

**Notice of City Council  
AGENDA**

**April 11, 2023 at 6:00 PM**

**NOTICE IS HEREBY GIVEN** that a Meeting of the Montgomery City Council will be held on **Tuesday, April 11, 2023**, at **6:00 PM** at the City of Montgomery City Hall, 101 Old Plantersville Road, Montgomery, Texas.

Members of the public may view the meeting live on the City's website under Agenda/Minutes and then select **Live Stream Page (located at the top of the page)**. The meeting will be recorded and uploaded to the City's website.

**CALL TO ORDER**

**INVOCATION**

**PLEDGE OF ALLEGIANCE TO FLAGS**

**ANNOUNCEMENTS**

Presentation to Tom Hoyt, President of "Friends of the Charles B. Stewart West Branch Library" of a Proclamation to celebrate and recognize April as Library Week.

**VISITOR/CITIZENS FORUM:**

Citizens are invited to speak for three (3) minutes on matters relating to City Government that relate to agenda or non-agenda items. Prior to speaking, each speaker must be recognized by the Presiding Officer. All speakers should approach the podium to address Council and give their name and address before sharing their comments. City Council may not discuss or take any action on an item, but may place the issue on a future agenda.

**CONSENT AGENDA:**

- 1.** Approval of the meeting minutes of City Council and Zoning Board of Adjustment meeting 03-28-2023.
- 2.** Consideration and possible action on approval of two BNSF Railway Pipeline Licenses for the Sanitary Sewer Force Main and 12" Waterline Projects on Old Plantersville Road.
- 3.** Consideration and possible action on A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF MONTGOMERY DESIGNATING AUTHORIZED SIGNATORIES FOR CONTRACTUAL DOCUMENTS AND DOCUMENTS FOR REQUESTING FUNDS PERTAINING TO THE COMMUNITY DEVELOPMENT BLOCK GRANT · DISASTER RECOVERY PROGRAM (CDBG-DR) CONTRACT NUMBER 19-076-017-B366.
- 4.** Consideration and possible action on Cost/Price Analysis and Profit Negotiation Procedures for federal grants.
- 5.** Consideration and possible action on an update to the City's financial policy and procedures for federal grants.
- 6.** Consideration and possible action on an update to the City's procurement policy and procedures for federal grants.

**PUBLIC HEARING:**

- 7.** Consideration and possible action on a rezoning request from Cornerstone Community Church located at 14740 Liberty Street.
- a) Acceptance of the Final Report from the Planning and Zoning Commission.
  - b) Convene into a Public Hearing to hear comments on the proposed rezoning of the property.
  - c) Consideration and approval of AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF MONTGOMERY, TEXAS AMENDING THE ZONING CLASSIFICATIONS AS DEFINED IN THE CITY CODE OF ORDINANCES CHAPTER 98, "ZONING," FOR A 0.295-ACRE TRACT SITUATED IN THE JOHN CORNER SURVEY, ABSTRACT NUMBER 8, MONTGOMERY COUNTY, TEXAS COMMONLY REFERRED TO AS A PORTION OF 14740 LIBERTY STREET, MONTGOMERY COUNTY, TEXAS FROM "R-1" SINGLE-FAMILY RESIDENTIAL ZONING DISTRICT, AS FOUND ON THE CITY'S OFFICIAL ZONING MAP TO "I" INSTITUTIONAL ZONING DISTRICT CLASSIFICATION; AND TO AMEND THE OFFICIAL ZONING MAP; PROVIDING A SAVINGS CLAUSE; PROVIDING A REPEALING CLAUSE; AND PROVIDING AN EFFECTIVE DATE UPON PASSAGE AND PUBLICATION.

**CONSIDERATION AND POSSIBLE ACTION:**

- 8.** a) Discussion on an Ordinance adopting the standards of Care for 2023 Youth Programs.
- b) Public Comment / Public Hearing
  - c) Consideration and possible action on: AN ORDINANCE ADOPTING THE STANDARDS OF CARE FOR 2023 FOR YOUTH PROGRAMS OFFERED BY THE CITY OF MONTGOMERY, TEXAS; PROVIDING THAT THIS ORDINANCE IS CUMULATIVE; PROVIDING A SERVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.
- 9.** Calling a Public Hearing for a rezoning request from "R1"-Single Family Residential to "B"-Commercial for a 0.552-acre parcel of land located at 14640 Liberty Street as submitted by Evan Ballew.
- 10.** Consideration and possible action regarding the bid results for the "Flagship Boulevard Storm Sewer and Pavement Replacement" project.

**EXECUTIVE SESSION:**

Adjourn into Closed Session in compliance with Section §551.001 etseq. Texas Government Code, to wit:

No items submitted at time of publication.

**POSSIBLE ACTION FROM EXECUTIVE SESSION:**

**COUNCIL INQUIRY:**

Pursuant to Texas Government Code Sect. 551.042 the Mayor and Council Members may inquire about a subject not specifically listed on this Agenda. Responses are limited to the recitation of existing policy or a statement of specific factual information given in response to the inquiry. Any deliberation or decision shall be limited to a proposal to place on the agenda of a future meeting.

**ADJOURNMENT**

Nici Browe, City Secretary. TRMC

I certify that the attached notice of meeting was posted on the bulletin board at City of Montgomery City Hall, 101 Old Plantersville Road, Montgomery, Texas, on Thursday, April 6, 2023 at 4:00 p.m.

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*This facility is wheelchair accessible and accessible parking spaces are available. Please contact the City Secretary's office at 936-597-6434 for further information or for special accommodations.*

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**City Council Regular & Board of Adjustment Meeting  
MINUTES**

**March 28, 2023, at 6:00 PM**

**CALL TO ORDER**

Mayor Byron Sanford called the meeting to order at 6:00 p.m.

Present:	Byron Sanford	Mayor
	Carol Langley	City Council Place #1
	Casey Olson	City Council Place #2
	Cheryl Fox	City Council Place #4
	Patricia Easley	City Council Place #5
Absent:	T.J. Wilkerson	City Council Place #3
Also Present:	Gary Palmer	City Administrator
	Nici Browe	City Secretary & Director of Administrative Services

**CALL TO ORDER**

Mayor, Byron Sanford called the meeting to order at 6:00 P.M.

**INVOCATION**

Mayor, Byron Sanford provided the Invocation.

**PLEDGE OF ALLEGIANCE TO FLAGS**

**VISITOR/CITIZENS FORUM:**

No Visitors addressed City Council.

**CONSENT AGENDA:**

1. Approval of the minutes of City Council Meeting 03-14-2023
2. Utility Billing Report

Councilmember Casey Olson moved to approve the Consent Agenda as presented. Councilmember Carol Langley seconded the motion. **Motion Passed (4-0).**

**ZONING BOARD OF ADJUSTMENT:**

3. Consideration and possible action by the City Council acting as the Zoning Board of Adjustment on a variance request to Section 98-122 of the City Code of Ordinances related to rear yard requirements for 128 Dina Lane.

Mr. Dave McCorquodale provided Council with details of the variance request and gave a comprehensive report on the applicants request and stated staff recommends approving the 5ft. request.

Council held a discussion on the request and Mr. McCorquodale responded to their questions.

Councilmember Casey Olson moved to approve the 5ft request contingent on there are no raised beds, or pool decking between the pool and the fence. Additionally, the contractor must submit an approved drainage plan to redirect flow away from the property located behind the subject property. Councilmember Patricia Easley seconded the motion. Councilmember Cheryl Fox opposed the motion. **Motion result (3-1). Failed.**

Mr. McCorquodale informed council that as Councilmember TJ Wilkerson is absent and that a variance request requires unanimous approval, the variance request is denied as the motion failed.

#### **CONSIDERATION AND POSSIBLE ACTION:**

4. Consideration and possible action on reassigning a Special Use Permit for microblading granted to Meghan Bird to new business owners Tayler Broussard and Kay Dinh.

Mr. McCorquodale presented this item and informed council that the original business was granted an Special Use Permit (SUP) and the new business owners are coming in to continue the operation. In order for this business owner to be allowed to operate the SUP must be transferred into the new owner's name.

Councilmember Carol Langley moved to approve transferring the SUP into the new owner's name. Councilmember Cheryl Fox seconded the motion. **Motion Passed (4-0).**

5. Discussion on a request from Living Savior Lutheran Church to rename Louisa Street north of Eva Street.

Mr. McCorquodale presented the item and invited Pastor David Bailes to the podium to address Council on his request.

Pastor Bailes stated that this request came from the development on the property there between Pond Street and Louisa Street. During the year 2018-2019 they made significant improvements to the Sanctuary building, with plans in the future to introduce and present other improvements to the church that would benefit not just the congregation but to the city as well.

Pastor Bailes continued that what he has found is their parking lot on the East side is small, but on the west side it is divided by the building, and described the confusion of the parking lot and having to re direct people to the west side parking lot. To achieve this, he would like to change their address and he stated that by this process they would like council to consider changing the name to Church Street, which used to run though their property, having purchased it from the city a few years back.

Pastor Bailes stated that church street is currently very small and proposed council remove "Church St" and rename it as "Cemetery", then Louisa north of 105 to Caroline would be church street.

Councilmember Casey Olson asked why the church has not just changed its address to Louisa Street.

Pastor Bailes responded that it could be done, but as they are requesting an address change thought that as their property is a Church renaming a street to reflect the Church would be very appropriate.

Councilmember Patricia Easley inquired if the change would impact anyone else.

Pastor Bailes stated he knew of one for sure, but unaware if it would impact any others.

Mr. McCorquodale informed council that this is just a discussion item not an actionable item at this time.

Councilmember Cheryl Fox shared some history of her own home that went through three street name changes.

Councilmember Patricia Easley stated that she would prefer to get some input from the family that it could affect.

Councilmember Carol Langley asked if staff knew what the timeline was for informing 911 services if the city approved this request later on.

Mr. McCorquodale stated that he did not know but would find out and inform council.

