except that if such insurance is canceled for non-payment of premium, such notice shall be ten (10) days.);

(iii) All insurance policies shall be endorsed to require the insurer to immediately notify the Sublandlord of any material change in the insurance coverages; and

(iv) Subtenant may maintain reasonable and customary deductibles, subject to approval by Sublandlord.

C. All insurance must be written on forms filed with and approved by the Texas Department of Insurance. Certificates of insurance, evidencing all coverage above, shall be prepared and executed by the insurance company or its authorized agent, promptly delivered to Sublandlord and updated as may be appropriate, and shall:

(i) List each insurance coverage described and required herein. Such certificates will also include a copy of the endorsements necessary to meet the requirements and instructions contained herein; and

(ii) Specifically set forth the notice-of-cancellation or termination provisions to the Sublandlord.

Section 2 Termination.

2.01 (a) This Sublease may be terminated:

(1) by mutual agreement of the Parties;

(2) with cause on thirty (30) days written notice to the non-terminating Party for such Party's failure to keep perform or observe any of its covenants, agreements, terms or provisions contained in this Sublease and such failure is not cured within the notice period;

(3) without cause, by either Party upon sixty (60) days written notice to the other Party;

(4) by Sublandlord upon thirty (30) days prior written notice to Subtenant if Sublandlord or Owner receives any notice of default from Owner and such Owner directs Sublandlord to terminate this Sublease;

(5) upon termination of the Master Lease; or

(6) as otherwise provided in the Master Lease.

2.02 Notwithstanding anything else to the contrary, if the Master Lease expires or terminates for any reason, then this Sublease shall simultaneously terminate.

2.03 If either Party notifies the other of its intention to terminate, or not to renew, this Sublease or if this Sublease would otherwise expire as provided herein, the following provisions shall be effective:

(a) Upon the expiration or any termination of this Sublease, including by reason of default, Subtenant at its expense shall, at the option of Sublandlord, or Owner; remove any and all structures, buildings, tanks, foundations and improvements not owned by Sublandlord, or Owner, regardless of whether or not such were placed on the Premises by Sublandlord, Owner or others; remove all debris and rubble; and, full and level any and all excavated areas of the Premises, all within thirty (30) days following the expiration or any termination of this Sublease, and surrender the Premises to the possession of Sublandlord, or Owner in a condition satisfactory to Sublandlord, or Owner, normal wear and tear excepted.

(b) In the event Subtenant fails to remove such structures and other property within thirty (30) days of the expiration or termination of this Sublease, Sublandlord at its option, may remove such structures and other improvements and Subtenant hereby agrees to reimburse Sublandlord for the reasonable expense thereof within thirty (30) days from receipt of Sublandlord's invoice for such costs.

Section 3. Miscellaneous.

3.01 In the event that any Party to this Sublease brings suit to enforce any provision of this Sublease or is required to defend any action, the defense to which is any provision of this Sublease, the unsuccessful Party agrees to pay to the prevailing Party its actual third-party costs and reasonable attorneys' fees.

3.02 This Sublease is made and entered into in the State of Texas, and shall in all respects be interpreted, enforced, and governed by and under the laws of that State, without reference to principles of conflict of laws.

3.03 This Sublease together with the Master Lease, and any subsequent amendments, contain the entire agreement and understanding between the Parties concerning the subject matter hereof, and supersedes and replaces all prior negotiations, proposed agreements, and agreements, whether written, oral or implied. Each of the Parties hereto acknowledges that no other party, nor

any agent or attorney of any other party, has made any promise, representation, or warranty whatsoever, express or implied, not contained herein concerning the subject matter hereof, to induce it to execute this Sublease in reliance upon any such promise, representation, or warranty not contained herein.

3.04 All notices to be given by any Party to this Sublease to the other Parties hereto or thereto shall be in writing, and shall be (a) given in person, (b) deposited in the United States mail, certified or registered, postage prepaid, return receipt requested, or (c) sent by national overnight courier service with confirmed receipt, each addressed as follows:

If to Sublandlord: City of Denison
Post Office Box 347
Denison, TX 75021
Attention: City Manager

Copy to:
Messer, Fort & McDonald, PLLC
6371 Preston Road, Suite 200
Frisco, TX 75034
Attention: Julie Fort

If to Subtenant: Homeless Empowerment Action Team (HEAT)
1030 W Crawford Street
Denison, TX 75020
Attn: President Barbara Bailey

Copy To:
Homeless Empowerment Action Team (HEAT)
P.O. Box 822
Denison, TX 75021
Attn: Debbie Kempe

3.05 Whenever in this document the context may so require, the masculine gender shall be deemed to refer to and include the feminine and neuter, and the singular to refer to and include the plural.

3.06 This Sublease may not be modified except by a writing signed by all Parties hereto and the written consent of each Interested Party.

3.07 Each of the Parties hereto agrees to undertake commercially reasonable efforts, including all steps and efforts contemplated by this Sublease, and any other steps and efforts which may become necessary by order or otherwise, to effectuate this Sublease, including, without limitation, the preparation and execution of any documents reasonably necessary to do so.

3.08 The Parties may execute this Sublease in two or more counterparts which shall, in the aggregate, be signed by all of the Parties; each counterpart shall be deemed an original instrument as against any Party who has signed it.

3.09 If any provision of this Sublease or the application thereof to any person or circumstance shall to any extent be finally determined by the applicable fact finder to be invalid or unenforceable, the remainder of this Sublease, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby and each provision of this Sublease shall be valid and enforceable to the fullest extent permitted by law.

3.10 Subtenant shall not directly or indirectly assign, pledge or permit any lien on this Sublease or any interest therein. Subtenant shall not sublet or permit any other person to occupy all or any portion of the Premises without Sublandlord's prior written consent, which may be withheld in Sublandlord's sole and absolute discretion.

1. Subtenant agrees to execute and deliver from time to time, upon the request of Sublandlord or an Interested Party, a certificate regarding the status of the Sublease, consisting of statements, if true (or if not, specifying why not), (a) that the Sublease is in full force and effect, (b) the date through which rentals have been paid, (c) the nature of any amendments or modifications of the Sublease, (d) that to the best of Subtenant's knowledge, no default, or state of facts which with the passage of time or notice (or both) would constitute a default, exists under the Lease, (e) that to the best of Subtenant's knowledge, no setoffs, recoupments, estoppels, claims or counterclaims exist against Sublandlord, and (f) such other matters as may be reasonably requested.

2. As a condition precedent to the effectiveness of this Sublease and of Subtenant's obligations hereunder, each of the following shall have been satisfied: (i) Subtenant shall have obtained all licenses and permits, effective as of the Commencement Date, necessary to allow it to legally perform its obligations under this Sublease; (ii) no suit, action or proceeding shall be pending in any court or before any governmental administrative body seeking to enjoin or otherwise prevent the consummation or performance of this Sublease by either Party; and (iii) all governmental authorizations, consents and approvals, if any, necessary to legal consummation of this Sublease shall have been obtained, effective as of the Commencement Date.

3. Venue in any judicial proceeding in regard to this Sublease shall lie in Grayson County.

4. The Parties agree that the Sublandlord has not waived its sovereign immunity by entering into and performing its obligations under this Sublease.

3.15 The Parties acknowledge that Subtenant may not enter into a contract with a company for goods and services unless the company verifies in writing that it does not boycott Israel and will not boycott Israel during the term of this Sublease. Pursuant to Section 2270.002,

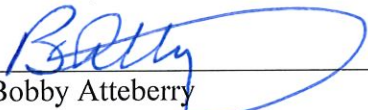
Texas Government Code, Subtenant verifies that it does not boycott Israel and will not boycott Israel during the term of this Sublease. For the purposes of this Sublease, "boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended 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.

Signature Page Follows

IN WITNESS WHEREOF, the Parties have executed or caused the execution of this Sublease by their respective officers duly authorized as of the day and year first above written.

SUBLANDLORD:

City of Denison, Texas

By: 
Bobby Atteberry
Its: Interim City Manager

SUBTENANT:

Homeless Empowerment Action Team (HEAT), a Texas nonprofit corporation


By: 
Name: Barbara Bailey
Its: President of Homeless Empowerment Action Team

Exhibit A
Premises



THE CITY OF DENISON
DENISON INDUSTRIAL SUBDIVISION
MP 659.76 LAT/LONG 33.753638,--96.550553
6,170 SQUARE FEET OF LAND █

NOT TO SCALE

Exhibit B
Master Lease

EXHIBIT B
MASTER LEASE

LAND LEASE

THIS LAND LEASE AGREEMENT (the "Agreement"), made this 12 day of March, 2021, between **TEXAS NORTHEASTERN RAILROAD, A division of Mid-Michigan Railroad, Inc.**, hereinafter referred to as "Railroad" or as "Party" or collectively with Lessee as "Parties", whose address is **C/O Genesee & Wyoming Railroad Services, Inc., 13901 Sutton Park Dr. South, Suite 270, Jacksonville, FL 32224** and **THE CITY OF DENISON**, hereinafter referred to as "Lessee" or as "Party" or collectively with Lessor as "Parties", whose address for the purposes of this Agreement is **POST OFFICE BOX 347, DENISON, TX 75021**.

WITNESSETH:

Section 1. LOCATION/DESCRIPTION.

In consideration of rent or fees or other sums of money hereinafter agreed to be paid by Lessee to Railroad, and of the covenants, agreements and undertakings of Lessee, as hereinafter set forth, Railroad hereby leases to Lessee, subject to the rights and uses hereinafter excepted and reserved, the following described property, hereinafter referred to as "Premises", in DENISON, County of GRAYSON, State of TX, for the purpose of using Railroad's lands, as outlined in Exhibit A, for a Homeless Shelter, which will provide meals, 3 showers, 3 washers and 3 dryers for consumption and/or use by the homeless, and no other purpose whatsoever, to wit:

That 6,170 square feet parcel of land located thereon at milepost 659.76, DENISON INDUSTRIAL Subdivision, City of DENISON, County of GRAYSON, State of TX, as shown on the print marked Exhibit "A", attached hereto and made a part hereof.

Lessee hereby undertakes and agrees:

Section 2. INSPECTION / USE.

(a) Lessee has thoroughly inspected the Premises, and is familiar with its condition, and hereby accepts the Premises, "As Is" in its present condition. Railroad is not obligated by this Agreement to make any changes, removal, or improvements of any nature.

(b) Lessee shall use the Premises only for the purpose specified hereinabove and for no other purpose whatsoever.

Section 3. ANNUAL BASE FEE (RENT).

(a) Lessee shall pay Railroad an annual base fee for the use of the Premises in the amount of TWO THOUSAND ONE HUNDRED and 00/100 Dollars (\$2,100.00) per year, payable in advance ("Annual Base Fee"). The first Annual Base Fee shall be paid prior to Lessor's execution of this Agreement. Subsequent Annual Base Fees shall be paid annually and 30 days in advance of each anniversary date of this Lease Agreement. For the avoidance of doubt, the anniversary date of this Lease Agreement will be established annually based on the effective date of this Lease Agreement. Lessee shall pay to Railroad an additional sum of money equal to one and one half (1 ½%) percent per month of the total unpaid annual base fee stated above, in the event said annual base fee is not received by Railroad within thirty (30) days from the date it is due and payable.

(b) RAILROAD reserves the right to adjust the annual base fee on each anniversary date of this Agreement, or at such other times as conditions warrant. Billing or acceptance by Railroad of any annual base fee shall not imply a definite term or otherwise restrict either Party from canceling this Agreement as herein provided.

(c) Payment of any annual base fee in advance by Lessee to Railroad shall not create an irrevocable lease for the period for which the rent is paid. Failure of Lessee to receive any bill or invoice for periodic rent, or receipt of a bill or invoice in an incorrect or unadjusted rent, shall neither override the Agreement terms nor excuse or release Lessee from liability or responsibility for the correct contract rent.

(d) In addition to any other considerations herein contained, Lessee agrees to pay to Railroad the sum of ONE THOUSAND and 00/100 Dollars (\$1,000.00) to partially defray Railroad's administrative handling costs in preparing this Agreement.

Section 4. TERM/TERMINATION.**4.1 TERM.**

The term of this Agreement shall commence on March 12, 2021 and unless sooner terminated as hereinafter provided, shall continue in force until either Party exercises its rights to terminate earlier in accordance with Section 4.2(a) or any other provision herein.

4.2 TERMINATION.

(a) Either Party has the right to terminate this Agreement by giving the other Party thirty (30) days written notice of an intention to terminate; with or without cause and regardless of performance or non-performance of any covenants and agreements contained herein and regardless of fees having been paid in advance for any period and without regard to any loss or damage incurred by either Party as a result of such termination or cancellation; said Agreement to terminate upon the expiration of said thirty (30) days' written notice.

(b) Upon the expiration or any termination of this Agreement, including by reason of default, Lessee at its expense shall, at the option of Railroad; remove any and all structures, buildings, tanks, foundations and improvements not owned by Railroad, regardless of whether or not such were placed on the Premises by Lessee or others; remove all debris and rubble; and, full and level any and all excavated areas of the Premises, all within thirty (30) days following the expiration or any termination of this Agreement, and surrender the Premises to the possession of Railroad in a condition satisfactory to Railroad, normal wear and tear excepted.

(c) In the event Lessee fails to remove such structures and other property within thirty (30) days of the expiration or termination of this Agreement, Railroad at its option, may either consider the structures and other improvements as abandoned by Lessee and same shall be deemed as part of the realty and title of such shall be vested in Railroad; or, Railroad may, at any time within one (1) year from the expiration or termination of this Agreement, remove such structures and other improvements and Lessee hereby agrees to reimburse Railroad for all verifiable expenses thereof within thirty (30) days from receipt of Railroad's invoice for such costs.

Section 5. INDEMNITY/LIABILITY.

(a) Lessee acknowledges that the Premises are in dangerous proximity to railroad tracks and that persons and property on the Premises are in constant danger of injury, death or destruction, including damage by fire, incident to the operation of the railroad tracks, whether by Railroad or others, and Lessee accepts this Agreement subject to such dangers.

(b) Except as otherwise provided in sub-section (d) of this section, and to the extent permitted by law, Lessee hereby assumes all liability and all risks of and agrees to release, indemnify, hold harmless and forever discharge Railroad, its parents, affiliates and subsidiaries, and the respective shareholders, directors, officers and employees of each (hereinafter collectively the "Railroad Indemnitees"), from and against any and all claims, demands, causes of actions, suits, and liability of every kind (including reasonable attorneys' fees, court costs and other expenses related thereto) for loss, injury or damages of any kind or nature whatsoever to any buildings, other structures or appurtenances thereto, belonging to Lessee, or to others, or to goods, merchandise, chattels or to the contents of such buildings or structures, or any other property that may be now or hereafter placed upon said Premises, or on land adjoining or adjacent thereto, and which are at the time used in connection with any buildings or structures on said Premises, UNLESS such loss, injury or damage be caused directly by the gross negligence of the Railroad Indemnitees; PROVIDED HOWEVER, that if any such loss, injury or damage aforesaid shall arise from fire, theft, or other casualty, which can be insured against, then Lessee assumes the risks thereof, and shall protect, and indemnify the Railroad Indemnitees as herein provided, regardless of whether same shall be caused or contributed to by the gross negligence of the Railroad Indemnitees, or otherwise.

(c) Except as otherwise provided in sub-section (d) of this section, and to the extent permitted by law, Lessee hereby assumes all liability and all the risks of and agrees to release, indemnify, hold harmless and forever discharge the Railroad Indemnitees from and against any and all claims, demands, losses, causes of actions, suits, and liability of every kind (including reasonable attorneys' fees, court costs and other expenses related thereto) for injury to or death of himself and of any persons in his or its employ, and of all persons whomsoever who may be on or about said Premises, or on land adjoining or adjacent thereto, UNLESS such injury or death be caused directly by the gross negligence of the Railroad Indemnitees .

(d) To the extent permitted by law, Lessee assumes the risks of and agrees to release, indemnify, hold harmless and forever discharge the Railroad Indemnitees from and against any and all claims, demands, losses, causes of actions, suits, and liability of every kind (including reasonable attorneys' fees, court costs and other expenses related thereto) for injury to or death of himself, and all persons whomsoever, and of loss or damage to property whosoever growing out of the presence, loading or unloading or tank cars upon or adjacent to the Premises, or the handling or storage upon or about said Premises of any goods of an explosive, dangerous or flammable nature, whether in compliance with or in violation of this Agreement, regardless of whether same be caused or contributed to by the negligence of the Railroad Indemnitees

(e) The risks of injury to or death of persons and loss or damage to property herein assumed by Lessee, as herein defined, shall include, but shall not be limited to, loss or damage to property of either of the Parties hereto, and injury to contractors, sublessees, licensees, or invitees of either of the Parties hereto, and whether or not such injury to or death of persons shall arise under any Workmen's Compensation Act or Federal Employers' Liability Act.

(f) TO THE EXTENT PROVIDED BY LAW, LESSEE, FOR HIMSELF, OR ITSELF, AND FOR HIS, OR ITS HEIRS, SUCCESSORS, ASSIGNS, OFFICERS, AGENTS, CONTRACTORS, AND EMPLOYEES, DOES HEREBY AGREE TO PROTECT, DEFEND AND INDEMNIFY THE RAILROAD INDEMNITEES FROM, AND TO REIMBURSE THE RAILROAD INDEMNITEES FOR, ANY AND ALL LIABILITY AND DAMAGES ARISING OUT OF THE RISKS HEREIN ASSUMED BY LESSEE, INCLUDING CLAIMS, JUDGMENTS, COSTS, ATTORNEY'S FEES, AND ALL OTHER EXPENSES INCURRED BY THE RAILROAD INDEMNITEES IN DEFENSE OF ANY CLAIMS, CAUSES OF ACTION, OR JUDGMENTS ARISING FROM ANY LIABILITY ASSUMED BY LESSEE HEREIN. THE INDEMNITIES PROVIDED IN THIS AGREEMENT ARE SPECIFICALLY INTENDED TO INCLUDE INDEMNITY OF THE RAILROAD INDEMNITEES FROM THEIR OWN ORDINARY NEGLIGENCE, EVEN IF THE INJURY OR DAMAGE IS CAUSED ENTIRELY BY THE ORDINARY NEGLIGENCE OF THE RAILROAD INDEMNITEES AND THERE IS NO NEGLIGENCE ON THE PART OF THE LESSEE. THE INDEMNITY OBLIGATIONS OF THIS AGREEMENT SHALL NOT BE LIMITED IN ANY WAY BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION, OR BENEFIT AVAILABLE UNDER WORKERS' OR WORKMEN'S COMPENSATION ACTS, DISABILITY ACTS OR ANY OTHER EMPLOYEE BENEFIT ACT.

Section 6. TAXES.

The Parties agree that the Lessee is a tax-exempt political subdivision of the state; provided, however, if applicable, the Lessee shall:

(a) Pay and continue to pay during the term of this Agreement, all taxes, before such become delinquent, which may become due or which may be levied on or assessed against the Premises or on any buildings or improvements thereon by any taxing jurisdiction or authority, or to reimburse Railroad, as additional annual fee, and within thirty (30) days from receipt of Railroad's invoice, for any such taxes which have been paid by Railroad. However, in the event that taxes are levied on or against the Premises as a component part of all of Railroad's property within a particular taxing jurisdiction, and if Railroad is unable to specifically identify and such taxes applicable to the Premises, then Railroad shall pay such taxes; and/or

(b) Make any and all renditions, listings, filings or other required duties and to pay all taxes, special or general, which may be levied on or assessed against any property or improvements located or placed on the Premises which are owned or under the control of the Lessee.

Section 7. MAINTENANCE.

Lessee agrees to maintain the Premises and improvements, if any, in a safe, sanitary, and neat condition satisfactory to Railroad, including the mowing of grass and landscaping of trees and shrubs.

Section 8. SUCCESSORS/ASSIGNS.

(a) This Agreement and all of the provisions, covenants and agreements herein contained shall be binding upon the Parties hereto, their heirs, executors, administrators, successors and assigns, and Lessee agrees to supply in writing to Railroad notice of any name changes. Excepting Homeless Empowerment Action Team (HEAT), a domestic nonprofit corporation, which Railroad has approved as a sublessee of Lessee under this Agreement, Lessee shall not sublease the Premises, or any part thereto, or assign this Agreement or interest therein, or sell any of Lessee's improvements located on the Premises, without the prior written consent of Railroad expressed in writing, , and any and every attempted subletting or assignment without such prior written consent shall be void and of no effect.

(b) In the event of any assignment of subletting consented to by Railroad, Lessee shall at all times remain fully responsible and liable for the payment of all fees herein specified, and for the compliance of all of its other obligations under the terms, provisions and agreements of this Agreement.

(c) This Agreement is personal to the Lessee and shall not inure to the benefit of any receiver, trustee, or other officer, or of any assignee for the benefit of any creditors, as an asset of Lessee, but shall cease and terminate upon the appointment of any such receiver, trustee, or other officer, or making of any such assignment.

Section 9. ENVIRONMENTAL.

(a) Notwithstanding any other provision of this Agreement, Lessee shall comply with any and all laws, statutes, ordinances, rules, regulations, orders, decisions, including the Resource Conservation and Recovery Act (RCRA), as amended or supplemented, and the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), as amended or supplemented (hereinafter collectively referred to as "Standards"), issued by any federal, state or municipal governmental body or agency established thereby (hereinafter referred to as "Authority"), relating to the use of the Premises by Lessee, its contractors, sublessees, licensees, or invitees.

(b) Lessee, in its use of the Premises, shall not create or permit any condition on the Premises that could present a threat to human health or to the environment. Lessee shall at all times be in full compliance with all Standards, present or future, set by any Authority, including but not limited to, Standards concerning air quality, water quality (surface or underground), noise, hazardous substances and hazardous waste(s).

(c) In the event Lessee is notified by any Authority of its non-compliance with any Standards, Lessee shall, without fail, immediately notify Railroad in writing of such non-compliance or, if Railroad is notified of such non-compliance and, Lessee, within thirty (30) days of its receipt of any notice, by Railroad or any Authority, shall take whatever action is necessary in order to bring the Premises into compliance.

(d) To the extent permitted by law, Lessee shall assume all liability for and shall protect, indemnify and hold harmless the Railroad Indemnitees from and against, any and all claims, costs, fines, judgments, penalties, suits and attorney's fees growing out of any violation of any Standards, regardless of the nature thereof or the Authority or person asserting such claim, which results from Lessee's use of the Premises or use of the Premises by Lessee's contractors, sublessees, licensees, or invitees, whether such claim arises in whole or in part from the negligence or alleged negligence of the Railroad Indemnitees or otherwise.

