



**CITY OF HUTCHINS
CITY COUNCIL MEETING
AGENDA**

**Monday, June 03, 2024 at 6:00 PM
City Hall, 321 N. Main Street**

Pursuant to Section 551 of the Texas Government Code, notice is hereby given of a Regular Meeting of the Hutchins City Council to be held on Monday, June 3, 2024, beginning with a Work Session at 6:00 p.m. and Regular Meeting at 6:30 p.m. at Hutchins City Hall Council Chambers, 321 N. Main Street, Hutchins, Texas, at which time the following items will be discussed and considered.

City Council Members

Mayor Mario Vasquez
Mayor Pro Tem Steve Nichols
Councilmember Brenda Campbell
Councilmember Dominic Didehbani
Councilmember Raymond Elmore
Councilmember Demarcus Odom

A. WORK SESSION

1. Recreation Center/Library Space Programming Presented by Brandstetter Carroll Inc.

B. CALL TO ORDER AND ANNOUNCE A QUORUM PRESENT

2. Roll Call by Mayor and announce a quorum.

C. INVOCATION AND PLEDGE OF ALLEGIANCE

- D. CITIZEN COMMENTS** - *This agenda item provides an opportunity for citizens to address the City Council on any matter that is not posted on the agenda. Anyone wishing to address the City Council should complete a Citizen Comments Form and submit it to the City Secretary prior to the start of the City Council meeting. There is a three (3) minute time limit for each citizen to speak. However, in accordance with the Texas Open Meetings Act, the City Council cannot discuss issues raised or make any decision at this time.*

- E. CONSENT AGENDA** - *All items presented in the Consent Agenda require no deliberation by the Council. Each Council member has the opportunity of removing an item from this agenda so that it may be considered separately.*

3. Consider approval of city council meeting minutes for April and May 2024.

F. PRESENTATIONS

4. Update on the storm damage from May 28, 2024. Presented by Stacey Hickson

G. PUBLIC HEARINGS

5. Conduct a Public Hearing requested by Brad Eubanks, of Eagle Surveying. (representing property owner Roger Gault "Hutchins Industrial Ventures LLC") for the replat of an 11.87 acre tract or parcel of land situated in the W.H. SHELTON SURVEY, ABSTRACT NO. 1292, City of Hutchins, Dallas County, Texas, being a called 11.869 acre tract of land conveyed to HUTCHINS INDUSTRIAL VENTURES, LLC by Special Warranty Deed with Vendor's Lien of record in Document Number 202000243075 of the Official Public Records of Dallas County, Texas, being all of Tract 1, Block A, Rachels Addition, an addition to the City of Hutchins, Dallas County, Texas according to the plat recorded in Volume 85243, Page 1248 of the Plat Records of Dallas County, Texas, and being more particularly described 1520 E Wintergreen. Presented by: Tim Rawlings
6. Open Public Hearing and receive comments
7. Consider a request for a replat at 1520 E. Wintergreen Road requested by Brad Eubanks, of Eagle Surveying. (representing property owner Roger Gault "Hutchins Industrial Ventures LLC") for the replat of an 11.87 acre tract or parcel of land situated in the W.H. SHELTON SURVEY, ABSTRACT NO. 1292, City of Hutchin, Dallas County, Texas. Presented by: Tim Rawlings

H. REGULAR AGENDA - *As authorized by Section 551.071 of the Texas Government Code, the City Council reserves the right to convene in Executive Session for the purpose of seeking confidential legal advice from the City Attorney on any agenda item listed herein.*

8. Discuss and Consider Bid from Big Sky Construction for the renovation of 5 holding cells at the police department presented by: Mamun Yusuf
9. Discuss and consider Resolution 2024-06-1197 BY THE CITY COUNCIL OF THE CITY OF HUTCHINS, TEXAS, APPROVING AN ENGAGEMENT AGREEMENT WITH WEST & ASSOCIATES L.L.P. RELATING TO BOND COUNSEL SERVICES. Presented by: Maria Joyner, Director of Finance
10. Discuss and consider Resolution 2024-06-1198 BY THE CITY COUNCIL OF THE CITY OF HUTCHINS, TEXAS, APPROVING AND AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE THE TERMS AND CONDITIONS OF A MASTER AGREEMENT BETWEEN THE CITY AND VC3 INC FOR COMPUTER SYSTEM, SOFTWARE SERVICES, HARDWARE AS A SERVICE, CONSULTING SERVICES AND/OR PROFESSIONAL SERVICES; AND PROVIDING FOR AN EFFECTIVE DATE Presented by: Maria Joyner, Director of Finance
11. Discuss and consider Resolution R2024-06-199 OF THE CITY COUNCIL OF THE CITY OF HUTCHINS, TEXAS, ACCEPTING THE PROPOSAL RECEIVED IN ASSOCIATION WITH THE CONSTRUCTION MATERIALS TESTING FOR NEW CITY HALL CONSTRUCTION PROJECT; AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE AN AGREEMENT WITH THE ECS SOUTHWEST, LLP, IN AN AMOUNT NOT TO EXCEED \$148,170.00; AND PROVIDING FOR AN EFFECTIVE DATE. Presented by: Mamun Yusuf

I. EXECUTIVE SESSION

12. Pursuant to Texas Government Code Section 551.071, Consultation with the City Attorney to receive legal advice regarding pending litigation, to wit: *City of Hutchins v. TOR Holdings, LLC*; Cause No. CC-22-03226-B

J. RECONVENE INTO REGULAR SESSION

13. Take action, if any, as a result of Executive Session

K. ITEMS OF COMMUNITY INTEREST

14. Atwell Public Library Board Meeting - Tuesday, June 18, 2024 at 6:30 p.m. City Hall Council Chamber, 321 N. Main St., Hutchins.

Parks and Recreation Board - Tuesday, June 4, 2024 at 6:30 p.m. City Hall Council Chamber, 321 N. Main St., Hutchins

Planning and Zoning Commission Meeting, Thursday, June 20, 2024, at 6:00 p.m. City Hall Council Chambers, 321 N. Main St., Hutchins

Regular City Council Meeting, Monday, June 17, 2024 at 6:30 p.m. City Hall Council Chamber, 321 N. Main St., Hutchins

CITY OFFICES CLOSED Wednesday, June 19, 2024 in observance of the Juneteenth Holiday.

L. ADJOURN

CERTIFICATION

I certify that a copy of the June 3, 2024, agenda of items to be considered by the Hutchins City Council was posted on the City Hall bulletin board, a place convenient and readily accessible to the general public at all times, and to the City's website www.cityofhutchins.org, in accordance with Chapter 551 of the Texas Government Code. Posted on May 31, 2024, before 6:00 p.m.



Cynthia Olguin
City Secretary



ACCESSIBILITY STATEMENT

The meeting location is wheelchair accessible from the front door. Request for special services must be received at least 48 hours in advance of scheduled meeting. For assistance, please call the office of the City Secretary at 972-225-6121 or email the City Secretary at colguin@cityofhutchins.org



STAFF REPORT

| | |
|------------------------|--|
| MEETING DATE: | June 3, 2024 |
| MEETING TYPE: | City Council |
| SUBMITTED BY: | Cynthia Olguin |
| AGENDA CAPTION: | Consider approval of city council meeting minutes for April and May 2024. Presented by: Cynthia Olguin |

Background Information

Consider approval of the meeting minutes for the following dates:

- April 1, 2024, Regular City Council Meeting
- April 15, 2024, Regular City Council Meeting
- May 14, 2024 Called City Council Meeting

Budget Implications

N/A

Operational Impact

N/A

Legal Review

N/A

Staff Recommendation

Staff recommend approval of the minutes.

Supporting Documentation and Attachments



**CITY OF HUTCHINS
CITY COUNCIL MEETING
MINUTES
Monday, April 01, 2024 at 5:30 PM
City Hall, 321 N. Main Street**

A meeting of the Hutchins City Council was held on Monday, April 1, 2024, with a Work Session beginning at 5:30 p.m. and a Regular Meeting beginning at 6:30 p.m. at Hutchins City Hall Council Chambers, 321 N. Main Street, Hutchins, Texas, at which time the following items were discussed and considered.

A. WORK SESSION

- 1. Conduct an interview with Pavlik and Associates, L.P. in relation to choosing a firm to conduct the Rebranding Initiative. Presented by: Katherine Lindsey, Assistant to the City Administrator and Pavlik and Associates, L.P.**

Linda Pavlik from Pavlik and Associates presented a proposed branding initiative. She presented projects her firm has completed for other surrounding cities and provided a brief description of how the project would move forward. The council discussed their concerns, including the timeline, improving Google search results, and changing the city's image.

B. CALL TO ORDER AND ANNOUNCE A QUORUM PRESENT

Mayor Vasquez called the meeting to order at 6:30 p.m. and announced a quorum.

Present

- Mayor Mario Vasquez
- Mayor Pro Tem Steve Nichols
- Councilmember Brenda Campbell
- Councilmember Dominic Didehbani
- Councilmember Raymond Elmore

Absent

- Councilmember Demarcus Odom

C. INVOCATION AND PLEDGE OF ALLEGIANCE

Mayor Pro Tem Nichols gave the invocation and Councilmember Campbell led the Pledge of Allegiance.

D. CITIZEN COMMENTS - None

E. CONSENT AGENDA - All items presented in the Consent Agenda require no deliberation by the Council. Each Council member has the opportunity of removing an item from this agenda so that it may be considered separately.

- 2. Consider approval of city council meeting minutes for February and March 2024. Presented by: Cynthia Olguin, City Secretary**

Motion made by Mayor Pro Tem Nichols and seconded by Councilmember Campbell to approve the consent agenda as presented. All in favor, the motion passed.

Voting Yea: Brenda Campbell, Dominic Didehbani, Raymond Elmore, Steve Nichols
Voting Nay: 0

F. PRESENTATIONS

3. Proclamation recognizing April 11th through the 17th as National Telecommunicator Week Presented by: Steve Perry, Police Chief

Chief Perry recognized telecommunications dispatcher Kelsie Cangelose for her outstanding work dealing with a barricaded person situation. Mayor Vasquez presented Chief Perry with a Proclamation in recognition of Telecommunicator Week.

4. Witt Road presentation by Dan Gallegher of Kimley-Horn by: Robert McWayne

Assistant Public Works Director McWayne introduced Dan Gallegher to provide his presentation to the council. Dan Gallegher, P.E., Kimley-Horn, 2600 N. Central Expressway, Richardson, Texas, presented his proposal for the Witt Road project located in the City of Dallas. The changes would include a concrete road with ingress/egress onto Lancaster-Hutchins Road with no left turn onto Lancaster-Hutchins Road and continued asphalt from Lancaster-Hutchins Road to Adessa. Witt Road will extend to Blanco but the developer will be responsible for extending improvements. A TIA has been completed and will be forwarded to city staff. The City of Dallas will need to dedicate the Right of Way to the City of Hutchins.

City staff will be proposing an amendment to the Code of Ordinance for truck zones.

5. Review agenda topics for the May 17, 2024, city council retreat. Presented by James Quin, City Administrator

City Administrator Quin provided the council with a draft agenda for the upcoming city council retreat and asked council members to provide feedback or topics of discussion.

G. PUBLIC HEARINGS

H. REGULAR AGENDA - *As authorized by Section 551.071 of the Texas Government Code, the City Council reserves the right to convene in Executive Session for the purpose of seeking confidential legal advice from the City Attorney on any agenda item listed herein.*

6. Discuss and consider Resolution R2024-04-1181 OF THE CITY COUNCIL OF THE CITY OF HUTCHINS, TEXAS, AUTHORIZING THE FIRE CHIEF TO APPLY FOR THE ASSISTANCE TO FIREFIGHTERS GRANT FROM THE FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) FOR THE FY 2024/2025 ASSISTANCE TO FIREFIGHTERS GRANT. Presented by: Stacey Hickson, Fire Chief

Motion made by Councilmember Didehbani and seconded by Councilmember Elmore to approve Resolution R2024-04-1181. All in favor, the motion passed.

Voting Yea: 4 Brenda Campbell, Dominic Didehbani, Raymond Elmore, Steve Nichols.
Voting Nay: 0

- 7. **Discuss and consider Resolution R2024-04-1182 OF THE CITY OF HUTCHINS, TEXAS, ACCEPTING BIDS RECEIVED IN ASSOCIATION WITH THE E. CLEVELAND STREET 18” WASTEWATER RELIEF LINE PROJECT; AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE AN AGREEMENT WITH THE APPARENT LOW BIDDER ATKINS BROTHERS EQUIPMENT COMPANY INC, IN AN AMOUNT NOT TO EXCEED \$612,000.00; AND PROVIDING FOR AN EFFECTIVE DATE** Presented by: Robert McWayne

Motion made by Councilmember Elmore and seconded by Mayor Pro Tem Nichols to approve Resolution R2024-04-1182. All in favor, the motion passed.

Voting Yea: 4 Brenda Campbell, Dominic Didehbani, Raymond Elmore, Steve Nichols.
Voting Nay: 0

- 8. **Neighborhood watch program signage** Presented by: Steve Perry, Police Chief, Driek Whitted Police Officer, Jennifer Cristobal Police Officer

Chief Perry, along with Officers Whitted and Cristobal, provided an update to the council regarding the signage for the Neighborhood Crime Watch Program. A total of sixty signs have been ordered, with forty-eight locations identified throughout the city. Additional signage will be placed in high-crime areas. Officer Whitted shared information about the neighborhood watch meetings that he hosts at the Public Safety Building, and Officer Cristobal conducts meetings with the Quail Run Community in their Community Room.

- 9. **Discuss and consider Resolution R2024-04-1183 OF THE CITY COUNCIL OF THE CITY OF HUTCHINS, TEXAS, APPROVING AND AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE THE TERMS AND CONDITIONS OF THE AGREEMENT BY AND BETWEEN THE CITY AND BIG SKY CONSTRUCTION COMPANY INC. FOR CONSTRUCTION SERVICES FOR CITY HALL; AND PROVIDING FOR AN EFFECTIVE DATE.** Presented by: James Quin, City Administrator

Motion made by Councilmember Elmore and seconded by Councilmember Didehbani to approve Resolution R2024-04-1183. All in favor, the motion passed.

Voting Yea: 4 Brenda Campbell, Dominic Didehbani, Raymond Elmore, Steve Nichols.
Voting Nay: 0

I. EXECUTIVE SESSION

- 10. **The City Council shall convene into Executive Session in accordance with Section 551.074, PERSONNEL MATTERS Deliberate the evaluation of the City Administrator**

Mayor Vasquez moved into Executive Session at 7:17 p.m.

J. RECONVENE INTO REGULAR SESSION

- 11. **Take action, if any, as a result of the Executive Session.**

The council reconvened into Regular Session at 7:40 p.m.

Mayor Pro Tem Nichols made the motion seconded by Councilmember Elmore to extend the City Administrator’s contract for two years with a five percent increase. All in favor, the motion passed.

Voting Yea: 4 Brenda Campbell, Dominic Didehbani, Raymond Elmore, Steve Nichols.
Voting Nay: 0

K. ITEMS OF COMMUNITY INTEREST

12. City Secretary Olguin announced the items of community interest.

L. ADJOURN

Motion made by Councilmember Elmore, seconded by Mayor Pro Tem Nichols to adjourn the meeting. The meeting was adjourned at 7:41 PM.

Voting Yea: Steve Nichols, Brenda Campbell, Dominic Didehbani, Raymond Elmore,
Voting Nay: 0

PASSED AND APPROVED BY THE HUTCHINS CITY COUNCIL AT A REGULAR MEETING HELD ON THE 3rd DAY OF JUNE 2024.

APPROVED:

Mario Vasquez, Mayor

ATTEST:

Cynthia Olguin, City Secretary



**CITY OF HUTCHINS
CITY COUNCIL MEETING
MINUTES**

**Monday, April 15, 2024 at 6:00 PM
City Hall, 321 N. Main Street**

A Meeting of the Hutchins City Council was held on Monday, April 15, 2024, with Work Session beginning at 6:00 p.m. and a Regular Meeting beginning at 6:30 p.m. at Hutchins City Hall Council Chambers, 321 N. Main Street, Hutchins, Texas, at which time the following items were discussed and considered.

A. WORK SESSION

- 1. Discuss and consider which firm to lead the rebranding project. Presented by: Katherine Lindsey, Assistant to the City Administrator**

Mayor Vasquez opened the Work Session at 6:00 p.m. with all members of the council present.

City Administrator James Quin summarized the firms previously interviewed by the city council. He told the council that the chosen firm would attend the council retreat. During the retreat, the council will discuss the rebranding project and updating Google searches.

B. CALL TO ORDER AND ANNOUNCE A QUORUM PRESENT

- 2. Roll Call by Mayor and announce a Quorum**

Mayor Vasquez called the meeting to order at 6:30 p.m. and announced a quorum.

PRESENT

- Mario Vasquez
- Steve Nichols
- Brenda Campbell
- Dominic Didehbani
- Raymond Elmore
- Demarcus Odom

C. INVOCATION AND PLEDGE OF ALLEGIANCE

Mr. James Spence gave the invocation and Councilmember Odom led the Pledge of Allegiance.

D. CITIZEN COMMENTS - None

E. CONSENT AGENDA - None

F. PRESENTATIONS

- 3. Presenting the Fire Department Annual Report for 2023 Presented by: Stacey Hickson, Fire Chief**

Chief Stacey Hickson provided the Fire Department Annual Report and answered questions.

4. National Police Week 2024 honoring Law Enforcement Presented by: Steve Perry, Police Chief

Mayor Vasquez presented the Hutchins Police Department with a Resolution in honor of National Police Week.

G. PUBLIC HEARINGS

5. Conduct a Public Hearing and consider action regarding a request for a 4B project at 101 S IH 45 Suite 1. Presented by Guy Brown, HEDC Executive Director

HEDC Executive Director Guy Brown presented the item and introduced Estella Hernandez, representing Pete’s Café. Ms. Hernandez provided a brief history of Pete’s Café and explained the outline of the restaurant. She stated the restaurant will be hiring 16-20 employees and they are looking to hire local residents.

5A. Open the Public Hearing and receive comments

Mayor Vasquez opened the public hearing at 6:55 p.m. With there being no public comments, Mayor Vasquez closed the public hearing at 6:56 p.m.

5B. Discuss and consider Resolution R2024-04-1184 APPROVING A 4B PROJECT FOR THE PURPOSE OF INFRASTRUCTURE IMPROVEMENTS FOR PROPERTY LOCATED AT 101 SOUTH INTERSTATE 45, SUITE 1, HUTCHINS, TEXAS; AUTHORIZING THE HEDC EXECUTIVE DIRECTOR TO EXECUTE THE FINAL AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

Councilmember Didehbani made the motion seconded by Councilmember Elmore to approve Resolution R2024-04-1184. All in favor, the motion carried.

Voting Yea: Steve Nichols, Brenda Campbell, Dominic Didehbani, Raymond Elmore, Demarcus Odom

Voting Nay: None

6. Conduct a Public Hearing and consider action regarding a request for a 4B project at 102 W. Palestine. Presented by Guy Brown, HEDC Executive Director

HEDC Executive Director Guy Brown presented the item and introduced Miriam Carmona, owner of Marigold’s Flowers. Mr. Brown explained that the applicant recently revised her request to \$3,400 to cover additional expenses.

6.A. Open Public Hearing and receive comments.

Mayor Vasquez opened the public hearing at 7:03 p.m. With there being no public comments, Mayor Vasquez closed the public hearing at 7:04 p.m.

6.B. Discuss and consider Resolution R2024-04-1185 OF THE CITY COUNCIL OF THE CITY OF HUTCHINS, TEXAS, APPROVING A 4B PROJECT FOR THE PURPOSE OF INFRASTRUCTURE IMPROVEMENTS FOR PROPERTY LOCATED AT 102 WEST PALESTINE STREET, HUTCHINS, TEXAS; AUTHORIZING THE HEDC EXECUTIVE DIRECTOR TO EXECUTE THE FINAL AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Pro Tem Nichols made the motion seconded by Councilmember Elmore to approve Resolution R2024-04-1185 with an amended amount of \$3,400. All in favor, the motion carried.

Voting Yea: Steve Nichols, Brenda Campbell, Dominic Didehbani, Raymond Elmore, Demarcus Odom

Voting Nay: None

H. REGULAR AGENDA - *As authorized by Section 551.071 of the Texas Government Code, the City Council reserves the right to convene in Executive Session for the purpose of seeking confidential legal advice from the City Attorney on any agenda item listed herein.*

7. Discuss and consider all matters incident and related to the issuance of the “City of Hutchins, Texas, Tax Note, Series 2024,” including the adoption of Ordinance 2024-1191 authorizing the issuance of such tax note. Presented by: Maria Joyner, Director of Finance

Director of Finance Maria Joyner explained the project items that will be covered by the tax note and a summary of the reimbursement resolution approved by the council in December 2023. Jim Sabonis, Hilltop Securities, presented the details of the competitive bids for tax notes, the number of bids received, and interest rates.

Mayor Pro Tem Nichols made the motion seconded by Councilmember Elmore to approve Ordinance 2024-1191 with an amended amount of \$3,400. All in favor, the motion carried.

Voting Yea: Steve Nichols, Brenda Campbell, Dominic Didehbani, Raymond Elmore, Demarcus Odom

Voting Nay: None

8. Discuss and consider Resolution R2024-04-1189 OF THE CITY COUNCIL OF THE CITY OF HUTCHINS, TEXAS, APPROVING AND AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE THE TERMS AND CONDITIONS OF AN AGREEMENT BY AND BETWEEN THE CITY AND _____ FOR PROFESSIONAL SERVICES FOR THE REBRANDING INITIATIVE; AND PROVIDING FOR AN EFFECTIVE DATE. Presented by: Katherine Lindsey, Assistant to the City Administrator

Councilmember Odom made the motion seconded by Councilmember Didehbani to approve Resolution R2024-04-1189 with Brandera for the rebranding initiative. All in favor, the motion carried.

Voting Yea: Steve Nichols, Brenda Campbell, Dominic Didehbani, Raymond Elmore, Demarcus Odom

Voting Nay: None

9. Authorize the City Administrator to execute all necessary contract documents with Big Sky Construction Company, Inc. for the construction of the City Hall facilities in an amount not to exceed a contract sum of \$14,050,000.00 with a contingency in the amount of \$750,000.00. Presented by: James Quin, City Administrator

Mayor Pro Tem Nichols made the motion seconded by Councilmember Campbell authorizing the City Administrator to execute all necessary contract documents with Big Sky Construction Company, Inc. for the construction of the City Hall facilities in an amount not to exceed a contract sum of \$14,050,000 with a contingency in the amount of \$750,000. All in favor, the motion carried.

Voting Yea: Steve Nichols, Brenda Campbell, Dominic Didehbani, Raymond Elmore, Demarcus Odom

Voting Nay: None

10. Discuss and consider Resolution R2024-04-1186 OF THE CITY COUNCIL OF THE CITY OF HUTCHINS, TEXAS, ACCEPTING BIDS RECEIVED IN ASSOCIATION WITH THE WATERLINE REPLACEMENT PROJECT IN THREE LOCATIONS; AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE AN AGREEMENT WITH THE APPARENT LOW BIDDER S-CO INCORPORATED, IN AN AMOUNT NOT TO EXCEED \$579,078.59; AND PROVIDING FOR AN EFFECTIVE DATE. Presented by Mamun Yusuf, Director of Public Works

Councilmember Campbell made the motion seconded by Mayor Pro Tem Nichols to approve Resolution R2024-04-1186 with low bidder S-Co Incorporated. All in favor, the motion carried.

Voting Yea: Steve Nichols, Brenda Campbell, Dominic Didehbani, Raymond Elmore, Demarcus Odom
Voting Nay: None

11. Discuss and consider Resolution R2024-04-1187 approving and authorizing the City Administrator to negotiate and execute the terms and conditions of the agreement for professional services between the City of Hutchins and Schaumburg and Polk Inc., for the Chatman Street Paving Replacement Project for an amount not to exceed \$139,500.00. Presented by: Mamun Yusuf, Director of Public Works

Mayor Pro Tem Nichols made the motion seconded by Councilmember Elmore to approve Resolution R2024-04-1187. All in favor, the motion carried.

Voting Yea: Steve Nichols, Brenda Campbell, Dominic Didehbani, Raymond Elmore, Demarcus Odom
Voting Nay: None

12. Discuss and consider Resolution R2024-04-1188 OF THE CITY COUNCIL OF THE CITY OF HUTCHINS, TEXAS, RESCHEDULING THE MAY 6, 2024, REGULAR CITY COUNCIL MEETING TO MAY 13, 2024, AND CANCELLING THE MAY 20, 2024, REGULAR CITY COUNCIL MEETING; AND PROVIDING AN EFFECTIVE DATE. Presented by: Cynthia Olguin, City Secretary

Councilmember Elmore made the motion seconded by Councilmember Campbell to approve Resolution R2024-04-1188. All in favor, the motion carried.

Voting Yea: Steve Nichols, Brenda Campbell, Dominic Didehbani, Raymond Elmore, Demarcus Odom
Voting Nay: None

13. Discuss and consider Ordinance 2024-04-1189 OF THE CITY OF HUTCHINS, TEXAS, AMENDING ORDINANCE 2023-1179 WHICH ADOPTED THE OPERATING BUDGET FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2023 AND ENDING SEPTEMBER 30, 2024; PROVIDING AMENDED APPROPRIATIONS FOR ALL OF THE FUNDS OF THE CITY; AUTHORIZING THE CITY ADMINISTRATOR TO MAKE ADJUSTMENTS; PROVIDING FOR THE REPEAL OF ALL ORDINANCES IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE. Presented by: Maria Joyner, Director of Finance

Councilmember Elmore made the motion seconded by Mayor Pro Tem Nichols to approve Ordinance 2024-04-1189. All in favor, the motion carried.

Voting Yea: Steve Nichols, Brenda Campbell, Dominic Didehbani, Raymond Elmore, Demarcus

Odom
Voting Nay: None

- 14. **Discuss and consider Ordinance 2024-04-1190 OF THE CITY OF HUTCHINS, TEXAS, AMENDING ORDINANCE NO. 2023-1180 WHICH ADOPTED THE OPERATING BUDGET FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2023, AND ENDING SEPTEMBER 30, 2024, BY APPROVING ADDITIONAL APPROPRIATIONS FOR THE FUNDING OF THE HUTCHINS ECONOMIC DEVELOPMENT CORPORATION; PROVIDING FOR THE REPEAL OF ALL ORDINANCES IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE. Presented by: Maria Joyner, Director of Finance**

Councilmember Elmore made the motion seconded by Councilmember Campbell to approve Ordinance 2024-04-1190. All in favor, the motion carried.

Voting Yea: Steve Nichols, Brenda Campbell, Dominic Didehbani, Raymond Elmore, Demarcus Odom

Voting Nay: None

I. ITEMS OF COMMUNITY INTEREST

- 15. City Secretary Olguin announced the items of community interest.

J. ADJOURN

Motion made by Councilmember Elmore, seconded by Councilmember Campbell to adjourn the meeting. The meeting was adjourned at 7:44 PM.

Voting Yea: Steve Nichols, Brenda Campbell, Dominic Didehbani, Raymond Elmore, Demarcus Odom

Voting Nay: None

PASSED AND APPROVED BY THE HUTCHINS CITY COUNCIL AT A REGULAR MEETING HELD ON THE 3rd DAY OF JUNE 2024.

APPROVED:

Mario Vasquez, Mayor

ATTEST:

Cynthia Olguin, City Secretary



**CITY OF HUTCHINS
CITY COUNCIL MEETING
MINUTES**

**Tuesday, May 14, 2024 at 6:00 PM
City Hall, 321 N. Main Street**

A Called Meeting of the Hutchins City Council was held on Tuesday, May 14, 2024, at 6:00 PM located at Hutchins City Hall Council Chambers, 321 N. Main Street, Hutchins, Texas, at which time the following items were discussed and considered.

A. CALL TO ORDER AND ANNOUNCE A QUORUM PRESENT

1. Roll Call by Mayor and announce a quorum.

Mayor Vasquez called the meeting to order at 6:02 p.m. and announced a quorum.

PRESENT

- Mario Vasquez
- Steve Nichols
- Brenda Campbell
- Raymond Elmore

ABSENT

- Dominic Didehbani
- Demarcus Odom

B. INVOCATION AND PLEDGE OF ALLEGIANCE

Mrs. Cheryl Vasquez gave the invocation and Mayor Pro Tem Nichols led the Pledge of Allegiance.

C. ELECTION MATTERS

2. Discuss and consider Resolution R2024-05-1190 OF THE CITY COUNCIL OF THE CITY OF HUTCHINS, TEXAS, CANVASSING THE RETURNS OF THE MAY 4, 2024, JOINT GENERAL ELECTION TO ELECT A MAYOR AND TWO (2) COUNCIL MEMBERS AT LARGE; AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Pro Tem Nichols made the motion seconded by Councilmember Elmore to approve Resolution R2024-05-1190. All in favor, the motion carried.