Caleb Villarreal, City Attorney informed Council of the process, which would be to submit the request information to EMS, Police, Fire and the Post Office to see if these agencies have any objections. The name change would take place by Ordinance.

6. Consideration and possible action on: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MONTGOMERY, TEXAS, AMENDING ITS MUNICIPAL BUDGET FOR THE FISCAL YEAR 2021-2022; APPROPRIATING THE VARIOUS AMOUNTS HEREIN, AS ATTACHED IN EXHIBIT A; CONTAINING FINDINGS AND A TEXAS OPEN MEETINGS ACT CLAUSE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Mr. Gary Palmer presented this item. He referred council to the memo he had placed with them at their seat.

Mr. Palmer went on to provide council with a table of events to date, such as working with the auditor, who started on the audit project prior to his arrival, however, once he arrived, he got with them and has provided the auditors with the items they needed in order to conduct and finish up the audit. He stated that at the same time, staff was struggling to wrap up the FY2021/2022 budget amendment which was first brought to the council in December and has been tabled several times, but is back tonight for council's approval of a certain amount. There are several items to go over, and the auditor is still working through items as before they can complete and file the audit with the state, we have to adopt the budget amendment.

Mr. Palmer addressed the backup sheet that showed highlighted amounts, indicating that these were items that went over within the 2021/2022 budget year.

Mr. Palmer informed council that it his intention to get with staff to find out why we overspent, look at the internal policies and will prevent these issues from occurring again. He went on to say once the investigation of how we overspent is complete he will come back with a report for council.

Councilmember Carol Langley inquired when the audit actually began.

Mr. Palmer responded it was the week after he started which was January 6, 2023.

Councilmember Carol Langley inquired if it was typical to start the audit at that late stage.

Mr. Palmer responded that it would have been earlier, however there were internal issues, with his onboarding and the Finance staff taking paternity leave, therefore it delayed the process. He added

that the auditor has helped immensely thus far as the city changed from one platform to another and she discovered some double entries, which she has adjusted appropriately to reduce the liability, however, that said there are other issues we need to work on, such as internal controls, communication as well as potential other items.

He stated he was confident that it will be achieved, but this is embarrassing to come to council to ask for a budget amendment for such an amount.

Councilmember Casey Olson commended the Public Works and Court Department for an excellent job with their departmental budgets.

Mr. Anthony Lasky informed Council that along with this City amendment the MEDC will have to do a budget amendment for the land purchase back in May of 2022 for \$600,000, Debt Service of \$27,000 for the additional payment made for the 2022 Tax Notes and Court Technology for the ticket readers maintenance for a little over \$2,000.00.

Mr. Palmer stated that with those items the motion that he would recommend would be to adopt the budget amendment as proposed.

Councilmember Casey Olson addressed Chief Solomon regarding an item on the list for the Police Cars. He inquired if there was a grant.

Chief Solon responded that it was not a grant, but the police cars were approved by Council in August of 2021, his department did not go out for a grant until December for additional cars. The approval by Council meant that the monies should have been moved, but were not which is the bottom line. He went on to state they in fact did not overspend on cars, the monies were never encumbered as they should have been.

Mr. Palmer expanded on Chief Comments and informed council that with the Capital Projects council has approved the expenditure, but the budget was not amended to account for that before the expense was bought to them for approval and it is his expectation from his initial research the same thing occurred with the remainder of the Capital Projects.

Councilmember Patricia Easley moved to approve the budget amendment for the General Fund and additional funds as presented. Councilmember Cheryl Fox seconded the motion. **Motion Passed (4-0).**

7. Consideration and possible action on AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MONTGOMERY, TEXAS, AMENDING ITS MUNICIPAL BUDGET FOR THE FISCAL YEAR 2022-2023; APPROPRIATING THE VARIOUS AMOUNTS HEREIN, AS ATTACHED IN EXHIBIT A; CONTAINING FINDINGS AND A TEXAS OPEN MEETINGS ACT CLAUSE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Mr. Palmer presented this item and stated that this budget amendment relates to 213 Prairie Street property, and where they discovered some water leak which caused the need for remediation quickly to stop the damage spreading further. Mr. Muckleroy contacted a contractor and gave us estimates but we needed them to go in and get to work on the issue immediately. Wet carpets were removed, drywall removed where it had been infiltrated by mold and fix the leak, putting us in a position to keep the building vacant and monitor without worry of any issues.

The contractor came in with the work at being a little in excess of \$24,000. Looking at the budget there is a line item for 213 Prairie but there aren't any funds in there at present. Therefore, we are

asking council to authorize the movement of funds from one fund into our general fund in order to approve this expense.

Mr. Palmer explained that the correct procedure for doing this is, that this is the request for movement of funds by budget amendment then item No.8 of this agenda is the authorization for the expense.

Mayor Byron Sanford asked Mr. Palmer to clarify what the water issue was.

Mr. Palmer responded that when he walked into the property, he found the carpets saturated and the water had moved through and into the bays where it pooled. The water was off, however, the issue came from the toiler and even though the meter was off there was just enough of a trickle that was not picked up by the meter but flowed into the toilet, causing overflow and continual flooding for over two months.

Councilmember Casey Olson asked to clarify the movement of funds.

Councilmember Casey Olson moved to approve the budget amendment as proposed. Councilmember Cheryl Fox seconded the motion. **Motion Passed (4-0).**

8. Consideration and possible action on authorizing the City Administrator to execute payment for invoice #I-1073 from Dri-Tex Restoration in the amount of \$24,134.52

Mr. Palmer presented this item and stated this relates to the expense for the item # 7 budget amendment.

Councilmember Casey Olson moved to approve the expense as proposed. Councilmember Cheryl Fox seconded the motion. **Motion Passed (4-0).**

#### **DEPARTMENTAL REPORTS:**

9. Public Works Report.
10. Utility Operations (H2O) Report.
11. Finance and Quarterly Investment Report.
12. Sales Tax Report.
13. Police and Code Enforcement Report.
14. Municipal Court Report.
15. City Engineer's Report.
16. City Administrator Report.

Each Department Head, and consultant representatives presented their departmental reports and responded to any question provided by council.

Councilmember Casey Olson moved to approve the Departmental Reports as presented. Councilmember Patricia Easley seconded the motion. **Motion Passed (4-0).**

#### **EXECUTIVE SESSION:**

Adjourn into Closed Session in compliance with Section §551.001 etseq. Texas Government Code, to wit:

City Council & Zoning Board of Adjustment Meeting Minutes 03-28-2023



Section 551.072 (deliberation regarding real property)

**Council convened into Executive Session at 7:13 P.M.**

**Council reconvened into Regular Session at 8:10 P.M.**

**POSSIBLE ACTION FROM EXECUTIVE SESSION:**

No motions were made on any item within Executive Session.

**COUNCIL INQUIRY:**

Councilmember Cheryl Fox stated she would like to see a report on how the City came out with the Mudbugs and Music Festival from last year.

Council held a brief discussion on this item.

Councilmember Patricia Easley inquired with Mr. McCorquodale the status of the Renegade RV Park that is going in at MLK.

Mr. McCorquodale responded that he discussed with the developer that it is not zoned appropriately for an RV Park.

Councilmember Patricia Easley confirmed that he is saying to all neighbors it's an RV Park, and she is concerned that he did not go through the proper permitting, residents not legally notified, and he appears to be going ahead.

Mr. McCorquodale explained what he had informed the owner/developer.

Councilmember Carol Langley spoke about two large potholes on 149, and thinks it is probably TXDOT but asked Mr. Muckleroy of Public Works to take a look and report to TXDOT if necessary.

**ADJOURNMENT**

Councilmember Carol Langley moved to adjourn the meeting. Councilmember Cheryl Fox seconded the motion. **Motion passed (4-0).**

**ADJOURNED: 8:27 P.M.**

Submitted by: \_\_\_\_\_  
Nici Browe, City Secretary

Date Approved: \_\_\_\_\_

\_\_\_\_\_  
Byron Sanford, Mayor

Montgomery City Council  
**AGENDA REPORT**

<b>Meeting Date:</b> April 11, 2023	<b>Budgeted Amount:</b> \$1,375,200
<b>Department:</b> Admin	<b>Prepared By:</b> Dave McCorquodale

**Subject**

Consideration and possible action on approval of two BNSF Railway Pipeline Licenses for the Sanitary Sewer Force Main and 12” Waterline Projects on Old Plantersville Road.

**Recommendation**

Approve the two License Agreements as presented.

**Discussion**

These two projects are being funded by the Redbird Meadows developer per the Development Agreement between the City and the developer. As you are aware, the project location is west of the railroad tracks. The new water and sewer lines will cross underneath the railroad right-of-way to connect with our water and sewer systems.

These two documents grant the City a license to locate our utility lines within the railroad right-of-way. The current budget has a total of \$1,375,200 for the design and construction of both projects. Again, the developer is responsible for the entire cost of both projects. The license fees total just over \$10,000.

<b>Approved By</b>		
Assistant City Administrator & Planning & Development Director	Dave McCorquodale	Date: 04/05/2023
City Administrator	Gary Palmer	Date: 04/05/2023

## PIPELINE LICENSE

THIS PIPELINE LICENSE ("**License**") is made to be effective \_\_\_\_\_, 2023 (the "**Effective Date**") by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("**Licensor**") and **CITY OF MONTGOMERY**, a Texas municipality ("**Licensee**").