(e) In the event Railroad incurs any cost in bringing the Premises into compliance, (including but not limited to consulting, engineering, clean-up, disposal and legal costs), in abating a violation by Lessee, its contractors, sublessees, licensees, or invitees of any Standards, in protecting against a threatened violation by Lessee, contractors, sublessees, licensees, or invitees of any Standards, in defending any claim of violation by Lessee, contractors, sublessees, licensees, or invitees of any Standards in any proceedings before any Authority or court, and/or in paying any fines or penalties imposed for such violation of Lessee, then Lessee shall reimburse Railroad for any and all said costs.

(f) Lessee expressly understands and agrees that the provisions of this section shall remain in full force and effect regardless of whether this Agreement is terminated pursuant to any other provision or whether the Premises are vacated by Lessee. Lessee agrees that the statutory limitations periods on actions to enforce the provisions of this section shall not be deemed to commence until Railroad discovers or is notified of any violation, or alleged violation, by Lessee, its contractors, sublessees, licensees, or invitees of any Standards, and Lessee hereby knowingly and voluntarily waives the benefits of any shorter limitation period.

Section 10. NOTIFICATION.

CASUALTY. In the event any buildings, structures or other improvements located upon the Premises and not belonging to Railroad, shall at anytime during the term of this Agreement be damaged or destroyed in whole or in part, Lessee shall give Railroad immediate written notice of such occurrence, and Lessee shall have ninety (90) days thereafter in which to rebuild same, in accordance with plans approved by Railroad; or Lessee shall within thirty (30) days remove all debris and rubbish, including the demolition of any unusable portions of structures resulting from above stated casualties; and in the event Lessee fails to do so, then Railroad may terminate this Agreement at its option, HOWEVER, Lessee shall remain fully responsible for the costs and expense in clearing and cleaning the Premises.

Section 11. DEFAULT/BREACH.

(a) In the event Lessee shall default in the payment of any fees, tax or other reimbursements provided for herein, late payment penalties, return check charges, or other sums due by Lessee, or upon breach or violation of any of Lessee's other covenants, agreements, undertakings, provisions, terms, applicable laws, or conditions herein contained, Railroad may, at Railroad's option, either immediately terminate this Agreement, assert its landlord's lien rights, and enter into and on and possess the Premises together with all Lessee's property thereon, with or without process of law, and may remove therefrom Lessee and all persons occupying the Premises or any part thereof, using such force as may be necessary for that purpose; or Railroad may require Lessee to remove all of Lessee's property from the Premises within twenty (20) days following receipt of termination notice. Failure of Railroad to enforce one or more of the remedies herein provided upon an event of default, shall not be construed to constitute a waiver of such default. In addition, Railroad reserves the right to avail itself of any and all rights and remedies available to it by operation of law or equity and any proceeding by the appropriate court action to enforce performance by Lessee at anytime of the applicable covenants of this Agreement or to secure damages for the breach thereof including reasonable attorney's fees. Railroad may waive any default of Lessee at anytime without affecting or impairing any rights arising from any subsequent default. Lessee agrees to reimburse Railroad for the costs of any claims, suits, judgments, costs, verifiable attorney's fees, court costs and all other related expenses incurred by Railroad arising from or growing out of Lessee defaulting in any of the terms of this Agreement. No action or proceeding by Railroad under this paragraph shall in any manner release or discharge the covenants, agreements, and undertakings of Lessee of any of the obligations, risks, or duties herein assumed by Lessee which may have accrued as of the date of any default.

(b) Lessee understands and agrees that Railroad shall not be required to make formal demand or give notice for any due and unpaid fees or for the curing of and default hereunder before declaring this Agreement terminated or before asserting its rights to avail itself of any remedies contained herein, either at law or equity, and Lessee does hereby expressly waive any rights to receive such demand or notice.

Section 12. RESERVED.

Section 13. FENCING.

(a) The Parties acknowledge and agree that fencing is necessary to separate the use of the Premises by Railroad and Lessee agrees to install such fencing according to the following specifications:

- (1) Three (3) feet offset from building; and
- (2) No closer than twenty (20') feet from nearest rail centerline.

(b) During the term of this Agreement, Lessee shall maintain, repair and/or replace said fence at Lessee's sole cost and expense.

Section 14. INSURANCE.

The Lessee, at its expense, shall obtain the insurance described in Exhibit B hereto attached and hereby made a part hereof.

Section 15. CLEARANCES.

Lessee agrees to maintain a minimum horizontal clearance of forty (40) feet from the centerline of any track situated upon the leased Premises.

Section 16. DRAINAGE.

16.1 Lessee shall maintain, in accordance with all applicable statutes, ordinances, building codes, subdivision covenants and restrictions, the existing drainage system on the Premises, including if necessary the diverting of all roof, stream, or other surface drainage water from the Premises to the nearest public or non-Railroad owned drainage or storm sewer system, in order to prevent the discharging of such waters upon adjacent lands, right-of-way and other property owned or controlled by Railroad.

16.2 If the Premises, including tracks thereon, or any portion thereof is part of Railroad's corridor or right-of-way, Lessee, during the term of this Agreement, shall maintain any segment of Railroad's drainage ditch located within the limits of Premises. Alternatively, Lessee shall install and maintain the drainage structures shown on attached Exhibit A to encase said drainage facility. All such installation and maintenance shall be at Lessee's sole cost and expense and in a manner satisfactory to

Railroad's Chief Engineer. After completion and such work has been inspected and approved by Railroad, Lessee may fill in and utilize the land over said installed drainage structures. Upon termination of this Agreement, if required by Railroad, Lessee shall remove said drainage structures and restore original open ditch in a manner satisfactory to said Chief Engineer.

Section 17. SERVICES, UTILITIES.

17.1 Railroad will be under no obligation to furnish the Premises with water, gas, sewage, electricity, heat, or other utility services and supplies that may be necessary or desirable in connection with Lessee's use and occupancy of the Premises. Lessee shall contract directly with any utility company for such services and supplies, and Lessee shall pay for the same directly, and, to the extent permitted by law, shall indemnify, defend and hold Railroad, its parents and affiliates harmless from such costs or expenses, and shall reimburse Railroad as additional rent any costs of or charges for such utilities paid by Railroad.

17.2 Lessee shall not use, for utility lines or otherwise, any property of Railroad other than the Premises without first obtaining Railroad's prior written consent, which shall not be unreasonably withheld, and complying with all requirements of Railroad applicable thereto.

Section 18. RESERVED.

Section 19. RESERVED.

Section 20. RESERVED.

Section 21. LIENS.

(a) LANDLORD'S LIEN.

Railroad shall have and is hereby given a lien, foreclosable according to the law, upon all buildings and structures erected and/or owned by Lessee on the Premises, and upon all of Lessee's property therein, or on the Premises, to secure payment of annual base fee or other amounts for which Lessee may be obligated to Railroad hereunder. Lessee may remove from the Premises any such buildings or structures erected on the Premises by Lessee at any time before the expiration or any termination of this Agreement, provided that Lessee be not at the time in default in the payment of rent, or in the performance of any obligation under this Agreement.

(b) LIENS.

(1) Lessee shall, when due and before any lien shall be attached to the Premises, if the same may be lawfully asserted, promptly pay any and all charges associated with Lessee's use and occupancy of the Premises, including but not limited to, water, light, gas, power, sewer and other utility services; any and all materials joined to or affixed to the Premises or improvements located thereon; any and all taxes or assessments; and, any and all labor costs to persons who perform labor upon the Premises.

(2) Lessee agrees that it will not allow, permit, or suffer any mechanics lien, materialman's lien of any kind or nature to be filed or asserted or enforced against the Premises or which in any way may affect Railroad's right, title and interest in and to the Premises. Railroad is hereby authorized to post any notices or take any other action upon or with respect to the Premises that is or may be permitted by law, to prevent the attachment of any such lien(s) to the Premises, PROVIDED HOWEVER, that the failure of Railroad to take any such action shall not relieve Lessee of any obligation or liability connected to any such lien(s).

(3) Lessee shall cause any such lien to be released within fifteen (15) days from the date such lien is asserted, claimed or filed and failure to do so shall constitute a default hereunder; and Lessee agrees to indemnify, hold harmless and defend Railroad from and against any and all losses, claims, judgments, expenses and damages connected or growing out of such lien(s).

Section 22. LEGAL NOTICES.

Any notices hereunder to be given by Railroad to Lessee shall be deemed to be properly given if, served upon or delivered to Lessee or his authorized representative, or if deposited in the United States mail, postage prepaid and addressed to Lessee at his last known place of business. Any notice hereunder to be given to Railroad by Lessee shall be deemed to be properly given if the same be deposited in the United States mail postage prepaid, addressed to:

Lessee: **CITY OF DENISON**
Post Office Box 347
Denison, TX 75021
Attention: Jud Rex

Copy to:
Messer, Fort & McDonald, PLLC
6371 Preston Road, Suite 200
Frisco, TX 75034
Attention: Julie Fort

Railroad: **TEXAS NORTHEASTERN RAILROAD, A DIVISION OF MID-MICHIGAN RAILROAD INC.**
c/o Genesee & Wyoming Railroad Services, Inc.
Real Estate Department
13901 Sutton Park Drive South
Suite 270
Jacksonville, FL 32224

Copy to:
General Counsel
Genesee & Wyoming Inc.
20 West Avenue
Darien, CT 06820

Section 23. SPECIAL PROVISIONS.

23.1 IMMUNITY.

The Parties agree that the Lessee has not waived its sovereign or governmental immunity by entering into and performing its obligations under this Agreement.

23.2 RIGHT OF ENTRY.

Railroad and its duly authorized representative shall at all reasonable times, have the right of entry and free access to the Premises and every part thereof, for the purposes of inspecting the same to determine condition and to determine whether or not Lessee is using and occupying the Premises for the purpose and in a manner herein set forth, or enter in order to clear any derailment, or to restore service over any side, switch or main line track, or to construct, extend or repair any signals or side, switch or main line track, or for any reason whatsoever.

23.3 WAIVER.

Lessee waives the right to question the validity of this Agreement or any of the terms and provisions hereof, or the right or power of the Railroad to execute and enforce this Agreement. This Agreement is made without covenant on the part of the Railroad to warrant its title to the Premises, or to give or to defend Lessee in the peaceful possession of the Premises and Lessee shall waive all right to claim damages in the event Lessee shall be evicted, ejected or required to surrender possession of the Premises by anyone owning or claiming title to or any interest in the Premises, or by reason of failure of title of Railroad, or for any other cause whatsoever.

23.4 ASSESSMENTS.

During the term of this Agreement, should the Premises be subject to an assessment in relation to any new construction, maintenance, repair or renewal of any public or municipal improvements, including but not limited to, street, sidewalk, paving, curbing, guttering, drainage, landscape and/or utilities or which the cost in whole or in part, is assessed against or is reasonably assignable to the Premises, then Railroad, at its option may require Lessee to pay the entire cost of the assessment against or assignable to the Premises, or, increase the annual fee then in effect at a rate equivalent to 12 1/2%, per annum, of the total cost assessed or assignable to the Premises.

23.5 HOLDOVER.

Should Lessee hold over the Premises or any part thereof, after the expiration of the term of this Agreement, unless otherwise agreed to in writing, such holding shall constitute and be construed as tenancy from month to month, at an annual base fee equal to the annual base fee payable for the last month of the term of his Agreement, or 1/12th of the annual base fee if the base fee is paid annually, plus fifty (50%) percent of such amount. The inclusion of the preceding sentence shall not be construed as Railroad's permission for Lessee to hold over, nor shall acceptance of any fees waive any accrued rights of Railroad or accrued liabilities of Lessee, or any default, termination or cancellation of this Agreement.

23.6 MISCELLANEOUS.

(a) The personal pronouns used herein as referring to Lessee shall be understood so to refer to Lessee whether Lessee be a natural person (one or more), a partnership, a corporation or any combination thereof, and all the covenants and agreements contained herein shall be the joint and several covenants and agreements of all such parties.

(b) No oral promises, oral agreements, or oral warranties shall be deemed a part of this Agreement, nor shall any alteration, amendment, supplement or waiver of any of the provisions of this Agreement be binding upon either Party hereto, unless same be supplemented, altered, changed or amended by an instrument in writing, signed by Railroad and Lessee.

(c) All obligations of Lessee hereunder to protect, indemnify and hold harmless the Railroad shall also extend to officers, agents, employees and/or contractors of Railroad, and to companies and other legal entities that control, are controlled by, are subsidiaries of or affiliated with the Railroad, their officers, agents, employees and/or contractors.

(d) This Agreement is made subject to the rights granted by or through Railroad for any surface, sub-surface or aerial uses antedating this Agreement, including but not limited to, the construction, maintenance, operation, renewal and/or relocation of fences, pipelines, communication lines, power lines, railroad tracks and signals, and any and all appurtenances applicable thereto. Railroad excepts and reserves the right to grant additional uses of the same or similar nature subsequent to the execution of this Agreement, without payment of any sum for damages, so long as such use does not unreasonably interfere with the use of Premises by Lessee for the purpose hereinbefore stated.

(e) Execution of this Agreement shall supersede and/or cancel any and all previous agreements, if any, related to the Occupancy and Use herein described, which may exist between the Parties or their predecessors.

23.7 VENUE. This Agreement shall be construed in accordance with the laws of the State of Texas and shall be performable in Grayson County, Texas.

23.8 HEADINGS. The headings of the Sections of this Agreement are inserted for convenience only and are not intended to govern, limit or aid in the construction of any term or provision of this Agreement.

23.9 CONSTRUCTION TERMS. The terms of this Agreement have been arrived at after mutual negotiation and, therefore, it is the intention of the Parties that its terms not be construed against any of the Parties by reason of the fact that it was prepared by one of the Parties.

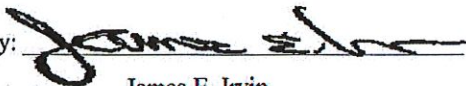
[Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

Witness:

Dawn Davis-Carpenter

TEXAS NORTHEASTERN RAILROAD, A DIVISION OF MID-MICHIGAN RAILROAD INC.

By: 

Print Name: James E. Irvin


Print Title: President

Date: March 12, 2021

Witness:



THE CITY OF DENISON

By: 

Print Name: Bobby Atzberry

Print Title: Interim City Manager

Date: 02/22/2021

Exhibit A
October 19, 2020



THE CITY OF DENISON
DENISON INDUSTRIAL SUBDIVISION
MP 659.76 LAT/LONG 33.753638,--96.550553
6,170 SQUARE FEET OF LAND

NOT TO SCALE

Exhibit B
LAND LEASE AGREEMENT
INSURANCE REQUIREMENTS

- (a) Lessee shall, at its expense, procure and maintain throughout the term of this Agreement, a comprehensive general form of insurance covering liability, including, but not limited to, Public Liability, Personal Injury, and Property Damage, as well as Contractual Liability in the amount of \$2,000,000 per occurrence and \$6,000,000 in the aggregate. Such policies shall be endorsed to provide Waiver of Subrogation in favor of Railroad and all its affiliated and parent companies, and Railroad and all its affiliated and parent companies shall be named as an Additional Insured. An Umbrella or Excess policy may be utilized to satisfy the required limits of liability under this section, but must "follow form" and afford no less coverage than the primary policy.
- (b) Lessee shall, at its expense, procure and maintain throughout the term of this Agreement, Statutory Workers' Compensation and Employers' Liability Insurance for its employees (if any) with minimum limits of not less than \$1,000,000 Bodily Injury by Accident, Each Accident; \$1,000,000 Bodily Injury by Disease, Policy Limit; \$1,000,000 Bodily Injury by Disease, Each Employee. Such policy shall be endorsed to provide a Waiver of Subrogation in favor of Railroad and all its affiliated and parent companies.
- (c) Lessee shall, at its expense, procure and maintain throughout the term of this Agreement, Commercial Automobile Insurance for all owned, non-owned and hired vehicles with a combined single limit of not less than \$1,000,000 for Bodily Injury and Property Damage Liability. Such policy shall be endorsed to provide Waiver of Subrogation in favor of Railroad and all its affiliated and parent companies, and name Railroad and all its affiliated and parent companies as Additional Insured.
- (d) All insurance shall be placed with insurance companies licensed to do business in the state in which the Track is located, with a current Best's Insurance Guide Rating of A- and Class VIII, or better. All coverages shall be primary and non-contributory to any insurance coverages maintained by Railroad. Lessee shall provide Railroad with, and thereafter maintain in effect, a current Certificate of Insurance, prior to commencement of this Agreement, evidencing such insurance, and such certificate of insurance must be endorsed to provide for coverage of incidents occurring within fifty (50) feet of a railroad track, and any provision in the insurance policy to the contrary must be specifically deleted. Each policy shall provide that it shall not be canceled or materially changed unless at least thirty (30) days' prior written notice of cancellation or change shall have been mailed by the insurance company to Railroad at the address designated herein.
- (e) The furnishing of insurance required by this Exhibit B shall in no way limit or diminish the liability or responsibility of Lessee as provided under any section of this Agreement.
- (f) If any policies providing the required coverages are written on a Claims-Made basis, the following shall apply:
- (1) The retroactive date shall be prior to the commencement date of this Agreement and shall not be advanced during the term of this Lease,
 - (2) Lessee shall maintain such policies on a continuous basis, and
 - (3) If there is a change in insurer or policies are canceled or not renewed, Lessee shall purchase an extended reporting period of not less than three (3) years after the termination of this Agreement.
 - (4) Lessee shall arrange for adequate time for reporting of any loss under this Agreement.
- (g) The above indicated insurance coverages shall be enforceable by any legitimate claimant after the termination or cancellation of this Agreement, or any amendment hereto, whether by expiration of time, by operation of law or otherwise, so long as the basis of the claim against the insurance company occurred during the period of time when the Agreement was in effect and the insurance was in force.
- (h) Failure to provide the required insurance coverages or endorsements (including contractual liability endorsement) or adequate reporting time shall be at Lessee's sole risk.



USG INSURANCE SERVICES OF TEXAS
 500 E Border Street, Suite 600
 Arlington, TX 76010
 (817) 524-1094 Fax: (817) 277-2195

NPP020U4302 Version 5

Quote is valid until 8/15/2020

Re: **Heat Inc. **UPDATED****

To:

Attn: Commission: _____%

From: Dori Howard

dhoward@usgins.com / (817) 524-1094

Please bind effective: _____

Confirm optional coverages:

Do not include any optional coverages.

Include the following optional coverages from Section V
 (Taxes & Fees may apply to optional premium if purchased)

Option 1 - (add: \$100.00) - Fiduciary Liability - Non-Profit Directors & Officers

Option 2 - (subtract: \$105.00) - Defense Within the Limits

Option 3 - (add: *\$7.00) - Terrorism Coverage
 *See Terrorism Section for Exact Pricing and Terms

This policy is eligible to be Direct Billed.
 Note: a \$5.00 installment fee will apply to each installment after the first - please select one of the following:

Direct Bill both this New Business and future Renewals
 (if checked - Select a Payment Plan):

SINGLE PAYMENT

TWO PAYMENTS - Premium must be over \$400

See the last page of this quote for Payment Plan Descriptions

Do not Direct Bill this New Business but do Direct Bill future Renewals

Do not Direct Bill this policy

NOTE: If the Direct Bill Option is selected, the Company will invoice the insured. Do not bill or collect the down payment. All taxes, surcharges and fees (except installment fees) will be billed in full with the first installment.

I. PREMIUM AND UNDERWRITING NOTES/REQUIREMENTS

NON PROFIT PACKAGE POLICY INFORMATION	
Carrier:	United States Liability Insurance Company
Status:	Admitted
A.M. Best Rating:	A++ (Superior) - XII
COVERAGE PART	PREMIUM
Commercial General Liability	\$743.00
Management Liability Coverages	\$698.00
PLEASE REFER TO THE EXCESS LIABILITY QUOTE #CUP020U3072 IF HIGHER LIMITS OF LIABILITY ARE DESIRED.	
TOTAL PREMIUM DUE TO CARRIER	\$1,441.00

FREE AND DISCOUNTED BUSINESS SERVICES AVAILABLE TO USLI INSURED - VISIT BIZRESOURCECENTER.COM FOR DETAILS

Please contact us with any questions regarding the terminology used or the coverages provided.

Read the quote carefully, it may not match the coverages requested

II. COVERED LOCATION(S) AND CORRESPONDING CLASSIFICATIONS

Location #1 - 1030 W Crawford St, Denison, TX 75020

Liability Coverage

Description	Class Code	Basis	Exposure	Prod/CompOps Rate	All Other Rate	Prod/CompOps Premium	All Other Premium
Community Centers - Not-for-Profit	41668	Total Area	1,180	0.000	189.909	\$0	\$224
			Per 1,000 Total Area				
Professional Liability - Social Services - Not-for-Profit	72990	Flat	Flat	0.000	165.000	\$0	\$165
Soup Kitchens - Not-for-Profit	11039	Sales	1,095	0.265	2.810	\$1	\$3
			Per 1,000 Sales				
Non-Owned & Hired Automobile Liability - Social Services	90099	Flat	3	0.000	349.530	\$0	\$350
			Flat				
Additional Insured - Mortgagee, Assignee or Receiver	49950	Flat	1	0.000	0.000	Incl	Incl
			Flat				

Liability Coverage Premium for Location #1: \$743

Management Liability Coverages

Description	Retention (each claim)	Premium
Directors and Officers Liability	\$0	\$698

Management Liability Coverages Premium for Location #1: \$698

III. LIABILITY LIMITS OF INSURANCE

COMMERCIAL GENERAL LIABILITY

Each Occurrence	\$1,000,000
Personal Injury and Advertising Injury	\$1,000,000
Medical Expense (Any One Person)	\$5,000
Damage To Premises Rented to You	\$100,000
Products/Completed Ops Aggregate	\$1,000,000
General Aggregate	\$2,000,000
General Liability Deductible	\$0

PROFESSIONAL E&O LIABILITY

Each Incident	\$1,000,000
Aggregate	\$2,000,000

HIRED AND NON-OWNED AUTO

Each Occurrence	Included
Aggregate	Included in General Aggregate

DIRECTORS & OFFICERS LIABILITY

Claims Made Limit	\$1,000,000
-------------------	-------------

Total for Location: \$1,441

Handwritten notes:
 Heat Aggregate
 RR per occurrence
 2 mil
 6 mil aggregate
 R.R. Combined Single Limit \$1 mil for Bodily Injury; Property Damage

IV. REQUIRED FORMS & ENDORSEMENTS

Non Profit Management Liability Endorsements

DO-100	(05/17) Directors and Officers Coverage Part	DO-GTC	(05/17) General Terms and Conditions
DO-274	(05/17) Punitive Damages Limit of Liability	SSP APP	(12/09) Social Services Product Application
DO-283	(05/17) Data and Security Plus Endorsement		

Please contact us with any questions regarding the terminology used or the coverages provided.