Voting Yea: Steve Nichols, Brenda Campbell, Raymond Elmore
Voting Nay: None

3. Discuss and consider Resolution R2024-05-1191 OF THE CITY COUNCIL OF THE CITY OF HUTCHINS, TEXAS, CANVASSING THE RETURNS OF THE MAY 4, 2024, SPECIAL ELECTION TO SUBMIT PROPOSITION A TO ESTABLISH A TERM OF OFFICE OF THREE (3) YEARS FOR THE POSITION OF MAYOR AND CITY COUNCIL MEMBERS

BEGINNING WITH THE POSITION TO BE ELECTED AT THE GENERAL ELECTION IN MAY 2025; AND PROVIDING FOR AN EFFECTIVE DATE. Presented by Cynthia Olguin
Councilmember Elmore made the motion seconded by Mayor Pro Tem Nichols to approve Resolution R2024-05-1191. All in favor, the motion carried.

Voting Yea: Steve Nichols, Brenda Campbell, Raymond Elmore
Voting Nay: None

4. Issue Statements of Officer and administer Oaths of Office to newly elected Councilmembers.

The Honorable Cass Calloway issued Statements of Officer and administered Oaths to Mayor Mario Vasquez, Councilmember Brenda Campbell and Councilmember Steve Nichols.

5. Discuss and consider the appointment of Mayor Pro-Tem for 2024-2025. Presented by: Cynthia Olguin

Councilmember Elmore made the motion seconded by Councilmember Campbell to appoint Steve Nichols as Mayor Pro Tem. All in favor, the motion carried.

Voting Yea: Steve Nichols, Brenda Campbell, Raymond Elmore
Voting Nay: None

D. CITIZEN COMMENTS

E. REGULAR AGENDA - *As authorized by Section 551.071 of the Texas Government Code, the City Council reserves the right to convene in Executive Session for the purpose of seeking confidential legal advice from the City Attorney on any agenda item listed herein.*

6. Discuss and consider Resolution R2024-05-1192, OF THE CITY COUNCIL OF THE CITY OF HUTCHINS, TEXAS, APPROVING AND AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE AN AGREEMENT BY AND BETWEEN THE CITY AND BRANDERA INC. FOR PROFESSIONAL SERVICES FOR THE REBRANDING INITIATIVE IN AN AMOUNT NOT TO EXCEED \$75,000.00; AND PROVIDING FOR AN EFFECTIVE DATE. Presented by: Katherine Lindsey, Assistant to the City Administrator

Councilmember Elmore made the motion seconded by Mayor Pro Tem Nichols to approve Resolution R2024-05-1192. All in favor, the motion carried.

Voting Yea: Steve Nichols, Brenda Campbell, Raymond Elmore
Voting Nay: None

7. Discuss and consider Resolution R2024-05-1193, OF THE CITY COUNCIL OF THE CITY OF HUTCHINS, TEXAS, APPROVING THE AMENDMENT OF THE FY2023-2024 CITY OF HUTCHINS ORGANIZATIONAL CHART. Presented by: Karen Steward, HR Director

Mayor Pro Tem Nichols made the motion seconded by Councilmember Elmore to approve Resolution R2024-05-1193. All in favor, the motion carried.

Voting Yea: Steve Nichols, Brenda Campbell, Raymond Elmore
Voting Nay: None

8. Keep Hutchins Beautiful KHB Board Application Selection

Mayor Pro Tem Nichols made the motion seconded by Councilmember to appoint the following to the Keep Hutchins Beautiful Board as regular members: Desiree Francis, America Rodriguez, Kimberley Diaz, Larocho Odom, Elaine Hudson, Scott Lindsay, and Tynee Sims-Rogers; and the following as alternate members: Virginia Burrell, Steven E. Brown and Jennifer Macias: All in favor, the motion carried.

Voting Yea: Steve Nichols, Brenda Campbell, Raymond Elmore
Voting Nay: None

- 9. **Discuss and consider Ordinance 2024-05-1192, OF THE CITY OF HUTCHINS, TEXAS, AMENDING THE CODE OF ORDINANCES BY AMENDING CHAPTER 12 “TRAFFIC AND VEHICLES” BY AMENDING ARTICLE 12.05 “COMMERCIAL AND OVERSIZED VEHICLES” BY AMENDING DIVISION 3 “WEIGHT LIMITS; TRUCK ROUTES” BY AMENDING SECTION 12.05.092 “DESIGNATED TRUCK ROUTES; DEFENSES” BY AMENDING PARAGRAPH 12.05.092(b) TO REVISE LANCASTER-HUTCHINS ROAD LIMITS. Presented by: Mamun Yusuf**

Mayor Pro Tem Nichols made the motion seconded by Councilmember Campbell to approve Ordinance 2024-05-1192. All in favor, the motion carried.

Voting Yea: Steve Nichols, Brenda Campbell, Raymond Elmore
Voting Nay: None

- 10. **Discuss and consider Resolution R2024-05-1194, OF THE CITY COUNCIL OF THE CITY OF HUTCHINS, TEXAS, ACCEPTING BIDS RECEIVED IN ASSOCIATION WITH THE SIDEWALK IMPROVEMENT PROJECT; AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE AN AGREEMENT WITH THE APPARENT LOW BIDDER THE ESTRADA CONCRETE COMPANY LLC , IN AN AMOUNT NOT TO EXCEED \$472,834.95. Presented by Mamun Yusuf**

Mayor Pro Tem Nichols made the motion seconded by Councilmember Elmore to approve Resolution R2024-05-1194. All in favor, the motion carried.

Voting Yea: Steve Nichols, Brenda Campbell, Raymond Elmore
Voting Nay: None

- 11. **Discuss and consider Resolution R2024-05-1195 OF THE CITY COUNCIL OF THE CITY OF HUTCHINS, TEXAS, ACCEPTING BIDS RECEIVED IN ASSOCIATION WITH THE MEADOWBROOK DRIVE CHANNEL IMPROVEMENTS; AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE AN AGREEMENT WITH THE APPARENT LOW BIDDER STOIC CIVIL CONSTRUCTION, INC, IN AN AMOUNT NOT TO EXCEED \$550,000.00; AND PROVIDING FOR AN EFFECTIVE DATE. Presented by Mamun Yusuf**

Mayor Pro Tem Nichols made the motion seconded by Councilmember Elmore to approve Resolution R2024-05-1195. All in favor, the motion carried.

Voting Yea: Steve Nichols, Brenda Campbell, Raymond Elmore
Voting Nay: None

- 12. **Discuss and consider Resolution R2024-05-1196 of the City of Hutchins, Texas, approving and authorizing the City Administrator to execute a contract by and between the City of Hutchins and CSEC Texas 911 Entity Subrecipient sub-award grant contract. Presented by: Steve Perry Police Chief and Becky Blanton Communications Supervisor**

Mayor Pro Tem Nichols made the motion seconded by Councilmember Campbell to approve Resolution R2024-05-1196. All in favor, the motion carried.

Voting Yea: Steve Nichols, Brenda Campbell, Raymond Elmore
Voting Nay: None

F. ITEMS OF COMMUNITY INTEREST

13. City Secretary Olguin announced the items of community interest.

G. ADJOURN

Motion made by Councilmember Elmore, seconded by Mayor Pro Tem Nichols to adjourn the meeting. The meeting was adjourned at 6:42 PM.

Voting Yea: Steve Nichols, Brenda Campbell, Raymond Elmore
Voting Nay: None

PASSED AND APPROVED BY THE HUTCHINS CITY COUNCIL AT A REGULAR MEETING HELD ON THE 3rd DAY OF JUNE 2024.

APPROVED:

Mario Vasquez, Mayor

ATTEST:

Cynthia Olguin, City Secretary



STAFF REPORT

MEETING DATE: June 3, 2024

MEETING TYPE: City Council

SUBMITTED BY: Tim Rawlings

AGENDA CAPTION: Conduct a Public Hearing requested by Brad Eubanks, of Eagle Surveying. (representing property owner Roger Gault “Hutchins Industrial Ventures LLC”) for the replat of an 11.87 acre tract or parcel of land situated in the W.H. SHELTON SURVEY, ABSTRACT NO. 1292, City of Hutchins, Dallas County, Texas, being a called 11.869 acre tract of land conveyed to HUTCHINS INDUSTRIAL VENTURES, LLC by Special Warranty Deed with Vendor’s Lien of record in Document Number 202000243075 of the Official Public Records of Dallas County, Texas, being all of Tract 1, Block A, Rachels Addition, an addition to the City of Hutchins, Dallas County, Texas according to the plat recorded in Volume 85243, Page 1248 of the Plat Records of Dallas County, Texas, and being more particularly described 1520 E Wintergreen. Presented by: Tim Rawlings

Background Information

Brad Eubanks, of Eagle Surveying. (representing property owner Roger Gault “Hutchins Industrial Ventures LLC”) has made a request to replat the 11.87 acre tract or parcel of land situated in the W.H. SHELTON SURVEY, ABSTRACT NO. 1292, City of Hutchins, Dallas County, Texas, being a called 11.869 acre tract of land conveyed to HUTCHINS INDUSTRIAL VENTURES, LLC by Special Warranty Deed with Vendor's Lien of record in Document Number 202000243075 of the Official Public Records of Dallas County, Texas, being all of Tract 1, Block A, Rachels Addition, an addition to the City of Hutchins, Dallas County, Texas according to the plat recorded in Volume 85243, Page 1248 of the Plat Records of Dallas County, Texas, and being more particularly described as 1520 E. Wintergreen Road.

Staff has reviewed the Replat and all requested corrections have been made, the replat conforms with the platting procedures set out in the City of Hutchins Subdivision Ordinance.

Budget Implications

N/A

Operational Impact

N/A

Legal Review

N/A

Staff Recommendation

Staff recommends approval

Supporting Documentation and Attachments

OWNER'S CERTIFICATE & DEDICATION

STATE OF TEXAS §
 COUNTY OF DALLAS §

WHEREAS, HUTCHINS INDUSTRIAL VENTURES, LLC, is the owner of an 11.87 acre tract or parcel of land situated in the W.H. SHELTON SURVEY, ABSTRACT NO. 1292, City of Hutchins, Dallas County, Texas, being a called 11.869 acre tract of land conveyed to HUTCHINS INDUSTRIAL VENTURES, LLC by Special Warranty Deed with Vendor's Lien of record in Document Number 202000243075 of the Official Public Records of Dallas County, Texas, being all of Tract 1, Block A, Rachels Addition, an addition to the City of Hutchins, Dallas County, Texas according to the plat recorded in Volume 85243, Page 1248 of the Plat Records of Dallas County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING, at a 1/2" iron rod with red plastic cap (illegible) found in the southeast right-of-way line of Wintergreen Road (variable width right-of-way), being the west corner of said Tract 1;

THENCE, N59°27'22"E, along the southeast right-of-way line of said Wintergreen Road, being the common northwest line of said Tract 1, a distance of 440.00 feet to a 1/2" iron rod with green plastic cap stamped "EAGLE SURVEYING" set at the intersection of the southeast right-of-way line of said Wintergreen Road and the southwest right-of-way line of Joe Ed Wallace Way (60' right-of-way), being the north corner of said Tract 1;

THENCE, S30°49'38"E, along the southwest right-of-way line of said Joe Ed Wallace Way, being the common northeast line of said Tract 1, a distance of 1175.00 feet to a 1/2" iron rod with red plastic cap stamped "KHA" found, being the north corner of a called 78.672 acre tract of land conveyed to Wintergreen TH LLC by Special Warranty Deed of record in Document Number 202200032936 of the Official Public Records of Dallas County, Texas and the east corner of said Tract 1;

THENCE, S59°27'22"W, along the northwest line of said 78.672 acre tract, being the common southeast line of said Tract 1, a distance of 440.00 feet to a 1/2" iron rod with red plastic cap (illegible) found in the northeast line of Lot 1, Block A, DLH Hutchins Wintergreen 11 North Addition, an addition to the City of Hutchins, Dallas County, Texas, being the south corner of said Tract 1, from which a found 1/2" iron rod bears S30°49'38"E, a distance of 21.59 feet, being the east corner of said Lot 1;

THENCE, N30°49'38"W, along the northeast line of said Lot 1, being the common southwest line of said Tract 1, a distance of 1175.00 feet to the **POINT OF BEGINNING**, containing 11.87 acres or 516,994 square feet, more or less.

NOW, THEREFORE, KNOWN ALL MEN BY THESE PRESENTS:

THAT, HUTCHINS INDUSTRIAL VENTURES, LLC, do hereby adopt this plat, designating the herein described property as **RACHELS ADDITION REVISED, LOTS 1R1 & 2, BLOCK A**, an addition to the City of Hutchins, Dallas County, Texas, and do hereby dedicate, in fee simple, to the public use forever any streets, alley, and floodway management areas shown thereon. The easements shown thereon are hereby reserved for the purposes indicated. The utility and fire lane easements shall be open to the public, fire and police units, garbage and rubbish collection agencies, and all public and private utilities for each particular use. The maintenance of paving on the utility and fire lane easements is the responsibility of the property owner. No buildings, fences, trees, shrubs, or other improvements or growths shall be constructed, reconstructed or placed upon, over or across the easements as shown. Said easements being hereby reserved for the mutual use and accommodation of all public utilities using or desiring to use same. All and any public utility shall have the right to remove and keep removed all or parts of any building, fences, trees, shrubs, or other improvements or growths which in any way may endanger or interfere with the construction, maintenance or efficiency of its respective system on the easements, and all public utilities shall at all times have the full right of ingress and egress to or from the said easements for the purpose of constructing, reconstructing, inspecting, patrolling, maintaining and adding to or removing all or parts of its respective systems without the necessity at any time of procuring the permission of anyone. (Any public utility shall have the right of ingress and egress to private property for the purpose of reading meters and any maintenance or service required or ordinarily performed by that utility).

This plat approved subject to all platting ordinances, rules, regulations, and resolutions of the City of Hutchins.

WITNESS, my hand at Dallas, Texas, this ____ day of _____, 2024.

OWNER: HUTCHINS INDUSTRIAL VENTURES, LLC

BY: _____
 Signature

 Printed Name and Title

STATE OF TEXAS §
 COUNTY OF COLLIN §

BEFORE ME, the undersigned authority, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and considerations therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF THE OFFICE this ____ day of _____, 2024.

Notary Public in and for the State of Texas

CERTIFICATE OF SURVEYOR

STATE OF TEXAS §
 COUNTY OF DENTON §

I, MATTHEW RAABE, Registered Professional Land Surveyor in the State of Texas, do hereby certify that I prepared this plat from an actual on the ground survey of the land, and that the corner monuments shown thereon were properly placed under my personal supervision in accordance with subdivision regulations of the City of Hutchins, Dallas County, Texas.

PRELIMINARY
 this document shall not be recorded for any purpose and shall not be used or viewed or relied upon as a final survey document

Matthew Raabe, R.P.L.S. # 6402

Date

STATE OF TEXAS §
 COUNTY OF DENTON §

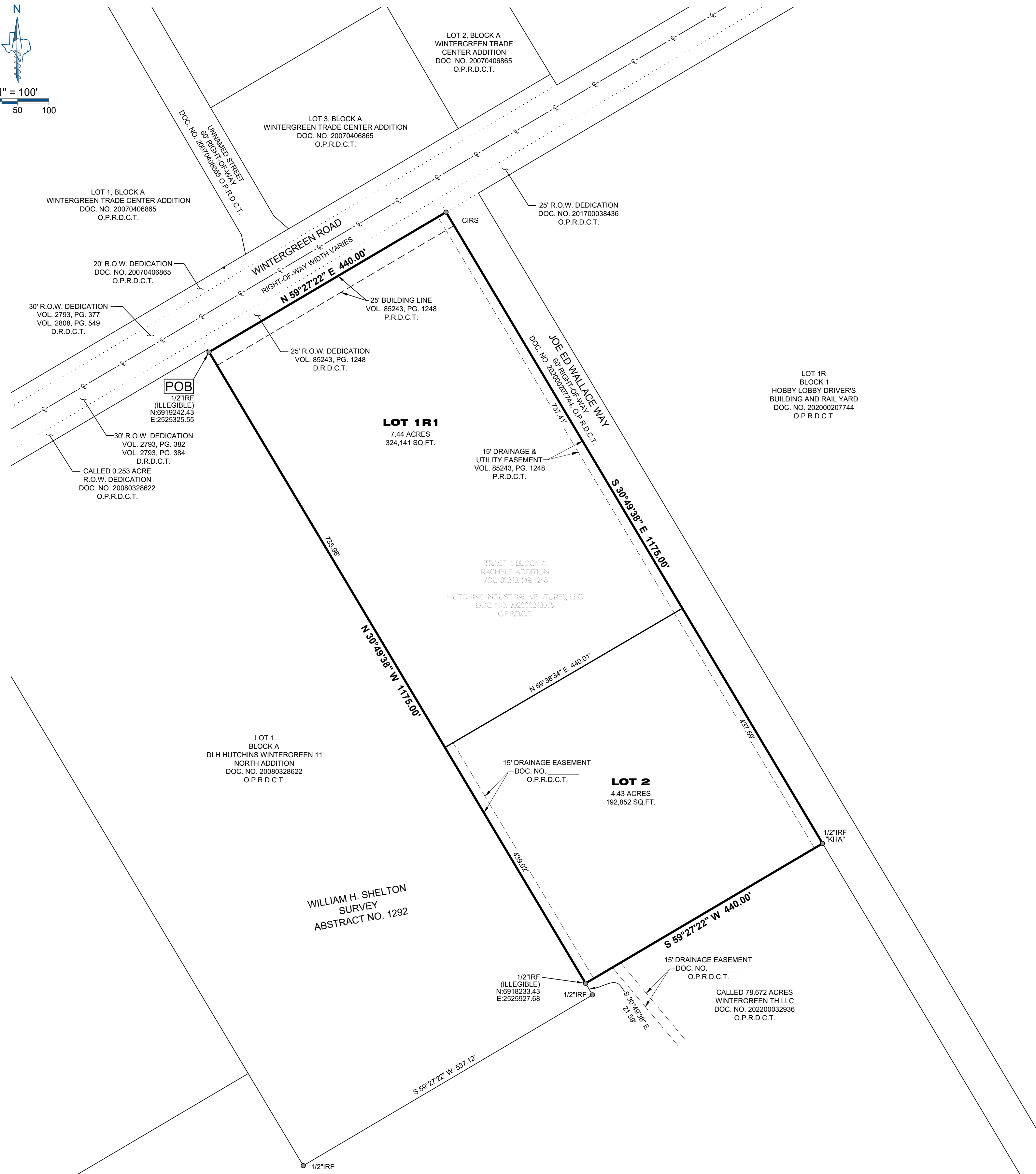
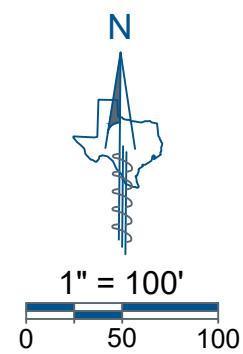
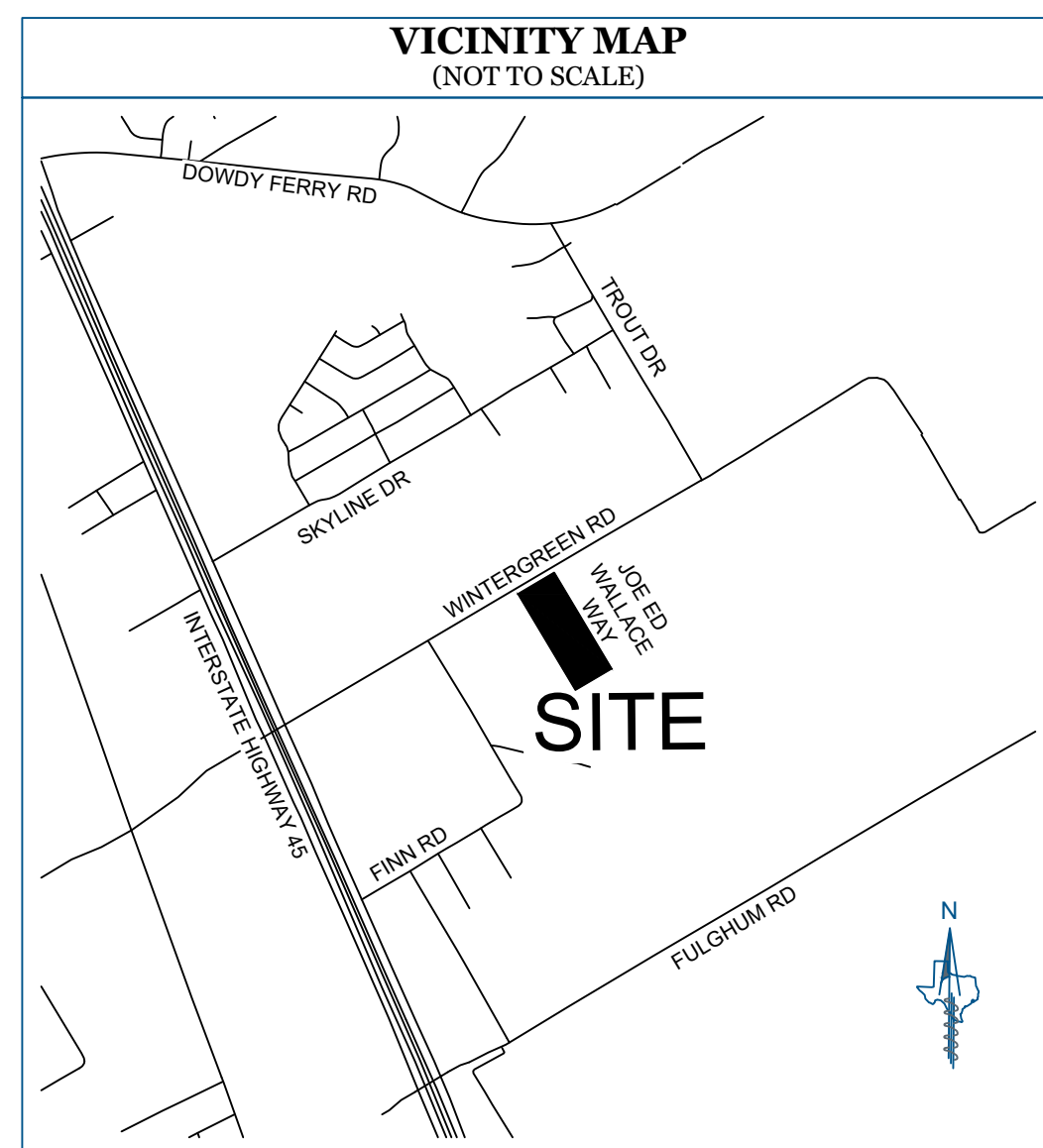
BEFORE ME, the undersigned authority, on this day personally appeared MATTHEW RAABE, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and considerations therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF THE OFFICE this ____ day of _____, 2024.

Notary Public in and for the State of Texas

**REPLAT
 RACHELS ADDITION REVISED
 LOTS 1R1 & 2, BLOCK A**

BEING A REPLAT OF LOT 1R, BLOCK A, RACHELS ADDITION REVISED, AN ADDITION TO THE CITY OF HUTCHINS, DALLAS COUNTY, TEXAS, ACCORDING TO THE PLAT RECORDED IN DOCUMENT NUMBER 202300023246, OFFICIAL PUBLIC RECORDS, DALLAS COUNTY TEXAS AND BEING 11.87 ACRES, ZONED LIGHT INDUSTRIAL (LI) LOCATED IN THE CITY OF HUTCHINS, DALLAS COUNTY, TEXAS AND BEING OUT OF WILLIAM H. SHELTON SURVEY, ABSTRACT NO. 1292 CITY OF HUTCHINS, DALLAS COUNTY, TEXAS
 2 LOTS



GENERAL NOTES

- 1.) The purpose of this plat is to replat one lot of record into two lots of record.
- 2.) This property is located in **Non-Shaded Zone "X"** as scaled from the F.E.M.A. Flood Insurance Rate Map dated July 07, 2014 and is located in Community Number 480179 as shown on Map Number 48113C0514L.
- 3.) The grid coordinates shown on this plat are based on GPS observations utilizing the AllTerra RTKNET Cooperative network. NAD 83(2011) State Plane Coordinate System.
- 4.) The bearings shown on this plat are based on GPS observations utilizing the AllTerra RTKNET Cooperative network. NAD 83(2011) Datum. (Texas North Central Zone - 4202).

All Variances (if any) from the General Development Ordinance Approved by City Council.

Mario Vasquez, Mayor
 City of Hutchins, Texas

Date

The undersigned, the City Secretary of the City of Hutchins, Texas, hereby certifies that the foregoing final plat of the RACHELS ADDITION REVISED, an addition to the City of Hutchins was submitted to the appropriate Planning & Zoning Commission or City Council as required by the ordinances of the City of Hutchins on the ____ day of _____, 2024, and such body by formal action, then and there accepted the dedication of streets, alleys, parks, eaements, public places and water and sewer lines, as shown and set forth in and upon said plat, and said body further authorized the acceptance thereof by signing as hereinabove subscribed in the capacity stated.

Witness my hand this ____ day of _____, 2024.

Cynthia Olguin, City Secretary, City of Hutchins, Texas.

LEGEND

- POB = POINT OF BEGINNING
- CIRS = CAPPED IRON ROD SET
- IRF = IRON ROD FOUND
- R.O.W. = RIGHT-OF-WAY
- VOL. = VOLUME
- PG. = PAGE
- DOC. NO. = DOCUMENT NUMBER
- O.P.R.D.C.T. = OFFICIAL PUBLIC RECORDS, DALLAS COUNTY, TEXAS
- ε— = CENTERLINE OF ROW

SURVEYOR
 Eagle Surveying, LLC
 Contact: Brad Eubanks
 222 S. Elm Street, Suite 200
 Denton, TX 76201
 (940) 222-3009

OWNER
 Hutchins Industrial Ventures, LLC
 5950 Berkshire Lane, Suite 900
 Dallas, TX 75225

EAGLE SURVEYING

Eagle Surveying, LLC
 222 South Elm Street
 Suite 200
 Denton, TX 76201
 940.222.3009
 www.eaglesurveying.com
 TX Firm # 10194177

| | |
|------------|-------------|
| JOB NUMBER | 2211.023-04 |
| DATE | 05/08/2024 |
| REVISION | |
| DRAWN BY | BE |

WHEREAS, HUTCHINS INDUSTRIAL VENTURES, LLC, is the owner of an 11.87 acre tract or parcel of land situated in the W.H. SHELTON SURVEY, ABSTRACT NO. 1292, City of Hutchins, Dallas County, Texas, being a called 11.869 acre tract of land conveyed to HUTCHINS INDUSTRIAL VENTURES, LLC by Special Warranty Deed with Vendor's Lien of record in Document Number 202000243075 of the Official Public Records of Dallas County, Texas, being all of Tract 1, Block A, Rachels Addition, an addition to the City of Hutchins, Dallas County, Texas according to the plat recorded in Volume 85243, Page 1248 of the Plat Records of Dallas County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING, at a 1/2" iron rod with red plastic cap (illegible) found in the southeast right-of-way line of Wintergreen Road (variable width right-of-way), being the west corner of said Tract 1;

THENCE, N59°27'22"E, along the southeast right-of-way line of said Wintergreen Road, being the common northwest line of said Tract 1, a distance of 440.00 feet to a 1/2" iron rod with green plastic cap stamped "EAGLE SURVEYING" set at the intersection of the southeast right-of-way line of said Wintergreen Road and the southwest right-of-way line of Joe Ed Wallace Way (60' right-of-way), being the north corner of said Tract 1;

THENCE, S30°49'38"E, along the southwest right-of-way line of said Joe Ed Wallace Way, being the common northeast line of said Tract 1, a distance of 1175.00 feet to a 1/2" iron rod with red plastic cap stamped "KHA" found, being the north corner of a called 78.672 acre tract of land conveyed to Wintergreen TH LLC by Special Warranty Deed of record in Document Number 202200032936 of the Official Public Records of Dallas County, Texas and the east corner of said Tract 1;

THENCE, S59°27'22"W, along the northwest line of said 78.672 acre tract, being the common southeast line of said Tract 1, a distance of 440.00 feet to a 1/2" iron rod with red plastic cap (illegible) found in the northeast line of Lot 1, Block A, DLH Hutchins Wintergreen 11 North Addition, an addition to the City of Hutchins, Dallas County, Texas according to the plat recorded in Document Number 20080328622 of the Official Public Records of Dallas County, Texas, being the south corner of said Tract 1, from which a found 1/2" iron rod bears S30°49'38"E, a distance of 21.59 feet, being the east corner of said Lot 1;

THENCE, N30°49'38"W, along the northeast line of said Lot 1, being the common southwest line of said Tract 1, a distance of 1175.00 feet to the **POINT OF BEGINNING**, containing 11.87 acres or 516,994 square feet, more or less.