In consideration of the mutual covenants contained herein, the parties agree to the following:

### GENERAL

1. Grant of License. Licensor hereby grants Licensee a non-exclusive license, subject to all rights, interests, and estates of third parties, including, without limitation, any leases, use rights, easements, liens, or other encumbrances, and upon the terms and conditions set forth below, to construct and maintain, in strict accordance with the drawings and specifications approved by Licensor as part of Licensee's application process (the "**Drawings and Specifications**"), one (1) pipeline, 12 inches in diameter inside a 20 inch Steel casing (collectively, the "**Pipeline**"), across or along Licensor's rail corridor at or near the station of Montgomery, County of Montgomery, State of Texas, Line Segment 7502, Mile Post 53.83 as shown on the attached Drawing No. 86688, dated January 19, 2023, attached hereto as **Exhibit "A"** and incorporated herein by reference (the "**Premises**").
2. Term. This License shall commence on the Effective Date and shall continue for a period of twenty-five (25) years, subject to prior termination as hereinafter described.
3. Existing Improvements. Licensee shall not disturb any improvements of Licensor or Licensor's existing lessees, licensees, easement beneficiaries or lien holders, if any, or interfere with the use, repair, maintenance or replacement of such improvements.
4. Use of the Premises. Licensee shall use the Premises solely for construction, maintenance, and use of the Pipeline in accordance with the Drawings and Specifications. The Pipeline shall carry potable water, and Licensee shall not use the Pipeline to carry any other material or use the Premises for any other purpose. Licensee is expressly prohibited from using or allowing any telecommunication facilities or equipment within the Premises, or using or allowing the use of the Premises for any other purpose.
5. Alterations. Except as set forth in this License, Licensee may not make any alterations to the Premises or permanently affix anything to the Premises or any buildings or other structures adjacent to the Premises without Licensor's prior written consent.

### COMPENSATION

6. License Fee. Licensee shall pay Licensor, prior to the Effective Date, a one-time payment (in lieu of recurring periodic fixed license fees) in the amount the sum of Three thousand eight hundred five and No/100 Dollars (\$3,805.00) as compensation for the use of the Premises.
7. Costs and Expenses.
  - 7.1 For the purpose of this License, "cost" or "costs" and "expense" or "expenses" includes, but is not limited to, actual labor and material costs including all assignable additives, and material and supply costs at current value where used.
  - 7.2 Licensee agrees to reimburse Licensor (pursuant to the terms of **Section 8** below) for all costs and expenses incurred by Licensor in connection with Licensee's use of the Premises or the presence, construction and maintenance of the Pipeline, including but not limited to the furnishing of Licensor's flaggers and any vehicle rental costs incurred, inspection coordination, safety, mobilization and/or other observation services described in this License (collectively, the "**Services**"). Licensee shall bear the cost of the Services, when deemed necessary by Licensor's representative. Flagging costs shall include, but not be limited to, the following: pay for at least an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays (as applicable); vacation allowance; paid holidays (as applicable); railway and

unemployment insurance; public liability and property damage insurance; health and welfare benefits; transportation; meals; lodging and supervision. Negotiations for railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase flagging rates. Flagging rates in effect at the time of performance by the flaggers will be used to calculate the flagging costs pursuant to this **Section 7**.

- 7.3 Licensor, at its sole discretion, may elect to designate a third party (the "**Scheduling Agent**"), to perform and/or arrange for the performance of the Services.
8. Payment Terms. All invoices are due thirty (30) days after the date of invoice. If Licensee fails to pay any monies due to Licensor within thirty (30) days after the invoice date, then Licensee shall pay interest on such unpaid sum from the due date until paid at an annual rate equal to the lesser of (i) the prime rate last published in *The Wall Street Journal* in the preceding December plus two and one-half percent (2-1/2%), or (ii) the maximum rate permitted by law.

### **LICENSOR'S RESERVED RIGHTS**

9. Reserved Rights of Use. Licensor excepts and reserves the right, to be exercised by Licensor and any other parties who may obtain written permission or authority from Licensor:
- 9.1 to maintain, use, operate, repair, replace, modify and relocate any utility, power or communication pipe/lines/cables and appurtenances (other than the Pipeline) and other facilities or structures of like character upon, over, under or across the Premises existing as of the Effective Date;
- 9.2 to construct, maintain, renew, use, operate, change, modify and relocate any tracks or additional facilities, structures and related appurtenances upon, over, under or across the Premises; or
- 9.3 to use the Premises in any manner as Licensor in its sole discretion deems appropriate, provided Licensor uses all commercially reasonable efforts to avoid material interference with the use of the Premises by Licensee for the purpose specified in **Section 4** above.
10. Right to Require Relocation. If at any time during the term of this License, Licensor desires the use of its rail corridor in such a manner as would, in Licensor's reasonable opinion, be interfered with by the Pipeline, Licensee shall, at its sole expense, within thirty (30) days after receiving written notice from Licensor to such effect, make such changes in the Pipeline as in the sole discretion of Licensor may be necessary to avoid interference with the proposed use of Licensor's rail corridor, including, without limitation, the relocation of the Pipeline, or the construction of a new pipeline to replace the Pipeline. Notwithstanding the foregoing, Licensee agrees to make all emergency changes and minor adjustments, as determined by Licensor in its sole discretion, to the Pipeline promptly upon Licensor's request.

### **LICENSEE'S OPERATIONS**

11. Construction and Maintenance of the Pipeline.
- 11.1 Licensee shall not enter the Premises or commence construction unless accompanied by Licensor's representative, the Scheduling Agent or its designee. Licensee shall notify Licensor's Roadmaster, Rainer Hoffman at [Rainer.Hoffman@bnsf.com](mailto:Rainer.Hoffman@bnsf.com), telephone 713-847-3580, at least ten (10) business days prior to installation of the Pipeline and prior to entering the Premises for any subsequent maintenance thereon. In the event of emergency, Licensee shall notify Licensor of Licensee's entry onto the Premises at the telephone number above as soon as practicable and shall promptly thereafter follow up with written notice of such entry.
- 11.2 Licensee's on-site supervisors shall retain/maintain a fully executed copy of this License at all times while on the Premises.
- 11.3 While on the Premises, Licensee shall use only public roadways to cross from one side of Licensor's tracks to the other.

- 11.4 Any contractors or subcontractors performing work on the Pipeline or entering the Premises on behalf of Licensee shall be deemed servants and agents of Licensee for purposes of this License.
- 11.5 Under no conditions shall Licensee be permitted to conduct any tests, investigations or any other activity using mechanized equipment and/or machinery, or place or store any mechanized equipment, tools or other materials, within twenty-five (25) feet of the centerline of any railroad track on the Premises unless Licensee has obtained prior written approval from Licensor. Licensee shall, at its sole cost and expense, perform all activities on and about the Premises, including without limitation all construction and maintenance of the Pipeline, in such a manner and of such materials as not at any time to endanger or interfere with (i) the existence or use of present or future tracks, roadbeds, or property of Licensor, (ii) the safe operation and activities of Licensor or existing third parties, or (iii) the rights or interests of third parties. If ordered to cease using the Premises at any time by Licensor's personnel due to any hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor has no duty or obligation to monitor Licensee's use of the Premises to determine the safe nature thereof, it being solely Licensee's responsibility to ensure that Licensee's use of the Premises is safe. Neither the exercise nor the failure by Licensor to exercise any rights granted in this Section will alter the liability allocation provided by this License.
- 11.6 Licensee shall, at its sole cost and expense, construct and maintain the Pipeline in such a manner and of such material that the Pipeline will not at any time endanger or interfere with (i) the existence or use of present or future tracks, roadbeds, or property of Licensor, (ii) the safe operation and activities of Licensor or existing third parties, or (iii) the rights or interests of third parties. The construction of the Pipeline shall be completed within one (1) year of the Effective Date, and any subsequent maintenance shall be completed within one (1) year of initiation. Within fifteen (15) days after completion of the construction of the Pipeline or the performance of any subsequent maintenance thereon, Licensee shall, at Licensee's own cost and expense, restore the Premises to substantially their state as of the Effective Date, unless otherwise approved in advance by Licensor in writing. On or before expiration or termination of this License for any reason, Licensee shall, at its sole cost and expense, surrender the Premises to Licensor pursuant to the terms and conditions set forth in **Section 24** hereof.
- 11.7 Licensor may direct one or more of its field engineers or inspectors to observe or inspect the construction and/or maintenance of the Pipeline at any time for compliance with the Drawings and Specifications and Legal Requirements (defined below). Licensee shall reimburse Licensor for the cost of such observation or inspection related services pursuant to **Section 8**. If ordered at any time to halt construction or maintenance of the Pipeline by Licensor's personnel due to non-compliance with the Drawings and Specifications or any other hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor has no duty or obligation to observe or inspect, or to halt work on, the Pipeline, it being solely Licensee's responsibility to ensure that the Pipeline is constructed and maintained in strict accordance with the Drawings and Specifications and in a safe and workmanlike manner in compliance with all terms hereof. Neither the exercise of, nor the failure by Licensor to exercise, any right granted by this Section will alter in any way the liability allocation provided by this License. If at any time Licensee shall, in the sole judgment of Licensor, fail to properly perform its obligations under this **Section 11**, Licensor may, at its option and at Licensee's sole expense, arrange for the performance of such work as it deems necessary for the safety of its operations and activities. Licensee shall promptly reimburse Licensor for all costs and expenses of such work, pursuant to the terms of **Section 8**. Licensor's failure to perform any obligations of Licensee shall not alter the liability allocation hereunder.

## 12. Boring and Excavation.

- 12.1 Prior to Licensee conducting any boring, excavation, or similar work on or about any portion of the Premises, Licensee shall contact the applicable State's call-before-you-dig utility location service to have 3<sup>rd</sup> parties mark the location of utilities. Licensee shall explore the proposed location for such work with hand tools to a depth of at least three (3) feet below the surface of the ground to determine whether pipelines or other structures exist below the surface, provided,

however, that in lieu of the foregoing hand-tool exploration, Licensee shall have the right to use suitable detection equipment or other generally accepted industry practice (e.g., consulting with the United States Infrastructure Corporation) to determine the existence or location of pipelines and other subsurface structures prior to drilling or excavating with mechanized equipment. Licensee shall request information from Licensor concerning the existence and approximate location of Licensor's underground lines, utilities, and pipelines at or near the vicinity of the proposed Pipeline by contacting Licensor's Telecommunications Helpdesk, currently at 1-800-533-2891 (option 1, then option 7), at least ten (10) business days prior to installation of the Pipeline. Upon receiving Licensee's timely request, Licensor will provide Licensee with the information Licensor has in its possession regarding any existing underground lines, utilities, and pipelines at or near the vicinity of the proposed Pipeline and, if applicable, identify the location of such lines on the Premises pursuant to Licensor's standard procedures. Licensor does not warrant the accuracy or completeness of information relating to subsurface conditions of the Premises and Licensee's operations will be subject at all times to the liability provisions herein.