Read the quote carefully, it may not match the coverages requested

Common Endorsements

Jacket	(07/19) Policy Jacket	TX Notice USLI	(01/20) Texas Important Notice
General Liability Endorsements			
CG0001	(12/07) Commercial General Liability Coverage Form	L-488 SSO	(02/11) Non-Owned and/or Hired Auto Liability
CG0103	(06/06) Texas Changes	L-500	(02/11) Bodily Injury Exclusion - All Employees, Volunteer Workers, Temporary Workers, Casual Laborers, Contractors, and Subcontractors
CG2018	(11/85) Additional Insured - Mortgagee, Assignee, or Receiver	L-549	(12/07) Absolute Professional Liability Exclusion
CG2107	(05/14) Exclusion - Access Or Disclosure Of Confidential Or Personal Information And Data-Related Liability - Limited Bodily Injury Exception Not Included	L-610	(11/04) Expanded Definition Of Bodily Injury
CG2132	(05/09) Communicable Disease Exclusion	L-622TX	(03/11) Molestation Or Abuse Exclusion
CG2139	(10/93) Contractual Liability Limitation	L-726	(07/09) Community Center Activity Exclusion
CG2147	(12/07) Employment-Related Practices Exclusion	L-728 SSO	(07/09) Limits Of Insurance Under Multiple Coverage Forms
CG2173	(01/15) Exclusion Of Certified Acts Of Terrorism	L-729	(08/09) Exclusion - Violation Of Statutes That Govern E-Mails, Fax, Phone Calls Or Other Methods Of Sending Material Or Informat
IL0017	(11/98) Common Policy Conditions	L-734 NPP	(10/16) Exclusion-Specific Activities, Events or Conditions
IL0021	(09/08) Nuclear Energy Liability Exclusion Endorsement	L-783 NPP	(07/18) Amendment of Liquor Liability Exclusion
IL0168	(09/08) Texas Changes - Duties	L-787	(05/13) Infringement Of Copyright, Patent, Trademark Or Trade Secret Endorsement
IL0275	(09/07) Texas Changes - Cancellation And Nonrenewal Provisions For Casualty Lines And Commercial Package Policies	RM TX Notice	(03/19) Notice to Policyholders - Texas
L TX	(06/11) Texas State Amendatory Endorsement	SSO	(12/09) Social Service Organization Professional Liability Coverage Form
L-232s	(09/05) Classification Limitation Endorsement	TRIADN	(02/15) Policyholder Disclosure Notice of Terrorism Insurance Coverage
L-428	(10/08) Firearms Exclusion		

V. OFFER OF OPTIONAL COVERAGE(S)

Based on the information provided, the following additional coverages are available to this applicant but are not currently included in the quotation. The additional premium may be subject to taxes & fees. For a firm final amount please contact us and we will revise the quote.

Coverage	Additional Premium
Option 1 Fiduciary Liability - Non-Profit Directors & Officers	\$100.00

Important Information

- If purchased, the DO-256 Fiduciary Liability Coverage Endorsement will be added which coincides with the D&O Limits up to \$1 million with defense inside that limit.

Coverage	Subtract Premium
Option 2 Defense Within the Limits	\$105.00

Important Information

- If Defense Within the Limits is selected, DO-281 Defense Within the Limits endorsement will be added.
- Moves defense costs to within the limits of liability for a discounted price.

Please contact us with any questions regarding the terminology used or the coverages provided.

****Read the quote carefully, it may not match the coverages requested****

	Coverage	Additional Premium
Option 3	Terrorism Coverage	\$7.00

Important Information

- Terrorism coverage, per the Terrorism Risk Insurance Program Reauthorization Act of 2015, is available for an additional premium of 1.00% of the total applicable premium. If not purchased, please provide the signed TRIADN Disclosure Notice or add form NTE - Notice of Terrorism Exclusion. When making your decision to purchase Terrorism Coverage, please be aware that coverage for "insured losses" as defined by the Act is subject to the coverage terms, conditions, amount, and limits in this policy applicable to losses arising from events other than acts of terrorism.
- The Terrorism premium shown above has been calculated as a percentage of the quoted coverages. If any coverages are added or removed at binding, the additional premium shown above is subject to change.

VI. DIRECT BILL PAYMENT PLAN DESCRIPTIONS

One Year Payment Plan Descriptions:

SINGLE PAYMENT - The entire premium is invoiced immediately and is due 20 days after it is invoiced.

TWO PAYMENTS - 50% of the premium is invoiced immediately and is due 20 days after it is invoiced; the balance is invoiced 150 days after inception.

An installment fee as noted on page 1 of this quote applies to each installment after the first.

Please contact us with any questions regarding the terminology used or the coverages provided.

****Read the quote carefully, it may not match the coverages requested****

City Council Meeting Staff Report



Agenda Item

Receive a report, hold a discussion and take action on the appointment of Angela J. Harwell, as a regular member, to the Planning and Zoning Commission, to serve a two-year term effective January 1, 2024.

Staff Contact

Felecia Winfrey, Development Coordinator

Planning Department

fwinfrey@cityofdenison.com

903-465-2720 Ext. 2519

Summary

- The Planning and Zoning Commission is governed by Chapter 2, Article II, Division 3 of the Denison Code of Ordinances.
- The Planning and Zoning Commission is made up of five regular members and four alternate members, who serve in the absence of one or more of the regular members. Its members are appointed by the City Council.
- Angela Harwell has agreed to and meets the eligibility requirements to serve on the City of Denison Planning and Zoning Commission. Ms. Harwell is currently a Commercial Real Estate Broker and a former chair and member of the City of Melissa Planning and Zoning Commission.

Staff Recommendation

Staff recommends the appointment of Angela Harwell as a regular member of the Planning and Zoning Commission for a two-year term.

Recommended Motion

“I move to appoint Angela Harwell as a regular member to the Planning and Zoning Commission, to serve a two-year term effective January 1, 2024.”

Background Information and Analysis

The Planning and Zoning Commission is governed by Chapter 2, Article II, Division 3 of the Denison Code of Ordinances. The Planning and Zoning Commission is made up of five regular members and four alternate members, who serve in the absence of one or more of the regular members. Its members are appointed by the City Council.

The Planning and Zoning Commission performs all functions necessary to carry out the intent of V.T.C.A., Local Government Code §§ 211.001-211.013 relative to the preparation, adoption and amendment of a comprehensive zoning ordinance for the City, including the conduct of public hearings related thereto. The Planning and Zoning Commission performs all functions related to the review and approval of subdivision plats which may be assigned to it by the statutes of the state and ordinances or charter of the City. The Planning and Zoning Commission also recommends and advises the City Council on matters involving the physical improvement of the City. Terms of office are two years, with no more than three consecutive full terms.

Angela Harwell has nineteen years of experience as a Commercial Real Estate Broker with knowledge of retail, office, multi-family, industrial, land, technology and hospitality. She is licensed in Texas and Florida, and is currently working to acquire an Oklahoma license. Ms. Harwell's nearly 19 years of real estate activities include commercial leasing, re-development, revitalization, marketing of commercial properties, developing a network of commercial-related professionals, awareness of total community impact of development decisions, access to tools such as CoStar, ESRI mapping and experience working with owner-developers. Her designations and memberships include Certified Commercial Investment (CCIM Institute), Texas Accredited Commercial Specialist (TACS), Real Estate Negotiation Expert (RENE), Pricing Strategy Advisor (PSA), Texas Association of Realtors and the National Association of Realtors. The appointment of Ms. Harwell will fill the regular member position left vacant when Brett Evan's term expired on December 31st, 2023. With appointment she will term out at the end of 2025.

Financial Considerations

N/A

Prior Board or Council Action

The Council's most recent appointment to the Planning and Zoning Commission was the reappointment of Linda Anderson as a regular member on January 16th, 2024.

Alternatives

Council may deny, modify, or table the item.

City Council Meeting Staff Report



February 19, 2024
Regular Council Meeting

Agenda Item

Receive a report, hold a discussion, and take action on the approval of the purchase of a Kubota tractor loader, with a total purchase amount of \$94,962.11, from Zimmerer Kubota & Equipment, Inc. and authorize the Interim City Manager to execute any associated documents.

Staff Contact

Ervin Pariera, Assistant Director of Public Works
epariera@cityofdenison.com
903-647-4190

Summary

- Tractor loaders equipped with a batwing style rotary cutter are commonly used to maintain right-of-way (ROW).
- The ROW division of Public Works is not currently assigned a tractor loader which prevents them from performing needed clearing and maintenance activities.
- The proposed purchase will provide ROW with an appropriately sized tractor loader equipped with a rotary cutter to allow them to begin performing maintenance activities in-house.

Staff Recommendation

Staff recommends approval of this purchase.

Recommended Motion

“I move to approve the purchase of a Kubota tractor loader, with a total purchase amount of \$94,962.11, from Zimmerer Kubota & Equipment, Inc. and authorize the Interim City Manager to execute any associated documents.”

Background Information and Analysis

The ROW division of Public Works does not currently have a tractor loader with batwing style rotary cutter to perform mowing and clearing maintenance work which limits the scope of work the division can effectively complete. The division needs a tractor loader with rotary cutter to mow and clear large open areas such as the land the city owns and maintains around Lake Randell. The proposed purchase will provide the division with an appropriately sized machine and will allow them to maintain city property and right-of-way.

The cooperative purchase program proposal from Zimmerer Kubota & Equipment, Inc. is for a Kubota model M5 tractor loader with all the necessary attachments and four-wheel drivetrain. The batwing rotary cutter is a Land Pride model RC5715 cutter. If approved, the fully equipped tractor will be available for delivery immediately after receipt of the purchase order as it is currently in stock.

Financial Considerations

The tractor loader was budgeted for in the FY2024 budget as a capital purchase and will be financed.

Prior Board or Council Action

None.

Alternatives

Council may choose to reject this purchase and direct staff to specify a different solution and or purchase from a different vendor.

-- Standard Features --

-- Custom Options --



M Series

M5-111HDC12-1

4WD, HYDRAULIC SHUTTLE TRANSMISSION & ROPS

***** EQUIPMENT IN STANDARD MACHINE & SPECIFICATIONS *****

DIESEL ENGINE

Kubota V3800 Direct Injection
 3.8L (230 cu. In.) 4 Cyl
 EPA Tier 4 Final Compliant
 Common Rail Electronic Fuel Injection
 Electronic Engine Management
 Turbocharged
 w/Wastegate and Intercooled
 Fuel Tank Capacity: 27.7 Gal
 60 Amp Alternator ROPS
 80 Amp Alternator Cab
 12V 900 CCA Battery
 SAE Gross HP: 105.6
 Engine Net HP: 100
 Max . PTO HP: 89
 Cab @ 2600 Engine RPM
 ROPS @ 2400 Engine RPM

TRANSMISSION

8F/8R Two Range, 4-Speed
 12F/12R Two Range, 6-Speed
 540/540E
 24F/24R Two Range, 6-Speed Hi/Lo
 540/540E
 24 speed on M5-111 only
 Auto 4WD Function
 Electro-Hydraulic Shuttle Shift
 Clutch - Multi Plate Wet
 Planetary Final Drives
 Hydraulic Wet Disc Brakes

FRONT AXLE

Hydrostatic Power Steering
 2WD: Tubular Steel Beam Telescoping
 4WD: Cast Iron, Bevel Gear 55 deg
 Planetary Final Drives
 Adj. (Rim) Tread Spacing

FLUID CAPACITY

Fuel Tank Capacity: 27.7 gal
 DEF Tank Capacity: 3.2 gal
 Cooling System: 11 qts
 Crankcase: 11.3 qts
 Hydraulics/Trans: 15.85 gal

INSTRUMENTS

LCD readout for MPH and PTO rpm
 RPM Memory
 Tachometer/Hour meter
 Oil Pressure
 Fuel Gauge
 Coolant Temperature
 Gear Speed Digital Light Indicator
 Digital Light Indicator F/R Direction

ULTRA GRAND CAB II

4-post, ROPS Certified
 RH & LH Doors
 Tinted Glass Doors and Windows
 In-roof window
 Tilt Steering Wheel
 Dual Level Air Conditioning & Heater
 Front and Wiper/Washer
 Front Sun Visor
 Retractable Seat belt
 LH & RH Side Mirrors
 Radio Ready Cab
 Steps, Left and Right Side
 Interior Dome Light
 12V - 30-Amp 2 Wire Coupler
 12V - 3 Pin 30-Amp Coupler
 12V - Outlet
 Cup Holder
 Instructor Seat Ready
 Horn

SAFETY EQUIPMENT

Flip-Up PTO Shield

EXHAUST EMISSION CONTROL TYPE

DPF System (Diesel Particulate Filter)
 SCR System

HYDRAULICS / HITCH / DRAWBAR

Open Center Gear Pump
 Max. Flow @ Rated Engine Speed: ROPS:
 2400 rpm
 Cab: 2600 rpm
 Power Steering: 5.4 gpm
 Impl. Flow ROPS: 15.9 gpm
 Impl. Flow Cab: 17.0 gpm
 Total Flow - ROPS: 21.3 gpm
 Total Flow - Cab: 23.1 gpm

REMOTE VALVES

(1) SCD (Self Canceling Detent)
 (1) FD (Float Detent) on -1 models (2 Total standard)

3 POINT HITCH & DRAWBAR

Cat II 3-point Hitch
 8 Speed Models
 @ Lift Points: 7055 lbs
 (ASAE) @ 24" Behind: 5181 lbs
 12/24 Speed Models
 @ Lift Points: 8600 lbs
 (ASAE) @ 24" Behind: 7275 lbs
 2 External Lift Cylinders
 Telescoping Lower Links
 Stabilizers
 Swinging Drawbar - Straight

POWER TAKE OFF (540)

Live-Independent Hyd. PTO
 SAE 1 3/8" Six Splines
 540 rpm @ 2205 Eng. rpm
 540 rpm @ 2035 Eng. rpm 12/24 speed
 540E* @ 1519 Eng. rpm
 * if equipped 12/24 Standard

M5-111HDC12-1 Base Price:	\$76,839.00
(1) FRONT LOADER /M5-091/M5-111 TRACTORS PNF	\$7,384.00
LA1854-FRONT LOADER/M5-091/M5-111 TRACTORS PNF	
(1) GRILLE GUARD PNF	\$275.00
M6909-GRILLE GUARD PNF	
(1) 84" 2 LEVER QUICK COUPLER BUCKET	\$1,108.00
M1816-84" 2 LEVER QUICK COUPLER BUCKET	
(1) AT&T TELEMATICS MODEM	\$449.00
DCU6700-AT&T TELEMATICS MODEM	
(1) M SERIES TELEMATICS HARNESS	\$162.00
M6712-M SERIES TELEMATICS HARNESS	
(1) STANDARD VALVE KIT FOR CAB PNF	\$1,270.00
M6902-STANDARD VALVE KIT FOR CAB PNF	
Configured Price:	\$87,487.00
Sourcwell Discount:	(\$19,247.14)
SUBTOTAL:	\$68,239.86
2Yr M5-111HDC12-1 Extended Warranty (4000 hrs.)	\$2,500.00
2Yr FRONT LOADER /M5-091/M5-111 TRACTORS PNF Extended Warranty	\$500.00
Factory Assembly:	\$260.00
Dealer Assembly:	\$660.00
Freight Cost:	\$1,150.00
PDI:	\$400.00
Labor to install Telematic	\$110.00
RC5715	\$21,142.25

Total Unit Price: \$94,962.11
 Quantity Ordered: 1
 Final Sales Price: \$94,962.11

Final pricing will be based upon pricing at the time of final delivery to Sourcwell members. Purchase Order Must Reflect Final Sales Price.

To order, place your Purchase Order directly with the quoting dealer

LIGHTING

2 Headlights - Tail lights
4 Hazard Flasher Lights w/ Turn Signals
2 Grille Mounted Worklights
2 Front Cab Halogen Worklights
2 Rear Halogen Worklights

Electric Key Shut Off
Parking Brake
Turn Signals
SMV Sign
7-Pin Electrical Trailer Connector

SELECTED TIRES

AMR8530B & AMR8556B
FRONT - 12.4-24 R1W GOODYEAR OPTITRAC
REAR - 18.4-30 R1W GOODYEAR OPTITRAC

***Some series of products are sold out for 2022. All equipment specifications are as complete as possible as of the date on the quote. Additional attachments, options, or accessories may be added (or deleted) at the discounted price.** All specifications and prices are subject to change. Taxes are not included. The PDI fees and freight for attachments and accessories quoted may have additional charges added by the delivering dealer. These charges will be billed separately. Prices for product quoted are good for 60 days from the date shown on the quote. All equipment as quoted is subject to availability.

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192.230.86.12



City Council Meeting Staff Report



February 19, 2024
Regular Council Meeting

Agenda Item

Receive a report, hold a discussion, and take action on the approval of the purchase of a Volvo wheeled excavator, with a total purchase amount of \$305,212.47, from ROMCO Equipment Company and authorize the Interim City Manager to execute any associated documents.

Staff Contact

Ervin Pariera, Assistant Director of Public Works
epariera@cityofdenison.com
903-647-4190

Summary

- Wheeled excavators are preferred for maintenance and construction work in stormwater channels.
- The Stormwater division of Public Works does not currently have an excavator assigned to them which prevents the division from performing major channel maintenance work.
- The proposed purchase will provide the Stormwater division with a properly sized excavator that is able to perform channel maintenance work in challenging locations.

Staff Recommendation

Staff recommends approval of this purchase.

Recommended Motion

“I move to approve the purchase of a Volvo wheeled excavator, with a total purchase amount of \$305,212.47, from ROMCO Equipment Company and authorize the Interim City Manager to execute any associated documents.”

Background Information and Analysis

Wheeled excavators are quickly becoming the popular choice for operators who work in challenging environments such as stormwater channels. The ability to maneuver the excavator in tight locations and traverse across roadways from one channel to the next makes it a valuable tool to have. The Stormwater division does not currently have an excavator assigned to them which minimizes the level at which they can perform channel maintenance and construction. Removing waste from stormwater channels and constructing, or reconstructing, channel walls are essential tasks in stormwater channel maintenance. The proposed purchase will provide the division with a new wheeled excavator to allow them to perform the job tasks of stormwater channel maintenance and construction more effectively.

The cooperative purchase proposal from ROMCO Equipment Company is for a Volvo EW180E wheeled excavator with a 36” bucket, hydraulic coupler for attachments, and thumb attachment. If approved, delivery will be approximately 60 days after receipt of a purchase order, or mid-April 2024.

Financial Considerations

The wheeled excavator was budgeted for in the FY2024 budget as a capital purchase and will be financed.

Prior Board or Council Action

None.

Alternatives

Council may choose to reject this purchase and direct staff to specify a different solution and or purchase from a different vendor.



1519 West Belt Line / Carrollton TX 75006 / 214 819-4100 / Fax: 214-819-4102
Road

Quote No. ES01006979
Version: 1
Date: 01/22/2024

CITY OF DENISON
PO Box 347
Denison TX 75021

ROMCO Equipment Co. is pleased to present the following equipment for your consideration:

NEW 2023 EW180E WHEELED EXCAVATOR S/N 323599

- Volvo D6J Tier 4 Final Diesel Engine @ 173 Hp
- Twin Tires 10:00 _ 20 PR16
- 17' 11" Boom (2 pc.)
- 8' 6" Arm
- Dozer Blade
- Front and Rear Outriggers
- Hammer Shear Piping
- Quick Coupler Piping
- Caretrack Monitoring System
- Rear View Camera
- Enclosed Cab w/ Air Conditioner
- All Standard Equipment
- Lifetime Frame Warranty

Sale Price (Buyboard Contract # 685-22)	\$285,436.00
36" Bucket	\$5,435.29
Hydraulic Coupler	\$6,680.00
4 Tined Thumb	\$7,661.18
Total for WB Coupler and Thumb	\$19,776.00
Total Price	\$305,212.47

Price does not include any taxes. The above price is valid for 30 days unless specifically extended by ROMCO Equipment Co.

Notice is hereby given that ROMCO Equipment Co. LLC has assigned its rights under this sales contract to ROMCO Exchange Co. LLC to sell the equipment described herein and, if applicable, to purchase trade-in property described herein.

Quoted By:
Chris Wheelock
ROMCO Equipment Co. Sales

EQUIPMENT FOR THE CONSTRUCTION, MINING AND AGGREGATE INDUSTRIES



City Council Meeting Staff Report



February 19, 2024
Regular Council Meeting

Agenda Item

Receive a report, hold a discussion, and take action on approval of a pavement condition assessment services purchase proposal in the amount of \$128,799.00 from Infrastructure Management Services, LP and authorize the Interim City Manager to execute any associated documents.

Staff Contact

Ervin Pariera, Assistant Director of Public Works
epariera@cityofdenison.com
903-647-4190

Summary

- Infrastructure Management Services (IMS) will provide pavement condition assessment services for all streets within City limits.
- The pavement condition assessment will include ancillary services to inventory critical infrastructure and all data captured will integrate with the City GIS system.
- Pavement condition assessments allow staff to accurately prioritize street repairs based on current condition ranking and financially plan for larger overlay and repair projects.

Staff Recommendation

Staff recommends approval of this purchase.

Recommended Motion

“I move to approve the purchase of pavement condition assessment services in the amount of \$128,799.00 from Infrastructure Management Services, LP and authorize the Interim City Manager to execute any associated documents.”

Background Information and Analysis

Pavement condition assessments are critical to the ability of staff to accurately prioritize street surface repairs and larger street surface rehabilitation projects. The reports generated by a thorough assessment also allow staff to accurately gauge the budgetary impact of needed projects so that staff may plan accordingly. Ideally, a thorough pavement condition assessment should be performed bi-annually as road conditions change rapidly and are impacted by weather and change in traffic patterns. The last pavement condition assessment was performed in-house in 2020 using video captured by a truck mounted mobile device. The data captured was interpreted by artificial intelligence software to generate a report. Although this type of assessment can be useful, it lacks many of the details staff need to properly address immediate issues and begin developing a master plan.

The proposed pavement condition assessment services will utilize the most advanced technology the industry has to offer to accurately gauge current surface conditions and dimensions. The assessment will gather GIS data including location of hydrants, water valves, sewer manholes, curb & gutter, stormwater infrastructure, etc. and transfer that data to the City maintained GIS database. Services also include report

generation and an in-person presentation to the Streets Committee. If approved, data collection will begin by end of March 2024 and the project will conclude in September 2024.

Financial Considerations

Funds are allocated in the Street Improvement Fund 15 for this purchase.