STAFF REPORT

MEETING DATE: June 3, 2024

MEETING TYPE: City Council

SUBMITTED BY: Tim Rawlings

AGENDA CAPTION: Conduct a Public Hearing requested by Brad Eubanks, of Eagle Surveying. (representing property owner Roger Gault “Hutchins Industrial Ventures LLC”) for the replat of an 11.87 acre tract or parcel of land situated in the W.H. SHELTON SURVEY, ABSTRACT NO. 1292, City of Hutchins, Dallas County, Texas, being a called 11.869 acre tract of land conveyed to HUTCHINS INDUSTRIAL VENTURES, LLC by Special Warranty Deed with Vendor’s Lien of record in Document Number 202000243075 of the Official Public Records of Dallas County, Texas, being all of Tract 1, Block A, Rachels Addition, an addition to the City of Hutchins, Dallas County, Texas according to the plat recorded in Volume 85243, Page 1248 of the Plat Records of Dallas County, Texas, and being more particularly described 1520 E Wintergreen. Presented by: Tim Rawlings

Background Information

Brad Eubanks, of Eagle Surveying. (representing property owner Roger Gault “Hutchins Industrial Ventures LLC”) has made a request to replat the 11.87 acre tract or parcel of land situated in the W.H. SHELTON SURVEY, ABSTRACT NO. 1292, City of Hutchins, Dallas County, Texas, being a called 11.869 acre tract of land conveyed to HUTCHINS INDUSTRIAL VENTURES, LLC by Special Warranty Deed with Vendor’s Lien of record in Document Number 202000243075 of the Official Public Records of Dallas County, Texas, being all of Tract 1, Block A, Rachels Addition, an addition to the City of Hutchins, Dallas County, Texas according to the plat recorded in Volume 85243, Page 1248 of the Plat Records of Dallas County, Texas, and being more particularly described as 1520 E. Wintergreen Road.

Staff has reviewed the Replat and all requested corrections have been made, the replat conforms with the platting procedures set out in the City of Hutchins Subdivision Ordinance.

Budget Implications

N/A

Operational Impact

N/A

Legal Review

N/A

Staff Recommendation

Staff recommends approval

Supporting Documentation and Attachments

OWNER'S CERTIFICATE & DEDICATION

STATE OF TEXAS §
COUNTY OF DALLAS §

WHEREAS, HUTCHINS INDUSTRIAL VENTURES, LLC, is the owner of an 11.87 acre tract or parcel of land situated in the W.H. SHELTON SURVEY, ABSTRACT NO. 1292, City of Hutchins, Dallas County, Texas, being a called 11.869 acre tract of land conveyed to HUTCHINS INDUSTRIAL VENTURES, LLC by Special Warranty Deed with Vendor's Lien of record in Document Number 202000243075 of the Official Public Records of Dallas County, Texas, being all of Tract 1, Block A, Rachels Addition, an addition to the City of Hutchins, Dallas County, Texas according to the plat recorded in Volume 85243, Page 1248 of the Plat Records of Dallas County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING, at a 1/2" iron rod with red plastic cap (illegible) found in the southeast right-of-way line of Wintergreen Road (variable width right-of-way), being the west corner of said Tract 1;

THENCE, N59°27'22"E, along the southeast right-of-way line of said Wintergreen Road, being the common northwest line of said Tract 1, a distance of 440.00 feet to a 1/2" iron rod with green plastic cap stamped "EAGLE SURVEYING" set at the intersection of the southeast right-of-way line of said Wintergreen Road and the southwest right-of-way line of Joe Ed Wallace Way (60' right-of-way), being the north corner of said Tract 1;

THENCE, S30°49'38"E, along the southwest right-of-way line of said Joe Ed Wallace Way, being the common northeast line of said Tract 1, a distance of 1175.00 feet to a 1/2" iron rod with red plastic cap stamped "KHA" found, being the north corner of a called 78.672 acre tract of land conveyed to Wintergreen TH LLC by Special Warranty Deed of record in Document Number 202200032936 of the Official Public Records of Dallas County, Texas and the east corner of said Tract 1;

THENCE, S59°27'22"W, along the northwest line of said 78.672 acre tract, being the common southeast line of said Tract 1, a distance of 440.00 feet to a 1/2" iron rod with red plastic cap (illegible) found in the northeast line of Lot 1, Block A, DLH Hutchins Wintergreen 11 North Addition, an addition to the City of Hutchins, Dallas County, Texas, being the south corner of said Tract 1, from which a found 1/2" iron rod bears S30°49'38"E, a distance of 21.59 feet, being the east corner of said Lot 1;

THENCE, N30°49'38"W, along the northeast line of said Lot 1, being the common southwest line of said Tract 1, a distance of 1175.00 feet to the POINT OF BEGINNING, containing 11.87 acres or 516,994 square feet, more or less.

NOW, THEREFORE, KNOWN ALL MEN BY THESE PRESENTS:

THAT, HUTCHINS INDUSTRIAL VENTURES, LLC, do hereby adopt this plat, designating the herein described property as RACHELS ADDITION REVISED, LOTS 1R1 & 2, BLOCK A, an addition to the City of Hutchins, Dallas County, Texas, and do hereby dedicate, in fee simple, to the public use forever any streets, alley, and floodway management areas shown thereon. The easements shown thereon are hereby reserved for the purposes indicated. The utility and fire lane easements shall be open to the public, fire and police units, garbage and rubbish collection agencies, and all public and private utilities for each particular use. The maintenance of paving on the utility and fire lane easements is the responsibility of the property owner. No buildings, fences, trees, shrubs, or other improvements or growths shall be constructed, reconstructed or placed upon, over or across the easements as shown. Said easements being hereby reserved for the mutual use and accommodation of all public utilities using or desiring to use same. All and any public utility shall have the right to remove and keep removed all or parts of any building, fences, trees, shrubs, or other improvements or growths which in any way may endanger or interfere with the construction, maintenance or efficiency of its respective system on the easements, and all public utilities shall at all times have the full right of ingress and egress to or from the said easements for the purpose of constructing, reconstructing, inspecting, patrolling, maintaining and adding to or removing all or parts of its respective systems without the necessity at any time of procuring the permission of anyone. (Any public utility shall have the right of ingress and egress to private property for the purpose of reading meters and any maintenance or service required or ordinarily performed by that utility).

This plat approved subject to all platting ordinances, rules, regulations, and resolutions of the City of Hutchins.

WITNESS, my hand at Dallas, Texas, this the ___ day of ___, 2024.

OWNER: HUTCHINS INDUSTRIAL VENTURES, LLC

BY:
Signature
Printed Name and Title

STATE OF TEXAS §
COUNTY OF COLLIN §

BEFORE ME, the undersigned authority, on this day personally appeared ___, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and considerations therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF THE OFFICE this ___ day of ___, 2024.

Notary Public in and for the State of Texas

CERTIFICATE OF SURVEYOR

STATE OF TEXAS §
COUNTY OF DENTON §

I, MATTHEW RAABE, Registered Professional Land Surveyor in the State of Texas, do hereby certify that I prepared this plat from an actual on the ground survey of the land, and that the corner monuments shown thereon were properly placed under my personal supervision in accordance with subdivision regulations of the City of Hutchins, Dallas County, Texas.

PRELIMINARY
this document shall not be recorded for any purpose and shall not be used or viewed or relied upon as a final survey document

Matthew Raabe, R.P.L.S. # 6402

Date

STATE OF TEXAS §
COUNTY OF DENTON §

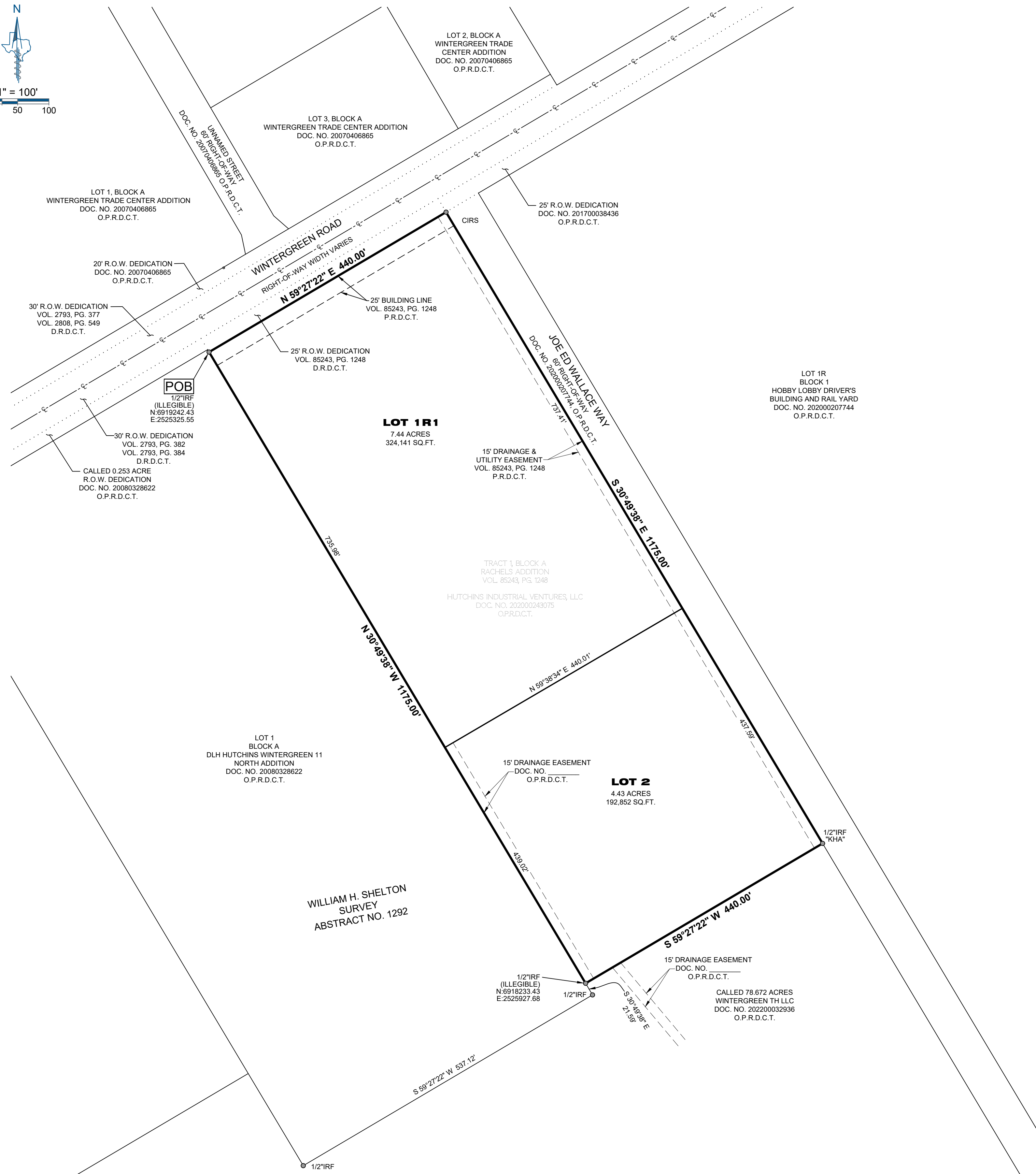
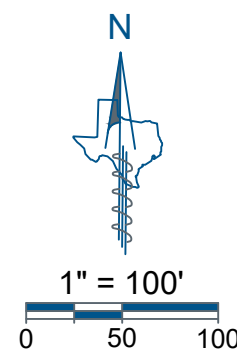
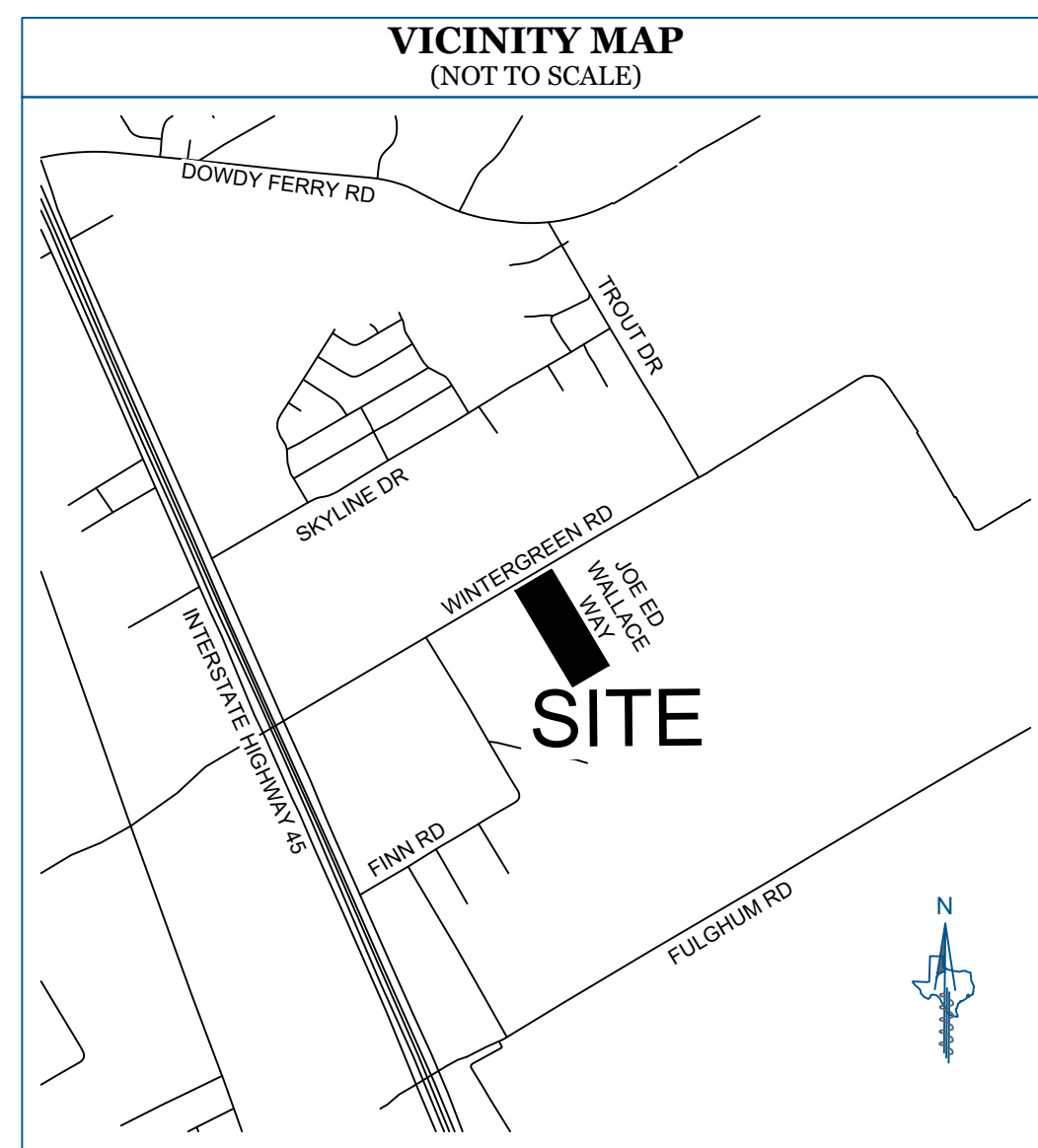
BEFORE ME, the undersigned authority, on this day personally appeared MATTHEW RAABE, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and considerations therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF THE OFFICE this ___ day of ___, 2024.

Notary Public in and for the State of Texas

REPLAT
RACHELS ADDITION REVISED
LOTS 1R1 & 2, BLOCK A

BEING A REPLAT OF LOT 1R, BLOCK A, RACHELS ADDITION REVISED, AN ADDITION TO THE CITY OF HUTCHINS, DALLAS COUNTY, TEXAS, ACCORDING TO THE PLAT RECORDED IN DOCUMENT NUMBER 202300023246, OFFICIAL PUBLIC RECORDS, DALLAS COUNTY TEXAS AND BEING 11.87 ACRES, ZONED LIGHT INDUSTRIAL (LI) LOCATED IN THE CITY OF HUTCHINS, DALLAS COUNTY, TEXAS AND BEING OUT OF WILLIAM H. SHELTON SURVEY, ABSTRACT NO. 1292 CITY OF HUTCHINS, DALLAS COUNTY, TEXAS
2 LOTS



GENERAL NOTES
1.) The purpose of this plat is to replat one lot of record into two lots of record.
2.) This property is located in Non-Shaded Zone "X" as scaled from the F.E.M.A. Flood Insurance Rate Map dated July 07, 2014 and is located in Community Number 480179 as shown on Map Number 48113C0514L.
3.) The grid coordinates shown on this plat are based on GPS observations utilizing the AllTerra RTKNET Cooperative network. NAD 83(2011) State Plane Coordinate System.
4.) The bearings shown on this plat are based on GPS observations utilizing the AllTerra RTKNET Cooperative network. NAD 83(2011) Datum. (Texas North Central Zone - 4202).

All Variances (if any) from the General Development Ordinance Approved by City Council.
Mario Vasquez, Mayor
City of Hutchins, Texas
Date
The undersigned, the City Secretary of the City of Hutchins, Texas, hereby certifies that the foregoing final plat of the RACHELS ADDITION REVISED, an addition to the City of Hutchins was submitted to the appropriate Planning & Zoning Commission or City Council as required by the ordinances of the City of Hutchins on the ___ day of ___, 2024, and such body by formal action, then and there accepted the dedication of streets, alleys, parks, eaements, public places and water and sewer lines, as shown and set forth in and upon said plat, and said body further authorized the acceptance thereof by signing as hereinabove subscribed in the capacity stated.
Witness my hand this ___ day of ___, 2024.
Cynthia Olguin, City Secretary, City of Hutchins, Texas.

LEGEND
POB = POINT OF BEGINNING
CIRS = CAPPED IRON ROD SET
IRF = IRON ROD FOUND
R.O.W. = RIGHT-OF-WAY
VOL. = VOLUME
PG. = PAGE
DOC. NO. = DOCUMENT NUMBER
O.P.R.D.C.T. = OFFICIAL PUBLIC RECORDS, DALLAS COUNTY, TEXAS
---ε--- = CENTERLINE OF ROW

SURVEYOR: Eagle Surveying, LLC
OWNER: Hutchins Industrial Ventures, LLC
Eagle Surveying, LLC
222 South Elm Street
Suite 200
Denton, TX 76201
940.222.3009
www.eaglesurveying.com
TX Firm # 10194177

WHEREAS, HUTCHINS INDUSTRIAL VENTURES, LLC, is the owner of an 11.87 acre tract or parcel of land situated in the W.H. SHELTON SURVEY, ABSTRACT NO. 1292, City of Hutchins, Dallas County, Texas, being a called 11.869 acre tract of land conveyed to HUTCHINS INDUSTRIAL VENTURES, LLC by Special Warranty Deed with Vendor's Lien of record in Document Number 202000243075 of the Official Public Records of Dallas County, Texas, being all of Tract 1, Block A, Rachels Addition, an addition to the City of Hutchins, Dallas County, Texas according to the plat recorded in Volume 85243, Page 1248 of the Plat Records of Dallas County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING, at a 1/2" iron rod with red plastic cap (illegible) found in the southeast right-of-way line of Wintergreen Road (variable width right-of-way), being the west corner of said Tract 1;

THENCE, N59°27'22"E, along the southeast right-of-way line of said Wintergreen Road, being the common northwest line of said Tract 1, a distance of 440.00 feet to a 1/2" iron rod with green plastic cap stamped "EAGLE SURVEYING" set at the intersection of the southeast right-of-way line of said Wintergreen Road and the southwest right-of-way line of Joe Ed Wallace Way (60' right-of-way), being the north corner of said Tract 1;

THENCE, S30°49'38"E, along the southwest right-of-way line of said Joe Ed Wallace Way, being the common northeast line of said Tract 1, a distance of 1175.00 feet to a 1/2" iron rod with red plastic cap stamped "KHA" found, being the north corner of a called 78.672 acre tract of land conveyed to Wintergreen TH LLC by Special Warranty Deed of record in Document Number 202200032936 of the Official Public Records of Dallas County, Texas and the east corner of said Tract 1;

THENCE, S59°27'22"W, along the northwest line of said 78.672 acre tract, being the common southeast line of said Tract 1, a distance of 440.00 feet to a 1/2" iron rod with red plastic cap (illegible) found in the northeast line of Lot 1, Block A, DLH Hutchins Wintergreen 11 North Addition, an addition to the City of Hutchins, Dallas County, Texas according to the plat recorded in Document Number 20080328622 of the Official Public Records of Dallas County, Texas, being the south corner of said Tract 1, from which a found 1/2" iron rod bears S30°49'38"E, a distance of 21.59 feet, being the east corner of said Lot 1;

THENCE, N30°49'38"W, along the northeast line of said Lot 1, being the common southwest line of said Tract 1, a distance of 1175.00 feet to the **POINT OF BEGINNING**, containing 11.87 acres or 516,994 square feet, more or less.



STAFF REPORT

MEETING DATE: June 3, 2024

MEETING TYPE: City Council

SUBMITTED BY: Robert McWayne

AGENDA CAPTION: DISCUSS AND CONSIDER BID FROM BIG SKY CONSTRUCTION FOR THE RENOVATION OF 5 HOLDING CELLS AT THE POLICE DEPARTMENT presented by: Mamun Yusuf

Background Information

On May 7th, 2024, at 2:00pm City staff received sealed bids for the Hutchins Police Department Holding Cells Renovation Project. Staff only received one bid from Big Sky Construction for \$240,000.00 (two hundred and forty thousand dollars and zero cents) and the OPCC for this project was estimated to be approximately \$110,000.

Budget Implications

\$240,000.00

Operational Impact

N/A

Legal Review

N/A

Staff Recommendation

Staff recommends rejecting all bids and re-advertising.

Supporting Documentation and Attachments

BID TABULATION FORM - May 7, 2024

CITY OF HUTCHINS, TX - POLICE DEPT HOLDING CELLS RENOVATION

ARCHITECT'S PROJECT NO. 23078



| BIDDER | BID FORM | BID BOND | CONTINGENCY ALLOWANCE | BASE BID |
|----------------------|----------|----------|-----------------------|-----------|
| Big Sky Construction | YES | YES | \$5,000 | \$240,000 |
| | | | | |
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*City of Hutchins, Texas
Hutchins Police Department*

**HOLDING CELLS RENOVATION
Hutchins, Texas**

*Construction Documents Submittal
Opinion of Probable Construction Cost*

January 30, 2024

Submitted to:
Brandstetter Carroll, Inc.
17304 Preston Road
Suite 1075
Dallas, TX 75252
Tel: 469.941.4926

Submitted by:
CCM Construction Services, LLC
PO Box 120455
Arlington, TX 76012-0455
Tel: 214.906.8751
Tel: 214.354.0405

*excellence in
construction cost
management SM*



City of Hutchins
Statement of Probable Construction Costs
HUTCHINS POLICE DEPARTMENT
HOLDING CELLS RENOVATION
SUMMARY
Construction Documents: January, 2023

| Project Element | Area (SF) | Direct Cost | 8.00% | 16.80% | 2.50% | 0.00% | Probable Construction Cost | Cost per SF |
|----------------------|-----------|-----------------|--------------------|--|------------------------|------------|----------------------------|-------------|
| | | | Design Contingency | General Conditions, Overhead, and Profit | Bonds, Fees, Insurance | Escalation | | |
| Interior Renovations | 800 | \$85,255 | \$6,820 | \$15,470 | \$2,689 | \$0 | \$110,234 | \$137.79 |
| TOTALS | | \$85,255 | \$6,820 | \$15,470 | \$2,689 | \$0 | \$110,234 | |

Notes:

- 1) Estimate Based on Construction Documents Drawings and Specifications Dated October 17, 2023 and Design Team Communication Through January 30, 2024.
- 2) Mark-Ups Are Cumulative. Mark-Up Percentage Includes: General Conditions (8.0%), Overhead (3.0%), and Profit (5.0%); Cumulative Total Equals 16.80%.
- 3) The Project is Anticipated to Bid Within the Next 30-60 Days. Cost Estimate Pricing is Circa January/February, 2024 and Escalation is Excluded.
- 4) Estimate Includes Construction Costs Only; Other Costs Such as Design Fees, Furniture, Fixtures, and Equipment (FF&E), New and Relocations, and Owner Project Administration Are Excluded. Permit Fees Are Assumed to be Non-Applicable and Are Excluded.
- 5) "Q" Adjacent to Estimate Line Item Indicates Vendor, Manufacturer, or Supplier Quote Received for Item(s).
- 6) The Estimate Reflects Costs For a Typical Number of Bidders, say 4 to 8. Estimated Potential Cost Adjustments Are Plus 5% to 15% for <4 Bidders and Minus 10% to 15% for > 8 Bidders.
- 7) Prices Reflect Historical Market Conditions. Unique Market Situations and World Events Could Substantially Affect Estimated Costs.

| City of Hutchins Statement of Probable Construction Costs HUTCHINS POLICE DEPARTMENT HOLDING CELLS RENOVATION Interior Renovations Construction Documents: January, 2023 | | |
|---|-----------|------------------|
| Item | | Cost |
| Division 1 - General Requirements | | \$ 9,750 |
| Administrative Requirements | \$ 5,500 | |
| Execution and Closeout Requirements | \$ 4,250 | |
| Division 2 - Existing Conditions | | \$ 9,785 |
| Demolition and Structure Moving | \$ 9,785 | |
| Division 5 - Metals | | \$ 2,865 |
| Metals | \$ 2,865 | |
| Division 7 - Thermal and Moisture Protection | | \$ 600 |
| Joint Protection | \$ 600 | |
| Division 9 - Finishes | | \$ 25,075 |
| Ceilings | \$ 16,885 | |
| Painting and Coating | \$ 8,190 | |
| Division 21 - Fire Suppression | | \$ 1,200 |
| Water-Based Fire-Suppression Systems | \$ 1,200 | |
| Division 23 - Heating, Ventilating, and Air-Conditioning (HVAC) | | \$ 16,690 |
| Heating, Ventilating, and Air-Conditioning (HVAC) | \$ 750 | |
| HVAC Air Distribution | \$ 15,940 | |
| Division 26 - Electrical | | \$ 17,290 |
| Lighting | \$ 12,790 | |
| Division 28 - Electronic Safety and Security | | \$ 2,000 |
| Electronic Safety and Security | \$ 2,000 | |
| TOTAL DIRECT COST: | | \$ 85,255 |

City of Hutchins
Statement of Probable Construction Costs
HUTCHINS POLICE DEPARTMENT
HOLDING CELLS RENOVATION
Interior Renovations
Construction Documents: January, 2023

Summary Square Footage Amounts

| Area Calculations | Conditioned Space | Unconditioned Space |
|---|-------------------|---------------------|
| First Floor (Overall Area of Renovation Work) | 800 SF | |
| Total Gross Area Floor Space | 800 SFF | |