- 12.2 For all bores greater than 26-inch diameter and at a depth less than 10.0 feet below bottom of rail, a soil investigation must be performed by Licensee and reviewed by Licensor prior to construction. This study is to determine if granular material is present, and to prevent subsidence during the installation process. If the investigation determines in Licensor's reasonable opinion that granular material is present, Licensor may select a new location for Licensee's use, or may require Licensee to furnish for Licensor's review and approval, in Licensor's sole discretion, a remedial plan to deal with the granular material. Once Licensor has approved any such remedial plan in writing, Licensee shall, at Licensee's sole cost and expense, carry out the approved plan in accordance with all terms thereof and hereof.
- 12.3 No wells shall be installed without prior written approval from Licensor.
- 12.4 Any open hole, boring, or well constructed on the Premises by Licensee shall be safely covered and secured at all times when Licensee is not working in the actual vicinity thereof. Following completion of that portion of the work, all holes or borings constructed on the Premises by Licensee shall be:
- 12.4.1 filled in to surrounding ground level with compacted bentonite grout; or
- 12.4.2 otherwise secured or retired in accordance with any applicable Legal Requirement. No excavated materials may remain on Licensor's property for more than ten (10) days, but must be properly disposed of by Licensee in accordance with applicable Legal Requirements.

## **LIABILITY AND INSURANCE**

### 13. Liability and Indemnification.

- 13.1 For purposes of this License: (a) "**Indemnitees**" means Licensor and Licensor's affiliated companies, partners, successors, assigns, legal representatives, officers, directors, shareholders, employees, and agents; (b) "**Liabilities**" means all claims, liabilities, fines, penalties, costs, damages, losses, liens, causes of action, suits, demands, judgments, and expenses (including, without limitation, court costs, reasonable attorneys' fees, costs of investigation, removal and remediation, and governmental oversight costs) environmental or otherwise; and (c) "**Licensee Parties**" means Licensee and Licensee's officers, agents, invitees, licensees, employees, or contractors, or any party directly or indirectly employed by any of them, or any party they control or exercise control over.
- 13.2 **TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS INDEMNITEES FOR, FROM, AND AGAINST ANY AND ALL LIABILITIES OF ANY NATURE, KIND, OR DESCRIPTION DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM, OR RELATED TO (IN WHOLE OR IN PART):**

- 13.2.1 **THIS LICENSE, INCLUDING, WITHOUT LIMITATION, ITS ENVIRONMENTAL PROVISIONS,**
- 13.2.2 **ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LICENSE,**
- 13.2.3 **LICENSEE'S OCCUPATION AND USE OF THE PREMISES,**
- 13.2.4 **THE ENVIRONMENTAL CONDITION AND STATUS OF THE PREMISES CAUSED BY OR CONTRIBUTED TO BY LICENSEE, OR**
- 13.2.5 **ANY ACT OR OMISSION OF ANY LICENSEE PARTY.**
- 13.3 **TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE NOW AND FOREVER WAIVES AND WILL INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM ANY AND ALL CLAIMS THAT BY VIRTUE OF ENTERING INTO THIS LICENSE, LICENSOR IS A GENERATOR, OWNER, OPERATOR, ARRANGER, OR TRANSPORTER FOR THE PURPOSES OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT, AS AMENDED ("CERCLA") OR OTHER ENVIRONMENTAL LAWS (DEFINED BELOW). NOTHING IN THIS LICENSE IS MEANT BY EITHER PARTY TO CONSTITUTE A WAIVER OF ANY INDEMNITEE'S COMMON CARRIER DEFENSES AND THIS LICENSE SHOULD NOT BE SO CONSTRUED. IF ANY AGENCY OR COURT CONSTRUES THIS LICENSE TO BE A WAIVER OF ANY INDEMNITEE'S COMMON CARRIER DEFENSES, LICENSEE AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND INDEMNITEES FOR ANY LIABILITIES RELATED TO THAT CONSTRUCTION OF THIS LICENSE. IN NO EVENT AS BETWEEN LICENSOR AND LICENSEE AS TO USE OF THE PREMISES AS CONTEMPLATED BY THIS LICENSE SHALL LICENSOR BE RESPONSIBLE TO LICENSEE FOR THE ENVIRONMENTAL CONDITION OF THE PREMISES.**
- 13.4 **IF ANY EMPLOYEE OF ANY LICENSEE PARTY ASSERTS THAT HE OR SHE IS AN EMPLOYEE OF ANY INDEMNITEE, TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM AND AGAINST ANY LIABILITIES ARISING OUT OF OR RELATED TO (IN WHOLE OR IN PART) ANY SUCH ASSERTION INCLUDING, BUT NOT LIMITED TO, ASSERTIONS OF EMPLOYMENT BY AN INDEMNITEE RELATED TO THE FOLLOWING OR ANY PROCEEDINGS THEREUNDER: THE FEDERAL EMPLOYERS' LIABILITY ACT, THE SAFETY APPLIANCE ACT, THE LOCOMOTIVE INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.**
- 13.5 **THE FOREGOING OBLIGATIONS OF LICENSEE SHALL NOT APPLY TO THE EXTENT LIABILITIES ARE PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY INDEMNITEE, BUT SHALL APPLY TO ALL OTHER LIABILITIES, INCLUDING THOSE ARISING FROM OR ATTRIBUTED TO ANY OTHER ALLEGED OR ACTUAL NEGLIGENCE, INTENTIONAL ACTS, OR STRICT LIABILITY OF ANY INDEMNITEE.**
- 13.6 Upon written notice from Licensor, Licensee agrees to assume the defense of any lawsuit or other proceeding brought against any Indemnatee by any entity, relating to any matter covered by this License for which Licensee has an obligation to assume liability for and/or save and hold harmless any Indemnatee. Licensee shall pay all costs and expenses incident to such defense, including, but not limited to, reasonable attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments.
14. Personal Property Risk of Loss. **ALL PERSONAL PROPERTY, INCLUDING, BUT NOT LIMITED TO, FIXTURES, EQUIPMENT, OR RELATED MATERIALS UPON THE PREMISES WILL BE AT THE RISK OF LICENSEE ONLY, AND NO INDEMNITEE WILL BE LIABLE FOR ANY DAMAGE THERETO OR**

**THEFT THEREOF, WHETHER OR NOT DUE IN WHOLE OR IN PART TO THE NEGLIGENCE OF ANY INDEMNITEE.**

15. Insurance. Licensee shall, at its sole cost and expense, procure and maintain during the term of this License the following insurance coverage:

15.1 Commercial General Liability "CGL" Insurance.

- a. The policy will provide a minimum of \$5,000,000 per occurrence and an aggregate limit of at least \$10,000,000 but in no event will the coverage be in an amount less than the amount otherwise carried by Licensee. Coverage must be purchased on a post 2004 ISO occurrence form or equivalent and include coverage for, but not limited to, the following:
  - Bodily Injury and Property Damage
  - Personal Injury and Advertising Injury
  - Fire legal liability
  - Products and completed operations
  - Contractual Liability for an "Insured Contract" consistent with the definition under the standard ISO general liability policy form.
- b. This policy will include the following endorsements or language, which shall be indicated on or attached to the certificate of insurance:
  - The definition of "Insured Contract" will be amended to remove any exclusion or other limitation for any work being done within 50 feet of Licensor's property;
  - Waiver of subrogation in favor of and acceptable to Licensor;
  - Additional insured endorsement in favor of and acceptable to Licensor and Jones Lang LaSalle Brokerage, Inc. to include coverage for ongoing and completed operations;
  - Separation of insureds;
  - The policy shall be primary and non-contributing with respect to any insurance carried by Licensor.
- c. The parties agree that the workers' compensation and employers' liability related exclusions in the CGL policy(s) are intended to apply to employees of the policyholder and will not apply to Licensor's employees.
- d. No other endorsements that limit coverage with respect to Licensee's obligations under this agreement may be included on the policy.

15.2 Business Automobile Insurance.

- a. The insurance will provide minimum coverage with a combined single limit of at least \$1,000,000 per accident, and include coverage for, but not limited to the following:
  - Bodily injury and property damage.
  - Any and all vehicles owned, used or hired.
- b. The policy will include the following endorsements or language, which will be indicated on or attached to the certificate of insurance:
  - Waiver of subrogation in favor of and acceptable to Licensor;
  - Additional insured endorsement in favor of and acceptable to Licensor;
  - Separation of insureds;
  - The policy shall be primary and non-contributing with respect to any insurance carried by Licensor.

15.3 Workers' Compensation and Employers' Liability Insurance.

- a. The policy will provide coverage of all employees performing any part of the installation or maintenance of the Pipeline including coverage for, but not limited to:
  - Licensee's statutory liability under the workers' compensation laws of the state(s) in which the work or services under this agreement are to be performed. The policy will cover all



of Licensee's employees, regardless of whether such coverage is optional under the law of that state(s).

- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

b. The policy will include contain the following endorsements or language, which shall be indicated on or attached to the certificate of insurance:

- Waiver of subrogation in favor of and acceptable to Licensor.