Prior Board or Council Action

None.

Alternatives

Council may choose to reject this purchase and direct staff see alternatives.



Quote for Professional Services Pavement Management Program Update



**John Phillips | Public Works Manager
City of Denison, Texas**

February 12, 2024

**International Cybernetics Company, LP
dba IMS Infrastructure Management Services**

Kurt Keifer, PhD, PE (TX) | President
6001 W Parmer Lane Suite 370-8933
Austin, Texas 78727

IMS Today and Pavement Management Services Offered

IMS Infrastructure Management Services, LP is pleased to submit a quotation to update the City's pavement management program. IMS is an industry leader with 38 years of pavement and asset management experience. Since our founding in 1985, we have provided similar services to more than 1,000 municipalities across the United States. **Collectively, the IMS engineering team brings more than 350 years of pavement and asset management experience to the table.**

IMS brings significant regional experience and expertise to meet the City's pavement condition assessment, right-of-way asset, and software integration. As we understand, the City of Denison currently maintains approximately 180-185 centerline miles of roadway. IMS has performed objective pavement data collection for similar agencies such as *Beaumont, Bedford, Cameron County, Carrollton, Cleburne, Dallas, Denton, Denton County, Euless, Flower Mound, Fort Worth, Grand Prairie, Grapevine, Hurst, Keller, Lubbock, McAllen,*



Members of the IMS Engineering, Technical and Sales Teams at our December 2022 in-service meeting week.

Plainview, Port Arthur, Prosper, Waxahachie, Weatherford; and many others in Texas. To ensure adequate coverage across the network the Road Surface Tester (RST) typically surveys the arterial and collector roadways in each direction while testing the residential roadways in a single direction, but for the revised quote we're proposing all arterial surveyed in both directions and the remaining roads in a single-pass, for a survey mileage of an IMS estimated **209 miles survey miles**. The RST is equipped with a Laser Crack Measuring System 2 (LCMS-2) that is the most technologically advanced data collection equipment available in the industry.

In addition to our recent experience in the area, it is worth noting that the IMS team has grown significantly since 2019, both in staffing and equipment. In 2021, we appointed a new Principal Engineer and President, Kurt Keifer, PhD, PE. Kurt (**based in Austin, TX**) brings over 20 years of experience to projects, and his background is at the core of the industry, with experience working for the US Army Corps of Engineers and developing the ASTM D6433 protocols.

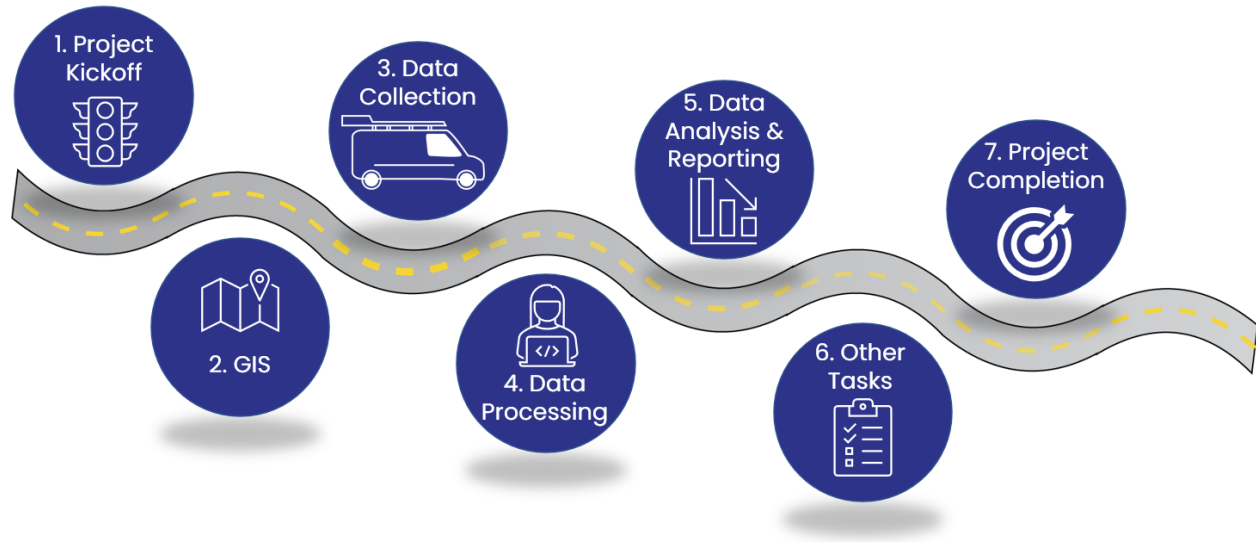
We have added six pavement engineers and nine GIS analysts to our team along with five state-of-the-art Road Surface Testers (RST) equipped with the latest 3D Laser Crack Measurement System (LCMS-2) technology. We have also added Fast Falling Weight Deflectometer (FastFWD) pavement structural testing equipment along with mobile Lidar technology for asset inventories and ADA sidewalk and ramp compliance surveys. The combination of our larger technical team and fleet of testing equipment provides IMS with greater capacity and redundancy for completing larger projects in a timelier manner.

We are confident that IMS will be the ideal partner to ensure that the City achieves its project goals, given our past successful work with the City, our significant regional experience, and our possession of the largest fleet of advanced pavement data collection systems in the United States.

Project Overview

Scope of Work

The IMS project approach for pavement condition and asset inventory projects typically follows the seven steps shown in the graphic below. In this section, we detail the specific tasks and milestones that will be required for the successful completion of this project.



IMS assigns seasoned pavement engineers as the project managers for all our projects. We believe it is imperative that the project manager have the requisite technical and domain knowledge – as well as practical project management experience – to lead the team. Our project management process is based on thorough planning, proactive management of schedules, and constant communication. The result of effective project management is higher quality with respect to project deliverables and satisfied stakeholders.

Kickoff Meeting

IMS has standardized a project approach based upon our 38 years of pavement management experience and the subsequent lessons learned after performing hundreds of projects. Detailed conversations with our clients allow us to tailor a solution to the specific needs of an individual municipality.

A prerequisite for a successful project is an initial project meeting with the City team members and the IMS team. This early communication is critical to ensuring that we are fully aligned with the City's overall vision for this project as well as the specific data needs for the City. Through this project initiation process, we will prepare the project plan for overall implementation. The plan includes:

- Contacts and stakeholders
- Measurable tasks and milestones
- Project approach and specific data collection methods
- Allocation of resources, including personnel and equipment
- Deliverables and schedule
- Performance and schedule risks

We will ensure that the plan remains current with any further data needs. Our Project Initiation Form and GIS Setup Form are part of our process, where the outcome will include a final project plan and an approved schedule in collaboration with the City's staff and stakeholders. This plan is established before any data collection begins. Project requirements are incorporated in the two project success documents. The project success documents ensure transparency and act as a reference point to ensure all stakeholders are accounted for and involved.

GIS Survey Mapping

Our data collection plan relies on a complete and up to date GIS street centerline. Shortly after the kick-off, our Esri GIS experts will review and update the City's street centerline data to ensure there is an accurate inventory of streets to be surveyed. City review of the centerline data is a critical path activity to ensure timely and accurate data collection. Once the inventory is confirmed by the City, the IMS team will prepare the GIS maps that guide field data collection.

IMS will produce survey maps to clearly indicate where our equipment will travel to collect data. While we would expect the City's GIS environment to be highly accurate, we find it valuable to ensure that we are aware of exactly which roads are included in the project and that we discuss how to proceed with roads, such as private roads that should not be collected. Any questions regarding the roadway network will be resolved prior to data collection. IMS will also confirm the linkage of the road segmentation to the City database and GIS, using the customer defined existing road segments.

Quality Management Plan (QMP)

Based on discussions with the City during the project initiation and kickoff meetings, IMS will develop a project-specific version of our standard QMP for this project. The plan will address the following:

Phase 1. Project Planning – Before Data Collection

- Project team and schedule
- Equipment calibration and control sites
- Rater calibration

Phase 2. Project Execution – During Collection & Processing

- Fast-tracked data collection, processing, and reporting
- Production data collection and processing
- Routine equipment inspection and calibration

Phase 3. Data Delivery – Post Data Processing

- City acceptance and corrective action procedures
- Final data review
- Database delivery and technical memo



IMS' standard Quality Management Plan (QMP) document that is customized for each project.

New to the IMS Project Workflow: Our engineering team has worked extensively to improve the AI and data processing algorithms of the LCMS-2 technology. This has resulted in more repeatability, improved automation (quality and speed), and better data. Our stated goals are to continuously improve and build upon the tools at our disposal to deliver the best data to our clients.

Pavement Condition Survey

Our two-person field crews will collect both outward facing and downward facing pavement imagery, using one of our RSTs equipped with LCMS-2 3D pavement imaging technology. Pavement surface distresses including load cracking, block cracking, rutting, raveling, reflective cracking, loss of section, bleeding, edge distress, and patched areas as well as right-of-way imagery will be collected on a segment-by-segment basis, with each distress being captured by type, extent, and severity. The data and imagery that is collected is then linked to the City's existing GIS data.

The LCMS-2 system is the highest resolution 3D pavement scanning technology available. Each LCMS-2 system relies on two downward-facing, high-resolution 3D cameras. Combined, the two 3D cameras capture continuous downward imagery for more than a standard lane width. The cameras are coupled with downward-facing lasers that provide constant and consistent illumination of the pavement surface regardless of ambient lighting conditions. The impacts of shadows from trees, buildings, or simply overcast sky conditions are eliminated by the laser illumination.



*IMS Road Surface Tester (RST) equipped with Laser Crack Measurement System (LCMS-2)
(Note: IMS has five RST LCMS-2 equipped systems dedicated to municipal pavement management.)*

The 3D cameras can detect one-millimeter-wide cracks and full-lane-width rutting, as required by ASTM D6433, on the pavement surface at speeds up to 65 mph. Due to the versatility of the LCMS-2 technology, the automated pavement condition survey will be performed at posted speeds, and traffic control will not be necessary for the data collection effort. Pavement data collection and imagery surveys are expected to progress at a rate of between 35 and 50 miles per day for the City.

The IMS team then processes the collected data using a combination of advanced analytical tools and rigorous, manual QC/QA performed by IMS' certified Pavement Condition Index (PCI) raters to determine accurate and repeatable PCI values for each roadway segment. Furthermore, we deliver our PCI ratings and supporting data (distress information, rutting, and IRI values) in both spreadsheet and GIS formats for easy review. The data that we provide may be used immediately for decision making or be imported into any pavement management system.

Any distresses that are not captured by the automated LCMS-2 system will be captured by our trained in-vehicle distress raters. The automated data is supplemented by information collected by the second crew person in the van using a mobile mapping solution known as NOMAD™. The NOMAD™ file format is part of IMS' unique approach to pavement condition surveys. The NOMAD™ files contain useful information for our field crews, including direction routing information and one-pass versus two-pass data collection instructions, and allow our trained field staff to capture additional condition and inspection information that is used by our QC/QA team to validate condition data.



IMS' customizable touchscreen NOMAD™ interface for entering notes and supplemental field data.

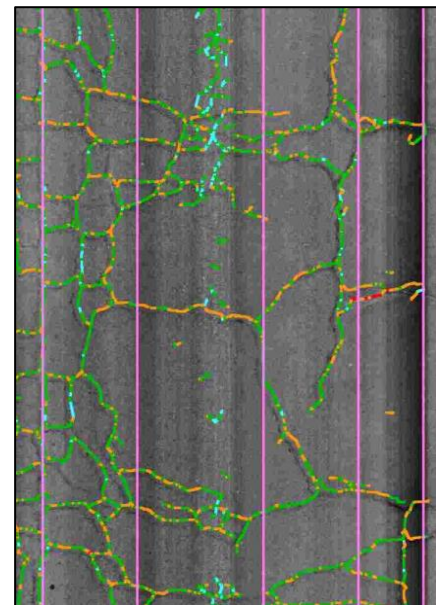
During data collection, IMS implements routines that are performed each day of data collection to ensure data consistency. These include:

- Equipment is calibrated, and daily reports are completed.
- All sensors are continually monitored to ensure they are receiving data within specification.
- The Crew Chief and operator manually monitor the HD digital images, GPS, distress recorder, roughness measurements, and rutting data.
- Each street is noted on the inventory and map, as well as through GPS and assignment of the RST van number.
- Production is tracked and records of coverage are documented.
- A corrective action plan is followed, as necessary.
- All data is backed up and sent to the IMS main office for processing.

ASTM D6433 Pavement Condition Evaluation

During and following the data collection effort, our team will evaluate all collected pavement imagery and surface measurements to arrive at Pavement Condition Index (PCI) values. This is a six-step process that includes the following tasks:

1. **RoadInspect™ Pavement Distress Detection** – Cracks, rutting, and other pavement distresses are automatically detected in both the 2D and 3D pavement images. IRI values are also calculated at this time. *(Note: The RoadInspect™ software was developed by Pavemetrics, the firm that manufactures the LCMS-2 technology.)*



LCMS-2 cracking data in QC/QA review stage.

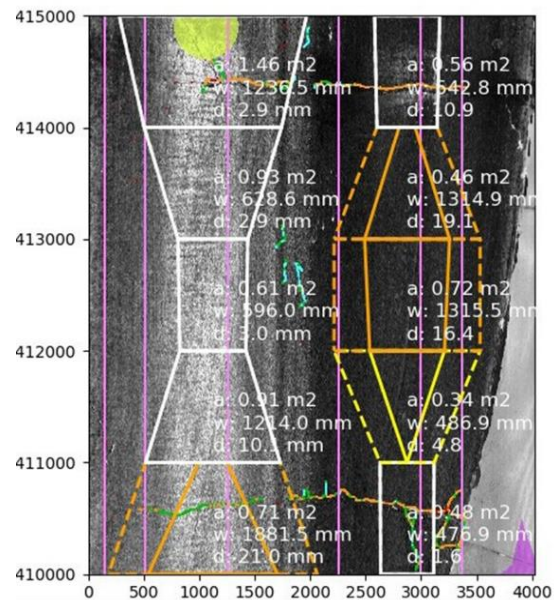
2. **IMS Pavement Distress Classification** – Pavement distresses detected by the RoadInspect™ software are then classified by type (e.g., alligator cracking, bleeding, edge cracking, etc.) and severity (e.g., low, medium, or high) based on predefined criteria (e.g., ASTM D6433). IMS has created a suite of custom tools that include rule-based algorithms in conjunction with artificial intelligence to accurately classify pavement distresses.
3. **IMS PCI Calculation** – Pavement distress data is imported into IMS' PCI calculation software, and PCI values are determined for each roadway segment using a scale from zero (0) to one hundred (100) as defined in ASTM D6433.
4. **IMS Quality Control (QC)** –The IMS project manager then does a review of the data and works with the QC team lead to address any issues that may be identified.
5. **IMS Quality Assurance (QA)** – The IMS project QA Manager independently reviews the rated data and works with our Project Manager and QC team to correct any issues observed.
6. **Client QA** – The IMS Project Manager reviews the findings of the pavement condition data with City staff before beginning any analysis activities. IMS will present the pavement condition data in a Client Review Spreadsheet (CRS) along with maps illustrating pavement conditions for the client to independently review.

Rutting and Roughness

IMS' LCMS-2 systems detect rutting on asphalt roadways using laser measurements of transverse profiles that are collected continuously as the vans drive at normal traffic speed. With more than 4,000 measurement points collected per transverse profile and sub-millimeter vertical accuracy, the LCMS-2 can define transverse profiles with a high level of precision, accuracy, and repeatability.

Once all the transverse profiles are collected for a roadway, IMS uses the Brazilian Method, which is an industry standard method, to determine the rut area and the deepest (or maximum) rut depth for the profiles. These values, as well as width of rut and color coding, can be seen in the LCMS-2 laser image to the right. Red represents high severity rutting, while orange represents moderate severity rutting. The severities are determined based on maximum rut depth thresholds that are specified in ASTM D6433.

Pavement roughness is evaluated by measuring the accumulated difference in the vertical displacement of a road surface, independent of chassis response, over a prescribed road length (longitudinal profile). This roughness is typically reported via the International Roughness Index (IRI). IRI data is calculated in real time from continuous longitudinal profile data collected by the LCMS-2's 3D profile device. To determine the road profile, data is simultaneously obtained from three devices: a pulse transducer-based distance-measuring instrument (DMI), high-speed 3D laser sensors operating at 112 MHz, and an accelerometer in compliance with ASTM E 950. The LCMS-2 unit conforms to a Class I profiling device, and it can also "pause" over non-valid roadway sections such as localized maintenance activities, railroad crossings, speed bumps, and brick inlays and not affect the IRI value.



Rut area and severity levels shown on the LCMS-2 composite image.

Quality Control and Quality Assurance

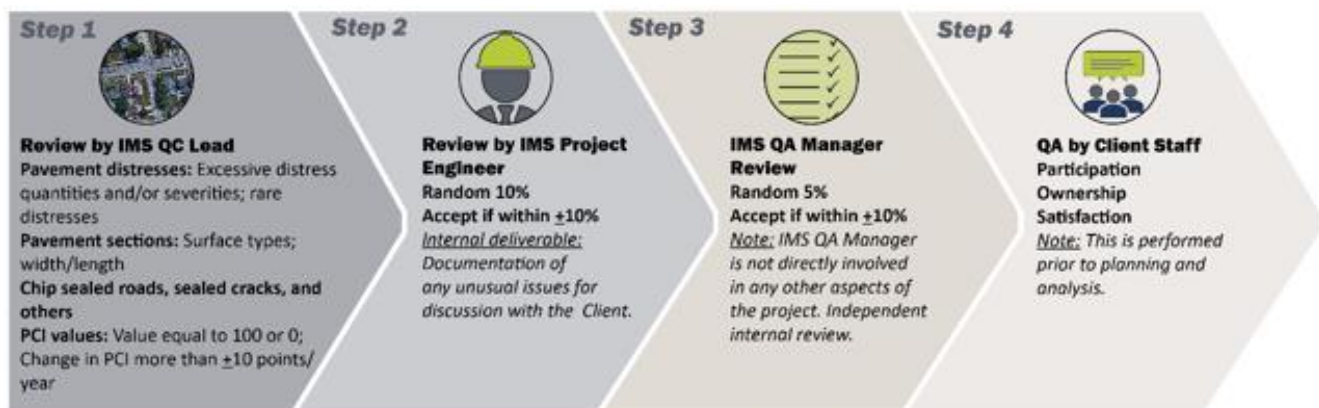
IMS has developed a unique approach to pavement condition assessments by coupling manual review of distress data with automated algorithms. This more rigorous QC/QA process ensures that the automated distress detection and classification algorithms that we use work correctly. Our Pavement Engineering team fully understands the capabilities and limitations of the state-of-the-art LCMS-2 technologies and sophisticated algorithms that we employ, and our QC/QA steps are extremely important in ensuring the success of the project.

The IMS QC/QA process is comprehensive and makes use of field observations, automated data processing tools, manual data review by our QC team, independent review by our QA manager, and lastly, final review by the City. There are QC/QA checks at each stage of the project to ensure data quality before the data is moved into the next steps.

Machine learning and artificial intelligence have made leaps and bounds in speeding up distress identification. And when supplemented with trained pavement raters, field staff, and expert engineers, they establish high data confidence and integrity. The final quality assurance performed by City personnel will ensure that the City has confidence in and takes ownership of the condition data.



New QA Tool! IMS QC/QA interface for manually reviewing automated distress detection and classification results.



IMS' rigorous, multi-step approach to QC/QA of pavement condition data to ensure ASTM D6433 compliant data.

The image above depicts the new QA tool developed by the IMS engineering team to assist our quality control team review the LCMS-2 automated data and field imagery to ensure a representative product. The flow chart below illustrates the 4-step process that has been improved and recently streamlined.

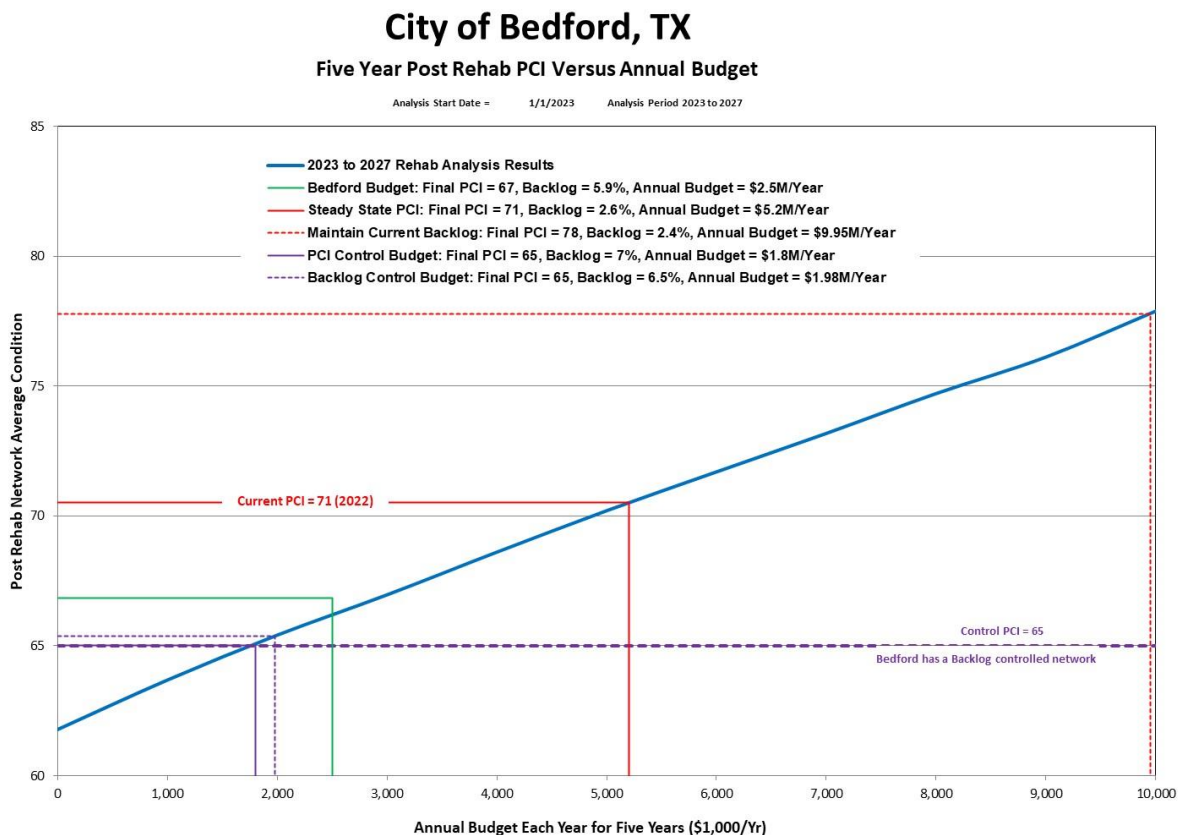
Analysis for the 2023 Project

Once the QC/QA process has been completed, our project team will deliver a Client Review Spreadsheet (CRS). This spreadsheet includes the pavement inventory, life-cycle cost estimates, and the familiar graphs and charts to understand the health of the network. This information will provide quality data, based on sound engineering principles, and realistic budgets for the City staff to utilize in their project selections and internal analyses.