City of Hutchins
Statement of Probable Construction Costs
HUTCHINS POLICE DEPARTMENT
HOLDING CELLS RENOVATION
Interior Renovations
Construction Documents: January, 2023

| Description | Category | Quantity | UM | Unit | Extended | Cost |
|---|------------|----------|-------|----------|----------|-----------|
| Division 1 - General Requirements | | | | | | \$ 9,750 |
| Administrative Requirements | | | | | | \$ 5,500 |
| Project Management and Coordination | | | | | | --- |
| Access to Work Area and Work Time Limitations | Renovation | 1 | ALLOW | 2,500.00 | 2,500.00 | |
| Provide Complete Construction Schedule to Owner | Renovation | 1 | LS | 3,000.00 | 3,000.00 | |
| Execution and Closeout Requirements | | | | | | \$ 4,250 |
| Cleaning and Waste Management | | | | | | --- |
| Daily and Final Cleaning | Renovation | 1 | LS | 3,500.00 | 3,500.00 | |
| Protecting Installed Construction | | | | | | --- |
| Protect Existing VAV Units in Place | Renovation | 1 | LS | 750.00 | 750.00 | |
| Division 2 - Existing Conditions | | | | | | \$ 9,785 |
| Demolition and Structure Moving | | | | | | \$ 9,785 |
| Demolition | | | | | | --- |
| Demo Hard Ceiling and Light Gauge or Miscellaneous Steel Framing | Renovation | 382 | SF | 7.50 | 2,865.00 | |
| Remove Existing Ceiling Device, 2x2, Diffuser or Grille | Renovation | 10 | EA | 125.00 | 1,250.00 | |
| Remove Existing Ceiling for MEP Modifications | Renovation | 328 | SF | 2.50 | 820.00 | |
| Remove Existing Ceiling Light, 1x4 or Similar, Salvage, Protect Wiring | Renovation | 5 | EA | 150.00 | 750.00 | |
| Remove Existing Smoke Detectors and Security Cameras, Salvage for Reuse | Renovation | 10 | EA | 150.00 | 1,500.00 | |
| Miscellaneous Demolition; Remove Unused or Abandoned Elements | Renovation | 800 | SFF | 1.50 | 1,200.00 | |
| Removal and Salvage of Construction Materials | | | | | | --- |
| Load, Haul, and Dispose of Demolition Materials Offsite | Renovation | 2 | LOADS | 700.00 | 1,400.00 | |
| Division 5 - Metals | | | | | | \$ 2,865 |
| Metals | | | | | | \$ 2,865 |
| Common Work Results for Metals | | | | | | --- |
| Rework and Elevate Ceiling Support Structure, as Required for New Ceiling | Renovation | 382 | SF | 7.50 | 2,865.00 | |
| Division 7 - Thermal and Moisture Protection | | | | | | \$ 600 |
| Joint Protection | | | | | | \$ 600 |
| Joint Sealants | | | | | | --- |
| Miscellaneous Joint Sealants and Firestopping | Renovation | 800 | SFF | 0.75 | 600.00 | |
| Division 9 - Finishes | | | | | | \$ 25,075 |
| Ceilings | | | | | | \$ 16,885 |
| Acoustical Ceilings | | | | | | --- |
| Reinstall Existing Ceiling After MEP Modifications | Renovation | 328 | SF | 3.50 | 1,148.00 | |
| Specialty Ceilings | | | | | | --- |
| New Ceiling System, 24"x24" Lay-In and Screw-In | Renovation | 382 | SF | 18.50 | 7,067.00 | |
| Compression Strut, 3'-6" Length | Renovation | 102 | EA | 85.00 | 8,670.00 | |
| Painting and Coating | | | | | | \$ 8,190 |
| Painting | | | | | | --- |
| Prep Existing CMU Surface for New Paint | Renovation | 2,642 | SF | 0.85 | 2,245.70 | |
| New Paint on CMU | Renovation | 2,642 | SF | 2.25 | 5,944.50 | |
| Division 21 - Fire Suppression | | | | | | \$ 1,200 |
| Water-Based Fire-Suppression Systems | | | | | | \$ 1,200 |
| Fire-Suppression Sprinkler Systems | | | | | | --- |
| Wet Pipe Sprinkler Systems, Modify as Required | Renovation | 800 | SFF | 1.50 | 1,200.00 | |
| Division 23 - Heating, Ventilating, and Air-Conditioning (HVAC) | | | | | | \$ 16,690 |
| Heating, Ventilating, and Air-Conditioning (HVAC) | | | | | | \$ 750 |
| Common Work Results for HVAC | | | | | | --- |
| HVAC Testing, Adjusting, and Balancing | Renovation | 1 | LS | 750.00 | 750.00 | |
| HVAC Air Distribution | | | | | | \$ 15,940 |
| HVAC Ducts and Casings | | | | | | --- |
| Adjust Ductwork as Required for Raised Ceiling [±108 LF] | Renovation | 1 | LS | 4,000.00 | 4,000.00 | |
| Connect Duct to New or Existing | Renovation | 9 | EA | 85.00 | 765.00 | |
| Prepare and Protect All Air Ducts for Reinstalling, per Cell Location | Renovation | 5 | EA | 350.00 | 1,750.00 | |

City of Hutchins
Statement of Probable Construction Costs
HUTCHINS POLICE DEPARTMENT
HOLDING CELLS RENOVATION
Interior Renovations
Construction Documents: January, 2023

| Description | | Category | Quantity | UM | Unit | Extended | Cost |
|---|--|------------|----------|----|----------|----------|------------------|
| Air Outlets and Inlets | | | | | | --- | |
| | Ceiling Diffuser E1, Security Type 24"x24" w/16 Ga. Steel Face Plate | | 5 | EA | 725.00 | --- | |
| Q | MATERIALS AND FREIGHT | Renovation | 5 | EA | 525.00 | 2,625.00 | |
| | INSTALLATION | Renovation | 5 | EA | 200.00 | 1,000.00 | |
| | Ceiling Diffuser S1, Security Type 24"x24" w/16 Ga. Steel Face Plate | | 8 | EA | 725.00 | --- | |
| Q | MATERIALS AND FREIGHT | Renovation | 8 | EA | 525.00 | 4,200.00 | |
| | INSTALLATION | Renovation | 8 | EA | 200.00 | 1,600.00 | |
| Division 26 - Electrical | | | | | | --- | \$ 17,290 |
| Electrical | | | | | | --- | \$ 4,500 |
| Common Work Results for Electrical | | | | | | --- | |
| | Miscellaneous Electrical Modifications for Branch Wiring | Renovation | 1 | LS | 4,500.00 | 4,500.00 | |
| Lighting | | | | | | --- | \$ 12,790 |
| Interior Lighting | | | | | | --- | |
| | Light Fixture Type A, 2'x4', Reconnect at Raised Ceiling Level | | 5 | EA | 2,557.95 | --- | |
| Q | MATERIALS | Renovation | 5 | EA | 1,307.95 | 6,539.75 | |
| Q | FREIGHT | Renovation | 1 | LS | 3,000.00 | 3,000.00 | |
| | INSTALLATION | Renovation | 5 | EA | 650.00 | 3,250.00 | |
| Division 28 - Electronic Safety and Security | | | | | | --- | \$ 2,000 |
| Electronic Safety and Security | | | | | | --- | \$ 2,000 |
| Common Work Results for Electronic Safety and Security | | | | | | --- | |
| | Reinstall Existing Smoke Detectors and Security Cameras | Renovation | 10 | EA | 200.00 | 2,000.00 | |



STAFF REPORT

MEETING DATE: June 3, 2024

MEETING TYPE: City Council

SUBMITTED BY: Maria Joyner

AGENDA CAPTION: Discuss and consider Resolution 2024-06-1197 BY THE CITY COUNCIL OF THE CITY OF HUTCHINS, TEXAS, APPROVING AN ENGAGEMENT AGREEMENT WITH WEST & ASSOCIATES L.L.P. RELATING TO BOND COUNSEL SERVICES.

Presented by: Maria Joyner, Director of Finance

Background Information

The City of Hutchins retains outside counsel to assist with the issuance and offering of its bonds, tax notes, and negotiation of related agreements, connected with such indebtedness; and to provide legal and tax advice to the City. The municipal bond market requires the engagement of Bond Counsel for the issuance of municipal debt. An opinion from nationally recognized Bond Counsel as to the validity of the bonds and the tax exemption of interest on the bonds is circulated to potential investors, delivered at closing, and attached to each bond. The opinion of bond counsel provides assurance both to issuers and to investors who purchase the bonds that all legal and tax requirements relevant to the matters covered by the opinion are met.

Budget Implications

Costs for Bond Counsel are paid from bond proceeds and are contingent on the successful completion of the bond transaction.

Operational Impact

N/A

Legal Review

The agreement was reviewed and approved by the City Attorney.

Staff Recommendation

Staff recommends that the City Council approves Resolution No. 2024-06-1197

Supporting Documentation and Attachments

Resolution 2024 – 06-1197
Agreement

**CITY OF HUTCHINS, TEXAS
RESOLUTION R2024-06-1197**

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF HUTCHINS, TEXAS, APPROVING AN ENGAGEMENT AGREEMENT WITH WEST & ASSOCIATES L.L.P. RELATING TO BOND COUNSEL SERVICES.

WHEREAS, The City of Hutchins (the “City”) plans to issue bonds or other obligations from time to time for various public purposes authorized by Texas statutes; and

WHEREAS, the City desires to engage experienced bond counsel services for the issuance of these bonds and other obligations; and

WHEREAS, It has been determined that there is a substantial need for the legal services provided by West & Associates, L.L.P .; the attorneys and support staff of the City cannot adequately fulfill these needs. Additionally, securing these legal services solely through private practice attorneys on an hourly fee basis, without regard to outcomes, is not feasible given the specific nature of the required services. Compensation for these services will be sourced from the proceeds of the bonds or other obligations issued by the City, and

WHEREAS, West & Associates L.L.P. (the “Firm”) is a nationally recognized law firm providing bond counsel services; and

WHEREAS, the City and the Firm desire to enter into an engagement agreement (the "Engagement Agreement") that sets forth the agreement between the parties with respect to bond counsel services; and

WHEREAS, the City Council finds that the passage of this Resolution is in the best interest of the citizens of Hutchins.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF HUTCHINS, TEXAS, THAT :

SECTION 1. That, all matters stated in the Recitals hereinabove are found to be true and correct and are incorporated herein by reference as if copied in their entirety.

SECTION 2. The City Council of the City of Hutchins, Texas approves the Agreement by and between the City and the Firm in substantially the form attached hereto as *Exhibit A*, with such changes as may be approved by the City Administrator and the City Administrator is hereby authorized to execute such Agreement.

SECTION 3. The Resolution shall become effective immediately from and after its passage.

**DULY RESOLVED AND ADOPTED by the City Council of the City of Hutchins, Texas,
this the 3rd day of June 2024.**

CITY OF HUTCHINS, TEXAS

Mario Vasquez, Mayor

ATTEST:

Cynthia Olguin, City Secretary

EXHIBIT "A"
Agreement

WEST & ASSOCIATES L.L.P.
ATTORNEYS AND COUNSELORS AT LAW

Section H, Item 9.

ROYCE WEST
CRAIG A. CAPUA
TONYA TARPEH
DEANNE PRICE CLAIRE
MICHAEL C. LACTSON
NICOLE COLLIER
LOUIS A. BEDFORD, IV
TWANA W. ALLEN
BRIAN M. KING
STEPHEN E. JONES

OF COUNSEL
DIANA LAQUEY EZZELL
ANTHONY LYONS
EDGARDO E. COLÓN

320 SOUTH R.L. THORNTON FREEWAY, SUITE 300
DALLAS, TEXAS 75203

OFFICE: 214-941-1881
FAX: 214-941-1399

WWW.WESTLLP.COM

HOUSTON OFFICE
440 LOUISIANA
SUITE 1880
HOUSTON, TEXAS 77002
OFFICE: 713-425-7293
FAX: 713-425-7299

FORT WORTH OFFICE
101 S. JENNINGS AVENUE
SUITE 210
FORT WORTH, TEXAS
76104
OFFICE: 817-877-1881
FAX: 817-458-4695

April 26, 2024

Sent via Email: j.quin@cityofhutchins.org
City of Hutchins
Attn: James Quin, City Administrator
321 North Main Street,
Hutchins, Texas 75141

Re: Bond Counsel Services

Dear Sir / Madame:

West & Associates L.L.P. ("West & Associates") are very pleased to serve as bond counsel ("Bond Counsel") on matters relating to the issuance of bonds, notes, certificates or other obligations ("Bonds") issued by or on behalf of the City of Hutchins. (the "City").

The purpose of this letter is to set out in writing our fees and the scope of our duties in connection with the issuance of Bonds by the City, and to outline our responsibilities in connection with any such engagement.

As Bond Counsel we would perform a specialized legal service. The tasks which our firm would undertake would be those necessary to rendering an opinion to the effect that the Bonds have been authorized, issued, and delivered in accordance with the Constitution and laws of the State of Texas, constitute valid and legally binding obligations of the City, and that the interest on the Bonds is exempt from Federal income taxes under existing statutes, regulations, rulings, and court decisions, if the Bonds are intended to be issued as tax-exempt obligations under federal income tax laws. In particular, we would prepare and direct the legal proceedings and perform the other necessary legal services with reference to the authorization, issuance, and delivery of the Bonds, including the following:

1. Preparing all instruments pursuant to which Bonds will be authorized, secured, sold, and delivered in consultation with the City (the "City"), the City staff, the City's financial advisors, and other officials and consultants of the City.
2. Attending meetings of the City and meetings with the City staff to the extent required or requested.

3. Attending meetings with prospective bond purchasers and meetings with rating agencies or credit enhancers to the extent required or requested.
4. Cooperating with the City and its consultants, including specifically the City's financial advisors and counsel, in the preparation of official statements or other securities laws disclosure documents, including review of the information therein describing the Bonds, the security therefor, and the federal income tax status thereof.
5. Cooperating with the City and its consultants, including specifically the City's financial advisors and counsel, in reviewing documents prepared for submission to national and/or state repositories with respect to the City's responsibilities under Rule 15c2-12 promulgated by the United States Securities and Exchange Commission.
6. Preparing and submitting forms and other information to the Texas Bond Review Board, as required by law.
7. Submitting the Bonds and the transcript of proceedings relating to the Bonds to the Attorney General of the State of Texas for approval and obtaining the registration of the Bonds by the Comptroller of Public Accounts of the State of Texas, as required by law.
8. Supervising the preparation, printing, execution, and delivery of the Bonds to the initial purchasers thereof.
9. When so delivered, rendering an opinion covering the validity of the Bonds under Texas law and the status of the interest thereon under federal income tax laws.
10. Providing follow-up advice concerning such subjects as arbitrage and rebate matters, the application of bond proceeds, new developments in the law concerning bond issues, federal income tax laws, continuing disclosure issues, and changes in industry practices.

The services described above to be provided as Bond Counsel do not include any responsibility for investigating the general financial condition and affairs of the City, nor do they include any responsibility with respect to litigation to which the City is a party. Our approving legal opinion as Bond Counsel will contain a paragraph substantially to the effect that we have acted as Bond Counsel for the City for the sole purpose of rendering an opinion with respect to the legality and validity of the Bonds under the Constitution and laws of the State of Texas, and with respect to the exemption of the interest on the Bonds from federal income taxes, and for no other reason or purpose. That paragraph of our opinion will also disclose that we have not been requested to investigate or verify any record, data, or other material relating to the financial condition or capabilities of the City or the organization for which the Bonds are issued, and have not assumed any responsibility with respect thereto.

In accordance with Section 1201.027 of the Texas Government Code, which provides that an issuer has the exclusive authority to determine the basis for compensation for legal services of the nature described in this engagement letter, the fees covering the legal services of our firm incurred in connection with the issuance and delivery of a series of Bonds by the City will be calculated based on the following formula: A base fee of \$17,500 and \$1.00 per \$1,000 principal amount of the aggregate principal amount of Bonds issued and delivered by the City not up to \$100 million; \$0.50 per \$1,000 principal amount of the aggregate principal amount of Bonds issued and delivered by the City in excess of \$100 million and not greater than \$200

million in principal amount of Bonds issued and delivered by the City; and \$0.25 per \$1,000 principal amount of the aggregate principal amount of Bonds issued and delivered by the City in excess of \$200 million in principal amount.

Also, we would be reimbursed for our actual out-of-pocket expenses reasonably and necessarily incurred in connection with the authorization, issuance, and delivery of each series or issue of Bonds. We will not incur expenses for travel without the approval of the City. West & Associates' federal taxpayer identification number is 06-1785983.

The fee quoted for the foregoing legal services as Bond Counsel is not inclusive of the fee covering the legal services to be performed by our firm in connection with the issuance of refunding bonds by the City. Such fees for legal services shall be determined on the basis of the following formula: \$1.50 per \$1,000 principal amount of the aggregate principal amount of Bonds issued and delivered by the City, with a minimum fee of \$20,000 per issue.

The fees and out-of-pocket expenses incurred with respect to the performance by our firm of services rendered in a capacity outside of our customary role as Bond Counsel, such as in connection with on-going compliance by the City with the provisions of Rule 15c2-12 of the U.S. Securities and Exchange Commission, the review of compliance by the City with federal income tax laws (other than in connection with the delivery of Bonds), as well as miscellaneous legal services requested by the City and its staff, will, unless governed by a separate engagement letter by and between the City and firm, be billed to the City on a monthly basis, as incurred. These services would be provided upon specific authorization from the City. Any fees so incurred would be charged on an hourly basis at the customary billing rates for the attorneys of our firm working on the matter. The hourly rates to be charged range from \$500 to \$750 an hour, depending on the attorney working on the matter. The hourly rates of Royce West, Tonya Tarpeh or other senior partners, tax counsel assigned to this account, shall be billed at \$750 per hour. Such services will be performed only upon the request of City staff, and we will advise the City Administrator or his designee General Counsel's office of the estimated amount of time and expense we would anticipate would be incurred as a result of the performance of such services.

Our fees and expenses for each series or issue of Bonds issued would be contingent upon the delivery of the Bonds to the purchasers thereof, and would be payable at the time of delivery of and payment for such series or issue of Bonds.

As you are aware, our firm represent many other entities and individuals. It is possible that during the time that our firm are representing the City, some of our respective present or future clients will have disputes or transactions with the City. You agree that we may continue to represent or may undertake to represent existing or new clients in any matter that is not substantially related to our work as Bond Counsel to the City and on behalf of entities issuing bonds for the benefit of the City. We are not aware of any representation of clients by our firm that would constitute a conflict of interest in representing the City as Bond Counsel. If potential conflicts are identified, our firm will meet with the General Counsel and discuss the potential conflict with you. If requested, either firm will recuse itself if it is determined that a potential conflict could result in inadequate representation of the City's interests.

In the interest of facilitating our services to you, we may send documents, information or data electronically or via the Internet or store electronic documents or data via computer software applications hosted remotely or utilize cloud-based storage. Your confidential electronic documents or data may be transmitted or stored using these methods. We may use third party service providers to store or transmit these documents or data. In using these electronic communication and storage methods, we each employ reasonable efforts to keep such communications, documents and data secure in accordance with our respective obligations under applicable laws, regulations, and professional standards; however, you recognize and accept that we have no control over the unauthorized interception or breach of any communications, documents or data once it has been transmitted or if it has been subject to unauthorized access while stored, notwithstanding all reasonable security measures employed by us or by our third party vendors. By your acceptance of this letter, you consent to our use of these electronic devices and applications and submission of confidential client information to or through third party service providers during this engagement.

Pursuant to Section 2270.002, Texas Government Code, the firm represents that as a "Company", as defined in Section 808.001, Texas Government Code, the firm does not Boycott Israel and, subject to or as otherwise required by applicable Federal law, including, without limitation, 50 U.S.C. Section 4607, the firm, as a "Company", as defined in Section 808.001, Texas Government Code, agrees not to Boycott Israel during the term of this engagement. For purposes of this Section, "Boycott Israel" shall have the meaning given such term in Section 2270.002, Texas Government Code.

Except as hereinafter provided, the term of this agreement will expire on April 30, 2026, unless the City, in the sole discretion thereof, determines to extend this agreement for up to two additional terms of not greater than one year for each such extension term. If the City so extends this agreement as provided above, the term of this agreement shall expire upon the end of the extension period. This agreement shall be terminable at will by either of the parties upon giving the other party thirty (30) days written notice of such termination.

We hope that the terms as described in this letter are satisfactory to you. Of course, we are available to discuss this matter further. Please let me know if you have any questions or comments regarding the above.

*****Signature Page to follow*****

Sincerely yours,

WEST & ASSOCIATES L.L.P.

By: _____
Royce West
Managing Partner

ACCEPTED this ___ day of _____, 2024.

CITY OF HUTCHINS

By: _____
Title: City Administrator

ACCEPTED this ___ day of _____, 2024.



STAFF REPORT

MEETING DATE: June 3, 2024

MEETING TYPE: City Council

SUBMITTED BY: Maria Joyner

AGENDA CAPTION: Discuss and consider Resolution 2024-06-1198 BY THE CITY COUNCIL OF THE CITY OF HUTCHINS, TEXAS, APPROVING AND AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE THE TERMS AND CONDITIONS OF A MASTER AGREEMENT BETWEEN THE CITY AND VC3 INC FOR COMPUTER SYSTEM, SOFTWARE SERVICES, HARDWARE AS A SERVICE, CONSULTING SERVICES AND/OR PROFESSIONAL SERVICES; AND PROVIDING FOR AN EFFECTIVE DATE Presented by: Maria Joyner, Director of Finance

Background Information

With escalating digital threats to governmental Information Technology (IT) systems, the City of Hutchins desires to make every effort to secure its data. The City of Hutchins holds a vast range of citizen data which could be used to carry out identity fraud. City services nationwide are also a big target for extortionist looking to hold Cities hostage with disruptive ransomware. Most attacks are financially motivated. In an effort to make sure that city staff utilizes every tool to protect its data, the City issued an RFP for IT services. The RFP bids were received January 19, 2024 (or earlier). A committee of five members reviewed the bids received. The top four firms were interviewed on March 11, 2024. Based on a thorough review, VC3 ranked highest as the company that could provide the best services to the City.

VC3 has over 29 years of IT experience and over 1,100 municipal government clients in 21 states. VC3 offers a longstanding history of combining stable day-to-day operations with forward thinking IT leadership to establish a high technology orientation for the City of Hutchins as we grow and evolve. VC3 has created service offerings to align with local government- specific needs including security & audit requirements, diverse technology needs across many city departments, and financial models designed to contain costs and adapt to shifting priorities across fiscal years and administrations. VC3 has 618 employees to provide services to its customers. The City of Hutchins will be managed on a day-to-day basis by a local team supporting Texas clients but the City will have access to the entire VC3 staff when needed. VC3 will provide Strengthened Security to the City. The City can benefit from strengthened security that protects the City from cyberattacks, data breaches, and other security vulnerabilities.

Budget Implications

The monthly fee associated with the contract with VC3 is \$14,550 and is included in the General Fund budget.

Operational Impact

Strengthening the City's Information Technology Services will help boost efficiency and productivity. This will help departments perform their task much faster than manual processes.

Legal Review

The resolution and agreement was reviewed and approved by the City Attorney.

Staff Recommendation

Staff recommends that the City Council approves Resolution No. 2024-_____

Supporting Documentation and Attachments

Resolution 2024 - _____
Agreement

**CITY OF HUTCHINS
RESOLUTION R 2024-06-1198**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HUTCHINS, TEXAS, APPROVING AND AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE THE TERMS AND CONDITIONS OF A MASTER AGREEMENT BETWEEN THE CITY AND VC3 INC FOR COMPUTER SYSTEM, SOFTWARE SERVICES, HARDWARE AS A SERVICE, CONSULTING SERVICES AND/OR PROFESSIONAL SERVICES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on November 1, 2023, an RFP was published for Comprehensive Technology Services for the City of Hutchins; and

WHEREAS, the proposals were received on or before January 19, 2024; and

WHEREAS, the top four proposals were interviewed on March 11, 2024; and

WHEREAS, the City Council of the City of Hutchins finds it in the best interest of the City of Hutchins to allow the City Administrator to begin contract negotiations with VC3 Inc., to provide Comprehensive Technology services to the City of Hutchins.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF HUTCHINS, TEXAS, THAT:

SECTION 1. The City, acting through its governing body, hereby confirms that it supports the City Administrator to negotiate and execute the Agreement, which is attached hereto as Exhibit “A” on behalf of the City of Hutchins.

SECTION 2. This Resolution shall become effective immediately upon its passage.

DULY RESOLVED AND ADOPTED by the City Council of the City of Hutchins, Texas, this the 3rd day of June 2024.

CITY OF HUTCHINS, TEXAS

Mario Vasquez, Mayor

ATTEST:

Cynthia Olguin, City Secretary

EXHIBIT "A"
MASTER AGREEMENT

MASTER AGREEMENT

This Master Agreement ("Agreement") is entered into as of this ____ day of _____, 2024 (the "Effective Date"), between VC3, Inc., a Delaware corporation having its principal place of business at 1301 Gervais Street, Suite 1800, Columbia, SC 29201 ("Company"), and City of Hutchins, Texas, a municipal corporation having its principal place of business at 321 North Main Street, Hutchins, Texas 75141 ("Client").

Client and Company hereby agree as follows:

1. Services, Third Party Products; and Orders.

1.1 Services. Company will provide to Client computer system and network maintenance services, managed services, software services, hardware as a service ("HaaS"), consulting services and/or professional services (the "Services") in each case as described in a written executed order between Company and Client (each an "Order"); provided however that the parties recognize that Company may from time to time provide Services to Client at Client's request without an Order, and in such cases, these Services shall be subject to and governed by the terms and conditions of this Agreement and performed by Company on a time and materials basis and invoiced at the hourly billing rates specified in Exhibit A.

1.2 Third Party Products. Company may sell or license or provide Third Party Products (as defined in Section 5.2) to Client as set forth in and on terms and conditions set forth in an Order.

1.3 Order. To be effective, each Order shall reference this Agreement and, when Client's signed version is received by Company, shall automatically be deemed a part of, and governed by the terms of, this Agreement. Each Order is enforceable according to the terms and conditions contained therein.

1.4 Change Orders. Client may request a change in the scope or nature of the Services in an Order at any time. However, changes to the scope of the Services in an Order can be made only in writing executed by both parties.

1.5 Non-Exclusive. Client understands and agrees that the Services provided under this Agreement are not exclusive to Client, and Company may provide the same or similar services to Company's other customers.

2. Charges for Services and Third Party Products.

2.1 Fees. Client agrees to pay Company the fees for Services and Third Party Products as indicated in each Order, or as hourly work defined below in Exhibit A (collectively referred to as the "Fees"). Company

reserves the right to increase the Fees once per calendar year. Unless otherwise expressly stated in an Order, Company's compensation for Services will be based on direct labor hours charged at fixed labor rates. The Order may call for a budget of expected charges as a way for both parties to monitor performance. Except as otherwise expressly set forth in an Order, all Services that are identified to be rendered on a time and materials basis will be invoiced at the hourly billing rates specified in Exhibit A.

2.2 Payment. Unless otherwise stated in an Order, all undisputed Fees for Services shall be due and payable by Client in advance of the calendar month in which the Services are to be provided to Client. Unless otherwise stated in an Order, Fees for Third Party Products shall be due and payable in advance of delivery. Payments made using electronic transfer shall be deducted from Client's designated bank account on the first business day of the month for which the Services are to be provided or on the date of delivery of Third Party Products. For prepaid Fees or Fees paid pursuant to a service plan, payment must be made in advance of providing Services or delivery of Third Party Products, unless other arrangements are agreed upon in the Order. Fees invoiced to Client shall be paid on a net thirty (30) day basis. Late payment for undisputed Fees (or any other amounts owing from Client to Company) shall be subject to interest on the unpaid amount(s) until and including the date payment is received, at the lower of either 2.0% per month or the maximum allowable rate of interest permitted by applicable law. Company reserves the right, but not the obligation, to suspend part or all of the Services in the event that any portion of undisputed Fees are not timely received by Company within fifteen (15) days following the date on which such Fees are due. All disputes initiated by Client related to Fees must be received by Company within thirty (30) days after the applicable Service is rendered or the date on which Client receives an invoice, whichever is later, otherwise Client waives its right to dispute the applicable Fees thereafter. A re-connect fee may be charged to Client in the event that Company suspends the Services due to Client's nonpayment. TIME IS OF

THE ESSENCE IN THE PERFORMANCE OF ALL PAYMENT OBLIGATIONS BY CLIENT.

2.3 Expenses. Client shall pay Company for all reasonable expenses incurred by Company in the performance of the Services, including without limitation travel, living, and out-of-pocket expenses incurred pursuant to this Agreement.

2.4 Taxes. Client shall pay directly, or reimburse Company for all taxes and tariffs assessed or levied by any governmental entity that are now or may become applicable to the Services or Third Party Products or measured by payments made by Client to Company hereunder, or are required to be collected by Company or paid by Company to tax authorities including interest assessment thereon if such assessments are due to Client's actions or inactions. This includes, but is not limited to, sales, use, excise, gross receipt and personal property taxes, or any other form of tax based on services performed, Third Party Products, equipment used by Company to perform services solely for Client, and the communication or storage of data, but does not include taxes based upon Company's net income.

3. Term; Termination.

3.1 Term. The term of this Agreement shall continue from the Effective Date until the earlier of (a) expiration of the term of all Orders referencing this Agreement or (b) termination of this Agreement as provided in this Agreement.

3.2 Termination for Breach. Either party may terminate an Order or this Agreement, as applicable, for material breach by the other party of the Order or this Agreement, as applicable, which is not cured within 30 days from the receipt by the party in breach of a written notice from the other party specifying the breach in detail. Client shall be liable for payment to Company for all Services rendered prior to the effective date of any such termination.

3.3 Early Termination. The Parties may terminate this Agreement early effective on written notice by a Party giving at least thirty (30) days of intent to terminate to the other Party.