15.4 Railroad Protective Liability Insurance. The policy will name only Licensor as the Insured and will provide coverage of at least \$5,000,000 per occurrence and \$10,000,000 in the aggregate. The coverage obtained under this policy shall only be effective during the initial installation and/or construction of the Pipeline. **THE CONSTRUCTION OF THE PIPELINE SHALL BE COMPLETED WITHIN ONE (1) YEAR OF THE EFFECTIVE DATE.** If further maintenance of the Pipeline is needed at a later date, an additional Railroad Protective Liability Insurance Policy shall be required. The policy will be issued on a standard ISO form CG 00 35 12 04 and include the following:

- Endorsed to include the Pollution Exclusion Amendment.
- Endorsed to include the Limited Seepage and Pollution Endorsement.
- Endorsed to remove any exclusion for punitive damages.
- Endorsed to include Evacuation Expense Coverage Endorsement.
- No other endorsements restricting coverage may be added.
- The original policy must be provided to Licensor and Licensee shall not perform any work or services of any kind under this agreement until Licensor has reviewed and approved the policy.
- The definition of "Physical Damage to Property" will be endorsed to read: "means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured's care, custody and control (including, but not limited to rolling stock and their contents, mechanical construction equipment or motive power equipment, railroad tracks, roadbeds, catenaries, signals, tunnels, bridges and buildings) arising out of the acts or omissions of the contractor named on the Declarations."

In lieu of providing a Railroad Protective Liability Policy, for a period of one (1) year from the Effective Date, Licensee may participate in Licensor's Blanket Railroad Protective Liability Insurance Policy available to Licensee or its contractor. The limits of coverage are the same as above. The cost is \$1,266.00.

- Licensee may **elect** to participate in Licensor's Blanket Policy;
- Licensee **declines** to participate in Licensor's Blanket Policy.

15.5 Intentionally deleted.

15.6 Other Requirements:

15.6.1 Where allowable by law, no exclusion for punitive damages may be included in any policy.

15.6.2 Licensee agrees to waive its right of recovery against Licensor for all claims and suits against Licensor. In addition, Licensee's insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against Licensor for all claims and suits. Licensee further waives its right of recovery, and its insurers also waive their right of subrogation against Licensor for loss of Licensee's owned or leased property or property under Licensee's care, custody, or control.

15.6.3 Allocated Loss Expense, including but not limited to defense costs and expenses, will be in addition to all policy limits for coverage under the insurance requirements.

- 15.6.4 Licensee is not allowed to self-insure without the prior written consent of Licensor. If Licensor allows Licensee to self-insure, Licensee shall directly cover any self-insured retention or other financial responsibility for claims in lieu of insurance. Any and all Licensor liabilities that would otherwise be covered by Licensee's insurance in accordance with the provisions of this agreement, will be covered as if Licensee elected not to include a self-insured retention or other financial responsibility for claims.
- 15.6.5 Prior to entering the Premises or commencing any work related to the installation or subsequent maintenance of the Pipeline, Licensee shall furnish to Licensor an acceptable certificate(s) of insurance from an authorized representative evidencing the required coverage(s), endorsements, and amendments.
- 15.6.6 Licensee shall notify BNSF in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration of any insurance requirement.
- 15.6.7 Any insurance policy shall be written by a reputable insurance company acceptable to Licensor or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.
- 15.6.8 If the coverage provided by any of the insurance policies required by this agreement is purchased on a "claims made" basis, Licensee hereby agrees to maintain coverage in force for a minimum of three years after expiration, cancellation or termination of this agreement.
- 15.6.9 Licensee agrees to provide evidence to Licensor that it has the required coverage in place at least annually or in the event of a renewal or material change of coverage
- 15.6.10 Licensee represents that this License has been thoroughly reviewed by Licensee's insurance agent(s)/broker(s), and that Licensee has instructed them to procure the insurance coverage required by this License.
- 15.6.11 Not more frequently than once every five years, Licensor may, at its discretion, reasonably modify the insurance requirements to reflect the then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.
- 15.6.12 If Licensee will subcontract any portion of the operation, Licensee shall require that the subcontractor provide and maintain insurance coverage(s) as set forth herein, naming Licensor as an additional insured. In addition, Licensee shall require that the subcontractor shall release, defend and indemnify Licensee to the same extent and under the same terms and conditions as Licensee is required to release, defend and indemnify Licensor under this agreement.
- 15.6.13 Failure to provide evidence as required by this section shall entitle, but not require, Licensor to terminate this License immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Licensee's obligations hereunder.
- 15.6.14 The fact that Licensee obtains insurance (including, without limitation, self-insurance) shall not release or diminish Licensee's liabilities or obligations including, without limitation, the liabilities and obligations under the indemnity provisions of the License. Damages recoverable by Licensor shall not be limited by the amount of the required insurance coverage.
- 15.6.15 In the event of a claim or lawsuit involving BNSF arising out of this Agreement, Licensee will make the policy covering such claims or lawsuits available to BNSF.
- 15.6.16 If Licensee maintains broader coverage and/or higher limits than the minimum requirements in this Agreement, BNSF requires and shall be entitled to the broader

coverage and/or the higher limits. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to BNSF.

15.6.17 These insurance provisions are intended to be a separate and distinct obligation on the part of the Licensee. Therefore, these provisions shall be enforceable and Licensee shall be bound thereby regardless of whether or not indemnity provisions are determined to be enforceable in the jurisdiction in which the work or services are performed under this License.

15.6.18 For purposes of this **Section 15**, Licensor shall mean "Burlington Northern Santa Fe, LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

## **COMPLIANCE WITH LAWS, REGULATIONS, AND ENVIRONMENTAL MATTERS**

### 16. Compliance with Laws, Rules, and Regulations.

16.1 Licensee shall observe and comply with any and all applicable federal, state, local, and tribal laws, statutes, regulations, ordinances, orders, covenants, restrictions, or decisions of any court of competent jurisdiction ("**Legal Requirements**") relating to the construction, maintenance, and use of the Pipeline and the use of the Premises.

16.2 Prior to entering the Premises, Licensee shall and shall cause its contractor(s) to comply with all of Licensor's applicable safety rules and regulations. Licensee must ensure that each of its employees, contractors, agents or invitees entering upon the Premises completes the safety orientation program at the Website "www.BNSFcontractor.com" (the "**Safety Orientation**") within one year prior to entering upon the Premises. Additionally, Licensee must ensure that each and every employee of Licensee, its contractors, agents and invitees possess a card certifying completion of the Safety Orientation prior to entering upon the Premises. Licensee must renew (and ensure that its contractors, agents or invitees, as applicable, renew) the Safety Orientation annually.

16.3 Licensee shall obtain on or before the date it or its contractor enters the Premises, any and all additional rights-of way, easements, licenses and other agreements relating to the grant of rights and interests in and/or access to the Premises (collectively, the "**Rights**") and such other rights, licenses, permits, authorizations, and approvals (including without limitation, any necessary local, state, federal or tribal authorizations and environmental permits) that are necessary in order to permit Licensee to construct, maintain, own and operate the Pipeline and otherwise to perform its obligations hereunder in accordance with the terms and conditions hereof.

16.4 Licensee shall either require that the initial stated term of each such Rights be for a period that does not expire, in accordance with its ordinary terms, prior to the last day of the term of this License or, if the initial stated term of any such Right expires in accordance with its ordinary terms on a date earlier than the last day of the term of this License, Licensee shall, at its cost, exercise any renewal rights thereunder, or otherwise acquire such extensions, additions and/or replacements as may be necessary, in order to cause the stated term thereof to be continued until a date that is not earlier than the last day of the term of this License.

16.5 Upon the expiration or termination of any Right that is necessary in order for Licensee to own, operate or use the Pipeline in accordance with the terms and conditions of this License, this License thereby shall automatically expire upon such expiration or termination of the Right.

### 17. Environmental.

17.1 Licensee shall strictly comply with Environmental Laws (as defined below). Licensee shall not maintain a treatment, storage, transfer or disposal facility, or underground storage tank, as

defined by Environmental Laws on the Premises. Licensee shall not release or suffer the release of oil or Hazardous Materials (as defined below) on or about the Premises.

- 17.2 Except as specifically set forth in Section 4 of this License, Licensee covenants that it will not handle or transport Hazardous Materials through the Pipeline or on Licensor's property. Upon request by Licensor, Licensee agrees to furnish Licensor with proof, satisfactory to Licensor, that Licensee is in compliance with the provisions of this **Section 17.2**.
- 17.3 Licensee shall give Licensor immediate notice to Licensor's Resource Operations Center at (800) 832-5452 of any known (i) release of Hazardous Materials on, from, or affecting the Premises, (ii) violation of Environmental Laws, or (iii) inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Licensee's use of the Premises. Licensee shall use its best efforts to immediately respond to any release on, from, or affecting the Premises. Licensee also shall give Licensor prompt notice of all measures undertaken on behalf of Licensee to investigate, remediate, respond to or otherwise cure such release or violation.
- 17.4 If Licensor has notice from Licensee or otherwise of a release or violation of Environmental Laws arising in any way with respect to the Pipeline which occurred or may occur during the term of this License, Licensor may require Licensee, at Licensee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises or Licensor's right-of-way.
- 17.5 Licensee shall immediately report to Licensor's Resource Operations Center at (800) 832-5452 any conditions or activities upon the Premises known to Licensee which create a risk of harm to persons, property or the environment and shall take all reasonable actions necessary to prevent injury to persons, property, or the environment arising out of such conditions or activities; provided, however, that Licensee's reporting to Licensor shall not relieve Licensee of any obligation whatsoever imposed on it by this License. Licensee shall promptly respond to Licensor's request for information regarding said conditions or activities.
- 17.6 During the term of this License, Licensor may, at Licensor's option, require Licensee to conduct an environmental audit, including but not limited to sampling, of the Premises through an environmental consulting engineer acceptable to Licensor, at Licensee's sole cost and expense, to determine if any noncompliance or environmental damage to the Premises has occurred during occupancy thereof by Licensee. The audit shall be conducted to Licensor's satisfaction and a copy of the audit report shall promptly be provided to Licensor for its review. Licensee shall pay all expenses for any remedial or corrective action that may be required as a result of said audit to correct any noncompliance or environmental damage, and Licensee shall diligently pursue and complete all necessary work prior to termination of this License. Licensee's obligations under this Section 17.6 shall survive termination of this License.
- 17.7 Notwithstanding anything in this Section 17, the parties agree that Licensor has no duty or obligation to monitor Licensee's use of the Premises to determine Licensee's compliance with Environmental Laws, it being solely Licensee's responsibility to ensure that Licensee's use of the Premises is compliant. Neither the exercise nor the failure by Licensor to exercise any rights granted in this Section will alter the liability allocation provided by this License.
- 17.8 "**Environmental Law(s)**" shall mean any federal, state, local, or tribal law, statute, ordinance, code, rule, regulation, policy, common law, license, authorization, decision, order, or injunction which pertains to health, safety, any Hazardous Material, or the environment (including but not limited to ground, air, water, or noise pollution or contamination, and underground or above-ground tanks) and shall include, without limitation, CERCLA 42 U.S.C. §9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §5101 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq.; the Clean Air Act, 42 U.S.C. §7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. §2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. §300f et seq.; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. 11001 et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136 to 136y; the Oil Pollution Act, 33 U.S.C. 2701 et

seq.; and the Occupational Safety and Health Act, 29 U.S.C. 651 et seq.; all as have been amended from time to time, and any other federal, state, local, or tribal environmental requirements, together with all rules, regulations, orders, and decrees now or hereafter promulgated under any of the foregoing, as any of the foregoing now exist or may be changed or amended or come into effect in the future.