Once the City reviews the PCI data, the Project Manager will set up a meeting with City staff to discuss the analysis requirements and identify additional budget scenarios to prepare. At a minimum, the following pavement management scenarios have been recommended, based on the simplified approach to this project:

- Annual funding required to maintain existing pavement conditions.
- Funding required to maintain an average PCI of 65 over the next 5 years.
- Funding allocation for asphalt overlay and/or surface treatments to maintain an average PCI of 70 over the next 5 years.
- PCI for the network if current funding levels remain the same for the next 5 years.
- Recommended pavement strategies for the various budget scenarios investigated.

We look forward to collaborating with the City staff to ensure that the pavement management program addresses the needs and priorities of the stakeholders involved. If the City has requested utilizing the **Easy Street Analysis (ESA) Excel spreadsheet**, similar to what IMS delivered for the City of Bedford from 2023 (see graph, below) has used for the past several years. As with most recent projects, we plan to run budget scenarios and develop paving projects with our streamlined approach utilizing the referenced IMS solution.



Relevant Pavement Data Collection and Analysis Projects

	City of Grand Prairie, TX
	<ul style="list-style-type: none">• IMS served as the prime consultant• Repeat client since 2016, most recently 2021• ASTM D6433 Pavement condition survey of 360 survey miles of roadway• Analysis performed with PAVER• Council presentation prepared and delivered summarizing pavement program and 5-year recommendations
	City of Euless, TX
	<ul style="list-style-type: none">• IMS served as prime consultant• First awarded in 2014, then again in 2017 and 2022• ASTM D6433 Pavement survey of 184 miles of roadway• Deflection testing on 81 miles of major roads• Analysis performed with IMS' Easy Street Analysis (ESA)• Council presentation prepared and delivered summarizing pavement program and 5-year recommendations• Significant concrete component of road network
	Beaumont, TX 2012, 2019
	<ul style="list-style-type: none">• IMS served as the prime consultant• Repeat client most recently started 2019, completed 2020• Visual Assessment of ROW condition and EOP attributes• Software: Incorporations of Easy Street Analysis (ESA) spreadsheet into Cityworks• Deliverables: 5-year pavement analysis and report; updated GIS; Council presentation• Worked with city to emphasize the longevity of initial decisions and how get the most out of the final reports.

City of Grand Prairie, Texas: Name: Dane Stovall, Street Services Manager Email: dstovall@gptx.org Phone: (972) 237-8526

City of Euless, Texas: Name: Major Jones, Public Works Director Email: mjones@eulesstx.gov Phone: (817) 685-1877

City of Beaumont, Texas: Name: Bart Bartkowiak, Director of Public Works and Technology Services Email: Bart.Bartkowiak@Beaumonttexas.gov Phone: (409) 880-37526

Capacity to Perform Work

IMS employs 49 full-time staff, including 8 pavement engineers – five of whom hold PhD degrees in pavement engineering, 10 GIS analysts and technicians, nine independently, OCTA certified ASTM D6433 pavement raters, and 15 trained and experienced field technicians. Together, we complete over 100 pavement and asset management projects annually. We stand second to none in our ability to establish cost-effective pavement management programs for large and small agencies alike, and our team has earned a reputation for excellence over the course of thousands of projects for municipal clients across the United States. Our multi-disciplinary team, led by pavement engineers, has the experience and expertise to assist our clients with full-service pavement and asset management services, software needs assessments, and custom implementations.

Key personnel identified for the project will be assigned to the City for the duration of the project. Our team is accustomed to working on multiple projects at a time, and we adjust resources on a routine basis to ensure that we have the staff and equipment required to meet project milestones.

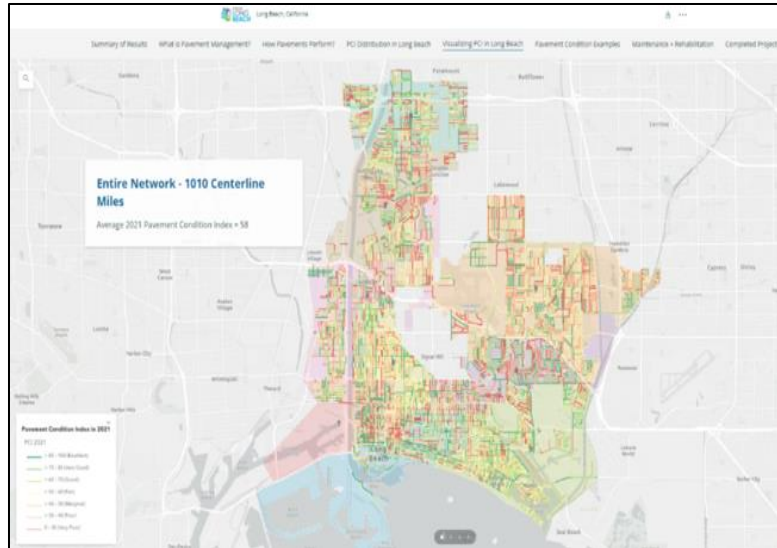
Proposed Project Schedule

This is a representation of our proposed schedule for the 2023 City of Denison project, which reflects our improved project workflow. The field surveys are expected to progress at 35 miles per day, and account for an estimated 3 days of testing.

Proposed 6-Month Schedule		
Assumes a NTP is issued January 1st, 2024 – <i>Data Collection is Weather Dependent</i>		
Task	Description	Estimated Milestone
1	Executed Agreement/NTP	If by March 31, 2024
2	GIS Acquisition and Validation	April, 2024
3	Kick-off with Review Map Iterations and Approval	April, 2024
4	RST LCMS-2 Pavement Surveys (261 Test-Miles)	May, 2024
5	QC/QA for Data Collected	June-July 2024
6	Deliver Pavement Condition Data/Client Review Spreadsheet	Late-June 2024
7	Draft 5-Year “ESA” Analyses & Iterations	August 2024
8	Final Analyses, Reporting, and GIS Mapping	September 2024
9	<i>Opt. Images, ROW Assets, Story Map, Council Presentation</i>	<i>by September 2024</i>

Optional: Esri Story Map

IMS is an Esri Authorized Business Partner and an early adopter of Esri technologies. The partnership between IMS and Esri makes unparalleled industry and subject matter expertise available to our clients. Our team of GIS experts are focused on building easy-to-use and easy-to-maintain web-based, geocentric story maps and dashboards to serve not only our clients, but also their constituents. These tools provide a dynamic way to present complicated information visually. Many agencies are already using Esri software and ArcGIS Online, and we look for ways to leverage that existing licensing, subscriptions, and infrastructure to elevate the data we are delivering. We have built story maps for clients to help explain to citizens how a pavement survey works, how the analysis is performed, and how the maintenance and rehabilitation budgets are distributed to maximize the use of scarce funding. In addition to the story maps, we have also deployed agency-focused dashboards to enable managers to easily review the planned work, existing and forecasted conditions, and funding impacts on a map.



IMS interactive Esri GIS story map: City of Long Beach, CA

Project Highlight: Long Beach, CA

Link to live story map: <https://bit.ly/3NQG1AT>

IMS is working with the City of Long Beach, CA to web-enable their pavement management plan to engage citizens in the pavement management process. To facilitate this activity, IMS has authored and deployed an Esri Story Map that shares complex engineering information in an easy to understand public-facing framework. A second, password protected configuration as a dashboard exists that allows City engineers to access additional information and data.

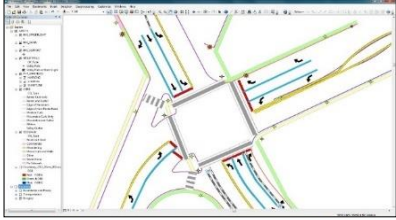




Deliverables

The following products can be delivered to the City:

- Report summarizing the findings of the pavement condition survey
- Client Review Spreadsheet (CRS) with inventory, charts, and graphs
- Esri geodatabase containing updated pavement information including distress information
- Signs geodatabase and multiple views of imagery along with a viewing tool.

Additional Value-Added Services

On the following page, the table presents additional services that the IMS Team can provide for this project. We have performed these services for agencies in Arizona and across the United States to assist agencies in better managing their pavement, sidewalk, and asset inventories.

Technology	Value Added	Photo
<p>Right of Way Asset Collection</p>	<p>Imagery collected during the RST survey can be used to build ROW asset inventories and condition assessments for signs, signposts, curb and gutter, sidewalks, ramps, striping, and many other assets. A subconsultant will be added to the team if this is selected.</p>	
<p>Bannered Imagery</p>	<p>HD ROW imagery collected at the same time as the pavement surveys is processed and cut into 15-foot intervals, then formatted and bannered with relevant header data and the City's branding. Images are linked to the City's GIS centerline and provided as a geodatabase with image hyperlinks.</p>	
<p>Fast Falling Weight Deflectometer (FastFWD)</p>	<p>Deployed for measuring pavement structural capacity and pavement layer stiffness values. This information is combined with pavement distress data to better predict future performance and fine-tune rehab activities. This is frequently used to determine when overlays are no longer effective, and reconstruction is needed.</p>	
<p>Sidewalk Surface Tester (SST)</p>	<p>Deployed for capturing sidewalk inventory and condition data, SSTs may also be deployed to collect data for narrow alleys, parking lots, bike paths, and multi-use trails. SST surveys provide agencies with comprehensive sidewalk condition data that may be used in combination with Lidar sidewalk ramp data to develop detailed ADA transition plans.</p>	
<p>Mobile LiDAR for Sidewalk Ramp Assessments</p>	<p>Deployed to supplement right-of-way inventory surveys by creating a three-dimensional point cloud from which measurements can be extracted. The integrated Ladybug 5+ camera captures high-resolution spherical imagery at defined intervals.</p>	

Fee Proposal

The detailed budget presented on the next page is based on the IMS work plan and deliverables. It represents a realistic budget to complete the work, and we are confident we can maintain an on-time, on-budget assignment. Here are the fees utilizing the current **NCTCOG** rates for IMS:

Service Category #1: Pavement Data Collection							Provide Price Per Tiered Group			A	B	C=A+B
Activity #	Activity Description	Unit	Unit Base Cost (\$)	Unit Cost (\$) 0-200 Lane Miles	Unit Cost (\$) 201-700 Lane Miles	Unit Cost (\$) 700+ Lane Miles	Total Units	Agreed Upon Cost (\$)/Unit	Total Agreed Upon Cost (\$)			
1	Automatically and continuously measure pavement cracking, texture, rutting and geometrics. Equipment used for rut measurement shall be capable of measuring both wheel track ruts simultaneously.	Lane Mile ²		\$140.00	\$115.00	\$100.00	209	\$100.00	\$20,900.00			
2	Collect pavement surface distress and structural condition information through automated means for all Participant-owned roadways.	Lane Mile ²		\$1.00	\$1.00	\$1.00	209	\$1.00	\$209.00			
3	Provide a customized digital condition rating system to collect user defined severity/extent based pavement distresses and pertinent roadway attributes to accommodate a standardized approach to collecting data	Lump Sum	\$2,500.00				1	\$2,500.00	\$2,500.00			
4	Collect dual-wheel path roughness data to International Roughness Index standards.	Lane Mile ²		\$1.00	\$1.00	\$1.00	209	\$1.00	\$209.00			
5	Collect pavement performance information that includes rutting using a minimum of seven (7) sensors (include pricing for nine (9) sensors as well), fatigue cracking, transverse cracking using a minimum of four (4) sensors, and longitudinal cracking	Lane Mile ²		\$1.00	\$1.00	\$1.00	209	\$1.00	\$209.00			
6	Perform friction testing	Lane Mile ²	(OR: see below)	\$195.00	\$160.00	\$150.00			0			
7	Measure lane striping reflectivity quality	Lane Mile ²		\$50.00	\$50.00	\$50.00			0			
Service Category #3: Pavement Management Analysis							Provide Price Per Tiered Group			A	B	C=A+B
Activity #	Activity Description	Unit	Unit Base Cost (\$)	Unit Cost (\$) 0-200 Lane Miles	Unit Cost (\$) 201-700 Lane Miles	Unit Cost (\$) 700+ Lane Miles	Total Units	Agreed Upon Cost (\$)/Unit	Total Agreed Upon Cost (\$)			
21	Calculate the International Roughness Index (IRI) for each road segment in accordance with ASTM E1926. Provide results compatible with the Participant's GIS database, if applicable.	Lane Mile ²		\$1.00	\$1.00	\$1.00	209	\$1.00	\$209.00			
22	Calculate a Pavement Condition Index (PCI) score for each road segment using an approved pavement management system and in accordance with ASTM D6433 or ASTM E3303. Provide results compatible with the Participant's GIS database, if applicable.	Lane Mile ²		\$20.00	\$15.00	\$12.00	209	\$12.00	\$2,508.00			
23	With input from Participant's staff, devise a weighing system taking into account PCI, IRI, average daily traffic for thoroughfares (traffic count raw data provided by Participant), public safety emergency routes, and apply this 0-100 numeric index to the roadway information collected for the entire jurisdiction. Provide results compatible with the Participant's GIS database, if applicable. Cost includes base cost plus lane mile unit cost.	Lane Mile ²	\$2,000.00	\$0.00	\$1.00	\$1.00	1	\$2,000.00	\$2,000.00			
24	Estimate the annual budget required to meet the long-term goals regarding desired pavement condition levels. Cost includes base cost plus lane mile unit cost.	Each Participant	\$4,500.00	\$0.00	\$1.00	\$1.00	1	\$4,500.00	\$4,500.00			
25	Create a five year and ten year pavement rehabilitation plan with input from Participant's staff. Cost includes base cost plus lane mile unit cost.	Each Participant	\$3,000.00	\$0.00	\$1.00	\$1.00	1	\$3,000.00	\$3,000.00			
26	Recommend the computer hardware and software needed for successful implementation, potentially including recommendations for licenses of pavement management system software and other geodatabase software as needed.	Each Participant	\$1,500.00						0			
27	Train Participant staff and provide assistance to the Public Works and IT Department as needed for the use of data collected through the fully automated system. (20 person maximum per class)	Day	\$3,500.00						0			
Service Category #4: Electronic Products							Provide Price Per Tiered Group			A	B	C=A+B
Activity #	Activity Description	Unit	Unit Base Cost (\$)	Unit Cost (\$) 0-200 Lane Miles	Unit Cost (\$) 201-700 Lane Miles	Unit Cost (\$) 700+ Lane Miles	Total Units	Agreed Upon Cost (\$)/Unit	Total Agreed Upon Cost (\$)			
28	Roadway information that shall be collected and provided to the Participant at a minimum includes items a, through i, in Exhibit B	Lane Mile ²		\$5.00	\$3.00	\$2.00	209	\$418.00	\$418.00			
29	Collect digital images at 25-foot intervals of the road surface condition and link to a geodatabase (minimum forward facing imagery).	Lane Mile ²		\$15.00	\$10.00	\$5.00	209	\$0.00	\$0.00			
30	Load assessment data for all Participant-maintained pavements into a pavement management system required by local government Participant(s), if applicable. (Example: MicroPaver). The assessment data shall include visual observations, photographs and measurements collected by instrumentation. Cost includes base cost plus lane mile unit cost.	Each Participant	\$3,500.00	\$5.00	\$4.00	\$3.00	209	\$3.00	\$4,127.00			
31	Implement map module so that pavement condition and other data can be integrated, displayed, and accessed through the map interface in a format consistent with the Participant's horizontal and vertical control network system, if applicable. Cost includes base cost plus lane mile unit cost.	Each Participant	\$7,000.00	\$0.00	\$5.00	\$5.00			0			
32	Provide to the Participant the pavement condition data in a pavement management system database approved by Participant. Coordinate with the Participant's IT department to provide pavement condition data in a format compatible with the Participant's Environmental Systems Research Institute (ESRI) GIS database, if applicable. Cost includes base cost plus lane mile unit cost.	Each Participant	\$1,500.00	\$10.00	\$8.00	\$5.00	209	\$1,500.00	\$2,545.00			
33	Provide asset management tools or systems (not just collection) (i.e., 15-year plan about how to fix or repair assets). Cost includes base cost plus lane mile unit cost.	Each Participant	\$2,500.00	\$0.00	\$0.00	\$0.00			0			
Service Category #6: GIS Related Services							Provide Price Per Tiered Group			A	B	C=A+B
Activity #	Activity Description	Unit	Unit Base Cost (\$)	Unit Cost (\$) 0-200 Lane Miles	Unit Cost (\$) 201-700 Lane Miles	Unit Cost (\$) 700+ Lane Miles	Total Units	Agreed Upon Cost (\$)/Unit	Total Agreed Upon Cost (\$)			
37	GIS Clean-Up Services	Each Participant	\$175 per Hour				7	175	\$1,225.00			
38	GIS Support Services	Each Participant	\$175 per Hour						0			
39	GIS Remote Training Sessions from IMS GIS Manager/Expert (2-Hour Sessions)	Each Participant	\$175 per Hour						0			
Service Category #7: Value Added Services							Provide Price Per Tiered Group			A	B	C=A+B
Activity #	Activity Description	Unit	Unit Base Cost (\$)	Unit Cost (\$) 0-200 Lane Miles	Unit Cost (\$) 201-700 Lane Miles	Unit Cost (\$) 700+ Lane Miles	Total Units	Agreed Upon Cost (\$)/Unit	Total Agreed Upon Cost (\$)			
40	Full Written Final Report- Firm shall prepare and submit a written project report summarizing the work performed, dates of collection, methodology, and results.	Each Participant	\$3,500.00				1	\$3,500.00	\$3,500.00			
41	Project Presentation- Firm shall prepare and present a written project report summarizing the work performed, dates of collection, methodology, and results to the Participant's legislative body.	Each Participant	\$3,500.00						0			
0	Council Presentation (Onsite)	Each Participant	\$5,000.00				1	\$5,500.00	\$500			
							IMS	TOTAL	\$53,559.00			

Test-Mileage Calculation:

IMS is proposing to survey all City-maintained major roads in both directions and all locals in one direction to ensure a sufficient representative sample. Please review our [assumptions below and the optional services on the following page:](#)

Denison, TX: IMS 2024 Base Scope of Services
Pavement Management Assessment, Analysis, and Report

Task	Activity	Quant	Units	Unit Rate	Total
Project Initiation					
1	Project Initiation & Set-up	1	LS	\$2,500.00	\$2,500.00
2	Network Referencing & GIS Linkage	209	T-Mi	\$6.00	\$1,254.00
3	Network Inventory Checks & Survey Map Development	209	T-Mi	\$3.00	\$627.00
	a. GIS Clean-up Services - To Enable an Accurate Map for Survey is Developed	7	HR	\$175.00	\$1,225.00
Field Surveys					
4	LCMS-2 RST Mobilization/Calibration	1	LS	\$2,925.00	\$2,925.00
5	LCMS-2 RST Field Pavement Data Collection (2-pass Arterials & 1-pass Remaining)	209	T-Mi	\$100.00	\$20,900.00
Data Management					
6	Data QA/QC, Processing, & Formatting	209	T-Mi	\$35.00	\$7,315.00
7	Annual Fee: Downward Images in Inform Continuous Intervals (Web Based; No Crack Display)	1st Year is Included in Base Activities			
	a. Data Fee for Hosting	1st Year is Included in Base Activities			
8	Easy Street Analysis of Pavement & 5-Year Budget Development	1	LS	\$5,000.00	\$5,000.00
	a. "ESA - Easy Street Analysis" Pavement Management Spreadsheet Software	Included in Base Activities			
	b. Customizable Prioritization & Cost-Benefit Analysis	Included in Base Activities			
	c. Unlimited Access - Training Library	Included in Base Activities			
	d. Online ESA Spreadsheet Training via Teams	Included in Base Activities			
9	Standard IMS Draft Written Report	1	LS	\$3,000.00	\$3,000.00
	a. Standard IMS Final Written Report	1	LS	\$500.00	\$500.00
10	City Council Presentation - Virtual	1	EA	\$3,500.00	\$3,500.00
	a. Add for an Onsite City Council Presentation	1	EA	\$2,000.00	\$2,000.00
11	Project Management	1	LS	\$2,813.00	\$2,813.00

Project Sub-Total:					\$53,559.00
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Selected Value-Added Services:

12	Right of Way Asset Data Collection (GPS w/2-pass of Majors: Select Once w/Any Asset Below)	209	T-Mi	\$4.60	\$961.40
13	a. Sign & Support Database Development	209	T-Mi	\$75.00	\$15,675.00
14	c. Sidewalk Database Development	209	T-Mi	\$22.00	\$4,598.00
15	d. Curb Ramp Database Development	209	T-Mi	\$30.00	\$6,270.00
16	b. Pavement Markings & Striping Database Development	209	T-Mi	\$43.40	\$9,070.60
17	e. Curb & Gutter Database Development	209	T-Mi	\$22.00	\$4,598.00
18	f. Traffic Signals/ Flashers. Controllers Database Development	209	T-Mi	\$25.00	\$5,225.00
19	h. Drop Inlets Database Development	209	T-Mi	\$22.00	\$4,598.00
20	j. Bridges Database Development	209	T-Mi	\$25.00	\$5,225.00
21	n. Guardrails & Roadside Pedestrian Fence Database Development	209	T-Mi	\$22.00	\$4,598.00
22	o. Catch Basins/ Drainage Inlets Database Development	209	T-Mi	\$22.00	\$4,598.00
23	s. Fire Hydrants Database Development	209	T-Mi	\$22.00	\$4,598.00
24	v. Manhole Covers Database Development	209	T-Mi	\$25.00	\$5,225.00

Additional Services Total:					\$75,240.00
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Project Total:					\$128,799.00
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Assumptions

- Test miles are calculated based on the number of centerline miles and whether they will require one pass collection, or two pass collection based the number of lanes. We have assumed one pass collection for all local roadways and 2 passes for arterials & 1-pass collectors and locals.
- Prior to kickoff meeting, agency will provide IMS with:
 - Primary POC, secondary POC and other stakeholder contact information.
 - Preliminary centerline GIS (i.e., geodatabase).
- Data collection relies heavily on up to date and topologically sound GIS centerline information.
- Pavement data collection is dependent on the agency's approval of the GIS maps representing the street inventory to be surveyed.
- Pavement data collection is weather dependent and assumes one mobilization to the area. Data cannot be collected if the pavement is wet or if the temperatures are below 32 F or above 95 F.