3.4 Equipment / Software Removal. Upon termination of this Agreement or an Order for any reason, Client shall provide Company with access, during normal business hours, to Client's premises (or any other locations at which Company-owned

hardware, equipment or software is located) to enable Company to remove all Company-owned hardware (including HaaS Hardware), equipment and software from the premises (if any). If Client fails to grant Company access as described herein, or if any of the Company-owned hardware or equipment is broken or damaged (normal wear and tear excepted) or any of the software is missing, Company shall have the right to invoice Client for, and Client hereby agrees to pay immediately, the full replacement value of any and all Company-owned hardware, equipment and software (as applicable) located at Client's premises.

3.5 Survival. Expiration or termination of any Order or this Agreement for any reason will not release either party from any liabilities or obligations set forth in any Order or this Agreement which (a) the parties have expressly agreed will survive any such expiration or termination or (b) remain to be performed or by their nature would be intended to be applicable following any such expiration or termination.

4. Proprietary Protections.

4.1 Ownership Rights

(a) General. Each party will retain all rights to any software, ideas, concepts, know-how, development tools, techniques or any other proprietary material or information that it owned or developed prior to the Effective Date or acquired or developed after the Effective Date without reference to or use of the intellectual property of the other party. All software that is licensed by a party from a third party vendor will be and remain the property of such vendor. No licenses will be deemed to have been granted by either party to any of its patents, trade secrets, trademarks, or copyrights, except as otherwise expressly provided in this Agreement. Nothing in this Agreement will require Company or Client to violate the proprietary rights of any third party in any software or otherwise. Notwithstanding anything to the contrary in this Agreement, Company (i) will retain all right, title and interest in and to all software development tools, know-how, methodologies, processes, technologies or algorithms used in performing the Services which are based on trade secrets or proprietary information of Company or are otherwise owned or licensed by Company (collectively, "tools"), (ii) will be free to use the ideas, concepts, methodologies, processes and know-how which are developed or created in the course of performing the Services and may be retained by

Company's employees in intangible form, all of which constitute substantial rights on the part of Company in the technology developed as a result of the Services performed under this Agreement.

(b) Materials Developed for or Delivered to Client. Client agrees that all software and other materials (including, but not limited to customizations, modifications, specifications, documentation and training materials) developed for or delivered to Client pursuant to this Agreement or any Order, including without limitation all related copyrights, patent rights, trade secrets, ideas, designs, concepts, techniques, inventions, discoveries or other intellectual property rights (collectively, the "Materials"), shall be the exclusive property of Company and the Company shall own all right, title and interest therein. In this connection, Client acknowledges that all Materials which are or may be developed pursuant to this Agreement or any Order are and shall be the intellectual property and confidential proprietary information and products of Company, and Client hereby transfers and assigns any and all rights in and to the Materials to Company, its successors and assigns, including without limitation all intellectual property rights relating thereto. From time to time upon Company's request, Client shall confirm such assignment by execution and delivery of such assignments, confirmations of assignment, or other written instruments as Company may request. Company agrees that Client shall have a limited nonexclusive license to use the Materials internally to the extent necessary to carry out and fulfill the terms and conditions of the Order for which the Materials were developed and shall have the right to grant a limited nonexclusive license to the third parties specifically identified in an Order to use the Materials solely for the purposes contemplated by such Order, provided that such third parties shall first agree in a signed writing to be bound by the terms of this Agreement or such terms as may be acceptable to Company.

(c) Specific Deliverables Owned by Client. Notwithstanding the foregoing provisions of Section 4.1(b) but subject to any third party rights or restrictions and the provisions of Section 4.1(a) and the other provisions of this Section 4.1(c), Client will own the copyright in and to Materials that (i) are developed for and delivered by Company to Client, (ii) are paid for by Client, and (iii) are clearly and specifically identified in an Order as governed by the provisions of this Section 4.1(c) (the "Specific Client

Owned Deliverables"). Notwithstanding the foregoing, Company will retain ownership of any Company-owned software or development tools that are used in producing the Specific Client Owned Deliverables and become embedded in the Specific Client Owned Deliverables. Company hereby grants to Client a perpetual (subject to compliance with this sentence), royalty-free, non-transferable, nonexclusive license to use such embedded software and tools (if any) solely in connection with Client's internal use and exploitation of the Specific Client Owned Deliverables and only so long as such software and tools (if any) remain embedded in the Specific Client Owned Deliverables and are not separated therefrom. Company will own all intellectual property rights in or related to the Specific Client Owned Deliverables other than the copyright ownership rights granted to Client pursuant to this Section 4.1(c).

4.2 Client Information. Company recognizes and agrees that, except as specified in Section 4.1, it has no claim of ownership to any data, materials or information submitted by Client to Company or the Services ("Client Information"), which Client Information is being provided to Company solely for the purposes of enabling Company to render the Services, and that title and all ownership rights in and to such Client Information shall at all times remain with Client. Client shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use all Client Information.

4.3 Confidentiality.

(a) Confidential Information. This Section 4.3 shall apply to all confidential and proprietary information disclosed by either party ("Disclosing Party") to the other party ("Receiving Party") in connection with this Agreement, including without limitation, all Client Information, Materials of Company, and information related to the Disclosing Party's technology, software, know-how, products, potential products, services, potential services, financial information, employees, customers, markets and/or business information (collectively, "Confidential Information"). The terms and conditions of this Agreement and all Orders shall be treated by Client as the Confidential Information of Company. Confidential Information shall not include any information which (i) was known to the Receiving Party prior to being disclosed by the Disclosing Party, (ii) becomes publicly known through no wrongful act

of the Receiving Party, (iii) is approved for release by written authorization of the Disclosing Party, (iv) is received from a third party not in breach of any separate confidentiality obligation known to the Receiving Party, or (v) is independently developed without reference to the Disclosing Party's Confidential Information.

(b) Scope of Obligation. The Receiving Party agrees to use the Confidential Information of the Disclosing Party only as provided for in this Agreement. Each party agrees to hold the other party's Confidential Information in strict confidence and not to disclose such Confidential Information to any third parties. Notwithstanding the foregoing, each party may disclose the other party's Confidential Information only to those employees, agents, representatives and/or consultants who require such information only in connection with this Agreement. Each party agrees to instruct all such employees, agents, representatives and consultants regarding the foregoing obligations and ensure that such employees, agents, representatives and consultants are bound by obligations of confidentiality to the Receiving Party that are at least as restrictive as those contained herein. Each party agrees that it will take all reasonable measures to protect the confidentiality of, and avoid the unauthorized disclosure or use of, the other party's Confidential Information in order to prevent it from being made public or in the possession of persons other than those persons authorized hereunder to have any such Confidential Information, which measures shall include at least the same degree of care that the Receiving Party utilizes to protect its own confidential information of a similar nature but in any event shall include commercially reasonable precautions designed to protect the Disclosing Party's Confidential Information from unauthorized disclosure and/or use.

(c) Limited Disclosure Right. Confidential Information may be disclosed to the extent required by court order or as otherwise required by law, provided that the Receiving Party, to the extent legally permissible, notifies the Disclosing Party promptly upon learning of the possibility of any such requirement and, to the extent legally permissible, has given the Disclosing Party a reasonable opportunity to contest or limit the scope of such required disclosure.

(d) Return of Confidential Information. Promptly upon termination of this Agreement, or at any other time upon the request by a party, the other party shall (i) return to the Disclosing Party or, at the

Disclosing Party's request, destroy all Confidential Information of such Disclosing Party, whether in paper or electronic form, provided, however that the foregoing shall not apply to Confidential Information that is stored in the Receiving Party's electronic archives, which Confidential Information will be destroyed in the ordinary course of the Receiving Party's business in accordance with its document destruction policies; and (ii) certify to the Disclosing Party in writing that it has complied with the provisions of this Section 4.3.

4.4 Safeguarding Protected Health Information.

(a) Company shall maintain the privacy and security of protected health information of Client as set forth in the Business Associate Addendum attached hereto as Exhibit B (the "BAA").

5. Limited Warranty and Disclaimers.

5.1 Limited Services Warranty. Company warrants to Client that the Services, as and when delivered or rendered hereunder, will substantially conform to the description of services or specifications set forth in the applicable Order. Company's sole liability under the foregoing warranty shall be to provide the services described in Section 5.5 hereof.

5.2 No Third Party Products Warranty. UNLESS OTHERWISE EXPRESSLY STATED IN AN ORDER, ANY THIRD PARTY PRODUCTS OR SERVICES SOLD TO, PROVIDED TO OR PROCURED FOR CLIENT, INCLUDING BUT NOT LIMITED TO THIRD PARTY HARDWARE, SOFTWARE, PERIPHERALS AND ACCESSORIES (COLLECTIVELY, "THIRD PARTY PRODUCTS") ARE PROVIDED TO CLIENT "AS IS" AND COMPANY EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS, IMPLIED, ARISING FROM COURSE OF DEALING OR USAGE OF TRADE OR STATUTORY WITH RESPECT TO SUCH THIRD PARTY PRODUCTS, INCLUDING BUT NOT LIMITED TO WARRANTIES OF PERFORMANCE, SECURITY, INTEGRATION, NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. COMPANY SHALL USE REASONABLE EFFORTS TO ASSIGN, TRANSFER AND FACILITATE ALL WARRANTIES (IF ANY) AND SERVICE LEVEL COMMITMENTS (IF ANY) FROM THE APPLICABLE THIRD

PARTY MANUFACTURER OR VENDOR FOR THE THIRD PARTY PRODUCTS TO CLIENT, BUT WILL HAVE NO LIABILITY WHATSOEVER FOR SUCH THIRD PARTY PRODUCTS. COMPANY SHALL NOT BE HELD LIABLE AS AN INSURER OR GUARANTOR OF THE PERFORMANCE, UPTIME, USEFULNESS, OR QUALITY OF ANY THIRD PARTY PRODUCTS.

5.3 No Compliance Warranty. COMPANY DOES NOT WARRANT THAT THE PROVISION OF THE SERVICES, OR CLIENT’S USE OF THE SERVICES, WILL SATISFY ANY PARTICULAR INDUSTRY-SPECIFIC OR REGULATORY REQUIREMENTS, OR BRING CLIENT INTO COMPLIANCE WITH ANY SUCH REQUIREMENTS.

5.4 DISCLAIMER OF WARRANTIES. THE WARRANTY SET FORTH IN SECTION 5.1 STATES COMPANY’S SOLE AND EXCLUSIVE WARRANTY TO CLIENT HEREUNDER. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 5.1, THE SERVICES ARE PROVIDED STRICTLY “AS IS” AND COMPANY MAKES NO ADDITIONAL WARRANTIES, EXPRESS, IMPLIED, ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, OR STATUTORY, AS TO THE SERVICES OR ANY MATTER WHATSOEVER. IN PARTICULAR, ANY AND ALL WARRANTIES OF PERFORMANCE, SECURITY, INTEGRATION, NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY EXCLUDED. COMPANY DOES NOT WARRANT, AND SPECIFICALLY DISCLAIMS THAT THE SERVICES BEING PROVIDED WILL RESULT IN COST SAVINGS, PROFIT IMPROVEMENT, OR THAT THE SERVICES WILL BE ERROR-FREE. THIS IS A LIMITED WARRANTY AND IS THE ONLY WARRANTY MADE BY COMPANY.

5.5 Notice Obligation; Remedy Regarding Services. Client shall notify Company in writing within thirty (30) days after completion of the Services in question when any of the Services fail to substantially conform to the description of services or specifications set forth in the applicable Order. Such notification shall include the detailed information necessary for Company to verify such nonconformity. Upon actual receipt of such notification and

verification of the nonconformity, Company shall correct the nonconformity so that the Services shall substantially conform with the agreed description of services or specifications in the applicable Order. Client agrees to pay Company for all personnel time and expenses incurred in investigating reported nonconformities when the alleged nonconformities are not discovered. The passage of the thirty (30) day period after completion of the Services in question without the notification described herein shall constitute final acceptance of the Services.

6. Limitation of Liability.

6.1 COMPANY’S LIABILITY ON ANY CLAIM, LOSS OR LIABILITY ARISING OUT OF, OR CONNECTED WITH THIS AGREEMENT, THE SERVICES, OR USE OF THE PRODUCT OF ANY SERVICES FURNISHED HEREUNDER, SHALL IN ALL CASES BE LIMITED SOLELY TO CORRECTION OF NONCONFORMITIES WHICH DO NOT SUBSTANTIALLY CONFORM WITH THE AGREED DESCRIPTION OF SERVICES IN AN ORDER, OR SPECIFICATIONS IDENTIFIED IN AN ORDER.

6.2 IF FOR ANY REASON COMPANY IS UNABLE OR FAILS TO CORRECT NONCONFORMITIES AS PROVIDED, COMPANY’S LIABILITY FOR DAMAGES ARISING OUT OF ANY ORDER FOR SUCH FAILURE, WHETHER IN CONTRACT OR TORT (INCLUDING NEGLIGENCE), LAW, EQUITY OR OTHERWISE, SHALL NOT EXCEED THE AMOUNTS PAID BY CLIENT FOR THAT PORTION OF THE SERVICES WHICH FAIL TO CONFORM. IN NO EVENT SHALL COMPANY’S MAXIMUM AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT (INCLUDING FOR ANY CLAIM AND/OR SERIES OF CLAIMS WHETHER RELATED OR UNRELATED), WHETHER IN CONTRACT OR TORT (INCLUDING NEGLIGENCE), LAW, EQUITY OR OTHERWISE, EXCEED THE AMOUNTS PAID BY CLIENT TO COMPANY IN THE THIRTY DAY (30) PERIOD PRECEDING THE EVENT(S) GIVING RISE TO THE CLAIM (OR TO THE FIRST CLAIM IN A SERIES OF CLAIMS). IT IS UNDERSTOOD AND AGREED THAT THE FEES FOR THIRD

PARTY PRODUCTS (IF ANY) PROVIDED TO CLIENT SHALL NOT BE INCLUDED IN THE CALCULATION OF THE LIMITATION OF DAMAGES DESCRIBED IN THIS PARAGRAPH AND AMOUNTS PAID BY CLIENT TO COMPANY.

6.3 UNDER NO CIRCUMSTANCES SHALL COMPANY BE LIABLE TO CLIENT FOR ANY LOSS OF USE, INTERRUPTION OF BUSINESS, LOSS OR CORRUPTION OF DATA, LOST PROFITS, LOST REVENUE, OR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND REGARDLESS OF THE FORM OF ACTION WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), LAW, EQUITY OR OTHERWISE, EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM OR DAMAGES ASSERTED BY ANY THIRD PARTY OR FOR ANY DAMAGES CAUSED BY ANY DELAY IN FURNISHING SERVICES HEREUNDER.

6.4 CLIENT ACKNOWLEDGES THAT COMPANY HAS SET ITS FEES, AND ENTERED INTO THIS AGREEMENT IN RELIANCE UPON THE LIMITATIONS OF LIABILITY AND THE DISCLAIMERS OF WARRANTIES AND DAMAGES SET FORTH IN THIS AGREEMENT, AND THAT THE SAME FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES. THE FOREGOING LIMITATION OF LIABILITY IS INDEPENDENT OF ANY EXCLUSIVE REMEDIES FOR BREACH OF WARRANTY SET FORTH IN THIS AGREEMENT.

6.5 THE PROVISIONS OF SECTIONS 5, 6 AND 7 ARE CLIENT’S EXCLUSIVE REMEDIES RELATED TO THE SERVICES, ANY FAILURE BY COMPANY TO CORRECT NONCONFORMITIES IN THE SERVICES, OR FOR BREACH BY COMPANY OF THIS AGREEMENT OR AN ORDER AND SHALL APPLY REGARDLESS OF THE SUCCESS OR EFFECTIVENESS OF SUCH REMEDIES.

6.6 Unless otherwise expressly stated in an Order, Company assumes no liability for failure of hardware

or equipment or software or any losses resulting from such failure.

6.7 Client is responsible for adopting reasonable measures to limit Client’s exposure with respect to such potential losses and damages, including without limitation examination and confirmation of results of the Services prior to use thereof, provision for identification and correction of errors and omissions, and preparation and storage of backup or duplicate data. Client is also responsible for complying with, and shall comply with, all local, state, provincial, federal, national and international laws, rules and regulations (“Laws”) pertaining to the use of the Services and use and disclosure of any Client Information.

7. Indemnity

7.1 Indemnification.

COMPANY AGREES TO DEFEND, INDEMNIFY AND HOLD CLIENT, ITS OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY COMPANY’S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS AGREEMENT, OR BY ANY NEGLIGENT OR STRICTLY LIABLE ACT OR OMISSION OF COMPANY, ITS OFFICERS, AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THIS AGREEMENT; EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OR FAULT OF CLIENT, ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS, AND IN THE EVENT OF JOINT AND CONCURRING NEGLIGENCE OR FAULT OF THE COMPANY AND CLIENT, RESPONSIBILITY AND INDEMNITY, IF ANY, SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS, WITHOUT WAIVING ANY GOVERNMENTAL

IMMUNITY AVAILABLE TO CLIENT UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. NEITHER CLIENT NOR COMPANY WAIVE ANY LEGAL CONTENTIONS, DEFENSES, OR IMMUNITIES, INCLUDING, BUT NOT LIMITED TO GOVERNMENTAL (I.E. SOVEREIGN) IMMUNITY.

7.2 Infringement Claims.

(a) **General.** Subject to Section 6 of this Agreement, the limitations set forth below in this Section 7.1 and the procedures set forth below in Section 7.3, Company and Client (each an “indemnitor”) each agrees to defend the other party (each an “indemnitee”) against any action to the extent that such action is based upon a claim that the Confidential Information (other than third party hardware, software, products, materials or services) provided by the indemnitor, or any part thereof, (i) infringes a copyright perfected under United States statute, or (ii) constitutes an unlawful disclosure, use or misappropriation of another party’s trade secret, and the indemnitor will bear the expense of such defense and pay any damages, costs and expenses, including reasonable attorneys’ fees and expenses (collectively “Damages”) that are attributable to such claim finally awarded by a court of competent jurisdiction.

(b) **Exclusions.** Neither Company nor Client will be liable to the other for claims of indirect or contributory infringement. The indemnitor will have no liability to the indemnitee hereunder if (i) the claim of infringement is based upon the use of Confidential Information provided by the indemnitor hereunder in connection or in combination with equipment, devices or software not supplied by the indemnitor or used in a manner for which the Confidential Information was not designed, (ii) the indemnitee modifies any Confidential Information provided by the indemnitor hereunder and such infringement would not have occurred but for such modification, or (iii) the claim of infringement arises out of the indemnitor’s compliance with specifications or requirements provided by the indemnitee and such infringement would not have occurred but for such compliance.

(c) **Additional Remedy.** If Confidential Information becomes the subject of an infringement claim under this Section 7.1, or in the indemnitor’s opinion is likely to become the subject of such a claim, then, in addition to defending the claim and paying any damages and attorneys’ fees as required above in this Section 7.1, the indemnitor may, at its option and in its sole discretion, (A) replace or modify the Confidential Information to make it noninfringing or cure any claimed misuse of another’s trade secret or (B) procure for the indemnitee the right to continue using the Confidential Information pursuant to this Agreement. Any costs associated with implementing either of the above alternatives will be borne by the indemnitor but will be subject to Section 6 of this Agreement. If neither alternative is pursued by, or (if pursued) available to, the indemnitor, (x) the indemnitee will return such Confidential Information to the indemnitor and (y) if requested by the indemnitee in good faith, the parties will negotiate, but subject to Section 6 of this Agreement, to reach a written agreement on what, if any, monetary damages (in addition to the indemnitor’s obligation to defend the claim and pay any damages and attorneys’ fees as required above in this Section 7.1) are reasonably owed by the indemnitor to the indemnitee as a result of the indemnitee no longer having use of such Confidential Information. The payment of any such monetary damages will be the indemnitee’s sole and exclusive remedy for the inability of the indemnitor to implement either of the above alternatives.

7.3 Third Party Indemnification of Company. Without limiting Company’s liability to Client under this Agreement, each of the parties acknowledge that Company would not enter into this Agreement, and by Company entering into and performing its obligations under this Agreement, Company will not assume and should not be exposed to the business and operational risks associated with Client’s business, and Client therefore agrees, subject to Section 7.3 below, to indemnify and defend Company and hold Company harmless from any and all third party claims and Damages arising out of the conduct of Client’s business, including without limitation the use by Client of the Services or any Third Party Products.

7.4 Procedures. The indemnification obligations set forth in this Section 7 will not apply unless the party claiming indemnification: (a) notifies the other promptly in writing of any matters in respect of which the indemnity may apply and of which the notifying party has knowledge, in order to allow the indemnitor the opportunity to investigate and defend the matter;

provided, however, that the failure to so notify will only relieve the indemnitor of its obligations under this Section 7 if and to the extent that the indemnitor is prejudiced thereby; and (b) gives the other party full opportunity to control the response thereto and the defense thereof, including without limitation any agreement relating to the settlement thereof; provided, however, that the indemnitee will have the right to participate in any legal proceeding to contest and defend a claim for indemnification involving a third party and to be represented by legal counsel of its choosing, all at the indemnitee’s cost and expense. However, if the indemnitor fails to promptly assume the defense of the claim, the party entitled to indemnification may assume the defense at the indemnitor’s cost and expense. The indemnitor will not be responsible for any settlement or compromise made without its consent, unless the indemnitee has tendered notice and the indemnitor has then refused to assume and defend the claim and it is later determined that the indemnitor was liable to assume and defend the claim. The indemnitee agrees to cooperate in good faith with the indemnitor at the request and expense of the indemnitor.

8. Additional Terms.

8.1 Hardware as a Service (HaaS).

(a) All hardware provided by Company as a part of Company providing HaaS under an Order (“HaaS Hardware”) shall at all times remain the property of Company and Client shall not have any right, title or interest in or to the HaaS Hardware other than the right to possession and use of the HaaS Hardware in accordance with this Agreement and the applicable Order.

(b) Client shall, during the term of the applicable Order and until redelivered to Company:

- ensure that the HaaS Hardware is kept and operated in a suitable environment, which shall at a minimum meet any requirements set out in the Order, use only for the purposes for which it is designed, and operate it in a proper manner by trained, competent staff in accordance with any operating instructions;
- keep the HaaS Hardware in as good and operating condition as it was on the date of its delivery (ordinary wear and tear excepted) including replacement of worn, damaged and lost parts, and shall make good any damage to the HaaS Hardware;

- make no alteration to the HaaS Hardware and not remove any existing component(s) from the HaaS Hardware without the prior written consent of Company;
- at all times keep the HaaS Hardware in its possession or control at the location(s) specified in the Order or such other locations as may be agreed with the Company in writing;
- permit Company or its duly authorized representative to inspect the HaaS Hardware at all reasonable times and for such purpose to enter upon the premises at which the HaaS Hardware is located, and shall grant reasonable access and facilities for such inspection;
- not, without the prior written consent of Company, part with control of (including for the purposes of repair or maintenance), sell or offer for sale, underlet or lend the HaaS Hardware or allow the creation of any mortgage, charge, lien or other security interest in respect of it;
- give immediate written notice to Company in the event of any loss, accident or damage to the HaaS Hardware arising out of or in connection with the Client's possession or use of the HaaS Hardware; and
- deliver up the HaaS Hardware at the end of the term of the Order at such address as Company requires, or if necessary allow Company or its representatives access to the premises where the HaaS Hardware is located for the purpose of removing the HaaS Hardware.

(c) Client acknowledges that Company shall not be responsible for any loss of or damage to the HaaS Hardware arising out of or in connection with any negligence, misuse, mishandling of the HaaS Hardware or otherwise caused by Client or any of its officers, employees, agents or contractors;

(d) The risk of loss, theft, damage or destruction of the HaaS Hardware shall pass to the Client on delivery by Company to Client. The HaaS Hardware shall remain at the sole risk of the Client during the term of the Order and until such time as the HaaS Hardware is redelivered to Company.

(e) During the term of the Order and until redelivered to Company, the Client shall, at its own expense, obtain and maintain the following insurances:

- insurance of the HaaS Hardware to a value not less than its full replacement value comprehensively against all usual risks of loss, damage or destruction by fire, theft or accident, and such other risks as Company may from time to time nominate in writing;
- insurance for such amounts as a prudent owner or operator of the HaaS Hardware would insure for, or such amount as Company may from time to time reasonably require, to cover any third party or public liability risks of whatever nature and however arising in connection with the HaaS Hardware; and
- insurance against such other or further risks relating to the HaaS Hardware as may be required by law, together with such other insurance as Company may from time to time consider reasonably necessary and advice to the Client.

The Client shall, on demand, supply copies of the relevant insurance policies or other insurance confirmation acceptable to Company and proof of premium payment to Company to confirm the insurance arrangements. If the Client fails to effect or maintain any of the insurances required under these conditions, Company shall be entitled to effect and maintain the same, pay such premiums as may be necessary for that purpose and recover the same as a debt due from the Client.

(f) Client permits Company to:

- charge Client for repairs to, or replacement of, any HaaS Hardware that is lost, damaged or destroyed until it has been returned to Company; and
- at any time swap the HaaS Hardware for alternative equipment offering in Company’s reasonable judgment the same functionality.

8.2 EULAs. Portions of the Services may require Client to accept the terms of one or more third party end user license agreements (“EULAs”). EULAs may contain service levels, warranties and/or liability

limitations that are different than those contained in this Agreement or an applicable Order. Client agrees to be bound by the terms of such EULAs and shall look only to the applicable third party provider for the enforcement of the terms of such EULAs.

8.3 Data Backup. Unless otherwise stated in an Order, Client understands and agrees that Company shall not be responsible for data backup or any data lost, corrupted, or rendered unreadable due to communication and/or transmissions errors or related failures, or equipment failures (including but not limited to silent corruption-related issues). Client is strongly advised to maintain a local and offsite backup of all mission-critical or customer-critical data, and to periodically verify the integrity and availability of all backed up data.

8.4 Bring Your Own Device (BYOD). Client hereby represents and warrants that Company is authorized to provide the Services to all devices, peripherals and/or computer processing units, including without limitation mobile devices (such as personal digital assistants, notebook computers, and tablet computers) that (i) are connected to Client’s systems related to the Services, and (ii) have been designated by Client to receive the Services, regardless of whether such device(s) are owned, leased or otherwise controlled by Client. Unless otherwise stated in an Order, devices will not receive or benefit from the Services while the devices are detached from or unconnected to such systems.

8.5 Hosted Solutions. Hosted solutions, including but not limited to hosted email and document-related applications, may require Client to accept the terms of a third party EULA, which may contain service levels, warranties and/or liability limitations that are different than those contained in this Agreement. Client agrees to be bound by the terms of such EULAs and shall look only to the applicable third party provider for the enforcement of the terms of such EULAs. Client will defend, indemnify, and hold Company harmless from any claims and Damages resulting from any breach of such a EULA by Client or any of its directors, officers, employees, or agents. Company reserves the right to suspend or terminate Client’s access to hosted solutions in the event that Company has reason to believe that the hosted solutions are being accessed, used or otherwise manipulated in a manner that violates any Law, or poses a threat to the integrity or security of Company’s computer servers or any third party server.

8.6 Disposal of Equipment. Client agrees that any Client assets, equipment, hardware, or software deemed to be replaced, retired, faulty, non-functional, dead-on arrival, returned, unrecoverable, or otherwise unusable may be disposed of by Company unless Client provides a written request to keep the asset at the time of removal.

8.7 Recording.

(a) Some Services provided may involve recording and/or monitoring. For such Services, information uploaded to or in any way passing through computer systems used to provide the Services, including without limitation written, visual, or oral communications or other electronic means, may be recorded or monitored for quality assurance and diagnostic purposes. By accessing or using the Services, Client consents to such recording and monitoring. Client is also solely responsible for informing anyone with whom Client interacts or otherwise communicates via the Services that information uploaded to or in any way passing through the Services, including without limitation written, visual, or oral communications or other electronic means, may be recorded or monitored for quality assurance and diagnostic purposes.

(b) If phone conferences/conference bridges are applicable to the Services being provided to Client, Client acknowledges that the laws of certain jurisdictions may require that if a conference is recorded, all participants in the conference must be informed in advance of any such recording, so they may consent to being recorded (if required by applicable Laws). Client acknowledges and agrees that Client shall be solely responsible for complying with all applicable Laws and third party rights when using recording features (which includes Client's obligation to obtain the consent, if required by applicable Laws, of all participants before the commencement of the recording). Company shall have no liability to Client or any participant in Client's recorded conference with respect to Client's obligations under this Section 8.7.

9. General Provisions.

9.1 Non-Hire Provision. Each party to this Agreement agrees that it will not hire, employ or contract with, or solicit to hire, employ or contract with, any person who is, or within the immediately preceding one year was, an employee or subcontractor of the other party to this Agreement for any purposes

during the term of this Agreement, or for a period of one year after this Agreement terminates.