- 17.9 **"Hazardous Material(s)"** shall include but shall not be limited to any substance, material, or waste that is regulated by any Environmental Law or otherwise regulated by any federal, state, local, or tribal governmental authority because of toxic, flammable, explosive, corrosive, reactive, radioactive or other properties that may be hazardous to human health or the environment, including without limitation asbestos and asbestos-containing materials, radon, petroleum and petroleum products, urea formaldehyde foam insulation, methane, lead-based paint, polychlorinated biphenyl compounds, hydrocarbons or like substances and their additives or constituents, pesticides, agricultural chemicals, and any other special, toxic, or hazardous (i) substances, (ii) materials, or (iii) wastes of any kind, including without limitation those now or hereafter defined, determined, or identified as "hazardous chemicals", "hazardous substances," "hazardous materials," "toxic substances," or "hazardous wastes" in any Environmental Law.

### **DISCLAIMER OF WARRANTIES**

18. No Warranties.

18.1 **LICENSOR'S DUTIES AND WARRANTIES ARE LIMITED TO THOSE EXPRESSLY STATED IN THIS LICENSE AND SHALL NOT INCLUDE ANY IMPLIED DUTIES OR IMPLIED WARRANTIES, NOW OR IN THE FUTURE. NO REPRESENTATIONS OR WARRANTIES HAVE BEEN MADE BY LICENSOR OTHER THAN THOSE CONTAINED IN THIS LICENSE. LICENSEE HEREBY WAIVES ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PREMISES OR WHICH MAY EXIST BY OPERATION OF LAW OR IN EQUITY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, HABITABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

18.2 **LICENSOR MAKES NO WARRANTY, REPRESENTATION OR CONDITION OF ANY KIND, EXPRESS OR IMPLIED, CONCERNING (A) THE SCOPE OF THE LICENSE OR OTHER RIGHTS GRANTED HEREUNDER TO LICENSEE OR (B) WHETHER OR NOT LICENSEE'S CONSTRUCTION, MAINTENANCE, OWNERSHIP, USE OR OPERATION OF THE PIPELINE WILL VIOLATE OR INFRINGE UPON THE RIGHTS, INTERESTS AND ESTATES OF THIRD PARTIES, INCLUDING, WITHOUT LIMITATION, ANY LEASES, USE RIGHTS, EASEMENTS AND LIENS OF ANY THIRD PARTY.**

19. Disclaimer of Warranty for Quiet Enjoyment. **LICENSOR DOES NOT WARRANT ITS TITLE TO THE PREMISES NOR UNDERTAKE TO DEFEND LICENSEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE.**

20. Eviction at Risk of Licensee. In case of the eviction of Licensee by anyone owning, claiming title to, or claiming any interest in the Premises, or by the abandonment by Licensor of the affected rail corridor, Licensor shall not be liable (i) to refund Licensee any compensation paid hereunder, except for the pro-rata part of any recurring charge paid in advance, or (ii) for any damages or costs Licensee sustains in connection with the eviction.

### **LIENS AND TAXES**

21. Liens and Charges. Licensee shall promptly pay and discharge any and all liens arising out of any construction, alterations or repairs done, suffered or permitted to be done by Licensee on the Premises. Licensor is hereby authorized to post any notices or take any other action upon or with respect to the Premises that is or may be permitted by law to prevent the attachment of any such liens to the Premises; provided, however, that failure of Licensor to take any such action shall not relieve Licensee of any obligation or liability under this **Section 21** or any other Section of this License.

22. Taxes. Licensee shall pay when due any taxes, assessments or other charges (collectively, "**Taxes**") levied or assessed by any governmental or quasi-governmental body upon the Pipeline or any other improvements constructed or installed on the Premises by or for Licensee (collectively, the "**Improvements**") or any Taxes levied or assessed against Licensor or the Premises that are attributable to the Improvements.

### **DEFAULT, TERMINATION, AND SURRENDER**

23. Default and Termination. In addition to and not in limitation of Licensor's right to terminate for failure to provide evidence of insurance as required pursuant to the terms of **Section 15**, the following events are also deemed to be events of default pursuant to which Licensor has the right to terminate as set forth below:
- 23.1 If default shall be made in any of Licensee's covenants, agreements, or obligations contained in this License and Licensee fails to cure said default within thirty (30) days after written notice is provided to Licensee by Licensor, or in case of any assignment or transfer of this License in violation of **Section 26** below, Licensor may, at its option, terminate this License by serving five (5) days' notice in writing upon Licensee. Notwithstanding the foregoing, Licensor shall have the right to terminate this License immediately if Licensee fails to provide evidence of insurance as required in **Section 15**.
- 23.2 Should Licensee not comply fully with the obligations of **Section 17** regarding the handling or transporting of Hazardous Materials, notwithstanding anything contained in any other provision of this License, Licensor may, at its option, terminate this License by serving five (5) days' notice in writing upon Licensee.
- 23.3 Any waiver by Licensor of any default or defaults shall not constitute a waiver of the right to terminate this License for any subsequent default or defaults, nor shall any such waiver in any way affect Licensor's ability to enforce any Section of this License. The remedies set forth in this **Section 23** shall be in addition to, and not in limitation of, any other remedies that Licensor may have at law or in equity.
- 23.4 In addition to and not in limitation of Licensor's rights to terminate this License for failure to provide evidence of insurance or occurrence of defaults as described above, this License may be terminated by either party, at any time, by serving thirty (30) days' written notice of termination upon the other party. Such termination shall not release either party hereto from any liability or obligation under the License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or thereafter in case by the terms of the License it is provided that anything shall or may be done after termination hereof.
24. Surrender of the Premises.
- 24.1 On or before expiration or termination of this License for any reason, Licensee shall, at its sole cost and expense:
- 24.1.1 if so directed by Licensor in writing, remove the Improvements, the Pipeline and all appurtenances thereto, or, at the sole discretion of Licensor, fill and cap or otherwise appropriately decommission the Pipeline with a method satisfactory to Licensor;
- 24.1.2 report and restore any damage to the Premises or Licensor's other property arising from, growing out of, or connected with Licensee's use of the Premises;
- 24.1.3 remedy any unsafe conditions on the Premises created or aggravated by Licensee; and
- 24.1.4 leave the Premises in substantially the condition which existed as of the Effective Date, or as otherwise agreed to by Licensor.

- 24.2 Upon any expiration or termination of this License, if Licensee fails to surrender the Premises to Licensors or if Licensee fails to complete its obligations under **Section 24.1** above (the "**Restoration Obligations**"), Licensee shall have a limited license to enter upon the Premises solely to the extent necessary for Licensee to complete the Restoration Obligations, and all liabilities and obligations of Licensee hereunder shall continue in effect until the Premises are surrendered and the Restoration Obligations are completed. Neither termination nor expiration shall release Licensee from any liability or obligation under this License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination, or, if later, the date when Licensee surrenders the Premises and all of the Restoration Obligations are completed.
- 24.3 If Licensee fails to complete the Restoration Obligations within thirty (30) days after the date of such termination of its tenancy, then Licensors may, at its election, either: (i) remove the Pipeline and the other Improvements or otherwise restore the Premises, and in such event Licensee shall, within thirty (30) days after receipt of bill therefor, reimburse Licensors for cost incurred, (ii) upon written notice to Licensee, take and hold the Pipeline and the other Improvements and personal property as its sole property, without payment or obligation to Licensee therefor, or (iii) specifically enforce Licensee's obligation to restore and/or pursue any remedy at law or in equity against Licensee for failure to so restore. Further, if Licensors has consented to the Pipeline and the other Improvements remaining on the Premises following termination, Licensee shall, upon request by Licensors, provide a bill of sale in a form acceptable to Licensors conveying the Pipeline and the other Improvements to Licensors for no additional consideration.