6. Agency will actively participate in submission review and provide comments within a period of time that the agency and IMS will agree to during the kickoff meeting. The current proposed schedule assumes a two-week review period for draft deliverable submissions.

Denison, TX: IMS 2024 Value-Added Services

Pavement Management Assessment, Analysis, and Report

Optional Service Activities:

25	Annual Fee: Downward Images in Inform Continuous Intervals	Year 2+	1	LS/YR	\$2,000.00	\$2,000.00
	a. Data Fee for Hosting (Web Based; No Crack Display)	Year 2+	209	T-Mi/YR	\$2.00	\$418.00
26	FastFWD Mobilization/Calibration		1	LS	\$2,925.00	\$2,925.00
	a. Deflection Testing: 2-pass Primary-2ndary Only - 24 Test Miles		2	DA	\$3,250.00	\$6,500.00
	c. Data Analysis of Deflection Testing		1	LS	\$4,000.00	\$4,000.00
	d. Traffic Control/Deflection Testing (County to provide; IMS Est. ___ Hrs)		0	HR	\$110.00	\$0.00
27	Collection & Delivery of Digital Images @ 20' Intervals (outward HD/ each)		370	T-Mi	\$10.00	\$3,700.00
28	Annual Fee: Downward Images in Inform Continuous Intervals (Web Based; No Crack Displ		1	EA YR	\$2,000.00	\$2,000.00
	a. Data Fee for Hosting		209	T-Mi	\$2.00	\$418.00
11	Right of Way Asset Data Collection (GPS w/2-pass of Majors: Select Once w/Any Asset Below)				Included in Base Activities	
	a. Sign & Support Database Development				Included in Base Activities	
	b. Pavement Markings & Striping Database Development				Included in Base Activities	
	c. Sidewalk Database Development				Included in Base Activities	
	d. Curb Ramp Database Development				Included in Base Activities	
	e. Curb & Gutter Database Development				Included in Base Activities	
	f. Traffic Signals/ Flashers. Controllers Database Development				Included in Base Activities	
	g. Street Lights Database Development		209	T-Mi	\$45.00	\$9,405.00
	h. Drop Inlets Database Development				Included in Base Activities	
	i. Driveways Database Development		209	T-Mi	\$22.00	\$4,598.00
	j. Bridges Database Development				Included in Base Activities	
	k. Street Furniture Database Development		209	T-Mi	\$25.00	\$5,225.00
	l. Cattle Guards Database Development		209	T-Mi	\$22.00	\$4,598.00
	m. Speed Humps Database Development		209	T-Mi	\$25.00	\$5,225.00
	n. Guardrails & Roadside Pedestrian Fence Database Development				Included in Base Activities	
	o. Catch Basins/ Drainage Inlets Database Development				Included in Base Activities	
	p. Shoulders Database Development		209	T-Mi	\$22.00	\$4,598.00
	q. Cabinets Database Development		209	T-Mi	\$22.00	\$4,598.00
	r. Utility Poles Database Development		209	T-Mi	\$45.00	\$9,405.00
	s. Fire Hydrants Database Development				Included in Base Activities	
	t. Medians Database Development		209	T-Mi	\$22.00	\$4,598.00
	u. Valves Database Development		209	T-Mi	\$32.00	\$6,688.00
	v. Manhole Covers Database Development				Included in Base Activities	
	w. Trees Database Development		209	T-Mi	\$55.00	\$11,495.00
29	IMS Web-Story Map of City's Pavement Condition (for External Portal)		1	EA	\$7,500.00	\$7,500.00
	a. Years 2 & 3 Annual Updates of Rehabs; Update		3	EA	\$2,000.00	\$6,000.00
30	IMS Web-Dashboard of City's Pavement Condition (for Internal Staff)		1	EA	\$5,500.00	\$5,500.00
	a. Years 2 & 3 Annual Updates of Rehabs; Update		3	EA	\$2,000.00	\$6,000.00
31	Non-Standard Written Report (Min. 8-Hours; beyond at Hourly Rate)		8	HR	\$150.00	\$1,200.00
32	Additional or Specialty Maps for Reporting (Beyond Typical 2 Sets)		1	EA	\$175.00	\$175.00
33	Additional Hard Copies of the Final Report (>3 Sets Included)		1	EA	\$200.00	\$200.00
34	Functional Class Review		16	HR	\$175.00	\$2,800.00
35	Sidewalk-Surface Tester (SST) Mob., Survey & Analysis: Sidewalks				(Available Upon Request)	
36	Lidar-Mounted Unit Mob., Survey & ADA Compliance Data: ADA Curb Ramps				(Available Upon Request)	
37	Software Evaluation Needs Assessment		1	LS	\$1,750.00	\$1,750.00
38	Convert Street Layer Polylines to Polygons		209	T-Mi	\$6.00	\$1,254.00
39	Convert Street Layer Polygons to Polylines		209	T-Mi	\$20.00	\$4,180.00

Thank you for your continued interest in working with the IMS team. We value developing and maintaining long-term partnerships with our clients. We will strive to become an asset and extension of the City of Denison staff and team. If any questions arise, please do not hesitate to contact me at (480) 741-1847 or jtourek@imsanalysis.com.

Best regards,

International Cybernetics Company, LP
dba **IMS Infrastructure Management Services**



Jim Tourek, Client Services Manager

City Council Meeting Staff Report



Agenda Item

Receive a report, hold a discussion and take action on the appointment of Jimmy Cravens and Braeden Wright, as regular members, to the Zoning Board of Adjustments and Appeals, each to serve a two-year term effective January 1, 2024.

Staff Contact

Felecia Winfrey, Development Coordinator

Planning Department

fwinfrey@cityofdenison.com

903-465-2720 Ext. 2519

Summary

- The Denison Zoning Board of Adjustments and Appeals was created under Chapter 28, Article II, Section 28.8 of the Denison Code of Ordinances.
- The Zoning Board of Adjustments and Appeals is comprised of five (5) total members; two (2) alternate members, all of whom reside within the City of Denison.
- The function of the Zoning Board of Adjustments and Appeals is to make special exceptions that are consistent with the general purpose and intent of this Ordinance in appropriate cases and subject to appropriate conditions and safeguards. Each member shall serve a two-year term of office, with no more than three consecutive full terms.
- Mr. Cravens is a former regular member and chairman of the Zoning Board of Adjustments and Appeals.
- Mr. Wright is a developer and realtor in the City of Denison.
- Mr. Cravens and Mr. Wright are willing, and eligible to serve a two-year term.

Staff Recommendation

Staff recommends the appointment of Jimmy Cravens and Braeden Wright as regular members of the Zoning Board of Adjustments and Appeals, to each serve a two-year term.

Recommended Motion

“I move to appoint Jimmy Cravens and Braeden Wright as regular members to the Zoning Board of Adjustments and Appeals, to serve a two-year term effective January 1, 2024.”

Background Information and Analysis

The Denison Zoning Board of Adjustments and Appeals was created under Chapter 28, Article II, Section 28.8 of the Denison Code of Ordinances. The Zoning Board of Adjustments and Appeals is comprised of five (5) total members; two (2) alternate members, all of whom reside within the City of Denison. The members are appointed by the City Council. The function of the Zoning Board of Adjustments and Appeals is to make special exceptions that are consistent with the general purpose and intent of this Ordinance in appropriate cases and subject to appropriate conditions and safeguards. Each member shall serve no more than a two-year term of office, with no more than three (3) consecutive full terms.

Jimmy Cravens is in good standing and is currently serving on the City of Denison's Parks and Recreation Committee. He also has previous experience serving on the Planning and Zoning Commission as well as the Zoning Board of Adjustments and Appeals. Mr. Cravens is a 2019 graduate of Leadership Denison and a retired military veteran with 33 years of service. Mr. Wright is currently a developer, realtor and business owner in the Denison community. The appointment of Mr. Cravens and Mr. Wright will fill the regular member positions left vacant when Lester Flemming's and Linwood Smith's terms expired on December 31st, 2023. With appointment they will term out at the end of 2025.

Financial Considerations

None

Prior Board or Council Action

The Council's most recent appointment to the Zoning Board of Adjustments and Appeals was the reappointment of Jeff Thompson as a regular member to the Zoning Board of Adjustments and Appeals to serve a two-year term on February 5, 2024.

Alternatives

Council may deny, modify, or table the appointment to the Zoning Board of Adjustments and Appeals.

City Council Meeting Staff Report



Agenda Item

Receive a report, hold a discussion and take action on adopting a resolution authorizing membership in the Atmos Cities Steering Committee and authorizing the payment of \$.05 cents per capita to the Atmos Cities Steering Committee to fund regulatory and related activities related to Atmos Energy Corporation.

Staff Contact

Christine Wallentine, City Clerk/Assistant to the City Manager
cwallentine@cityofdenison.com
(903) 465-2720, Ext. 2437

Summary

- The Atmos Cities Steering Committee (“ACSC”) is composed of 185 municipalities in the service area of Atmos Energy Corporation, Mid-Tex Division that have retained original jurisdiction.
- Because Atmos has no competitors, regulation of the rates that it charges its customers is the only way that cities can ensure that natural gas rates are fair.
- Working as a coalition to review the rates charged by Atmos allows cities to accomplish more collectively than each city could do acting alone.
- ACSC protects the authority of municipalities over the monopoly natural gas provider and defends the interests of residential and small commercial customers within the 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.

Staff Recommendation

Staff recommends adoption of the resolution.

Recommended Motion

“I move to adopt the resolution authorizing membership in the Atmos Cities Steering Committee and authorizing the payment of \$.05 cents per capita to the Atmos Cities Steering Committee to fund regulatory and related activities related to Atmos Energy Corporation.”

Background Information and Analysis

Most municipalities have retained original jurisdiction over gas utility rates and services within municipal limits. The Atmos Cities Steering Committee (“ACSC”) is composed of 185 municipalities in the service area of Atmos Energy Corporation, Mid-Tex Division that have retained original jurisdiction. Atmos is a monopoly provider of natural gas. Because Atmos has no competitors, regulation of the rates that it charges its customers is the only way that cities can ensure that natural gas rates are fair. Working as a coalition to review the rates charged by Atmos allows cities to accomplish more collectively than each city could do acting alone. Cities have more than 100 years’ experience in regulating natural gas rates in Texas.

ACSC is the largest coalition of cities served by Atmos Mid-Tex. There are 185 ACSC member cities, which represent more than 60 percent of the total load served by Atmos-Mid Tex. ACSC protects the

authority of municipalities over the monopoly natural gas provider and defends the interests of residential and small commercial customers within the cities. Although many of the activities undertaken by ACSC are connected to rate cases (and therefore expenses are reimbursed by the utility), ACSC also undertakes additional activities on behalf of municipalities for which it needs funding support from its members.

ACSC is actively involved in rate cases, appeals, rulemakings, and legislative efforts impacting the rates charged by Atmos within the City. These activities will continue throughout the calendar year. It is possible that additional efforts will be necessary on new issues that arise during the year, and it is important that ACSC 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.

Financial Considerations

The annual membership cost is \$1,316.40, budgeted in the General Fund.

Prior Board or Council Action

The City Council has historically approved this membership as it is a cost-effective way to monitor and be active in legal issues involving Atmos Energy.

Alternatives

City Council may deny or table this agenda item.

City of Arlington, c/o Atmos Cities Steering Committee
 Attn: Brandi Stigler
 101 S. Mesquite St., Ste 300
 MS #63-0300
 Arlington, TX 76010

Invoice

Date	Invoice #
2/6/2024	24-49

Bill To
City of Denison

Item	Population	Per Capita	Amount
2024 Membership Assessment	26,328	0.05	1,316.40

Please make check payable to: Atmos Cities Steering Committee and mail to Atmos Cities Steering Committee, Attn: Brandi Stigler, Arlington City Attorney's Office, 101 S. Mesquite St., Ste 300, MS #63-0300, Arlington, Texas 76010	Total	\$1,316.40
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RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING MEMBERSHIP IN THE
ATMOS CITIES STEERING COMMITTEE; AND
AUTHORIZING THE PAYMENT OF FIVE CENTS PER
CAPITA TO THE ATMOS CITIES STEERING
COMMITTEE TO FUND REGULATORY AND RELATED
ACTIVITIES RELATED TO ATMOS ENERGY
CORPORATION**

WHEREAS, the City of Denison is a regulatory authority under the Gas Utility Regulatory Act (GURA) and has exclusive original jurisdiction over the rates and services of Atmos Energy Corporation, Mid-Tex Division (Atmos) within the municipal boundaries of the city; and

WHEREAS, the Atmos Cities Steering Committee (ACSC) has historically intervened in Atmos rate proceedings and gas utility related rulemakings to protect the interests of municipalities and gas customers residing within municipal boundaries; and

WHEREAS, ACSC is participating in Railroad Commission dockets and projects, as well as court proceedings and legislative activities, affecting gas utility rates; and

WHEREAS, the City would like to become a member of ACSC; and

WHEREAS, in order for ACSC to continue its participation in these activities which affects the provision of gas 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 DENISON, TEXAS:

I.

That the City is authorized to become a member in the Atmos Cities Steering Committee to protect the interests of the City of Denison and protect the interests of the customers of Atmos Energy Corporation, Mid-Tex Division residing and conducting business within the City limits.

II.

The City is further authorized to pay its 2024 assessment to the ACSC in the amount of five cents (\$0.05) per capita.

III.

A copy of this Resolution and approved assessment fee payable to “*Atmos Cities Steering Committee*” shall be sent to:

Brandi Stigler
Atmos Cities Steering Committee
c/o Arlington City Attorney’s Office, Mail Stop 63-0300
101 S. Mesquite St., Suite 300
Arlington, Texas 76010

PRESENTED AND PASSED on this the 19th day of February 2024, by a vote of _____ ayes and _____ nays at a regular meeting of the City Council of the City of Denison, Texas.

JANET GOTT, Mayor

ATTEST:

Christine Wallentine, City Clerk

City Council Meeting Staff Report



Agenda Item

Receive a report, hold a discussion, conduct a public hearing, and take action on an Ordinance to rezone an approximately 2.94 acre tract identified as GCAD Property ID No. 141832, said property being legally described as Lots 1 through 16 and including the twenty (20) foot alley, Block 2 of Miller's First Addition to the City of Denison, Grayson County, Texas, according to the deed recorded in Volume Y, Page 330, Deed Records of Grayson County, Texas; being commonly known as 715 W. Sears Street, to amend the current Planned Development Ordinance No. 5218 by changing the current zoning classification from Planned Development Overlay (PD) District with the base zoning of Single-Family Residential Attached (SF-TH) District to a Planned Development Overlay (PD) District with the base zoning of Multi-Family Residential (MF-2) District and Local Retail (LR) District for residential and retail use and amending Exhibit B "Development Standards" and Exhibit C "Concept Plan" of Ordinance No. 5218. (Case No. 2023-117PD).

Staff Contact

Dianne York, Planner
dyork@cityofdenison.com
903-465-2720

Summary

- Applicant is seeking to amend the existing Planned Development (PD) to allow for the development of a mid-rise apartment building with a retail component.
- The proposed base zoning districts will include MF-2, Multi-Family Residential (MF-2) and Local Retail (LR).

Staff Recommendation

Staff recommends approval of this request, including the conceptual elevations to the PD Ordinance.

Recommended Motion

"I move to approve the Ordinance amending the Planned Development Overlay District to a Planned Development Overlay District with the base zoning Multi-Family Residential (MF-2) District and Local Retail (LR) District and amending Exhibit B "Development Standards" and Exhibit C "Concept Plan" and to include the conceptual elevations to the Ordinance.

Background Information and Analysis

The applicant is requesting to amend the current Planned Development Ordinance No. 5218 by changing the current zoning classification from PD with a base zoning of SF-TH, Single Family Attached to a PD with the base zoning of MF-2, Multi-Family Residential (MF-2) and Local Retail (LR) to allow for residential and retail uses.

The complex will consist of approximately two hundred (200) residential units and approximately six thousand (6,000) square feet of retail space located at the northeast corner of the property. In order to accommodate the density, the applicant is requesting a deviation from the MF-2 base zoning district height requirement to allow for a four (4) story structure with a fifth story constructed above the retail

space to allow for eleven (11) units. The building will have a minimum side and front yard setback of ten (10) feet for yards adjacent to N. Armstrong Avenue, N. Barrett Avenue, and W. Sears Street. A zero (0) foot rear yard setback is proposed for the rear yard adjacent to W. Morton Street.

Parking for the residents will be accommodated via an internal parking garage at 1.5 spaces per unit. Visitor and leasing office parking spaces are proposed via on-street parking located on W. Sears Street. Customer and employee parking for the retail space is provided via twenty-two (22) on-street parking spaces located on the west side of N. Barrett Avenue.

A minimum of ten (10) percent of the total lot area will be dedicated to landscape and usable open space. Amenities for the residents will include a courtyard with a pool, grilling stations, open space for activities, a fitness center, club room and mail center.

A traffic impact study will be provided at the time of Civil Engineering Plan submittal.

The proposed development is required to be developed in accordance with City standards. Additional applications such as a Petition for Right-of-Way (ROW) Abandonment, Civil Engineering Plans, Replat and Site Plan must be submitted by the developer prior to requesting a building permit.

The Planning and Zoning Commission recommended approval of the request, however the recommended including the conceptual elevations to the Planned Development Ordinance.

According to Ordinance Section 28.10, City staff and the City Council shall consider the following factors when reviewing rezone requests:

1. *Whether the uses permitted by the proposed change will be appropriate in the immediate area concerned, and their relationship to the general area and to the city as a whole;*

The area has been developed in a predominantly single-family residential manner; however, the Future Land Use Plan depicts this area to be developed in a neighborhood manner and allows for neighborhood commercial.

2. *Whether the proposed change is in accord with any existing or proposed plans for providing public schools, streets, water supply, sanitary sewers, and other utilities to the area;*

The applicant must develop all required infrastructure or improve any existing infrastructure to meet City standards. Civil Engineering Plans are required for this development and must be submitted to City staff at the appropriate time.

3. *The amount of vacant land currently classified for similar development in the vicinity and elsewhere in the city, and any special circumstances that may make a substantial part of such vacant land unavailable for development;*

Rezoning of this property will not impact the availability of similar land for development.

4. *The recent rate at which land is being developed in the same zoning classification as the request, particularly in the vicinity of the proposed change;*

There have been no multi-family zoning requests in this area.

5. *How other areas designated for similar development will be, or are likely to be, affected if the proposed amendment is approved;*

N/A

6. *Whether the zoning petition is consistent with the current land use plan; and*

The area has been developed in a predominantly single-family residential manner; however, the Future Land Use Plan depicts this area to be developed in a neighborhood manner and allows for neighborhood commercial.

7. *Any other factors that will substantially affect the public health, safety, morals, or general welfare.*

Other factors which may substantially affect general welfare have been addressed above.

Financial Considerations

N/A

Prior Board or Council Action

- The City Council approved Ordinance No. 5218 allowing for a Planned Development Overlay District with a base zoning of Single Family Residential District - Attached (SF-TH) at their meeting held on July 11th, 2022.
- The Planning and Zoning Commission recommended approval of the request at their meeting held on February 13th, 2024.

Alternatives

- The Planning and Zoning Commission may table, recommend denial, or recommend approval with conditions.

Aerial of Subject Area





CCM ENGINEERING

2570 FM 407 STE. 209, Highland Village, TX 75077

Office: 972-691-6605

TBPE FIRM #605

Exhibit B

Narrative

RE: The Village at Denison Denison, Texas

The Village at Denison is a midrise, multifamily development proposed on 2.94 acres located between North Armstrong Avenue and North Barrett Avenue and north of West Sears Street and south of FM 120 (West Morton Street). The land is currently zoned Planned Development with a base zoning of SF-TH, Single Family Townhome District. We are proposing to amend the zoning with a Planned Development to allow for approximately 200 residential units plus approximately 6,000 square feet of retail space facing North Barrett Avenue and West Morton Street. The proposed building will be mostly four stories with a small section of five stories over the proposed retail portion of the project. Street parking will be designed in front of the proposed retail with front load parking spaces on North Barrett Avenue

The proposed zoning change conforms to the future land use plan in the City's comprehensive plan which allows for Neighborhood commercial. Being just 3 blocks from downtown, we feel this development would provide a catalyst to the downtown business district and revitalize this area. It will also provide a unique living opportunity for this part of town. This development could encourage other new residential and non-residential developments in the downtown district. We feel this project will positively impact the downtown business district since it is a short walk to the shops and restaurants on Main Street.

Our PD zoning request will use the MF-2 and Local Retail as the base zoning districts. The PD development standards that we are amending are shown in our Exhibit A – PD Conditions.

This project will provide ample parking in the form of an internal parking garage that is screened from public view. Additional amenities will be provided to the

residents including a swimming pool and an amenity center, as well as future retail and/or restaurants within the building.

The development proposed is of high quality and will serve as a positive landmark for the City of Denison.

EXHIBIT 'B'

The Village at Denison

Planned Development District Development Standards

Statement of Purpose and Intent

This zoning submittal encompasses 2.94 acres located between North Armstrong Avenue and North Barrett Avenue and north of West Sears Street and south of FM 120 (West Morton Street). The use proposed for the property would provide a unique living opportunity for this part of town with an upscale Multifamily community and a Retail component. It is the intent of this Planned Development (PD) document to establish a base zoning for the overall property together with the uses and development regulations as designated therein, subject to modifications as set forth herein.

This PD Document and the Concept plan provide departure from existing zoning, use, and development regulations in recognition of the unique character of the development described herein, and unless expressly modified by this PD documents or the Concept Plan, the property shall be developed in accordance with the base zoning districts described below, as they exist or may be amended.

1.0 PROJECT OVERVIEW

The purpose of this Plan Development is to develop a 4-stories medium rise multi-family site with the addition of a fifth story (5-stories) for small retail area at ground level. The maximum density is 72 units per acre, for a total of approximately 200 units that will range in between 670 square feet (1Bed/1Bath) and 1,250 square feet (2Bed/2Bath) and a Retail component of minimum 6,000 square feet. A site plan is required for development within this district.

2.0 PROJECT LOCATION

The Village is located at 715 W. Sears Street and is situated in the Miller's 1st Addition being all of Block 2 as described in Exhibit A, Legal Decision.

3.0 PROPOSED THOROUGHFARES/ACCESS/CROSS SECTIONS

W. Morton Street is designated on the Thoroughfare Plan as a Minor Arterial. S. Armstrong Avenue and W. Sears Street are designated on the Thoroughfare Plan as a Major Collector. N. Barrett Avenue is designated on the Thoroughfare Plan as a Local Street.