9.2 Conflict. Any purchase order or other document issued by Client is for administrative convenience only and does not govern, control or amend the terms of this Agreement or any Order. In the event of any conflict between this Agreement and any Order, this Agreement shall prevail unless the Order expressly references amending and superseding a specific provision of this Agreement.

9.3 Authorization. Each Party represents that it has full capacity and authority to grant all rights and assume all obligations granted and assumed under this Agreement.

9.4 Assignment. Company may not assign this Agreement in whole or in part without the prior written consent of the Client. In the event of an assignment by Company to which the City has consented, the assignee shall agree in writing with the Client to personally assume, perform, and be bound by all the covenants and obligations contained in this Agreement.

9.5 Successors and Assigns. Subject to the provisions regarding assignment, this Agreement shall be binding on and inure to the benefit of the Parties to it and their respective heirs, executors, administrators, legal representatives, successors and assigns.

9.6 Amendments. This Agreement may be amended by mutual written agreement of the Parties.

9.7 Exhibits. The exhibits attached hereto are incorporated herein and made a part hereof for all purposes.

9.8 Conflict of Interest. Company represents that no official or employee of the Client has any direct or indirect pecuniary interest in this Agreement.

9.9 Compliance with Federal, State & Local Laws. Company shall comply in performance of services under the terms of this Agreement with all applicable laws, ordinances and regulations, judicial decrees or administrative orders, ordinances, and codes of federal, state and local governments, including all applicable federal clauses.

9.10 Survival. In the event of any expiration or termination of this Agreement, Sections 2, 3, 4, 5, 6, 7, and 9 of this Agreement shall survive and shall continue to bind the parties.

9.11 Governing Law. This Agreement shall be governed in all respects by the laws of the United States of America and the State of Texas without regard to conflicts of law principles. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this Agreement.

9.12 Forum. All disputes arising under this Agreement shall be brought in the state or federal courts located in Dallas County, Texas, as permitted by law. The state and federal courts located in Dallas County, Texas shall each have nonexclusive jurisdiction over disputes under this Agreement. The Parties consent to the personal and subject matter jurisdiction of the above courts.

9.13 Injunctive Relief. It is understood and agreed that, notwithstanding any other provisions of this Agreement, breach of the provisions of this Agreement by Client will cause Company irreparable damage for which recovery of money damages would be inadequate, and that Company shall therefore be entitled to obtain timely injunctive relief to protect Company's rights under this Agreement in addition to any and all remedies available at law.

9.14 Notices. All notices or reports permitted or required under this Agreement shall be in writing and shall be delivered by personal delivery or by certified or registered mail, return receipt requested, and shall be deemed given upon personal delivery or five (5) days after deposit in the mail. Notices shall be sent to the parties at the addresses described on the first page of this Agreement or such other address as either party may designate for itself in writing. All notices to Company must be to its President to be effective.

9.15 No Agency. Nothing contained herein shall be construed as creating any agency, partnership, or other form of joint enterprise between the parties.

9.16 Force Majeure. Neither party shall be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder (except for the payment of money) on account of strikes, shortages, riots, insurrection, fires, flood, storm, explosions, acts of God, war, governmental action, labor conditions, earthquakes, power failure, communications delays/outages, material shortages or any other cause which is beyond the reasonable control of such party.

9.17 Waiver. The failure of either party to require performance by the other party of any provision hereof shall not affect the full right to require such performance at any time thereafter; nor shall the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of the provision itself.

9.18 Severability. In the event that any provision of this Agreement shall be unenforceable or invalid under any applicable law or be so held by applicable court decision, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole, and, in such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law or applicable court decisions.

9.19 Nondisclosure. Client promises not to disclose the terms and conditions of this Agreement to any third party without the prior written consent of Company.

9.20 Headings. The section headings appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or extent of such section or in any way affect this Agreement.

9.21 Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which will be considered an original, but all of which together will constitute one and the same instrument.

9.22 Entire Agreement. This Agreement together with any Orders attached hereto completely and exclusively states the agreement of the parties regarding its subject matter. It supersedes, and its terms govern, all prior proposals, agreements, or other communications between the parties, oral or written, regarding such subject matter. This Agreement shall not be modified except by a subsequently dated written amendment signed on behalf of Company and Client by their duly authorized representatives.

9.23 Boycott Israel; Boycott Energy Companies; and Prohibition of Discrimination against Firearm Entities and Firearm Trade Associations.

(a) Company verifies that it does not Boycott Israel and agrees that during the term of the Agreement will not Boycott Israel as that term is defined in Texas Government Code Section 808.001, as amended.

(b) Company verifies that it does not Boycott Energy Companies and agrees that during the term of this Agreement will not Boycott Energy Companies as that term is defined in Texas Government Code Section 809.001, as amended.

(c) Company verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association as those terms are defined in Texas Government Code

Section 2274.001, as amended, and will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.

(d) This section does not apply if Company is a sole proprietor, a non-profit entity, or a governmental entity; and only applies if: (i) Company has ten (10) or more fulltime employees and (ii) this Agreement has a value of \$100,000.00 or more to be paid under the terms of this Agreement.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the date first above written.

COMPANY:

VC3, Inc.

By: _____

Name: _____

Title: _____

CLIENT:

City of Hutchins, Texas

By: _____

Name: _____

Title: _____

Exhibit A
Hourly Rates

| Service Area | Hourly Bill Rate | Description of Service Area |
|-------------------------------------|------------------|--|
| Consulting & Project Management | \$ 232.00 | Consulting (Design, Architecture, Planning); Technology Assessments; Security Audits. Project Management. CIO Consulting Services including without limitation product evaluations and application/infrastructure planning services. |
| Application Development | \$ 232.00 | Application Software development, design, testing, and code revisions. Systems Programming (System Level Scripting/Automation). All SharePoint services. |
| Web Design Services | \$ 201.00 | Web site design and implementation services which are NOT built on a Microsoft SharePoint platform. |
| Infrastructure Deployment Services | \$ 206.00 | Installation and Setup of the following: Networks, Electronic Messaging Systems, Servers, SANs, VMWare, Citrix, Network Domains, and Desktop Deployments. |
| Infrastructure Maintenance Services | \$ 196.00 | Maintenance Services for the following: Networks, Electronic Messaging Systems, Servers, SANs, VMWare, Domains, Microsoft Server, and Desktop support. |
| Travel Time | \$ 124.00 | Travel time to and from the Client. This rate includes the mileage expense at the current IRS approved mileage rate. |
| After Hours Support Services | \$ 257.00 | All reactive support services provided to Client outside of the hours of 8am to 5pm Monday through Friday and all services provided on National Holidays |

Note: Rates will automatically increase on an annual basis equivalent to the CPI change for All Urban Consumers or by a rate of 4%, whichever is higher. Annual rate increases will become effective on the first of the month following the release of data for the prior calendar year.

Exhibit B

BUSINESS ASSOCIATE ADDENDUM

This Business Associate Addendum (“Addendum”) sets out the responsibilities and obligations of Company (referred to in this Addendum as “Business Associate”) and Client (referred to in this Addendum as “Covered Entity”). In connection with the Agreement, Business Associate and Covered Entity agree to the terms and conditions of this Addendum, which is incorporated into and made a part of the Agreement, in order to comply with the use and handling of Protected Health Information of Covered Entity (“PHI”) under the Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R., Parts 160 and 164, as amended from time to time (“Privacy Standards”) and the Security Standards, 45 C.F.R. §160, 162 and 164, as amended from time to time (“Security Standards”) of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and the Health Information Technology for Economic and Clinical Health Act, enacted as part of the American Recovery and Reinvestment Act of 2009 and its accompanying regulations (the “HITECH Act”), as may be amended from time to time in accordance with the terms and conditions set forth in this Addendum. Unless otherwise provided, all capitalized terms in this Addendum will have the same meaning as provided under the Privacy Standards, the Security Standards and the HITECH Act. Notwithstanding the foregoing, for purposes of this Addendum, the term “PHI” shall refer solely to information accessed, received, used, disclosed and/or maintained by Business Associate as part of the provision of services to Covered Entity pursuant to the Agreement.

1. Uses and Disclosures of Protected Health Information. Business Associate provides certain services and functions for and/or on behalf of Covered Entity under the Agreement. In order for Business Associate to perform one or more of these functions for Covered Entity, Business Associate may receive or access PHI from Covered Entity or other sources in accordance with the terms of the Agreement. Business Associate may use and disclose such PHI pursuant to this Addendum, the Agreement, or as otherwise permitted by law, to the extent necessary for Business Associate to perform its services for Covered Entity and for the proper management and administration of its business activities. Business Associate will not use or further disclose any PHI in violation of this Addendum.

Business Associate may use and disclose PHI that is created or received by Business Associate from or on behalf of Covered Entity if such use or disclosure, respectively, complies with each applicable requirement of 45 C.F.R. § 164.504(e) and the HITECH Act. The additional requirements of Subtitle D of the HITECH Act that relate to privacy and that apply to covered entities will also apply to Business Associate and are incorporated into this Addendum by reference.

Except as otherwise limited by any agreement between the parties hereto with regard to the provision of services, Business Associate may use PHI to provide data aggregation services to Covered Entity as permitted by 45 C.F.R. §164.504(e)(2)(i)(B).

2. Use of PHI for Administrative Activities. Notwithstanding Section 1 above, Business Associate may use or disclose PHI for management and administrative activities of Business Associate or to comply with the legal responsibilities of Business Associate; provided, any such disclosure is required by law or the Business Associate obtains reasonable assurances from the third party that receives the Protected Health Information that the third parties will treat the Protected Health Information confidentially and will only use or further disclose the Protected Health Information in a manner consistent with the purposes that the Protected Health Information was

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provided by Business Associate, and promptly report any breach of the confidentiality of the Protected Health Information to Business Associate.

3. Minimum Necessary. The parties shall at all times comply with the "minimum necessary" requirements for use and disclosure of PHI. All uses and disclosures shall therefore be limited, to the extent practicable, to a limited data set or, if needed, to the minimum necessary to accomplish the intended purposes for such use or disclosure as determined by the disclosing entity and consistent with Section 13405(b) of the HITECH Act and any implementing regulations adopted thereunder.

4. Sale of PHI. Except to the extent otherwise permitted by this Addendum, Business Associate shall not directly or indirectly receive remuneration in exchange for PHI that is created or received by Business Associate from or on behalf of Covered Entity unless: (1) pursuant to an authorization by the Individual in accordance with 45 C.F.R. §164.508 that includes a specification for whether the PHI can be further exchanged for remuneration by the entity receiving PHI of that Individual; or (2) as provided in Section 13405(d)(2) of the HITECH Act and regulations to be issued by the Secretary, upon the effective date of such regulations. Nothing herein shall preclude the payment of consideration from Covered Entity to Business Associate in return for the provision of services by Business Associate to Covered Entity.

5. Safeguards. Business Associate will implement appropriate safeguards to prevent any use or disclosure of PHI not otherwise permitted in this Addendum. Business Associate will implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of electronic PHI that it creates, receives, maintains or transmits on behalf of Covered Entity and comply with 45 C.F.R. §§ 164.308, 164.310, 164.312 and 164.316 of the Security Rule as required by the HITECH Act. Notwithstanding any provision of this Addendum to the contrary, the parties hereto hereby agree and acknowledge that Business Associate shall have no responsibility to protect or safeguard any information or PHI prior to access or actual receipt of such information or PHI by Business Associate.

6. Reports of Impermissible Use or Disclosure. Business Associate will report to Covered Entity any use or disclosure of PHI not permitted by this Addendum within ten (10) business days of Business Associate's learning of such use or disclosure. Business Associate will also report to Covered Entity within ten (10) business days upon discovery by Business Associate of any security incident relating to PHI of which it becomes aware. Security Incidents that do not result in any unauthorized access, use, disclosure, modification, destruction of information or interference with system operations ("Unsuccessful Security Incidents") will be reported in the aggregate upon written request of Covered Entity in a manner and frequency mutually acceptable to the parties. Business Associate hereby notifies Covered Entity that Unsuccessful Security Incidents including, but not limited to, ping sweeps or other common network reconnaissance techniques, attempts to log on to a system with an invalid password or username, and denial of service attacks that do not result in a server being taken off line, may occur from time to time.

7. Breach Notification. Business Associate will comply with Section 13402 of the HITECH Act and the regulations implementing such provisions, currently Subpart D of Title 45 of the Code of Federal Regulations, as such regulations may be in effect from time to time (collectively, the "Breach Notification Rules").

Except as provided in 45 C.F.R. § 164.412, Business Associate will give Covered Entity notice of any Breach of Unsecured Protected Health Information pursuant to 45 C.F.R. §164.410. The notice required by this Section will be written in plain language and will include, to the extent possible or available, the following:

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- (a) The identification of the individual whose Unsecured Protected Health Information has been, or is reasonably believed by Business Associate to have been, accessed, acquired or disclosed during the Breach;
- (b) A brief description of what happened, including the date of the Breach and theft date of the discovery of the Breach;
- (c) A description of the types of Unsecured Protected Health Information that were involved in the Breach (such as whether the full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
- (d) Any steps individuals who were subjects of the Breach should take to protect themselves from potential harm that may result from the Breach;
- (e) A brief description of what Business Associate is doing to investigate the Breach, to mitigate the harm to individuals, and to protect against further Breaches; and
- (f) Contact procedures for individuals to ask questions or learn additional information, including a toll free telephone number, an email address, Web site, or postal address.

Notwithstanding the foregoing, Covered Entity shall not provide to Business Associate any PHI that is Unsecured Protected Health Information.

8. Agents and Subcontractors. If Business Associate provides PHI to an agent or subcontractor for a purpose authorized under this Addendum, Business Associate will receive reasonable assurances from the agent or subcontractor that the agent or subcontractor will abide by the same restrictions and conditions applicable to Business Associate's use and disclosure of PHI, as set forth in this Addendum. Business Associate will maintain a list of any such disclosures to agents or subcontractors to the extent required by Section 12 of this Addendum.

9. Obligations Regarding Business Associate's Personnel. Business Associate will appropriately inform all of its employees, agents, representatives and members of its workforce ("Business Associate Personnel"), whose services may be used to satisfy Business Associate's obligations under this Addendum, of the general terms of this Addendum. Business Associate represents and warrants that the Business Associate Personnel are under legal obligation to Business Associate, by contract or otherwise, sufficient to enable Business Associate to fully comply with the provisions of this Addendum.

10. Access to PHI.

- (a) **Covered Entity Access.** The parties agree and acknowledge that Business Associate does not maintain PHI in a Designated Record Set. Should Business Associate maintain a Designated Record Set in the future, within ten (10) business days of a request by Covered Entity for access to PHI held by Business Associate in such Designated Record Set, Business Associate will make the requested PHI available to Covered Entity.
- (b) **Patient Access.** If a patient requests access to PHI directly from Business Associate, Business Associate will within ten (10) business days forward such request in writing to Covered Entity. Covered Entity will be responsible for making all determinations regarding the grant or denial of a patient's request for PHI and Business Associate will make no such determinations. Only Covered Entity will release PHI to the patient pursuant to such a request, unless release by Business Associate has otherwise been approved by Covered Entity.

11. Amendment of PHI. Within ten (10) business days of receiving a request from Covered Entity to amend a patient's PHI, if Business Associate retains such PHI in a Designated Record Set, Business Associate will provide such information to Covered Entity for amendment. If Covered Entity's request includes specific information

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to be included in the PHI as an amendment, Business Associate will incorporate such amendment in such Designated Record Set within ten (10) business days of receipt of Covered Entity's request. Business Associate will forward to Covered Entity within ten (10) business days any requests by patients to Business Associate to amend PHI. Covered Entity will be responsible for making all final determinations regarding amendments to PHI requested by patients and Business Associate will make no such determinations. Nothing in this paragraph shall prohibit Business Associate from amending PHI to the extent necessary for Business Associate to otherwise perform its services for Covered Entity.

12. Accounting of Disclosures; Requests for Disclosure.

- (a) **Disclosure Records.** Business Associate will keep a record of any disclosure made to its agents, subcontractors or other third parties for any purpose other than disclosures:
 - i. to carry out treatment, payment and health care operations as provided in 45 CFR §164.506;
 - ii. to Individuals of PHI about them as provided in 45 CFR §164.502;
 - iii. incident to a use or disclosure otherwise permitted or required by the HIPAA Privacy Rule, 45 CFR Part 164, Subpart E, as provided in 45 CFR §164.502;
 - iv. pursuant to an authorization as provided in 45 CFR §164.508;
 - v. for a facility's directory or to persons involved in the Individual's care or other notification purposes as provided in 45 CFR §164.510;
 - vi. for national security or intelligence purposes as provided in 45 CFR §164.512(k)(2);
 - vii. to correctional institutions or law enforcement officials as provided in 45 CFR §164.512(k)(5); or
 - viii. as part of a limited data set in accordance with 45 CFR §164.514(e); or

Business Associate will maintain such disclosure record for six (6) years from the effective date of termination of this Addendum.

Notwithstanding the foregoing, Business Associate agrees to document disclosures of PHI and collect information related to such disclosures as would be required for Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. §164.528, and in accordance with, and upon the effective date of, Section 13405(c) of the HITECH Act.

- (b) **Data Regarding Disclosures.** For each disclosure for which Business Associate must maintain documentation under paragraph 12(a), Business Associate will record and maintain the following information:
 - a. Unless subject to b. below:
 - i. the date of disclosure;
 - ii. the name of the entity or person who received the PHI, and the address of such entity or person, if known;
 - iii. a description of the PHI disclosed; and
 - iv. a brief statement of the purpose of the disclosure.
 - b. If Business Associate has made multiple disclosures of PHI to the same person or entity for a single purpose, the accounting may, with respect to such multiple disclosures, provide:
 - i. The information required by a. above for the first disclosure;
 - ii. The frequency, periodicity, or number of the disclosures made during the accounting period; and
 - iii. The date of the last such disclosure during the accounting period.

- (c) **Patient Request for Disclosure of Records.** Within ten (10) business days of receipt of a notice from Covered Entity to Business Associate of a patient's request for an accounting of PHI disclosed, Business Associate will provide Covered Entity with the records of disclosures requested in the notice. Business Associate will provide the records for the time period requested by the patient or for six (6) years before the date on which the accounting was requested by the patient, as set forth in the notice.

- (d) **Patient Request to Business Associate.** If a patient requests an accounting of disclosures directly from Business Associate, Business Associate will forward the request to Covered Entity within ten (10) business days of Business Associate's receipt of the request and will make its records of disclosures available to Covered Entity as otherwise provided in this Section. Covered Entity will be responsible to prepare and deliver the records of disclosure to the patient. Business Associate will not provide an accounting of its disclosure directly to the patient.

13. COVERED ENTITY OBLIGATIONS

Covered Entity shall provide Business Associate with the "Notice of Privacy Practices" that Covered Entity produces in accordance with 45 C.F.R. §164.520, as well as any changes to such notice.

Covered Entity shall provide Business Associate with notice of any changes to, revocation of, or permission by an Individual to Use or Disclose PHI, including, without limitation, any authorization, if such changes affect Business Associate's permitted Uses or Disclosures, as soon as Covered Entity receives or becomes aware of such changes to or revocation of permission.

In the event that Covered Entity shall agree to any restriction to the Use or Disclosure of PHI that would materially impact Business Associate, Covered Entity shall provide written notice to Business Associate of such restriction and shall not provide to Business Associate, or permit Business Associate access to, PHI subject to such restriction.

Covered Entity shall not request Business Associate to Use or Disclose PHI in any manner that would not be permissible under the HIPAA Rules if done by Covered Entity or that would otherwise violate the HIPAA Rules, this Addendum or the Minimum Necessary standards.

14. Termination. Upon Covered Entity's knowledge of a material breach of this Addendum by Business Associate, Covered Entity shall notify Business Associate of such breach in reasonable detail and provide thirty (30) days' notice and opportunity for Business Associate to cure the breach or violation, or if cure is not possible, Covered Entity may immediately terminate this Addendum.

15. Responsibilities upon Termination.

- (a) **Return of PHI; Destruction.** Within thirty (30) days of termination of this Addendum, if feasible Business Associate will return to Covered Entity all PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity which Business Associate maintains in any form or format, and Business Associate will not maintain or keep in any form or format any

portion of such PHI. Alternatively, Business Associate may destroy all such PHI and provide written documentation of such destruction. The requirement to return or destroy such PHI will apply to all agents or subcontractors of Business Associate. Business Associate will be responsible for recovering, and likewise returning to Covered Entity or destroying, any PHI from such agents or subcontractors. If Business Associate cannot obtain the PHI from any agent or subcontractor, Business Associate will so notify Covered Entity and will require that such agents or subcontractors directly return PHI to Covered Entity or otherwise destroy such PHI, subject to the terms of this Section.

- (b) **Alternative Measures.** If Business Associate believes that returning or destroying PHI at the termination of this Addendum is infeasible, it will provide written notice to Covered Entity of such infeasibility within ten (10) business days of the effective date of termination of this Addendum along with reason why such return or destruction is infeasible. Business Associate agrees to extend all protections, limitations and restrictions of this Addendum to Business Associate's use or disclosure of PHI retained after termination of this Addendum, and to limit further uses or disclosures to those purposes that make the return or destruction of the PHI infeasible. Any such extended protections, limitations and restrictions will apply to any agents or subcontractors of Business Associate for whom return or destruction of PHI is determined by Covered Entity to be infeasible.

16. Business Associate Books and Records. Business Associate will make its internal practices, books and records on the use and disclosure of PHI available to the Secretary of the Department of Health and Human Services to the extent required for determining compliance with the Privacy Standards and any other provisions of HIPAA and HIPAA regulations. Notwithstanding this provision, no attorney-client, accountant-client or other legal privilege will be deemed waived by Business Associate or Covered Entity as a result of this Section.

17. Change in Law. The parties agree to promptly amend this Addendum to the extent changes in laws addressing the privacy or security of PHI impose new or different rights and obligations on covered entities and business associates.



STAFF REPORT

MEETING DATE: June 3, 2024

MEETING TYPE: City Council

SUBMITTED BY: Mamun Yusuf

AGENDA CAPTION: Discuss and consider Resolution R2024-06-199 OF THE CITY COUNCIL OF THE CITY OF HUTCHINS, TEXAS, ACCEPTING THE PROPOSAL RECEIVED IN ASSOCIATION WITH THE CONSTRUCTION MATERIALS TESTING FOR NEW CITY HALL CONSTRUCTION PROJECT; AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE AN AGREEMENT WITH THE ECS SOUTHWEST, LLP, IN AN AMOUNT NOT TO EXCEED \$148,170.00; AND PROVIDING FOR AN EFFECTIVE DATE. Presented by: Mamun Yusuf

Background Information

City staff received a proposal for construction materials testing (CMT) services for the new City Hall construction project from ECS Southwest, LLP in the amount of \$148,170. ECS Southwest, LLP is one of the three (3) pre-selected firms for CMT services and currently working on Southern wastewater improvement projects.

Budget Implications

\$148,170.00

Operational Impact

N/A

Legal Review

N/A

Staff Recommendation

Staff recommends approving resolution R2024-XX-XXXX

Supporting Documentation and Attachments

**CITY OF HUTCHINS, TEXAS
RESOLUTION NO. R 2024-06-1199**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HUTCHINS, TEXAS, ACCEPTING THE PROPOSAL RECEIVED IN ASSOCIATION WITH THE CONSTRUCTION MATERIALS TESTING FOR NEW CITY HALL CONSTRUCTION PROJECT; AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE AN AGREEMENT WITH THE ECS SOUTHWEST, LLP, IN AN AMOUNT NOT TO EXCEED \$148,170.00; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS the City accepted the proposal for the construction materials testing Project (“the “Project”); and

WHEREAS the City has accepted ECS Southwest, LLP for the Project; and

WHEREAS the City Council of the City of Hutchins finds it in the best interest of the residents and businesses of the City of Hutchins to accept the proposal, The ECS Southwest, LLP, for the Project in an amount not to exceed \$148,170.00.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HUTCHINS, THAT:

SECTION 1. The City, acting through its governing body, hereby confirms that it accepts the proposal received by the City’s Department of Public Works on May 30, 2024.

SECTION 2. The City, acting through its governing body, hereby confirms that it awards the Professional Service Agreement (PSA) to ECS Southwest, LLP, at the submitted proposal of \$148,170.00 as set forth in Exhibit “A” attached hereto and incorporated herein by reference.

SECTION 3. For and on behalf of the City Council, the City Administrator is hereby authorized to negotiate and execute a contract with ECS Southwest, LLP, in the amount not to exceed \$148,170.00 for the Project.

SECTION 4. This Resolution shall become effective immediately from and after its passage.

DULY RESOLVED AND ADOPTED by the City Council of the City of Hutchins, Texas, this the 3rd day of June 2024.

CITY OF HUTCHINS, TEXAS

Mario Vasquez, Mayor

ATTEST:

Cynthia Olguin, City Secretary

EXHIBIT "A"
Professional Service Agreement – ECS Southwest LLP



ECS Southwest, LLP

ESTIMATED COST PROPOSAL FOR
CONSTRUCTION MATERIALS ENGINEERING & TESTING SERVICES

HUTCHINS CITY HALL

400 North JJ Lemon Road
Hutchins, Texas 75141

ECS Proposal Number **19:14654-CP**

ECS Southwest, LLP
3033 Kellway Drive, Suite 110
Carrollton, TX 75006
P: 972-392-3222

05/30/2024

Vince Elizarde, P.E.
VElizarde@ECSLimited.com





05/30/2024

Mamun Yusuf
City of Hutchins – Public Works
321 North Main Street
Hutchins, Texas 75141

ECS Proposal No. 19: 14654-CP

Reference: **Proposal for Construction Materials Engineering and Testing Services
Hutchins City Hall
Hutchins, Texas 75141**

We are pleased to submit our unit fee proposal for **Construction Materials Engineering and Testing (CMT) Services** for this project. Based upon our extensive experience with local construction means and methods, quality assurance, quality control, and building construction in multiple markets in Texas, we can offer an unparalleled combination of service and value to your project. We have been providing CMT services along with geotechnical engineering and environmental services in the Dallas / Fort Worth metroplex since 2000.

Our staff of professional engineers and certified technicians will provide responsive and professional services to your project team. In addition, our paperless field reporting system will transmit to you and the project team our Project Principal reviewed testing and inspection reports within **24 to 48 hours** of when our actual observation / testing services are performed.

Our local North Texas operation benefits from having nationally accredited in-house geotechnical and construction materials testing laboratories. Our concrete laboratory performs compressive strength testing of concrete and masonry materials. Our soils laboratory performs soil tests including Proctors (moisture/density relationship) tests, Classifications, and California Bearing Ratios among others.

If you have any questions or comments regarding our proposal, please do not hesitate to contact us. ***We thank you for the opportunity to submit our proposal and look forward to the possibility of helping you on this project.***

Respectfully,
ECS Southwest, LLP

Raza Hussain Mir
Project Manager
NAME@ECSLimited.com

Vincent J. Elizarde, P.E.
Principal Engineer
VELizarde@ECSLimited.com

PROJECT INFORMATION / OVERVIEW

The request for bid provided by the client identifies the proposed development will consist of the construction of the following generalized structures and site features:

- One City Hall Building (~23,500 square feet)
- Site Pavement: Fire Lanes, Dumpster, Transformer, and Generator Enclosures, including Parking
- Site Features: Misc. Flatwork and Sidewalks (outside building)

SCOPE OF SERVICES

Our construction materials engineering and testing services scope is limited to our providing periodic or continuous testing and/or observations for the construction of the above-noted structures and features of this project. We anticipate that the project general contractor or their designated representative will be scheduling our services on an on-call, as-needed basis. Our general assumptions utilized in the preparation of this proposal are provided in a later section.

Unless otherwise directed by the client, items such as *service cancellations while our staff is in transit to the project site or once at the project site, onsite delays and standby time, and failed tests* are not factored into our scope and estimated fees provided with this proposal.

We agree to provide an engineering technician(s) or an engineer, as scheduled (see above), to perform our construction materials observation, sampling, and testing services as noted in the following sections. *To most effectively service the client and facilitate the construction process and schedule, we request that our services be scheduled a minimum 24-hours in advance.* We anticipate the following services for this project:

Earthwork

An Engineering Technician will perform the following services pertaining to earthwork:

1. Obtain (pick up) soil samples and perform laboratory soil tests generally including moisture/density relationship (Standard Proctor) tests, soil classification tests (Atterberg Limits and percent finer than the no. 200 sieve) for each requested soil-type. Additional soil testing may be required depending on project-specific requirements.
2. Observe proof-rolling of prepared subgrade areas.
3. Observe placement and compaction of backfill materials (as scheduled)
4. Perform in-place moisture/density tests on placed and compacted soils and prepared subgrades.
5. Perform lime gradations and lime depth measurements for lime-treated subgrades.
6. As-requested, periodically observe excavation operations to document removal of unsuitable materials including but not limited to deleterious materials, trash, debris, frozen soil, or stones.