### **MISCELLANEOUS**

25. Successors and Assigns. All provisions contained in this License shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and assigns of Licensors and Licensee to the same extent as if each such successor and assign was named a party to this License.
26. Assignment.
- 26.1 Licensee may not sell, assign, transfer, or hypothecate this License or any right, obligation, or interest herein (either voluntarily or by operation of law, merger, or otherwise) without the prior written consent of Licensors, which consent may not be unreasonably withheld or delayed by Licensors. Any attempted assignment by Licensee in violation of this **Section 26** shall be a breach of this License and, in addition, shall be voidable by Licensors in its sole and absolute discretion.
- 26.2 For purposes of this **Section 26**, the word "assign" shall include without limitation (a) any sale of the equity interests of Licensee following which the equity interest holders of Licensee immediately prior to such sale own, directly or indirectly, less than 50% of the combined voting power of the outstanding voting equity interests of Licensee, (b) any sale of all or substantially all of the assets of (i) Licensee and (ii) to the extent such entities exist, Licensee's parent and subsidiaries, taken as a whole, or (c) any reorganization, recapitalization, merger or consolidation involving Licensee. Notwithstanding the foregoing, any reorganization, recapitalization, merger or consolidation following which the equity interest holders of Licensee immediately prior to such reorganization, recapitalization, merger or consolidation own, directly or indirectly, at least 50% of the combined voting power of the outstanding voting equity interests of Licensee or any successor thereto or the entity resulting from such reorganization, recapitalization, merger or consolidation shall not be deemed an assignment. THIS LICENSE SHALL NOT RUN WITH THE LAND WITHOUT THE EXPRESS WRITTEN CONSENT OF LICENSORS, SUCH CONSENT TO BE IN LICENSORS'S SOLE DISCRETION.
- 26.3 Notwithstanding the provisions of **Section 26.1** above or anything contained in this License to the contrary, if Licensee sells, assigns, transfers, or hypothecates this License or any interest herein in contravention of the provisions of this License (a "**Purported Assignment**") to another party (a "**Purported Transferee**"), the Purported Transferee's enjoyment of the rights and privileges granted under this License shall be deemed to be the Purported Transferee's agreement to be bound by all of the terms and provisions of this License, including but not limited to the obligation

to comply with the provisions of **Section 15** above concerning insurance requirements. In addition to and not in limitation of the foregoing, Licensee, for itself, its successors and assigns, shall indemnify, defend and hold harmless Licensor for all Liabilities of any nature, kind or description of any person or entity directly or indirectly arising out of, resulting from or related to (in whole or in part) a Purported Assignment. The provisions of this **Section 26.3** shall survive the expiration or earlier termination of this License.

26.4 Licensor shall have the right to transfer and assign, in whole or in part, all of its rights and obligations under this License, and upon any such transfer or assignment, Licensor shall be released from any further obligations hereunder, and Licensee agrees to look solely to the successor in interest of Licensor for the performance of such obligations.

27. Notices. Any notice, invoice, or other writing required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address for such party specified below, or to such other address as the party to be notified may designate by giving the other party no less than thirty (30) days' advance written notice of such change in address.

If to Licensor: Jones Lang LaSalle Brokerage, Inc.  
2650 Lou Menk Drive, MOB1  
Fort Worth, TX 76131  
Attn: Permits/Licenses

with a copy to: BNSF Railway Company  
2650 Lou Menk Dr.  
Fort Worth, TX 76131  
Attn: Senior Manager Real Estate

If to Licensee: City of Montgomery  
101 Old Plantersville Road  
Montgomery, TX 77316

28. Survival. Neither termination nor expiration will release either party from any liability or obligation under this License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration, or, if later, the date when the Pipeline and the other Improvements are removed and the Restoration Obligations are completed in accordance with the terms hereof.

29. Recordation. It is understood and agreed that this License shall not be placed or allowed to be placed on public record.

30. Applicable Law. All questions concerning the interpretation or application of provisions of this License shall be decided according to the substantive laws of the State of Texas without regard to conflicts of law provisions.

31. Severability. To the maximum extent possible, each provision of this License shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this License shall be prohibited by, or held to be invalid under, applicable law, such provision shall be ineffective solely to the extent of such prohibition or invalidity, and this shall not invalidate the remainder of such provision or any other provision of this License.

32. Integration. This License is the full and complete agreement between Licensor and Licensee with respect to all matters relating to Licensee's use of the Premises, and supersedes any and all other agreements between the parties hereto relating to Licensee's use of the Premises as described herein. However, nothing herein is intended to terminate any surviving obligation of Licensee or Licensee's obligation to defend and hold Licensor harmless in any prior written agreement between the parties.



33. Joint and Several Liability. If Licensee consists of two or more parties, all the covenants and agreements of Licensee herein contained shall be the joint and several covenants and agreements of such parties.
34. Waiver. The waiver by Licensor of the breach of any provision herein by Licensee shall in no way impair the right of Licensor to enforce that provision for any subsequent breach thereof.
35. Interpretation.
- 35.1 This License shall be interpreted in a neutral manner, and not more strongly for or against any party based upon the source of the draftsmanship; both parties hereby agree that this License shall not be subject to the principle that a contract would be construed against the party which drafted the same. Article titles, headings to sections and paragraphs and the table of contents (if any) are inserted for convenience of reference only and are not intended to be a part or to affect the meaning or interpretation hereof. The exhibit or exhibits referred to herein shall be construed with and as an integral part of this License to the same extent as if they were set forth verbatim herein.
- 35.2 As used herein, "include", "includes" and "including" are deemed to be followed by "without limitation" whether or not they are in fact followed by such words or words of like import; "writing", "written" and comparable terms refer to printing, typing, lithography and other means of reproducing words in a visible form; references to any person are also to that person's successors and permitted assigns; "hereof", "herein", "hereunder" and comparable terms refer to the entirety hereof and not to any particular article, section, or other subdivision hereof or attachment hereto; references to any gender include references to the masculine or feminine as the context requires; references to the plural include the singular and vice versa; and references to this License or other documents are as amended, modified or supplemented from time to time.
36. Counterparts. This License may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original but which together shall constitute one and the same instrument, and the signature pages from any counterpart may be appended to any other counterpart to assemble fully executed documents, and counterparts of this License may also be exchanged electronically and any electronic version of any party's signature shall be deemed to be an original signature for all purposes.
37. Licensor's Representative. Jones Lang LaSalle Brokerage, Inc. is acting as representative for BNSF Railway Company.

**END OF PAGE – SIGNATURE PAGE FOLLOWS**

This License has been duly executed by the parties hereto as of the Effective Date.

**LICENSOR:**

**BNSF Railway Company**, a Delaware corporation

By: Jones Lang LaSalle Brokerage, Inc.  
2650 Lou Menk Drive, MOB1  
Fort Worth, TX 76131

By: \_\_\_\_\_  
Shane Krueger  
Vice President Permits and Special Projects

**LICENSEE:**

**City of Montgomery**, a Texas municipality

By: \_\_\_\_\_

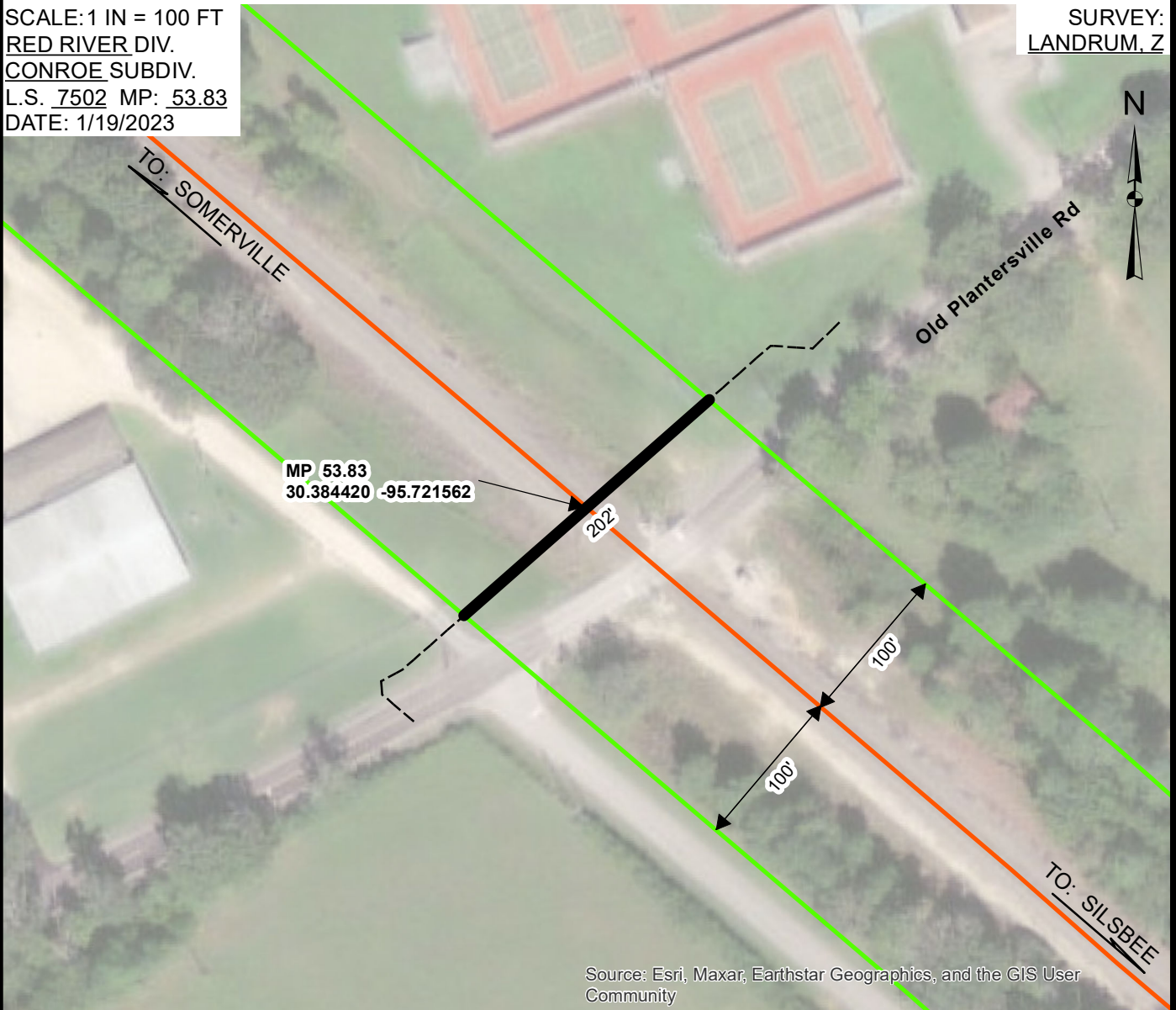
Title: \_\_\_\_\_

# EXHIBIT "A"

SCALE: 1 IN = 100 FT  
 RED RIVER DIV.  
 CONROE SUBDIV.  
 L.S. 7502 MP: 53.83  
 DATE: 1/19/2023

SURVEY:  
 LANDRUM, Z

MAP REF. 1220



DESCRIPTION OF PIPELINE  
 PIPELINE SHOWN BOLD

	CARRIER PIPE	CASING PIPE		CARRIER PIPE	CASING PIPE
SIZE:	12"	20"	LENGTH ON R/W:	202'	202'
CONTENTS:	POTABLE WATER		WORKING PRESSURE:	60 PSI	
PIPE MATERIAL:	PVC	STEEL	BURY: BASE/RAIL TO TOP OF CASING		12'
SPECIFICATIONS / GRADE:	AWWA C 900 DR-18	ASTM A 36	BURY: NATURAL GROUND		10'
WALL THICKNESS:	0.733"	0.281"	BURY: ROADWAY DITCHES		10'
COATING:	-	COAL TAR ENAMEL	CATHODIC PROTECTION		NO