4.0 CONCEPT PLAN/CONCEPT ELEVATIONS

The design and development of the Property shall generally comply with the Concept Plan as depicted in Exhibit C, which is intended to provide a general representation of the location of the land use of the property.

The design of the structure shall generally comply with the Conceptual Elevations as depicted in Exhibit D, which is intended to provide a general representation of the design and construction of the complex.

5.0 PROPERTY OWNERS ASSOCIATION

A property owners association shall be established and shall be responsible for the ownership and maintenance of all common areas. Including all private open space areas shown on the Concept Plan. There may be a separate property owners association established for Multifamily and for retail.

6.0 MF-2, MULTI-FAMILY RESIDENTIAL DISTRICT

Except as noted below, areas designated for multi-family development on the Concept Plan shall develop in accordance with the MF-2, Multi-Family Zoning District (MF-2) as it exists or may be amended.

- A. Minimum Project Size. Two (2) acres
- B. Maximum density. Seventy-two (72) units per acre.
- C. Height Regulations.
 - a. Maximum height for the main building: five (5)-stories or Seventy-two (72) feet.
 - b. Maximum height for the detached parking garage: five (5)-stories or fifty (50) feet.
- D. Size of Yards.
 - a. Minimum front yard: Located on Sears Street, ten (10) feet.
 - b. Minimum side yard: Located on Armstrong Avenue and Barrett Avenue, ten (10) feet.
 - c. Minimum rear yard: Located on Morton Street, zero (0) feet.
 - i. Requirements listed in Section 28.31.4.B.3.a-c. shall not apply to this development.
- E. Building Separation.
 - a. Requirements listed in Section 28.31.4.B.4.a-b. shall not apply to this development.
- F. Maximum lot Coverage. Eighty-five (85) percent.
- G. Parking.

Development will provide a parking garage located on the same property as the multi-family and retail development.

 - a. Minimum Number of Parking Spaces: One and a half (1.5) spaces per unit
 - b. Visitor and leasing office parking is proposed via on-street parking with spaces located W. Sears Street.
 - c. Development shall be exempt from screening requirement for parking lots adjacent to public streets.
 - d. Development shall be exempt from parking space clearance requirement listed in Section 28.31.4.E.1.
- H. Additional Standards.
 - a. Usable open space: Minimum of eight (8) percent usable open space shall be provided.

- b. Landscape area requirements: Minimum of ten (10) percent of the total lot area shall be devoted to a combination of landscaping (pervious surface area) and usable open space.
- c. Refuse Facilities: a single refuse facility will serve all units on site. A compactor shall be provided at grade level for safe and convenient pickup by refuse collection and shall be screened from public view in accordance with City standards along property line.
- d. All screening requirements shall conform to City standards and standards set forth in Section 28.50.53.
- e. A swimming pool shall be provided per section 28.31.5.F
- f. Development is exempt from Section 28.31.5.G
- g. All points of the exterior façade shall be within one hundred and fifty (150) feet horizontally of a dedicated fire lane easement, unless approved differently by authorities having jurisdiction.
- h. A 4-foot-wide paved walkway shall connect the building entry doors to the street-side parking areas. The minimum width of any sidewalk adjacent to head-in parking spaces shall be six (6) feet wide to accommodate a two (2)-foot bumper overhang for vehicles.
- i. All building address signage shall be approved by authorities having jurisdiction.
- j. Other regulations as established by article V (Development Standards) are applicable unless specifically addressed above.

7.0 LOCAL RETAIL (LR)

Except as noted below, areas designated as retail space on the Concept Plan shall be developed in accordance with the Local Retail Zoning District (LR) as it exists or may be amended. Approximately six thousand (6,000) square feet of the structure is dedicated to retail space. Retail space is located on the first floor in the northeast corner of the structure as depicted on Exhibit C, Concept Plan.

- A. Development is exempt from the following standards:
 - a. Height Regulations
 - b. Area Regulations
 - c. Size of yards
 - d. Maximum Lot Coverage
 - e. Floor to Area Ratio.
- B. Outside Display of Merchandise:
 - a. Shall not be placed more than 30 feet from the main building.
 - b. Shall not occupy any of the parking spaces that are provided for the retail portions of the development.
 - c. Shall not pose a safety or visibility hazard, nor impede public vehicular or pedestrian circulation, either onsite or offsite, in any way.
 - d. Shall not extend into the public street right-of-way.
 - e. All outside display items shall be removed at the end of each business day (except for large seasonal items such as living plants, Christmas trees, etc.).
 - f. All merchandise shall be displayed in a neat and orderly manner, and the display area shall be maintained in a clean, litter free manner.

- C. Permanent open storage is prohibited.
- D. Recreational vehicles, travel trailers or motor homes may not be used for onsite dwelling or non-residential purposes.
- E. Parking for Retail will be provided along N. Barrett Avenue with a minimum of 22 parking spaces. Spaces shall be head-in parking spaces with a minimum width of nine feet and a minimum depth of eighteen feet (9'x18').
- F. No designated loading or unloading zones are required, however, loading or unloading via Morton Street is prohibited.

8.0 OPEN SPACE AND AMENITIES

- A. Usable open space: Minimum of eight (8) percent usable open space shall be provided.
- B. All common and open space areas shall be owned and maintained by the Property Owners Associations (POA)
- C. A courtyard containing a pool, grilling stations, open space for activities and a seating area.
- D. Indoor amenities will include a fitness center, club room and mail center.

Proposed Preliminary Project Area Calculations

UNIT MARK	DESCRIPTION	# UNITS	# UNITS	# UNITS	# UNITS	# UNITS	# UNITS	# UNITS	NET SF	TOTAL SF
1ST	2ND	3RD	4TH	5TH	TOTAL	MARK	PER UNIT			
A1	1-Bdrm/1-Bath	2	3	3	1	12	15.9%	780	9,360	21,330
A2	1-Bdrm/1-Bath (Courtyard Corner)	4	8	8	2	30	14.6%	711	21,330	21,330
A3	1-Bdrm/1-Bath	5	9	9	2	34	16.0%	650	20,900	20,900
A4	1-Bdrm/1-Bath (Trash Room)	15	17	17	2	68	32.2%	1,104	75,072	75,072
B1	2-Bdrm/2-Bath (Above Club)	0	2	2	2	0	2.0%	1,280	7,680	7,680
B2	2-Bdrm/2-Bath (Outside Corner)	3	4	4	4	16	7.6%	1,259	20,144	20,144
B3		3	4	4	4	16	7.6%	1,259	20,144	20,144
SUBTOTALS		35	53	53	11	205				

Grade Level Commercial Area: + 6,000 SF Gross SF
NET SF = CONDITIONED SF WITH PERIMETER WALL FRAMING

Proposed Preliminary Parking Calculations

1. Spaces per 1-bed unit: 133 Total 1-bed units: 166 Spaces Required

2. Spaces per 2-bed unit: 190 Total 2-bed units: 189 Spaces Required

Total Required Spaces: 348 Spaces Required (minimum)

Tenant Garage Parking Proposed:

- Garage Level 1: 77 Spaces Proposed
- Garage Level 2: 80 Spaces Proposed
- Garage Level 3: 80 Spaces Proposed
- Garage Level 4: 80 Spaces Proposed

Total Tenant use Garage Parking Proposed: 317 Spaces Proposed

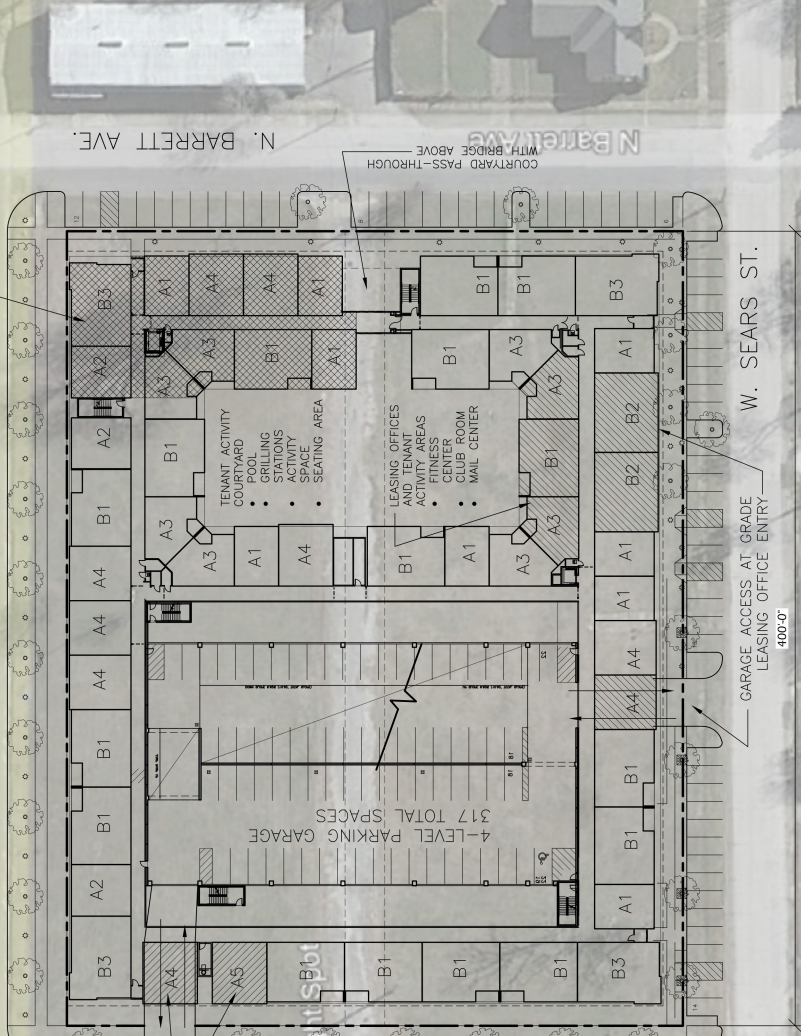
W. Sears Street Parking (Tenant Visitor/Loading): 33 Spaces Proposed

Total Tenant use Parking Proposed: 350 Spaces Proposed

N. Barrett Ave. Street Parking (Commercial Parking): 26 Spaces Proposed

Total Parking Proposed: 376 Total Spaces Proposed

±6,000 SF GROSS COMMERCIAL SPACE WITH 4-LEVELS OF APARTMENTS ABOVE. (5-STORY BUILDING SECTION)



The Village in Denison

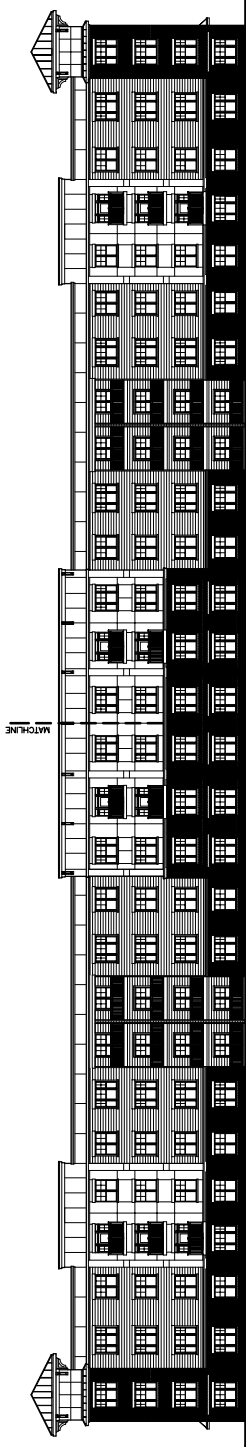
THESE DRAWINGS ARE AN INSTRUMENT OF SERVICE AND NOT BE LOANED, REPRODUCED, COPIED, REPRODUCED, OR REPRODUCED IN ANY MANNER WITHOUT THE WRITTEN PERMISSION OF PARKER ASSOCIATES, TULSA, LLC.

PARKER ASSOCIATES
2202 S. W. 44th St., Suite 200
Tulsa, Oklahoma 74109
(918) 432-2400

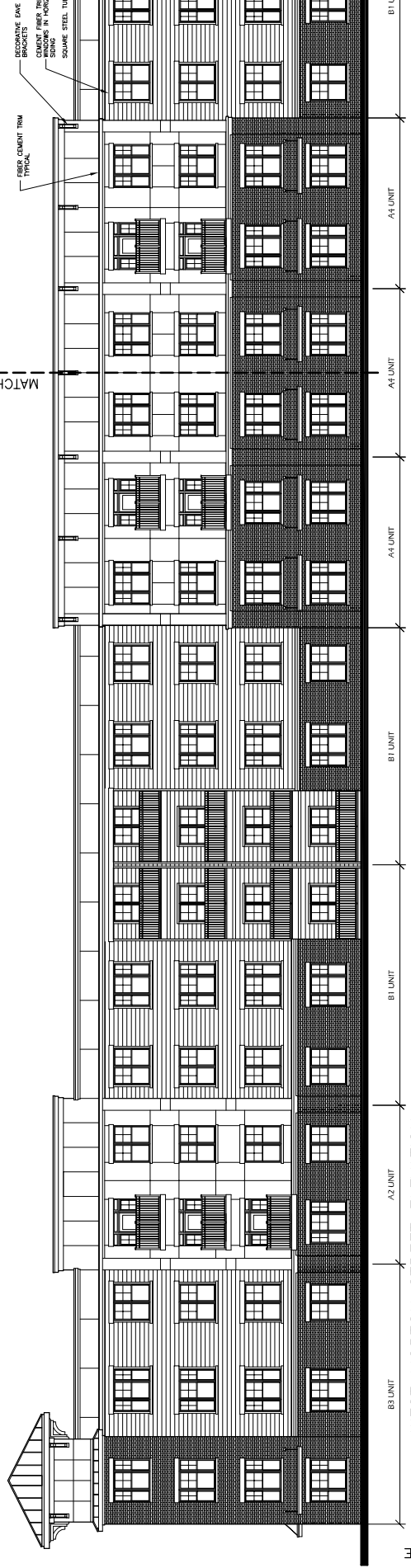
NOT FOR CONSTRUCTION

DATE: 09-27-24
JOB NUMBER: 222013
DRAWN BY: BH
CHECKED BY: S1

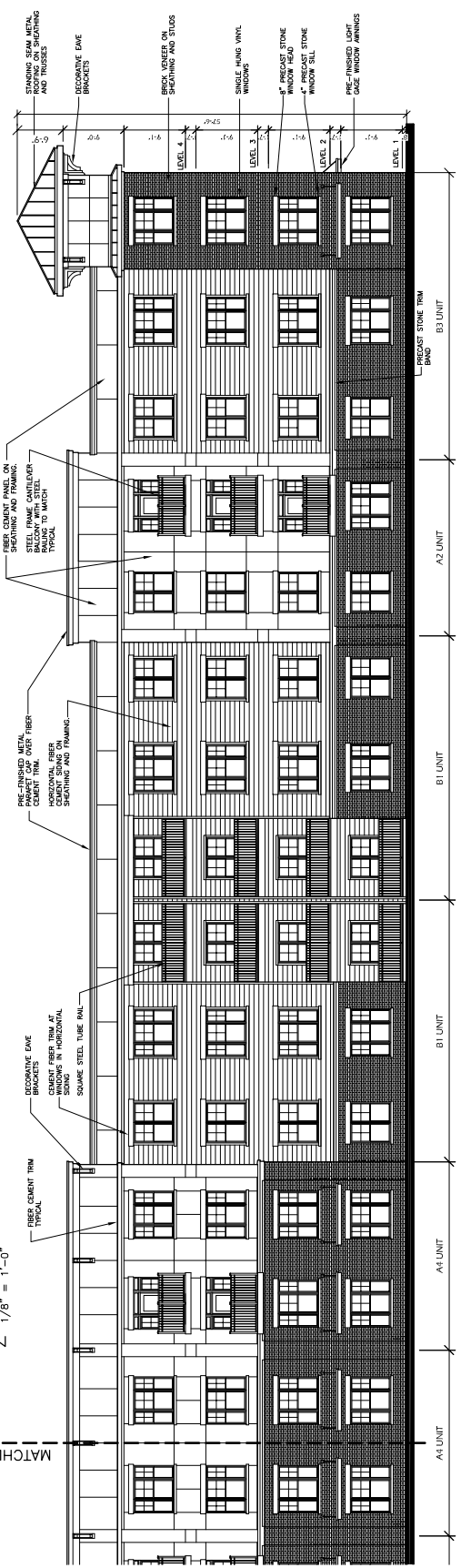
1 PRELIMINARY SITE CONTEXT PLAN
1" = 30'-0"



1 WEST MORTON STREET ELEVATION - FULL ELEVATION
 1/16" = 1'-0"



2 WEST MORTON STREET ELEVATION
 1/8" = 1'-0"



3 WEST MORTON STREET ELEVATION
 1/8" = 1'-0"

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The Village in Denison

NOT FOR CONSTRUCTION

PRELIMINARY

THE DOCUMENTS ARE THE PROPERTY OF PARKER ASSOCIATES AND ARE TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED ON THESE DOCUMENTS.

DATE: 11-10-2023

JOB NUMBER: 220219

DRAWN BY: BH

DATE: 11-10-2023

ARCHITECT OF RECORD: PARKER ASSOCIATES, TULSA, OK

220219

11-10-2023

SHEET NUMBER: ELEV of





ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DENISON, TEXAS, AMENDING CHAPTER 28 OF THE CODE OF ORDINANCES OF THE CITY OF DENISON, THE SAME BEING THE COMPREHENSIVE ZONING ORDINANCE OF THE CITY, AND AMENDING THE OFFICIAL ZONING MAP OF THE CITY BY AMENDING THE CURRENT PLANNED DEVELOPMENT ORDINANCE NO. 5218 BY CHANGING THE CURRENT ZONING CLASSIFICATION FROM PLANNED DEVELOPMENT OVERLAY (PD) DISTRICT WITH BASE ZONING OF SINGLE-FAMILY RESIDENTIAL—SINGLE-FAMILY ATTACHED (SF-TH) DISTRICT TO PLANNED DEVELOPMENT OVERLAY (PD) DISTRICT WITH BASE ZONING OF MULTI-FAMILY RESIDENTIAL DISTRICT (MF-2) AND LOCAL RETAIL DISTRICT (LR), AND AMENDING EXHIBIT B “DEVELOPMENT STANDARDS” OF ORDINANCE NO. 5218, ON AN APPROXIMATELY 2.94 ACRE TRACT IDENTIFIED AS GCAD PROPERTY ID NO. 141832, SAID PROPERTY BEING LEGALLY DESCRIBED AS LOTS 1 THROUGH 16 AND INCLUDING THE TWENTY (20’) FOOT ALLEY, BLOCK 2 OF MILLER’S FIRST ADDITION TO THE CITY OF DENISON, GRAYSON COUNTY, TEXAS, ACCORDING TO THE DEED RECORDED IN VOLUME Y, PAGE 330, DEED RECORDS OF GRAYSON COUNTY, TEXAS; BEING COMMONLY KNOWN AS 715 W. SEARS STREET; BEING MORE PARTICULARLY DESCRIBED AND DEPICTED IN EXHIBIT “A”; PROVIDING DEVELOPMENT STANDARDS, ATTACHED HERETO AS EXHIBIT “B”; PROVIDING A CONCEPT PLAN, ATTACHED HERETO AS EXHIBIT “C”; PROVIDING FOR SEVERABILITY, REPEALING, AND SAVINGS CLAUSES; PROVIDING A PENALTY CLAUSE; PROVIDING FOR PUBLICATION; PROVIDING AN EFFECTIVE DATE; AND FINDING AND DETERMINING THE MEETING AT WHICH THIS ORDINANCE IS ADOPTED TO BE OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, the City of Denison, Texas (hereinafter referred to as “City”) is a Home Rule Municipality acting under its Charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Texas Local Government Code; and

WHEREAS, the City Council of the City of Denison, Texas (the “City Council”), is authorized and empowered by law, in accordance with Chapter 211 of the Texas Local Government Code, to adopt zoning regulations governing the use of land within the City; and

WHEREAS, the City Council adopted Chapter 28 of its Code of Ordinances, the same being the Comprehensive Zoning Ordinance of the City, which governs the use and development of land in the City (the “Zoning Ordinance”); and

WHEREAS, the City has received a request from Malone Plumbing, Inc., to amend the current Planned Development Ordinance No. 5218 by changing the current zoning classification from Planned Development Overlay (PD) District with the base zoning of Single-Family Residential - Single-Family Attached (SF-TH) District to a Planned Development Overlay (PD) District with the base zoning of

Multi-Family Residential (MF-2) District and Local Retail (LR) District for residential and retail use and to amend Exhibit B “Development Standards” of Ordinance No. 5218 on an approximately 2.94 acre tract identified as GCAD Property ID No. 141832, said property being legally described as Lots 1 through 16 and including the twenty (20’) foot alley, Block 2 of Miller’s First Addition, City of Denison, Grayson County, Texas, and being more particularly described and depicted in **Exhibit A**, attached hereto and incorporated as if fully set forth herein (the “Property”); and

WHEREAS, Owner has designated Cody Crannell of CCM Engineering to act in the capacity of Owner as agent for submittal, processing, representation, and/or presentation of the application, and as the principal contact person for responding to all requests for information; and

WHEREAS, the Development Standards and Concept Plan, as set forth in **Exhibit B** and **Exhibit C**, attached hereto and incorporated herein, define the base zoning districts and provide for modifications to district regulations for the development of the Property; and

WHEREAS, after public notices were given in compliance with Texas law and public hearings were conducted, and after considering the information submitted at those public hearings and all other relevant information and materials, the Planning and Zoning Commission of the City (the “Planning and Zoning Commission”) has recommended to the City Council to approve the change in zoning district classification on the Property and to amend the official zoning map of the City (the “Zoning Map”) to reflect the PD zoning classification; and

WHEREAS, after complying with all legal notices, requirements, and conditions, a public hearing was held before the City Council at which it considered the recommendation of the Planning and Zoning Commission and, among other things, the character of the land and its suitability for particular uses, and compatibility with surrounding uses, with a view of encouraging the most appropriate use of land in the City, and the City Council does hereby find that the requested zoning accomplishes such objectives; and

WHEREAS, the Zoning Ordinance incorporates design standards and building materials standards that are differentially applicable to residential structures and non-residential buildings; and

WHEREAS, such standards substantially further the preservation of property values and the promotion of economic development within the City; and

WHEREAS, such standards also establish the character of community development and embody architecturally and, in some contexts, culturally significant features of continuing duration; and

WHEREAS, the Zoning Ordinance also provides for planned development districts, which enable departures from traditional zoning district standards in recognition of the unique character of a development project; and

WHEREAS, the City’s policy in creating or amending a planned development district is to incorporate and enhance to the fullest extent feasible the design and building materials standards that are integral to the City’s zoning regulations in all planned development districts; and

WHEREAS, the City Council finds and determines that the incorporation of such standards lends long-term viability to the planned development project; and

WHEREAS, the owner and/or developer of the Property has consented in writing to the enforcement of the City’s design and building materials standards within the planned development district and waived the statutory provisions in Chapter 3000, Texas Government Code.