Reinforcing Steel & Cast-In-Place Concrete Structures

An Engineering Technician will perform the following services pertaining to reinforcing steel and concrete:

1. Observe reinforcing steel layout for size, spacing, cleanliness, length, splices, and positioning.
2. Observe concrete placement, contractor procedures, and limited initial curing.
3. Perform concrete field tests and associated measurements including: slump, air content, unit weight, and ambient air & concrete temperature. Sample placed concrete materials.
4. Pick up concrete sample cylinders the following work-day and transport them to the ECS concrete laboratory for processing, moisture curing, and subsequent compressive strength testing. *Appropriate onsite storage areas (curing boxes, shades, etc) for initial sample curing and any other field curing of concrete samples shall be provided by the contractor.*

Foundations

A Senior Engineering Technician will perform the following services pertaining to foundations:

1. Observe foundation excavation including prepared subgrade surfaces (shallow foundations, footings, etc) and bearing strata, penetration depth, and end bearing surface (deep foundations, piers, etc).
2. Observe the reinforcing steel layout and concrete placement (see "Reinforcing Steel & Cast-In-Place Concrete Structures" section).

Structural Masonry

A Senior Engineering Technician will perform the following services pertaining to structural masonry:

1. Observe reinforcing steel layout for size, spacing, cleanliness, length, splices, and positioning. Observe cells.
2. Perform masonry field tests and associated measurements (as applicable) including: slump, ambient air & material temperature.
3. Sample placed masonry materials (grout and mortar).
4. Pick up masonry samples the following work-day and transport them to the ECS materials laboratory for processing, moisture curing, and subsequent sample preparation and compressive strength testing.

Structural Steel

A Structural Steel Technician will perform the following services pertaining to structural steel:

1. Observe general structural steel erection and assembly.
2. Observe completed welds and connections.

Project Administration, Clerical, & Dispatching

Project Administrators / Clerical Staff will work on the projects as follows:

1. Perform Field Services Dispatching.
2. Process Field Reports and Laboratory Test Result Reports.
3. Perform additional administrative and clerical duties to aid in project execution.

Project Management

Project Managers and Principal Engineers will manage the project as follows:

1. Attend the Pre-Construction meeting (if held).
2. Coordinate field and lab services with the project general contractor and dispatch our field staff as scheduled.
3. Process, finalize, and distribute all field and laboratory reports.
4. Manage our project operation and services delivery as well as provide general material engineering consultation.

Our field staff or project professionals will provide documentation of events in the field and notify the project general contractor and the client (as needed) upon recognition of deficiencies.

ADDITIONAL SERVICES

The following services are not included in the Scope of Services and will be considered as *Additional Services*, if and when they are required, requested, or occur:

1. Construction materials observation, sampling, or testing for non-structural components.
2. Additional construction material samples for laboratory testing including early test samples or additional sample sets beyond the frequency required in the project documents.
3. Services cancellation in transit or at the project site, including all associated staff time and vehicle charges.
4. Onsite delays and standby time.
5. Failed Tests, including all associated time, materials, and vehicle charges.
6. Field (on site) curing facilities and/or storage for the cementitious samples.
7. Attendance at construction meetings throughout the duration of the construction process.
8. Any additional services not specifically included in the above Scope of Services for this project.

The additional services noted above are not factored into our scope and estimated fees provided with this proposal. Unless defined specifically, all additional services will be invoiced at their standard rates (subject to overtime modification, where applicable) shown on the following fee schedule.

ESTIMATED FEES

Based on the general scope of work indicated above and our take-off quantities, presumed construction procedures, phasing, and schedule, we anticipate our construction materials engineering and testing fees as shown on the following "Estimated Fees & Total Cost" table.

The number of hours and level of effort that we based our proposal on should be considered approximate since it is not based upon a published construction schedule or provided material quantities. In addition, our actual number of hours and tests for this project will ultimately be determined by as-constructed magnitudes and frequencies of installation events as well as the proportion of concurrent events requiring our CMT services. If a construction schedule or material quantities become available, we can review them against our assumptions and be more definitive in our scope and estimated costs.

The rates applied to this project and utilized in our fee estimation are provided on the following "Standard Fee Schedule" table. Additions or deletions to our scope of work (estimated quantities) will be adjusted based on the established unit prices provided in this proposal for this project.

GENERAL ASSUMPTIONS

Based on the general project information and our scope of services outlined above, the general assumptions utilized in the preparation of our estimated fees are listed below:

1. All material sample pickups and transport to our Laboratory are separate trips, independent of scheduled services.
2. All reinforcing steel observation (as scheduled) will be performed on the same trip as the respective concrete placement event, immediately prior to concrete placement.
3. Concrete will generally be placed at 200 cubic yards per event (pour) where applicable. 300 cubic yards per pavement concrete placement event.
4. Utility trench excavation backfilling will be completed at a rate of 300 linear feet / day.
5. Building Pad Subgrade Moisture Conditioning will be completed within 10 feet at a rate of 1,000 cubic yards / day.

ESTIMATED FEES & TOTAL COST

| Description of Services | Notes | Quantity | Unit | Rate | Total |
|---|--------------|----------|--------|------------------|----------------------|
| Earthwork | | | | | |
| LAB: Moist./Dens. Relationship (St. Proctor) | | 4 | each | \$ 155.00 | \$ 620.00 |
| LAB: Atterberg Limits (Plasticity Index) | | 4 | each | \$ 85.00 | \$ 340.00 |
| LAB: Washed Sieve Analysis (Pass No. 200) | | 4 | each | \$ 50.00 | \$ 200.00 |
| Engineering Technician | 80 Events | 640 | hours | \$ 62.00 | \$ 39,680.00 |
| Engineering Technician (OT) | | 40 | hours | \$ 93.00 | \$ 3,720.00 |
| Nuclear Gauge Fee | | 80 | events | \$ 55.00 | \$ 4,400.00 |
| Vehicle Charge | | 82 | trips | \$ 70.00 | \$ 5,740.00 |
| | | | | Subtotal: | \$ 54,700.00 |
| Reinforcing Steel & Cast-In-Place Concrete | | | | | |
| Engineering Technician | 40 Events | 200 | hours | \$ 62.00 | \$ 12,400.00 |
| Concrete: Cylinders – Compressive Strength | 80 Sets of 5 | 400 | each | \$ 16.00 | \$ 6,400.00 |
| Sample Pickup Technician | | 40 | trips | \$ 50.00 | \$ 2,000.00 |
| Vehicle Charge | | 80 | trips | \$ 70.00 | \$ 5,600.00 |
| | | | | Subtotal: | \$ 26,400.00 |
| Foundations - Piers | | | | | |
| Senior Engineering Technician | 20 Events | 160 | hours | \$ 70.00 | \$ 11,200.00 |
| Senior Engineering Technician (OT) | | 40 | hours | \$ 105.00 | \$ 4,200.00 |
| Concrete: Cylinders – Compressive Strength | 20 Sets of 5 | 100 | each | \$ 16.00 | \$ 1,600.00 |
| Sample Pickup Technician | | 20 | trips | \$ 50.00 | \$ 1,000.00 |
| Vehicle Charge | | 40 | trips | \$ 70.00 | \$ 2,800.00 |
| | | | | Subtotal: | \$ 20,800.00 |
| Structural Steel | | | | | |
| Structural Steel Technician | 20 Events | 100 | hours | \$ 85.00 | \$ 8,500.00 |
| Vehicle Charge | | 20 | trips | \$ 70.00 | \$ 1,400.00 |
| | | | | Subtotal: | \$ 9,900.00 |
| Structural Masonry | | | | | |
| Senior Engineering Technician | 20 Events | 80 | hours | \$ 70.00 | \$ 5,600.00 |
| Grout: Prisms - Compressive Strength | 20 Sets of 3 | 60 | each | \$ 20.00 | \$ 1,200.00 |
| Mortar: Cubes - Compressive Strength | 20 Sets of 3 | 60 | each | \$ 18.00 | \$ 1,080.00 |
| Sample Pickup Technician | | 20 | trips | \$ 50.00 | \$ 1,000.00 |
| Vehicle Charge | | 40 | trips | \$ 70.00 | \$ 2,800.00 |
| | | | | Subtotal: | \$ 11,680.00 |
| Project Management | | | | | |
| Project Initiation / Startup | | 1 | each | \$ 250.00 | \$ 250.00 |
| Administrator / Clerical / Dispatch | | 18 | hours | \$ 50.00 | \$ 900.00 |
| Project Manager | | 90 | hours | \$ 150.00 | \$ 13,500.00 |
| Project Principal | | 45 | hours | \$ 220.00 | \$ 9,900.00 |
| Vehicle Charge | | 2 | trips | \$ 70.00 | \$ 140.00 |
| | | | | Subtotal: | \$ 24,690.00 |
| TOTAL ESTIMATED COST: | | | | | \$ 148,170.00 |

STANDARD FEE SCHEDULE

| Description of Services | Notes | Unit Rate |
|--|-------------|------------------|
| Field Services | | |
| • Engineering Technician | | \$ 62.00 / hour |
| • Senior Engineering Technician | | \$ 70.00 / hour |
| • Structural Steel Technician | | \$ 85.00 / hour |
| • Specialty Technician | | \$ 80.00 / hour |
| • Nuclear Gauge Fee | | \$ 55.00 / day |
| • Concrete Core Drilling – Mobilization | | \$ 250.00 / each |
| • Concrete Core Drilling – Crew | | \$ 150.00 / hour |
| • Sample Pickup | | \$ 50.00 / trip |
| • Vehicle Charge | | \$ 70.00 / trip |
| Project Management & Engineering Services | | |
| • Project Initiation / Startup | | \$ 200.00 / each |
| • Administrator / Clerical / Dispatch | | \$ 50.00 / hour |
| • Project Manager | | \$ 150.00 / hour |
| • Project Principal | | \$ 220.00 / hour |
| • Concrete Mix Design Review | | \$ 275.00 / each |
| • Certification Letter | | \$ 250.00 / each |
| Laboratory Services | | |
| • Earthwork: Standard Proctor, Moisture / Density Relationship | ASTM D-698 | \$ 155.00 / each |
| • Earthwork: Modified Proctor, Moisture / Density Relationship | ASTM D-1557 | \$ 155.00 / each |
| • Earthwork: Atterberg Limits Tests, Plasticity Index | ASTM D-4318 | \$ 85.00 / each |
| • Earthwork: Washed Sieve Analyses, Percent Passing #200 Sieve | ASTM D-1440 | \$ 50.00 / each |
| • Earthwork: Lime Series | ASTM D-6276 | \$ 180.00 / each |
| • Earthwork: Lime Gradations | ASTM D-6913 | \$ 15.00 / each |
| • Earthwork: Free-Swell Test | ASTM D-4546 | \$ 110.00 / each |
| • Concrete: Cylinders – Compressive Strength | ASTM C-39 | \$ 16.00 / each |
| • Grout: Prisms - Compressive Strength | ASTM C-1019 | \$ 20.00 / each |
| • Mortar: Cubes - Compressive Strength | ASTM C-270 | \$ 18.00 / each |
| • Masonry: Masonry Block Prism – Compressive Strength | ASTM C-1314 | \$ 300.00 / each |

General Notes

1. There will be **no minimum charge** for services rendered on this project; billing will be based on specific unit rates reflecting only the actual time spent and tests performed on this project.
2. Hourly unit rates are based on a normal 8-hour workday, 40 hours per week, Monday through Friday (non-holidays), between normal business hours of 8:00 a.m. to 5:00 p.m. Hourly rates outside normal, and on Saturday, Sunday, and Holidays, will be invoiced at a rate of 1.5 times the normal hourly rate indicated above.
3. Vehicle charges account for a round trip originating from our local office to the project site.

APPENDICES

REPORTING
BILLING
PROPOSAL ACCEPTANCE
COMPANY OVERVIEW
TERMS AND CONDITIONS

REPORTING

Daily field reports and laboratory test reports will be distributed via electronic mail (email) as part of our service to the distribution list determined by the client for this project. We will not distribute reports to any parties without permission from the client. ***Our reporting systems are fully computerized, we are able to submit both field and laboratory results within 24-48 hours of when our actual observation / testing services are performed.*** Report distribution by facsimile can be performed if specifically requested.

Where deficiencies in procedures or materials are recognized in the field or the laboratory, the general contractor will be notified as soon as possible. Electronic copies of reports can be forwarded via email to additional parties designated by the client, at no extra charge, as part of our service.

BILLING

Invoices will be issued on a monthly basis and will provide a week by week breakdown of billing units, unless modified by request of the client. Our invoices are normally processed on or around the 10th of each month and represent costs incurred during the previous calendar month. These invoices will also display a monthly cumulative summary of project costs to date. This monthly summary will serve as a means of monitoring job expenses as they relate to job progress. We request that payment be rendered within 30 days of receipt of the invoice. ECS reserves the right to assess a finance charge of 1.5% per month on the outstanding balance over 30 days. ECS also reserves the right to withhold final certifications until outstanding balances have been paid in full.

All services provided for this project will be billed in accordance with the unit rate schedule. It is our belief that all required services have been included in our unit price list. Should supplemental services be deemed necessary at a later date, they would be invoiced at the rate noted on the fee schedule in effect at that time, unless otherwise agreed upon in advance. All unit prices listed herein shall remain as stated throughout the project.

Unless otherwise directed by the client, items such as *service cancellations while our staff is in transit to the project site or once at the project site, onsite delays and standby time, and failed tests* are not factored into our scope and estimated fees provided with this proposal. Technician and project management time and vehicle charges as well as each failed test will be invoiced as additional (out of scope) services. Additional services noted are not factored into our scope and estimated fees provided with this proposal and will be invoiced as separate (out of scope) services. Unless defined specifically, all additional services will be invoiced at their standard rates (subject to overtime, where applicable) shown on the schedule of fees for this proposal.

PROPOSAL ACCEPTANCE

Attached to this letter, and an integral part of our proposal, are our "Terms and Conditions of Service". These conditions represent the current recommendations of the Geoprofessional Business Association, the Consulting Engineers' Council, and the Geo-Institute of the American Society of Civil Engineers.

Our insurance carrier requires that we receive a signed proposal acceptance form (following page) prior to initiation of work and release of any work product. This letter is the agreement for our services and your authorization for ECS to proceed with our defined scope of services. Your acceptance of this proposal is indicated by signing and returning the enclosed "Proposal Acceptance Form" to us.

We are pleased to have the opportunity to offer our services and look forward to working with you on this project.

PROPOSAL ACCEPTANCE FORM

ECS Proposal No.: 19:14654-CP
 ECS Proposal Date: 05/30/2024
 Project Name: Hutchins City Hall – Hutchins, Texas
 Scope of Work: Construction Materials Engineering & Testing Services
 Total Estimated Cost: **\$ 148,170.00**

Client Signature: _____ Date: _____

Please complete this page and return one copy of this proposal to ECS to indicate acceptance of this proposal and to initiate work on the above-referenced project. The Client’s signature above also indicates that he/she has read or has had the opportunity to read the accompanying Terms and Conditions of Service and agrees to be bound by such Terms and Conditions of Service.

BILLING INFORMATION
 (Please Print or Type)

Name of Client: _____
 Name of Contact Person: _____
 Telephone No. of Contact Person: _____
 Party Responsible for Payment: _____
 Company Name: _____
 Person/Title: _____
 Department: _____
 Billing Address: _____
 Email Address: _____
 Telephone Number: _____
 Client Project/Account Number: _____
 Special Conditions for Invoice: _____
 Submittal and Approval: _____

ECS offers a full array of services to assist you with *all* phases of your project, including but not limited to:

| | | |
|---|--|--|
| <input type="checkbox"/> Phase I, II and III Environmental Site Assessments | <input type="checkbox"/> Third Party Mechanical, Electrical, Plumbing Inspections Services | <input type="checkbox"/> Building Envelope, Roofing, and Waterproofing Inspection and Consultation |
| <input type="checkbox"/> Archaeological Assessments | <input type="checkbox"/> Geotechnical Engineering Services | <input type="checkbox"/> Pre- and Post-Construction Condition Assessments |
| <input type="checkbox"/> Wetlands Delineations | <input type="checkbox"/> Construction Materials Testing | <input type="checkbox"/> Specialty Materials and Forensics Testing |
| <input type="checkbox"/> Asbestos/Lead Paint Services | <input type="checkbox"/> Septic/Drainfield Design Services | |
| <input type="checkbox"/> Indoor Air Quality Mold Services | <input type="checkbox"/> LEED® Consulting Services | |

Please indicate any of the services you are interested in and a member of the ECS team will contact you to discuss how we can be of service to your project.

COMPANY BACKGROUND AND HISTORY

ECS is a diverse consulting firm specializing in Geotechnical Engineering, Construction Materials Engineering and Testing, Environmental Services, and Facilities Engineering. Our firm was founded in 1987 and employs a staff of nearly 1,500 people including registered professional engineers and geologists, certified laboratory technicians and construction inspectors, field engineers, computer specialists, and support personnel. ECS operates 50 offices and continues to grow in the Midwest, Southwest, and Eastern states. Our firm is ranked on the Engineer News Record (ENR) Top 5 Geotechnical firms and top 100 pure design firms.

ECS Southwest, LLP, our local subsidiary operation with 6 offices throughout Texas and Oklahoma, offers a wide range of consulting services. Our services are divided into four major function groups described below:

Geotechnical Engineering Group performs subsurface explorations with emphasis on foundation systems for buildings of all types, drainage system designs and other ground water solutions, retaining structures, problem soil sites, slope stability evaluations, and deep foundation designs. Understanding that most cost overruns occur during construction, this is our best opportunity to provide value as well as up-front quality control.

Construction Materials Engineering and Testing Group provides full-scale testing and inspection services on numerous projects with scopes of work reflecting our ability to follow projects from earthwork phases through roofing construction, including:



Illume Park – Dallas, TX

- Full Service Construction Inspection
- Excavation Monitoring
- Foundation Installation, Observation & Testing
- Field & Laboratory Testing of Concrete, Steel, Masonry, Soil, and Fireproofing
- Floor Flatness Surveys
- Non-Destructive Concrete & Steel Testing
- Concrete Core Drilling & Testing

Environmental Services Group performs Phase I and Phase II Environmental Site Assessments, Site Characterization Studies, Risk Assessments and Remediation Assessment and Design, Wetlands Studies and Delineations, Wetlands Mitigation, and Asbestos and Lead Based Paint Surveys. The Environmental Services group oversees remedial activity to insure compliance with federal, state, and local regulations and guidelines as well as site specific environmental management plans.

Facilities Engineering Group performs property condition assessments, pre-construction and post construction condition surveys, building investigations, garage rehabilitation schemes, asphalt and concrete pavement evaluations, water infiltration evaluations, asbestos and lead-based paint consulting, materials testing and evaluation, non-destructive and selective destructive evaluation of structures, full-scale load testing, and general investigative engineering services associated with the built environment.

Our ECS Service Groups function as a team to deliver on multi-faceted projects thereby providing our clients a single consultant through the life of the project. Our commitment to client responsiveness and a combination of our technical excellence and practical experience has us able to deliver high quality deliverables in an expeditious fashion thereby facilitating the design and construction schedules.

VALUE ENGINEERING

An important part of the consulting engineer's role on a project team is value engineering. At ECS, we constantly strive to provide the most economical design without sacrificing quality or compromising safety. Each project and location presents different challenges and the opportunity for different solutions. ECS provides value engineering within all our major service groups. Brief examples include:

- Increasing bearing capacity to reduce the size and cost of foundation systems.
- Changing deep foundation systems (such as caissons or piles) to conventional shallow spread footing systems.
- Appropriately applying Modified and Standard Proctor values to the earthwork process, especially during mass-grading. This allows the contractor to achieve sufficient results with less time and effort, and ultimately reduces the cost of the work without changing the engineering properties.
- Utilizing technological advances in geosynthetics to provide economical solutions to stabilize subgrades during mass grading for slabs and pavements.
- Recommending the use of segmental block retaining walls instead of conventional concrete retaining walls to reduce costs.
- Accurately analyzing slab or pavement subgrades to reduce over design.
- Utilizing technologically advanced and more cost effective methods of the treatment of contaminated soils and ground water.
- Providing expeditious transmission of field observation and testing documentation during construction to reduce the magnitude of corrections or change orders.

ECS is often asked to review and revise recommendations performed by other firms. This is done by fully utilizing the engineering properties of the subsurface conditions. ECS thoroughly understands the capabilities of the subsurface conditions having performed extensive field and laboratory testing on the major soil and rock types within our local North Texas geologic area. In many cases ECS' fee is "paid for" by providing more project-pertinent and site-specific recommendations that result in overall time and cost savings for the project.



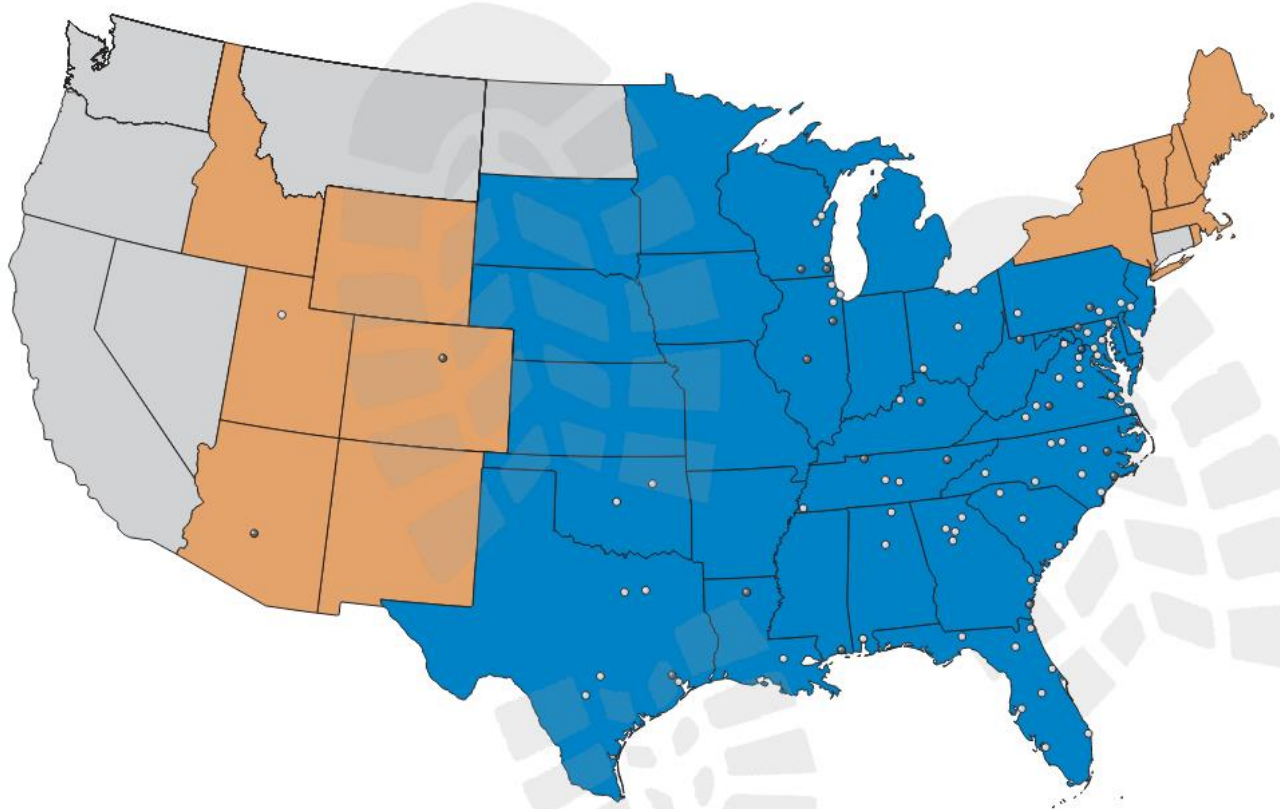
One Uptown – Dallas, TX



The Jordan Apartments – Dallas, TX

WHEREVER YOUR PROJECT TAKES YOU, ECS HAS...

BOOTS ON THE GROUND.



SERVICES KEY

- Environmental & Facilities
- Geotechnical, Environmental, Materials Testing & Facilities
- Geotechnical, Environmental & Facilities

OFFICES KEY

- Full Service Office
- Testing Services Only
- Corporate Headquarters

Materials Testing Service Area is approximately a 75-mile radius around each office.



CONSTRUCTION MATERIALS ENGINEERING & TESTING SERVICES

ECS approaches providing materials engineering and testing services based on the requirements set forth by the local jurisdictions and project specifications. In addition, ECS has served on numerous projects requiring Special Inspections and we are thoroughly familiar with the International Building Code (IBC) inspection requirements. Our staff have served as Special Inspections Engineer of Record on hundreds of projects in areas of the country where IBC has been implemented.

Services

Our CMT services include all those common to the Texas and Oklahoma region including observation, sampling, testing, and engineering for: earthwork, foundation installation, reinforcing steel, cast-in-place concrete, structural masonry, post-tensioned concrete, structural steel, fireproofing, etc. In addition, ECS has local capabilities to perform specialty testing including ultrasound, infrared, ground penetrating radar, magnetic particle, concrete / asphalt coring capabilities, and floor flatness surveys.

Technician Certifications

In order to meet the project requirements for CMT services, ECS has developed in house training programs that produce certified technicians at all levels. Our proposed technicians all hold related certifications. In addition, we have access to certified technicians through our other regional offices. Common technician certifications include:

- International Code Council (ICC)
- American Concrete Institute (ACI)
- Washington Area Council of Engineering Laboratories, Inc (WACEL)
- American Welding Society Certified Welding Inspector (AWS)
- Floor Flatness (in-house certification)
- Exterior Insulation and Finish Systems (EIFS)



Laboratory Qualifications

ECS operates engineering laboratories at most of its locations. Our concrete laboratory handles all testing for compression testing of concrete, masonry, and cores. The soil laboratory provides testing of soil including Proctor tests, classifications, and CBR among others. Accreditations and inspections currently held by ECS Labs include:



- U.S. Army Corps of Engineers (USACE)
- Washington Area Council of Engineering Laboratories (WACEL)
- AASHTO Material Reference Laboratory (AMRL) - Proficiency Sampling
- National Institutes of Science & Technology (NIST)
- National Ready Mix Concrete Association (NRMCA) - Proficiency Testing

Delivery

ECS proposes to assign technicians qualified for the required services. A Project Manager based in the Carrollton, TX office will supervise our field and laboratory staff, attend meetings and correspond with the project team, review field and laboratory reports, provide engineering consulting as necessary and to prepare final certifications. In addition, a Principal Engineer of ECS will be assigned to the project to provide additional technical review and support. All technical reports will be submitted with signatures of both the Project Manager and Principal Engineer.

TERMS AND CONDITIONS OF SERVICE

The professional services (the "Services") to be provided by ECS Southwest, LLP ["ECS"] pursuant to the Proposal shall be provided in accordance with these Terms and Conditions of Service ("Terms"), including any addenda as may be incorporated or referenced in writing shall form the Agreement between ECS and Client.

- 1.0 **INDEPENDENT CONSULTANT STATUS** - ECS shall serve as an independent professional consultant to CLIENT for Service on the Project, identified above, and shall have control over, and responsibility for, the means and methods for providing the Services identified in the Proposal, including the retention of Subcontractors and Subconsultants
- 2.0 **SCOPE OF SERVICES** - It is understood that the fees, reimbursable expenses and time schedule defined in the Proposal are based on information provided by CLIENT and/or CLIENT'S contractors and consultants. CLIENT acknowledges that if this information is not current, is incomplete or inaccurate, if conditions are discovered that could not be reasonably foreseen, or if CLIENT orders additional services, the scope of services will change, even while the Services are in progress.
- 3.0 **STANDARD OF CARE**
- 3.1 **In fulfilling its obligations and responsibilities enumerated in the Proposal, ECS shall be expected to comply with and its performance evaluated in light of the standard of care expected of professionals in the industry performing similar services on projects of like size and complexity at that time in the region (the "Standard of Care"). Nothing contained in the Proposal, the agreed-upon scope of Services, these Terms and Conditions of Service or any ECS report, opinion, plan or other document prepared by ECS shall constitute a warranty or guaranty of any nature whatsoever.**
- 3.2 CLIENT understands and agrees that ECS will rely on the facts learned from data gathered during performance of Services as well as those facts provided by the CLIENT. CLIENT acknowledges that such data collection is limited to specific areas that are sampled, bored, tested, observed and/or evaluated. Consequently, CLIENT waives any and all claims based upon erroneous facts provided by the CLIENT, facts subsequently learned or regarding conditions in areas not specifically sampled, bored, tested, observed or evaluated by ECS.
- 3.3 If a situation arises that causes ECS to believe compliance with CLIENT'S directives would be contrary to sound engineering practices, would violate applicable laws, regulations or codes, or will expose ECS to legal claims or charges, ECS shall so advise CLIENT. If ECS' professional judgment is rejected, ECS shall have the right to terminate its Services in accordance with the provisions of Section 25.0, below.
- 3.4 If CLIENT decides to disregard ECS' recommendations with respect to complying with applicable Laws or Regulations, ECS shall determine if applicable law requires ECS to notify the appropriate public officials. CLIENT agrees that such determinations are ECS' sole right to make.
- 4.0 **CLIENT DISCLOSURES**
- 4.1 Where the Scope of Services requires ECS to penetrate a Site surface, CLIENT shall furnish and/or shall direct CLIENT'S consultant(s) or agent(s) to furnish ECS information identifying the type and location of utility lines and other man-made objects known, suspected, or assumed to be located beneath or behind the Site's surface. ECS shall be entitled to rely on such information for completeness and accuracy without further investigation, analysis, or evaluation.
- 4.2 "Hazardous Materials" shall include but not be limited to any substance that poses or may pose a present or potential hazard to human health or the environment whether contained in a product, material, by-product, waste, or sample, and whether it exists in a solid, liquid, semi-solid or gaseous form. CLIENT shall notify ECS of any known, assumed, or suspected regulated, contaminated, or other similar Hazardous Materials that may exist at the Site prior to ECS mobilizing to the Site.
- 4.3 If any Hazardous Materials are discovered, or are reasonably suspected by ECS after its Services begin, ECS shall be entitled to amend the scope of Services and adjust its fees to reflect the additional work or personal protective equipment and/or safety precautions required by the existence of such Hazardous Materials.
- 5.0 **INFORMATION PROVIDED BY OTHERS** - CLIENT waives, releases and discharges ECS from and against any claim for damage, injury or loss allegedly arising out of or in connection with errors, omissions, or inaccuracies in documents and other information in any form provided to ECS by CLIENT or CLIENT'S agents, contractors, or consultants, including such information that becomes incorporated into ECS documents.
- 6.0 **CONCEALED RISKS** - CLIENT acknowledges that special risks are inherent in sampling, testing and/or evaluating concealed conditions that are hidden from view and/or neither readily apparent nor easily accessible, e.g., subsurface conditions, conditions behind a wall, beneath a floor, or above a ceiling. Such circumstances require that certain assumptions be made regarding existing conditions, which may not be verifiable without expending additional sums of money or destroying otherwise adequate or serviceable portions of a building or component thereof. Accordingly, ECS shall not be responsible for the verification of such conditions unless verification can be made by simple visual observation. Client agrees to bear any and all costs, losses, damages and expenses (including, but not limited to, the cost of ECS' Additional Services) in any way arising from or in connection with the existence or discovery of such concealed or unknown conditions.
- 7.0 **RIGHT OF ENTRY/DAMAGE RESULTING FROM SERVICES**
- 7.1 CLIENT warrants that it possesses the authority to grant ECS right of entry to the Site for the performance of Services. CLIENT hereby grants ECS and its subcontractors and/or agents, the right to enter from time to time onto the property in order for ECS to perform its Services. CLIENT agrees to indemnify and hold ECS

- harmless from any claims arising from allegations that ECS trespassed or lacked authority to access the Site.
- 7.2 CLIENT warrants that it possesses all necessary permits, licenses and/or utility clearances for the Services to be provided by ECS except where ECS' Proposal explicitly states that ECS will obtain such permits, licenses, and/or utility clearances.
- 7.3 ECS will take reasonable precautions to limit damage to the Site and its improvements during the performance of its Services. CLIENT understands that the use of exploration, boring, sampling, or testing equipment may cause minor, but common, damage to the Site. The correction and restoration of such common damage is CLIENT'S responsibility unless specifically included in ECS' Proposal.
- 7.4 CLIENT agrees that it will not bring any claims for liability or for injury or loss against ECS arising from (i) procedures associated with the exploration, sampling or testing activities at the Site, (ii) discovery of Hazardous Materials or suspected Hazardous Materials, or (iii) ECS' findings, conclusions, opinions, recommendations, plans, and/or specifications related to discovery of contamination.
- 8.0 **UNDERGROUND UTILITIES**
- 8.1 ECS shall exercise the Standard of Care in evaluating client-furnished information as well as information readily and customarily available from public utility locating services (the "Underground Utility Information") in its effort to identify underground utilities. The extent of such evaluations shall be at ECS' sole discretion.
- 8.2 CLIENT recognizes that the Underground Utility Information provided to or obtained by ECS may contain errors or be incomplete. CLIENT understands that ECS may be unable to identify the locations of all subsurface utility lines and man-made features.
- 8.3 CLIENT waives, releases, and discharges ECS from and against any claim for damage, injury or loss allegedly arising from or related to subterranean structures (pipes, tanks, cables, or other utilities, etc.) which are not called to ECS' attention in writing by CLIENT, not correctly shown on the Underground Utility Information and/or not properly marked or located by the utility owners, governmental or quasi-governmental locators, or private utility locating services as a result of ECS' or ECS' subcontractor's request for utility marking services made in accordance with local industry standards.
- 9.0 **SAMPLES**
- 9.1 Soil, rock, water, building materials and/or other samples and sampling by-products obtained from the Site are and remain the property of CLIENT. Unless other arrangements are requested by CLIENT and mutually agreed upon by ECS in writing, ECS will retain samples not consumed in laboratory testing for up to sixty (60) calendar days after the issuance of any document containing data obtained from such samples. Samples consumed by laboratory testing procedures will not be stored.
- 9.2 Unless CLIENT directs otherwise, and excluding those issues covered in Section 10.0, CLIENT authorizes ECS to dispose of CLIENT'S non-hazardous samples and sampling or testing process by-products in accordance with applicable laws and regulations.
- 10.0 **ENVIRONMENTAL RISKS**
- 10.1 When Hazardous Materials are known, assumed, suspected to exist, or discovered at the Site, ECS will endeavor to protect its employees and address public health, safety, and environmental issues in accordance with the Standard of Care. CLIENT agrees to compensate ECS for such efforts.
- 10.2 When Hazardous Materials are known, assumed, or suspected to exist, or discovered at the Site, ECS and/or ECS' subcontractors will exercise the Standard of Care in containerizing and labeling such Hazardous Materials in accordance with applicable laws and regulations, and will leave the containers on Site. CLIENT is responsible for the retrieval, removal, transport and disposal of such contaminated samples, and sampling process byproducts in accordance with applicable law and regulation.
- 10.3 Unless explicitly stated in the Scope of Services, ECS will neither subcontract nor arrange for the transport, disposal, or treatment of Hazardous Materials. At CLIENT'S written request, ECS may assist CLIENT in identifying appropriate alternatives for transport, off-site treatment, storage, or disposal of such substances, but CLIENT shall be solely responsible for the final selection of methods and firms to provide such services. CLIENT shall sign all manifests for the disposal of substances affected by contaminants and shall otherwise exercise prudence in arranging for lawful disposal.
- 10.4 In those instances where ECS is expressly retained by CLIENT to assist CLIENT in the disposal of Hazardous Materials, samples, or wastes as part of the Proposal, ECS shall do so only as CLIENT'S agent (notwithstanding any other provision of this AGREEMENT to the contrary). ECS will not assume the role of, nor be considered a generator, storer, transporter, or disposer of Hazardous Materials.
- 10.5 Subsurface sampling may result in unavoidable cross-contamination of certain subsurface areas, as when a probe or excavation/boring device moves through a contaminated zone and links it to an aquifer, underground stream, pervious soil stratum, or other hydrous body not previously contaminated, or connects an uncontaminated zone with a contaminated zone. Because sampling is an essential element of the Services indicated herein, CLIENT agrees this risk cannot be eliminated. Provided such services were performed in accordance with the Standard of Care, CLIENT waives, releases and discharges ECS from and against any claim for damage, injury, or loss allegedly arising from or related to such cross-contamination.
- 10.6 CLIENT understands that a Phase I Environmental Site Assessment (ESA) is conducted solely to permit ECS to render a professional opinion about the likelihood of the site having a Recognized Environmental Condition on, in, beneath, or near the Site at the time the Services are conducted. No matter how thorough a Phase I ESA

study may be, findings derived from its conduct are highly limited and ECS cannot know or state for an absolute fact that the Site is unaffected or adversely affected by one or more Recognized Environmental Conditions. CLIENT represents and warrants that it understands the limitations associated with Phase I ESAs.

11.0 OWNERSHIP OF DOCUMENTS

- 11.1 ECS shall be deemed the author and owner (or licensee) of all documents, technical reports, letters, photos, boring logs, field data, field notes, laboratory test data, calculations, designs, plans, specifications, reports, or similar documents and estimates of any kind furnished by it [the "Documents of Service"] and shall retain all common law, statutory and other reserved rights, including copyrights. CLIENT shall have a limited, non-exclusive license to use copies of the Documents of Service provided to it in connection with the Project for which the Documents of Service are provided until the completion of the Project.
11.2 ECS' Services are performed and Documents of Service are provided for the CLIENT'S sole use. CLIENT understands and agrees that any use of the Documents of Service by anyone other than the CLIENT, it's licensed consultants and its contractors is not permitted. CLIENT further agrees to indemnify and hold ECS harmless for any errors, omissions or damage resulting from its contractors' use of ECS' Documents of Service.
11.3 CLIENT agrees to not use ECS' Documents of Service for the Project if the Project is subsequently modified in scope, structure or purpose without ECS' prior written consent. Any reuse without ECS' written consent shall be at CLIENT'S sole risk and without liability to ECS or to ECS' subcontractor(s). CLIENT agrees to indemnify and hold ECS harmless for any errors, omissions or damage resulting from its use of ECS' Documents of Service after any modification in scope, structure or purpose.
11.4 CLIENT agrees to not make any modification to the Documents of Service without the prior written authorization of ECS. To the fullest extent permitted by law, CLIENT agrees to indemnify, defend, and hold ECS harmless from any damage, loss, claim, liability or cost (including reasonable attorneys' fees and defense costs) arising out of or in connection with any unauthorized modification of the Documents of Service by CLIENT or any person or entity that acquires or obtains the Documents of Service from or through CLIENT. CLIENT represents and warrants that the Documents of Service shall be used only as submitted by ECS.

12.0 SAFETY

- 12.1 Unless expressly agreed to in writing in its Proposal, CLIENT agrees that ECS shall have no responsibility whatsoever for any aspect of site safety other than for its own employees. Nothing herein shall be construed to relieve CLIENT and/or its contractors, consultants or other parties from their responsibility for site safety. CLIENT also represents and warrants that the General Contractor is solely responsible for Project site safety and that ECS personnel may rely on the safety measures provided by the General Contractor.
12.2 In the event ECS assumes in writing limited responsibility for specified safety issues, the acceptance of such responsibilities does not and shall not be deemed an acceptance of responsibility for any other non-specified safety issues, including, but not limited to those relating to excavating, trenching, shoring, drilling, backfilling, blasting, or other construction activities.

13.0 CONSTRUCTION TESTING AND REMEDIATION SERVICES

- 13.1 CLIENT understands that construction testing and observation services are provided in an effort to reduce, but cannot eliminate, the risk of problems arising during or after construction or remediation. CLIENT agrees that the provision of such Services does not create a warranty or guarantee of any type.
13.2 Monitoring and/or testing services provided by ECS shall not in any way relieve the CLIENT'S contractor(s) from their responsibilities and obligations for the quality or completeness of construction as well as their obligation to comply with applicable laws, codes, and regulations.
13.3 ECS has no responsibility whatsoever for the means, methods, techniques, sequencing or procedures of construction selected, for safety precautions and programs incidental to work or services provided by any contractor or other consultant. ECS does not and shall not have or accept authority to supervise, direct, control, or stop the work of any contractor or consultant or any of their subcontractors or subconsultants.
13.4 ECS strongly recommends that CLIENT retain ECS to provide construction monitoring and testing services on a full time basis to lower the risk of defective or incomplete Work being installed by CLIENT'S contractor(s). If CLIENT elects to retain ECS on a part time basis for any aspect of construction monitoring and/or testing, CLIENT accepts the risks that a lower level of construction quality may occur and that defective or incomplete work may result and not be detected by ECS' part time monitoring and testing. Unless the CLIENT can show that the error or omission is contained in ECS' reports, CLIENT waives, releases and discharges ECS from and against any other claims for errors, omissions, damages, injuries, or loss alleged to arise from defective or incomplete work that was monitored or tested by ECS on a part time basis. Except as set forth in the preceding sentence, CLIENT agrees to indemnify and hold ECS harmless from all damages, costs, and attorneys' fees, for any claims alleging errors, omissions, damage, injury or loss allegedly resulting from Work that was monitored or tested by ECS on a part time basis.

14.0 CERTIFICATIONS

- CLIENT may request, or governing jurisdictions may require, ECS to provide a "certification" regarding the Services provided by ECS. Any "certification" required of ECS by the CLIENT or jurisdiction(s) having authority over some or all aspects of the Project shall consist of ECS' inferences and professional opinions based on the limited sampling, observations, tests, and/or analyses performed by ECS at discrete locations and times. Such "certifications" shall constitute ECS' professional opinion of a condition's existence, but ECS does not guarantee that such condition exists, nor does it relieve other parties of the responsibilities or obligations such parties have with respect to the possible existence of such a condition. CLIENT agrees it cannot make the resolution of any dispute with ECS or payment of any amount due to ECS contingent upon ECS signing any such "certification."

15.0 BILLINGS AND PAYMENTS

- 15.1 Billings will be based on the unit rates, plus travel costs, and other reimbursable expenses as stated in the Professional Fees section of the Proposal. Any Estimate of Professional Fees stated in these Terms shall not be considered as a not-to-exceed or lump sum amount unless otherwise explicitly stated. CLIENT understands and agrees that even if ECS agrees to a lump sum or not-to-exceed amount, that amount shall be limited to number of hours, visits, trips, tests, borings, or samples stated in the Proposal.
15.2 CLIENT agrees that all Professional Fees and other unit rates shall be adjusted annually to account for inflation based on the most recent 12-month average of the Consumer Price Index (CPI-U) for all items as established by www.bls.gov when the CPI-U exceeds an annual rate of 2.0%.
15.3 Should ECS identify a Changed Condition(s), ECS shall notify the CLIENT of the Changed Condition(s). ECS and CLIENT shall promptly and in good faith negotiate an amendment to the Scope of Services, Professional Fees, and time schedule.
15.4 CLIENT recognizes that time is of the essence with respect to payment of ECS' invoices, and that timely payment is a material consideration for this agreement. All payment shall be in U.S. funds drawn upon U.S. banks and in accordance with the rates and charges set forth in the Professional Fees. Invoices are due and payable upon receipt.
15.5 If CLIENT disputes all or part of an invoice, CLIENT shall provide ECS with written notice stating in detail the facts of the dispute within fifteen (15) calendar days of the invoice. CLIENT agrees to pay the undisputed amount of such invoice promptly.
15.6 ECS reserves the right to charge CLIENT an additional charge of one-and-one-half (1.5) percent (or the maximum percentage allowed by Law, whichever is lower) of the invoiced amount per month for any payment received by ECS more than thirty (30) calendar days from the date of the invoice, excepting any portion of the invoiced amount in dispute. All payments will be applied to accrued interest first and then to the unpaid principal amount. Payment of invoices shall not be subject to unilateral discounting or set-offs by CLIENT.
15.7 CLIENT agrees that its obligation to pay for the Services is not contingent upon CLIENT'S ability to obtain financing, zoning, approval of governmental or regulatory agencies, permits, final adjudication of a lawsuit, CLIENT'S successful completion of the Project, settlement of a real estate transaction, receipt of payment from CLIENT'S client, or any other event unrelated to ECS provision of Services. Retainage shall not be withheld from any payment, nor shall any deduction be made from any invoice on account of penalty, liquidated damages, or other sums incurred by CLIENT. It is agreed that all costs and legal fees including actual attorney's fees, and expenses incurred by ECS in obtaining payment under this Agreement, in perfecting or obtaining a lien, recovery under a bond, collecting any delinquent amounts due, or executing judgments, shall be reimbursed by CLIENT.
15.8 Unless CLIENT has provided notice to ECS in accordance with Section 16.0 of these Terms, payment of any invoice by the CLIENT shall mean that the CLIENT is satisfied with ECS' Services and is not aware of any defects in those Services.

16.0 DEFECTS IN SERVICE

- 16.1 CLIENT, its personnel, its consultants, and its contractors shall promptly inform ECS during active work on any project of any actual or suspected defects in the Services so to permit ECS to take such prompt, effective remedial measures that in ECS' opinion will reduce or eliminate the consequences of any such defective Services. The correction of defects attributable to ECS' failure to perform in accordance with the Standard of Care shall be provided at no cost to CLIENT. However, ECS shall not be responsible for the correction of any deficiency attributable to CLIENT-furnished information, the errors, omissions, defective materials, or improper installation of materials by CLIENT's personnel, consultants or contractors, or work not observed by ECS. CLIENT shall compensate ECS for the costs of correcting such defects.
16.2 Modifications to reports, documents and plans required as a result of jurisdictional reviews or CLIENT requests shall not be considered to be defects. CLIENT shall compensate ECS for the provision of such Services.

17.0 INSURANCE

- ECS represents that it and its subcontractors and subconsultants maintain Workers Compensation insurance, and that ECS is covered by general liability, automobile and professional liability insurance policies in coverage amounts it deems reasonable and adequate. ECS shall furnish certificates of insurance upon request. The CLIENT is responsible for requesting specific inclusions or limits of coverage that are not present in ECS insurance package. The cost of such inclusions or coverage increases, if available, will be at the expense of the CLIENT.

18.0 LIMITATION OF LIABILITY

- 18.1 CLIENT agrees to allocate certain risks associated with the Project by limiting ECS' total liability to CLIENT arising from ECS' professional liability, i.e. professional acts, errors, or omissions and for any and all causes including negligence, strict liability, breach of contract, or breach of warranty, injuries, damages, claims, losses, expenses, or claim expenses (including reasonable attorney's fees) relating to professional services provided under this agreement to the fullest extent permitted by law. The allocation is as follows.
18.1.1 If the proposed fees are \$10,000 or less, ECS' total aggregate liability to CLIENT shall not exceed \$20,000, or the total fee received for the services rendered, whichever is greater.
18.1.2 If the proposed fees are in excess of \$10,000, ECS' total aggregate liability to CLIENT shall not exceed \$40,000, or the total fee for the services rendered, whichever is greater.
18.2 CLIENT agrees that ECS shall not be responsible for any injury, loss or damage of any nature, including bodily injury and property damage, arising directly or indirectly, in whole or in part, from acts or omissions by the CLIENT, its employees, agents, staff, consultants, contractors, or subcontractors to the extent such injury, damage, or loss is caused by acts or omissions of CLIENT, its employees, agents, staff, consultants, contractors, subcontractors or person/entities for whom CLIENT is legally liable.

18.3 CLIENT agrees that ECS' liability for all non-professional liability arising out of this agreement or the services provided as a result of the Proposal be limited to \$500,000.

19.0 INDEMNIFICATION

19.1 Subject Section 18.0, ECS agrees to hold harmless and indemnify CLIENT from and against damages arising from ECS' negligent performance of its Services, but only to the extent that such damages are found to be caused by ECS' negligent acts, errors or omissions, (specifically excluding any damages caused by any third party or by the CLIENT.)

19.2 To the fullest extent permitted by Law, CLIENT agrees to indemnify, and hold ECS harmless from and against any and all liability, claims, damages, demands, fines, penalties, costs and expenditures (including reasonable attorneys' fees and costs of litigation defense and/or settlement) ["Damages"] caused in whole or in part by the negligent acts, errors, or omissions of the CLIENT or CLIENT'S employees, agents, staff, contractors, subcontractors, consultants, and clients, provided such Damages are attributable to: (a) the bodily injury, personal injury, sickness, disease and/or death of any person; (b) the injury to or loss of value to tangible personal property; or (c) a breach of these Terms. The foregoing indemnification shall not apply to the extent such Damage is found to be caused by the sole negligence, errors, omissions or willful misconduct of ECS.

19.3 It is specifically understood and agreed that in no case shall ECS be required to pay an amount of Damages disproportional to ECS' culpability. If CLIENT is a homeowner, homeowners' association, condominium owner, condominium owner's association, or similar residential owner, ECS recommends that client retain legal counsel before entering into this AGREEMENT to explain CLIENT'S rights and obligations hereunder, and the limitations, and restrictions imposed by this AGREEMENT. CLIENT agrees that failure of CLIENT to retain such counsel shall be a knowing waiver of legal counsel and shall not be allowed on grounds of avoiding any provision of this AGREEMENT.

19.4 If CLIENT is a residential builder or residential developer, CLIENT shall indemnify and hold harmless ECS against any and all claims or demands due to injury or loss initiated by one or more homeowners, unit-owners, or their homeowner's association, cooperative board, or similar governing entity against CLIENT which results in ECS being brought into the dispute.

19.5 In no event shall the duty to indemnify and hold another party harmless under this Section 19.0 include the duty to defend.

20.0 CONSEQUENTIAL DAMAGES

20.1 CLIENT shall not be liable to ECS and ECS shall not be liable to CLIENT for any consequential damages incurred by either due to the fault of the other or their employees, consultants, agents, contractors or subcontractors, regardless of the nature of the fault or whether such liability arises in breach of contract or warranty, tort, statute, or any other cause of action. Consequential damages include, but are not limited to, loss of use and loss of profit.

20.2 ECS shall not be liable to CLIENT, or any entity engaged directly or indirectly by CLIENT, for any liquidated damages due to any fault, or failure to act, in part or in total by ECS, its employees, agents, or subcontractors.

21.0 SOURCES OF RECOVERY

21.1 All claims for damages related to the Services provided under this agreement shall be made against the ECS entity contracting with the CLIENT for the Services, and no other person or entity. CLIENT agrees that it shall not name any affiliated entity including parent, peer, or subsidiary entity or any individual officer, director, or employee of ECS, specifically including its professional engineers and geologists.

21.2 In the event of any dispute or claim between CLIENT and ECS arising out of in connection with the Project and/or the Services, CLIENT and ECS agree that they will look solely to each other for the satisfaction of any such dispute or claim. Moreover, notwithstanding anything to the contrary contained in any other provision herein, CLIENT and ECS' agree that their respective shareholders, principals, partners, members, agents, directors, officers, employees, and/or owners shall have no liability whatsoever arising out of or in connection with the Project and/or Services provided hereunder. In the event CLIENT brings a claim against an affiliated entity, parent entity, subsidiary entity, or individual officer, director or employee in contravention of this Section 21, CLIENT agrees to hold ECS harmless from and against all damages, costs, awards, or fees (including attorneys' fees) attributable to such act.

22.0 **THIRD PARTY CLAIMS EXCLUSION** - CLIENT and ECS agree that the Services are performed solely for the benefit of the CLIENT and are not intended by either CLIENT or ECS to benefit any other person or entity. To the extent that any other person or entity is benefited by the Services, such benefit is purely incidental and such other person or entity shall not be deemed a third party beneficiary to the AGREEMENT. No third-party shall have the right to rely on ECS' opinions rendered in connection with ECS' Services without written consent from both CLIENT and ECS, which shall include, at a minimum, the third-party's agreement to be bound to the same Terms and Conditions contained herein and third-party's agreement that ECS' Scope of Services performed is adequate.

23.0 DISPUTE RESOLUTION

23.1 In the event any claims, disputes, and other matters in question arising out of or relating to these Terms or breach thereof (collectively referred to as "Disputes"), the parties shall promptly attempt to resolve all such Disputes through executive negotiation between senior representatives of both parties familiar with the Project. The parties shall arrange a mutually convenient time for the senior representative of each party to meet. Such meeting shall occur within fifteen (15) days of either party's written request for executive negotiation or as otherwise mutually agreed. Should this meeting fail to result in a mutually agreeable plan for resolution of the Dispute, CLIENT and ECS agree that either party may bring litigation.

23.2 CLIENT shall make no claim (whether directly or in the name of the CLIENT) against ECS unless CLIENT shall have first provided ECS with a written certification executed by an independent engineer licensed in the jurisdiction in which the Project is located, reasonably specifying each and every act or omission which the certifier contends constitutes a violation of the Standard of Care. Such certificate shall be a precondition to the institution of any judicial proceeding and shall be provided to ECS thirty (30) days prior to the institution of such judicial proceedings.

23.3 Litigation shall be instituted in a court of competent jurisdiction in the county or district in which ECS' office contracting with the CLIENT is located. The parties agree that the law applicable to these Terms and the Services provided pursuant to the Proposal shall be the laws of the Commonwealth of Virginia, but excluding its choice of law rules. Unless otherwise mutually agreed to in writing by both parties, CLIENT waives the right to remove any litigation action to any other jurisdiction. Both parties agree to waive any demand for a trial by jury.

24.0 CURING A BREACH

24.1 A party that believes the other has materially breached these Terms shall issue a written cure notice identifying its alleged grounds for termination. Both parties shall promptly and in good faith attempt to identify a cure for the alleged breach or present facts showing the absence of such breach. If a cure can be agreed to or the matter otherwise resolved within thirty (30) calendar days from the date of the termination notice, the parties shall commit their understandings to writing and termination shall not occur.

24.2 Either party may waive any right provided by these Terms in curing an actual or alleged breach; however, such waiver shall not affect future application of such provision or any other provision.

25.0 TERMINATION

25.1 CLIENT or ECS may terminate this agreement for breach or these terms, non-payment, or a failure to cooperate. In the event of termination, the effecting party shall so notify the other party in writing and termination shall become effective fourteen (14) calendar days after receipt of the termination notice.

25.2 Irrespective of which party shall effect termination, or the cause therefore, ECS shall promptly render to CLIENT a final invoice and CLIENT shall immediately compensate ECS for Services rendered and costs incurred including those Services associated with termination itself, including without limitation, demobilizing, modifying schedules, and reassigning personnel.

26.0 **TIME BAR TO LEGAL ACTION** - Unless prohibited by law, and notwithstanding any Statute that may provide additional protection, CLIENT and ECS agree that a lawsuit by either party alleging a breach of this agreement, violation of the Standard of Care, non-payment of invoices, or arising out of the Services provided hereunder, must be initiated in a court of competent jurisdiction no more than two (2) years from the time the party knew, or should have known, of the facts and conditions giving rise to its claim, and shall under no circumstances shall such lawsuit be initiated more than three (3) years from the date of substantial completion of ECS' Services.

27.0 **ASSIGNMENT** - CLIENT and ECS respectively bind themselves, their successors, assigns, heirs, and legal representatives to the other party and the successors, assigns, heirs and legal representatives of such other party with respect to all covenants of these Terms. Neither CLIENT nor ECS shall assign these Terms, any rights thereunder, or any cause of action arising therefrom, in whole or in part, without the written consent of the other. Any purported assignment or transfer, except as permitted above, shall be deemed null, void and invalid, the purported assignee shall acquire no rights as a result of the purported assignment or transfer and the non-assigning party shall not recognize any such purported assignment or transfer.

28.0 **SEVERABILITY** - Any provision of these Terms later held to violate any law, statute, or regulation, shall be deemed void, and all remaining provisions shall continue in full force and effect. CLIENT and ECS shall endeavor to quickly replace a voided provision with a valid substitute that expresses the intent of the issues covered by the original provision.

29.0 **SURVIVAL** - All obligations arising prior to the termination of the agreement represented by these Terms and all provisions allocating responsibility or liability between the CLIENT and ECS shall survive the substantial completion of Services and the termination of the agreement.

30.0 TITLES; ENTIRE AGREEMENT

30.1 The titles used herein are for general reference only and are not part of the Terms and Conditions.

30.2 These Terms and Conditions of Service together with the Proposal, including all exhibits, appendixes, and other documents appended to it, constitute the entire agreement between CLIENT and ECS. CLIENT acknowledges that all prior understandings and negotiations are superseded by this agreement.

30.3 CLIENT and ECS agree that subsequent modifications to the agreement represented by these shall not be binding unless made in writing and signed by authorized representatives of both parties.

30.4 All preprinted terms and conditions on CLIENT'S purchase order, Work Authorization, or other service acknowledgement forms, are inapplicable and superseded by these Terms and Conditions of Service.

30.5 CLIENT'S execution of a Work Authorization, the submission of a start work authorization (oral or written) or issuance of a purchase order constitutes CLIENT'S acceptance of this Proposal and its agreement to be fully bound the foregoing Terms. If CLIENT fails to provide ECS with a signed copy of these Terms or the attached Work Authorization, CLIENT agrees that by authorizing and accepting the services of ECS, it will be fully bound by these Terms as if they had been signed by CLIENT.

END OF TERMS AND CONDITIONS OF SERVICE