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

Section 1. Incorporation of Premises. The above and foregoing premises are true and correct and are incorporated herein and made a part hereof for all purposes.

Section 2. Findings. After due deliberations and consideration of the recommendation of the Planning and Zoning Commission and the information and other materials received at the public hearing, the City Council has concluded that the adoption of this Ordinance is in the best interests of the City, and of the public health, safety and welfare.

Section 3. Zoning Amendment. The Zoning Ordinance and Ordinance No. 5218 are hereby amended to change the zoning of the Property to Planned Development Overlay (PD) District with the base zoning of Multi-Family Residential (MF-2) District and Local Retail (LR) District, subject to the following regulations, which exhibits are incorporated as if fully set forth herein, and all applicable City ordinances and regulations governing except as may be modified by this Ordinance:

Exhibit B:	Development Standards
Exhibit C:	Concept Plan

Section 4. Zoning Map. The Zoning Map is hereby amended to reflect the established zoning classification designation herein made.

Section 5. Compliance Required. The Property shall be used only in the manner and for the purposes provided for in this Ordinance and the Comprehensive Zoning Ordinance of the City, as amended.

Section 6. Severability Clause. Should any section, subsection, sentence, clause, or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. The City hereby declares that it would have passed this Ordinance, and each section, subsection, sentence, clause, or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional or invalid.

Section 7. Savings/Repealing Clause. All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

Section 8. Penalty. Any person, firm, entity or corporation who violates any provision of this Ordinance shall be deemed guilty of a misdemeanor, and upon conviction therefore, shall be fined in a sum not exceeding Two Thousand and No/100 Dollars (\$2,000.00). Each continuing day's violation shall constitute a separate offense. The penal provisions imposed under this Ordinance shall not preclude the City from filing suit to enjoin the violation. The City retains all legal rights and remedies available to it pursuant to local, state and federal law.

Section 9. Publication and Effective Date. This Ordinance shall become effective immediately upon its adoption and its publication as required by law.

Section 10. Open Meeting. It is hereby officially found and determined that the meeting at which this ordinance was passed was open to the public as required by law, and that public notice of the time, place, and purpose of said meeting was given all as required by Section 551.041 of the Texas Government Code.

AND IT IS SO ORDERED.

On motion by Councilmember _____, seconded by Councilmember _____, the above and foregoing ordinance was passed and approved by the following vote:

- Ayes:
- Nays:
- Abstentions:

At regular meeting February 19, 2024.

JANET GOTT, MAYOR

ATTEST:

Christine Wallentine, City Secretary

EXHIBIT A

PROPERTY LEGAL DESCRIPTION AND DEPICTION

Being an approximately 2.94 acre tract identified as GCAD Property ID No. 141832, said property being legally described as Lots 1 through 16 and including the twenty (20') foot alley, Block 2 of Miller's First Addition to the City of Denison, Grayson County, Texas, according to the deed recorded in Volume Y, Page 330, Deed Records of Grayson County, Texas; being commonly known as 715 W. Sears Street.

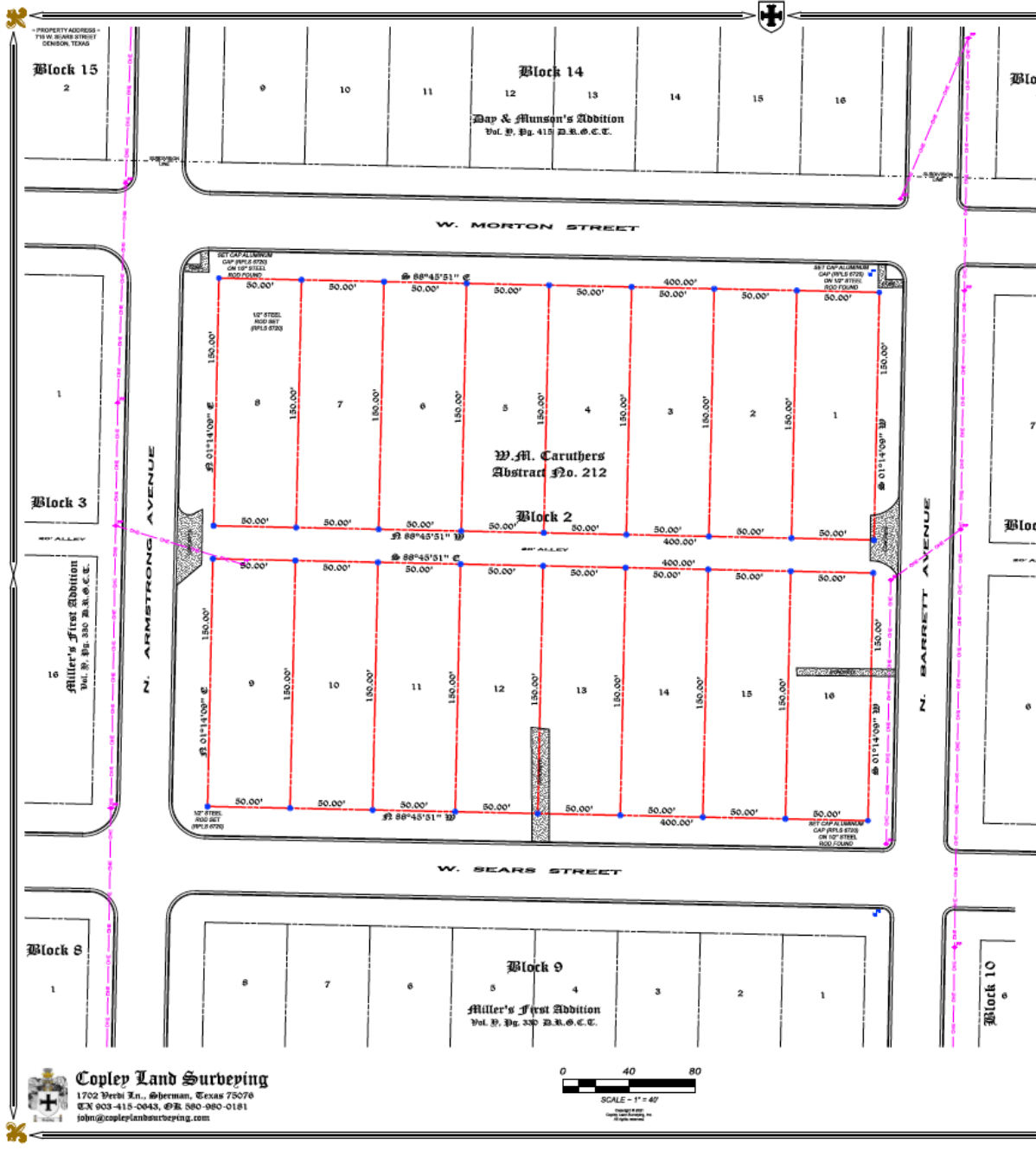


EXHIBIT B
DEVELOPMENT STANDARDS
THE VILLAGE AT DENISON
PLANNED DEVELOPMENT DISTRICT
STATEMENT OF INTENT AND PURPOSE

This zoning submittal encompasses approximately 2.94 total acres of land currently located within the City of Denison. The uses proposed for the Property will provide the ability to accommodate and encourage the development of a variety of uses including local retail and multi-family. It is the intent of this planned development document (PD) to establish a base zoning for the overall property together with the uses and development regulations as designated therein, subject to modifications as set forth herein. Additionally, the City's Zoning Ordinance incorporates building materials that are differentially applicable to residential structures and non-residential buildings, and it is the City's policy in creating a planned development district to incorporate and enhance to the fullest extent possible the design and building materials standards, which embody architecturally, and in some contexts, culturally significant features of continuing duration.

This PD document and the Concept Plan provide departure from existing zoning, use, and development regulations in recognition of the unique character of the development described herein, and unless expressly modified by this PD document or the Concept Plan, the Property shall be developed in accordance with the base zoning districts described below, as they exist or may be amended.

1.0 PROJECT OVERVIEW

The Village at Denison is a midrise, multifamily development on a proposed 2.94 acres. The development proposes allowing for approximately 200 residential units.

2.0 PROJECT LOCATION

The Village at Denison is located in between North Armstrong Avenue and North Barrett Avenue and north of West Sears Street.

3.0 CONCEPT PLAN

The design and development of the Property shall generally comply with the Concept Plan, which is intended to provide a general representation of the location of the land uses on the property.

4.0 LR -LOCAL RETAIL DISTRICT

- A. Permitted uses: Those uses listed for the LR District in section 28.49 as "P" or "C" are authorized uses permitted by right or conditionally permitted uses (i.e. SUP), respectively. Conditional uses must be approved utilizing procedures set forth in section 28.11
- B. Local Retail zoning location: The Local Retail zoning will be located on the first floor of the multistory building in the locations shown on the Concept Plan.
- C. Outside display of merchandise:
 - a. Shall not be placed more than 30 feet from the main building.
 - b. Shall not occupy any of the parking spaces that are provided for the retail portions of

- the development.
- c. Shall not pose a safety or visibility hazard, nor impede public vehicular or pedestrian circulation, either onsite or offsite, in any way.
- d. Shall not extend into the public street right-of-way.
- e. All outside display items shall be removed at the end of each business day (except for large seasonal items such as living plants, Christmas trees, etc).
- f. All merchandise shall be displayed in a neat and orderly manner, and the display area shall be maintained in a clean, litter free manner.
- D. Permanent open storage is prohibited.
- E. Recreational vehicles, travel trailers or motor homes may not be used for on-site dwelling or non-residential purposes.
- F. Parking will be provided for the retail only with a minimum of 26 parking spaces along N. Barrett Avenue. Spaces shall be head in parking spaces with a minimum width of 9 feet and a minimum depth of 18 feet.
- G. No designated loading or unloading zones are required.

5.0 MF-2 - MULTI-FAMILY RESIDENTIAL DISTRICT

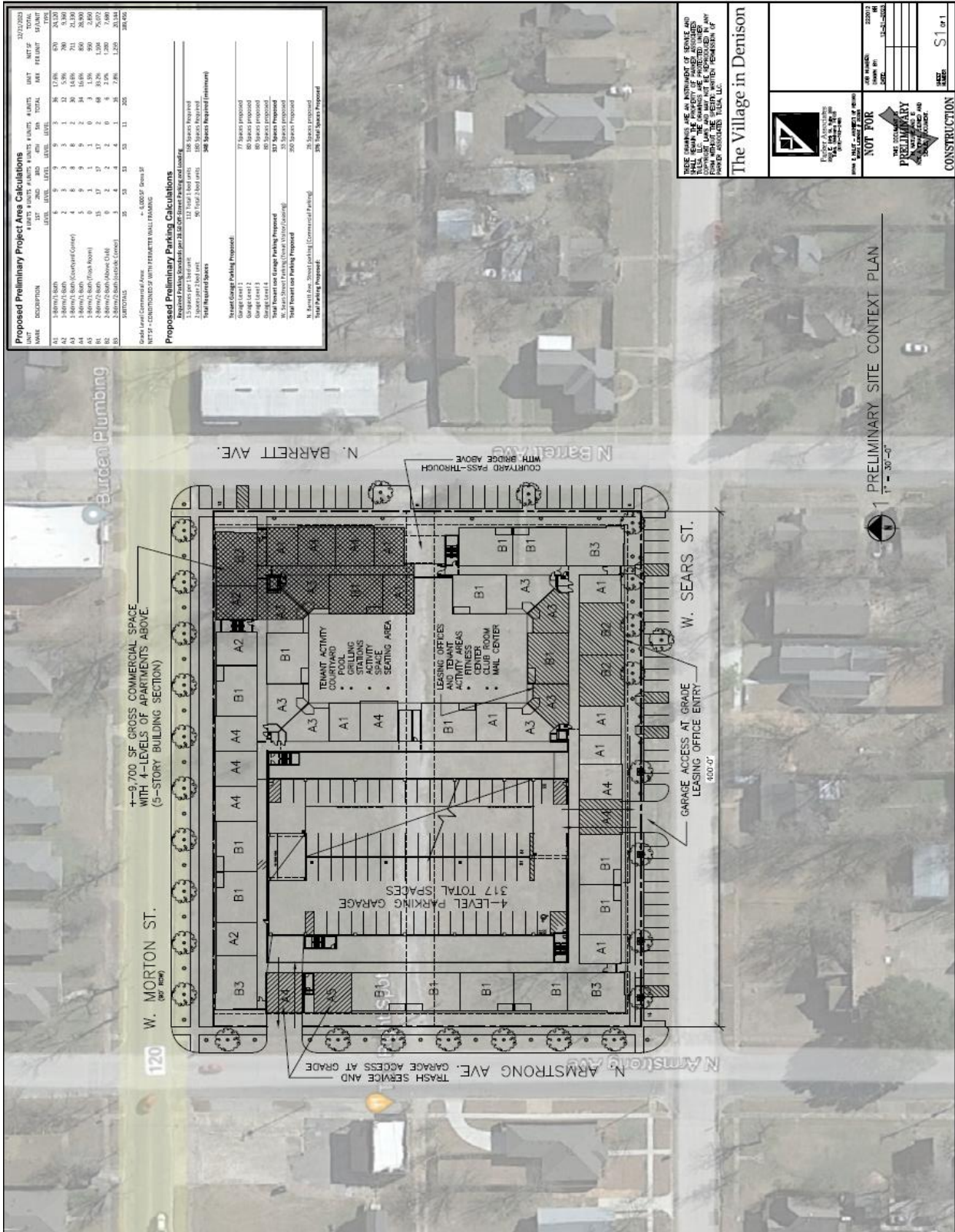
- A. All requirements of the MF-2 Zoning ordinance shall apply to this PD except as listed below:
- B. General purpose and description:
 - a. This development is intended to be developed as a medium rise multifamily site. The maximum density is 71 units per acre. A site plan would be required for development within this district.
- C. Height regulations:
 - a. The maximum height for the main building is 4-stories or 56 feet.
 - b. Maximum height for accessory buildings is 4-stories or 50 feet (detached parking garage).
- D. Area regulations:
 - a. Size of lot: The minimum project size shall be acres (2) acres.
- E. Size of yards:
 - a. Minimum front yard (Sears Street) is 10 feet.
 - b. The minimum yards (Armstrong Ave. and Barrett Ave.) is 10 feet on each side.
 - c. Minimum Rear Yard (Morton Street) is 0 feet.
 - d. All additional rear yard requirements listed in 28.30.4 B (3) are N/A.
 - e. All building separation requirements listed in 28.30.4 B (4) are N/A
- F. Maximum lot coverage:
 - a. Maximum lot coverage is 80%.
- G. Parking regulations:
 - a. Parking spaces clearances noted in 28.30.4 E (1) are not applicable to garage parking.
 - b. Screening of parking adjacent to public streets is not applicable.
 - c. The minimum dedicated tenant use parking is 1.5 spaces per unit with additional streetside parking for visitors to comply with the total minimum amount

required by section 28.50.

H. Special Requirements:

- a. Except as provided in 28.30.5 (B-S), or noted below, 8% minimum open space shall be provided.
- b. Maximum density is 71 units per acre.
- c. Minimum of 15% of the total lot area shall be devoted to a combination of landscaping (pervious surface area) and usable open space.
- d. Refuse facilities: A single refuse facility will serve all units on the site. A compactor shall be provided at grade level for safe and convenient pickup by refuse collection agencies and shall be screened from public view along property line.
- e. If fence or screening is provided it shall be in accordance with section 28.53.
- f. The playground area referenced in 28.31.5 (G) is not required.
- g. All points on the exterior façade shall be within 150 feet horizontally of a dedicated fire lane easement, unless approved differently by authorities having jurisdiction.
- h. A 4-foot-wide paved walkway shall connect the building entry doors to the street-side parking areas. The minimum width of any sidewalk adjacent to head-in parking spaces shall be 6 feet wide to accommodate a 2-foot bumper overhang for vehicles.
- i. All building address signage shall be approved by authorities having jurisdiction.
- j. Other regulations as established by article V (Development Standards) are not applicable unless specifically addressed above.

EXHIBIT C CONCEPT PLAN



Proposed Preliminary Project Area Calculations

UNIT	DESCRIPTION	# UNITS	AREA (SQ FT)	LEVEL	TOTAL	DATE	NET SF	TOTAL
A1	1-Bedroom/1-Bath	6	9	36	12,960	6/11	21,216	21,216
A2	1-Bedroom/1-Bath (Corner Unit)	4	8	32	11,520	6/11	23,136	23,136
A3	1-Bedroom/1-Bath	4	8	32	11,520	6/11	21,216	21,216
A4	1-Bedroom/1-Bath	5	9	45	15,750	6/11	28,900	28,900
B1	2-Bedroom/2-Bath (Club Room)	0	17	68	23,760	6/11	390	23,760
B2	2-Bedroom/2-Bath (Above GYM)	0	2	8	2,880	6/11	1,320	2,880
B3	2-Bedroom/2-Bath (Corner)	1	4	16	5,760	6/11	1,200	7,440
TOTALS		15	58	232	81,360		1,250	81,360

Proposed Preliminary Parking Calculations

Assigned parking standards per 2008 City of Denver Parking and Loading

- 15 Spaces per 1,000 sq ft
- 20 Spaces per 1,000 sq ft
- 30 Spaces per 1,000 sq ft
- 50 Spaces per 1,000 sq ft
- 75 Spaces per 1,000 sq ft
- 100 Spaces per 1,000 sq ft
- 150 Spaces per 1,000 sq ft
- 200 Spaces per 1,000 sq ft
- 250 Spaces per 1,000 sq ft
- 300 Spaces per 1,000 sq ft
- 350 Spaces per 1,000 sq ft
- 400 Spaces per 1,000 sq ft
- 450 Spaces per 1,000 sq ft
- 500 Spaces per 1,000 sq ft
- 550 Spaces per 1,000 sq ft
- 600 Spaces per 1,000 sq ft
- 650 Spaces per 1,000 sq ft
- 700 Spaces per 1,000 sq ft
- 750 Spaces per 1,000 sq ft
- 800 Spaces per 1,000 sq ft
- 850 Spaces per 1,000 sq ft
- 900 Spaces per 1,000 sq ft
- 950 Spaces per 1,000 sq ft
- 1,000 Spaces per 1,000 sq ft

Street Garage Parking Proposed:

- Storage Level 1: 77 Spaces Proposed
- Storage Level 2: 80 Spaces Proposed
- Storage Level 3: 82 Spaces Proposed
- Storage Level 4: 82 Spaces Proposed
- Total Street Garage Parking Proposed: 321 Spaces Proposed
- Total Street Parking Proposed: 321 Spaces Proposed
- Total Street Parking (Commercial Parking): 321 Spaces Proposed
- Total Parking Proposed: 321 Spaces Proposed

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The Village in Denison

NOT FOR CONSTRUCTION

THE 2024 PRELIMINARY ARCHITECTURAL AND ENGINEERING DRAWINGS FOR THE PROJECT ARE PRELIMINARY AND NOT TO BE USED FOR CONSTRUCTION.

DATE: 02/22/2024
 DRAWN BY: [Name]
 CHECKED BY: [Name]
 SCALE: 1/8" = 30'-0"

S1 of 1

City Council Meeting Staff Report



February 19, 2024

Agenda Item

Receive a report, hold a discussion and take action on an ordinance considering all matters incident and related to the issuance, sale and delivery of “City of Denison, Texas Combination Tax and Limited Surplus Revenue Certificates of Obligation, Series 2024;” authorizing the issuance of the Certificates; approving and authorizing instruments and procedures relating to said Certificates; and enacting other provisions relating to the subject.

Staff Contact

Laurie Alsabbagh, Finance Director
lalsabbagh@cityofdenison.com
903-465-2720 EXT 2492

Summary

- Capital Improvement Projects were discussed with Council during the FY2024 budget process.
- Projects to be covered under this issuance include infrastructure for North West Denison Development, Lake Texoma Raw Water Pump Station, upgrades to the Rylant Water Treatment Plant, emergency reconstruction of the Duck Creek Interceptor line, improvements to Loy Lake Dam, and other system improvements.
- Resolution for Publication of Notice of Intent adopted by Council on December 4, 2023.
- Notices were published in The Herald Democrat newspaper on December 10th and 17th, 2023 and posted continuously on the City’s website.
- The bond sale is currently scheduled for approval at the City Council meeting on February 19, 2024, however this is President’s Day, and the bond market will be closed for the holiday.
- Consequently, this item will need to be tabled to the March 4, 2024, City Council meeting.

Staff Recommendation

Staff recommends tabling this agenda item to March 4, 2024.

Recommended Motion

“I move to table adoption of the ordinance authorizing the issuance of the City's Combination Tax and Limited Surplus Revenue Certificates of Obligation, Series 2024, to the City Council meeting scheduled to begin at 6:00 p.m., March 4, 2024, at City Hall located at 300 W. Main, Denison, Texas.”

Background Information and Analysis

Each year during the budget process, staff brings before Council the multi-year capital improvement projects plan. Based on the FY2024 plan, utility projects to be covered under this bond issuance include infrastructure for North West Denison Development, Lake Texoma Raw Water Pump Station, upgrades to the Rylant Water Treatment Plant, emergency reconstruction of the Duck Creek Interceptor line, improvements to Loy Lake Dam, as well as other system improvements. Staff published the required notice, on two separate occasions, in the Herald Democrat and also posted notice on the City’s website, as required by law.

The bond sale is currently scheduled for approval at the City Council meeting on February 19, 2024, however this is President's Day and the bond market will be closed for the holiday. Consequently, this item will need to be tabled to the March 4, 2024, City Council meeting. Since the February 19, 2024, date was published as part of the notice of intent, this item is required to be on the City Council agenda for February 19, 2024.

Staff is requesting this agenda item be tabled to the March 4, 2024, City Council Meeting.

Financial Considerations

Principal amount of Bonds to be issued will not exceed \$57,500,000. Financial Advisors from Hilltop Securities, Inc. will present the pricing for the CO's.

Prior Board or Council Action

Council adopted a resolution directing the publication of notice of intention to issue combination tax and revenue certificates of obligation at their meeting on December 4, 2023.

Alternatives

Council may choose not to approve the ordinance for the CO's. If they choose not to approve, the City will not move forward with the process to receive funding for the projects.