VENTS: NUMBER \_ \_ SIZE \_ \_ HEIGHT OF VENT ABOVE GROUND \_ \_  
 NOTE: CASING TO BE JACKED OR DRY BORED ONLY

MONTGOMERY  
 COUNTY OF MONTGOMERY

STATE OF TX

JNC

## PIPELINE LICENSE

THIS PIPELINE LICENSE ("**License**") is made to be effective \_\_\_\_\_, 2022 (the "**Effective Date**") by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("**Licensor**") and **CITY OF MONTGOMERY**, a Texas municipality ("**Licensee**").

In consideration of the mutual covenants contained herein, the parties agree to the following:

### GENERAL

1. Grant of License. Licensor hereby grants Licensee a non-exclusive license, subject to all rights, interests, and estates of third parties, including, without limitation, any leases, use rights, easements, liens, or other encumbrances, and upon the terms and conditions set forth below, to construct and maintain, in strict accordance with the drawings and specifications approved by Licensor as part of Licensee's application process (the "**Drawings and Specifications**"), one (1) pipeline, 6 inches in diameter inside a 12 inch Steel casing (collectively, the "**Pipeline**"), across or along Licensor's rail corridor at or near the station of Montgomery, County of Montgomery, State of Texas, Line Segment 7502, Mile Post 54.87 as shown on the attached Drawing No. 86585, dated January 6, 2023, attached hereto as **Exhibit "A"** and incorporated herein by reference (the "**Premises**").
2. Term. This License shall commence on the Effective Date and shall continue for a period of twenty-five (25) years, subject to prior termination as hereinafter described.
3. Existing Improvements. Licensee shall not disturb any improvements of Licensor or Licensor's existing lessees, licensees, easement beneficiaries or lien holders, if any, or interfere with the use, repair, maintenance or replacement of such improvements.
4. Use of the Premises. Licensee shall use the Premises solely for construction, maintenance, and use of the Pipeline in accordance with the Drawings and Specifications. The Pipeline shall carry Sanitary Sewer, and Licensee shall not use the Pipeline to carry any other material or use the Premises for any other purpose. Licensee is expressly prohibited from using or allowing any telecommunication facilities or equipment within the Premises, or using or allowing the use of the Premises for any other purpose.
5. Alterations. Except as set forth in this License, Licensee may not make any alterations to the Premises or permanently affix anything to the Premises or any buildings or other structures adjacent to the Premises without Licensor's prior written consent.

### COMPENSATION

6. License Fee. Licensee shall pay Licensor, prior to the Effective Date, a one-time payment (in lieu of recurring periodic fixed license fees) in the amount the sum of Three thousand seven hundred and No/100 Dollars (\$3,700.00) as compensation for the use of the Premises.
7. Costs and Expenses.
  - 7.1 For the purpose of this License, "cost" or "costs" and "expense" or "expenses" includes, but is not limited to, actual labor and material costs including all assignable additives, and material and supply costs at current value where used.
  - 7.2 Licensee agrees to reimburse Licensor (pursuant to the terms of **Section 8** below) for all costs and expenses incurred by Licensor in connection with Licensee's use of the Premises or the presence, construction and maintenance of the Pipeline, including but not limited to the furnishing of Licensor's flaggers and any vehicle rental costs incurred, inspection coordination, safety, mobilization and/or other observation services described in this License (collectively, the "**Services**"). Licensee shall bear the cost of the Services, when deemed necessary by Licensor's representative. Flagging costs shall include, but not be limited to, the following: pay for at least an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays (as applicable); vacation allowance; paid holidays (as applicable); railway and

unemployment insurance; public liability and property damage insurance; health and welfare benefits; transportation; meals; lodging and supervision. Negotiations for railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase flagging rates. Flagging rates in effect at the time of performance by the flaggers will be used to calculate the flagging costs pursuant to this **Section 7**.

- 7.3 Licensor, at its sole discretion, may elect to designate a third party (the "**Scheduling Agent**"), to perform and/or arrange for the performance of the Services.
8. Payment Terms. All invoices are due thirty (30) days after the date of invoice. If Licensee fails to pay any monies due to Licensor within thirty (30) days after the invoice date, then Licensee shall pay interest on such unpaid sum from the due date until paid at an annual rate equal to the lesser of (i) the prime rate last published in *The Wall Street Journal* in the preceding December plus two and one-half percent (2-1/2%), or (ii) the maximum rate permitted by law.

### **LICENSOR'S RESERVED RIGHTS**

9. Reserved Rights of Use. Licensor excepts and reserves the right, to be exercised by Licensor and any other parties who may obtain written permission or authority from Licensor:
- 9.1 to maintain, use, operate, repair, replace, modify and relocate any utility, power or communication pipe/lines/cables and appurtenances (other than the Pipeline) and other facilities or structures of like character upon, over, under or across the Premises existing as of the Effective Date;
- 9.2 to construct, maintain, renew, use, operate, change, modify and relocate any tracks or additional facilities, structures and related appurtenances upon, over, under or across the Premises; or
- 9.3 to use the Premises in any manner as Licensor in its sole discretion deems appropriate, provided Licensor uses all commercially reasonable efforts to avoid material interference with the use of the Premises by Licensee for the purpose specified in **Section 4** above.
10. Right to Require Relocation. If at any time during the term of this License, Licensor desires the use of its rail corridor in such a manner as would, in Licensor's reasonable opinion, be interfered with by the Pipeline, Licensee shall, at its sole expense, within thirty (30) days after receiving written notice from Licensor to such effect, make such changes in the Pipeline as in the sole discretion of Licensor may be necessary to avoid interference with the proposed use of Licensor's rail corridor, including, without limitation, the relocation of the Pipeline, or the construction of a new pipeline to replace the Pipeline. Notwithstanding the foregoing, Licensee agrees to make all emergency changes and minor adjustments, as determined by Licensor in its sole discretion, to the Pipeline promptly upon Licensor's request.

### **LICENSEE'S OPERATIONS**

11. Construction and Maintenance of the Pipeline.
- 11.1 Licensee shall not enter the Premises or commence construction unless accompanied by Licensor's representative, the Scheduling Agent or its designee. Licensee shall notify Licensor's Roadmaster, Rainer Hoffman at [Rainer.Hoffman@bnsf.com](mailto:Rainer.Hoffman@bnsf.com), telephone 713-847-3580, at least ten (10) business days prior to installation of the Pipeline and prior to entering the Premises for any subsequent maintenance thereon. In the event of emergency, Licensee shall notify Licensor of Licensee's entry onto the Premises at the telephone number above as soon as practicable and shall promptly thereafter follow up with written notice of such entry.
- 11.2 Licensee's on-site supervisors shall retain/maintain a fully executed copy of this License at all times while on the Premises.
- 11.3 While on the Premises, Licensee shall use only public roadways to cross from one side of Licensor's tracks to the other.

- 11.4 Any contractors or subcontractors performing work on the Pipeline or entering the Premises on behalf of Licensee shall be deemed servants and agents of Licensee for purposes of this License.
- 11.5 Under no conditions shall Licensee be permitted to conduct any tests, investigations or any other activity using mechanized equipment and/or machinery, or place or store any mechanized equipment, tools or other materials, within twenty-five (25) feet of the centerline of any railroad track on the Premises unless Licensee has obtained prior written approval from Licensor. Licensee shall, at its sole cost and expense, perform all activities on and about the Premises, including without limitation all construction and maintenance of the Pipeline, in such a manner and of such materials as not at any time to endanger or interfere with (i) the existence or use of present or future tracks, roadbeds, or property of Licensor, (ii) the safe operation and activities of Licensor or existing third parties, or (iii) the rights or interests of third parties. If ordered to cease using the Premises at any time by Licensor's personnel due to any hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor has no duty or obligation to monitor Licensee's use of the Premises to determine the safe nature thereof, it being solely Licensee's responsibility to ensure that Licensee's use of the Premises is safe. Neither the exercise nor the failure by Licensor to exercise any rights granted in this Section will alter the liability allocation provided by this License.
- 11.6 Licensee shall, at its sole cost and expense, construct and maintain the Pipeline in such a manner and of such material that the Pipeline will not at any time endanger or interfere with (i) the existence or use of present or future tracks, roadbeds, or property of Licensor, (ii) the safe operation and activities of Licensor or existing third parties, or (iii) the rights or interests of third parties. The construction of the Pipeline shall be completed within one (1) year of the Effective Date, and any subsequent maintenance shall be completed within one (1) year of initiation. Within fifteen (15) days after completion of the construction of the Pipeline or the performance of any subsequent maintenance thereon, Licensee shall, at Licensee's own cost and expense, restore the Premises to substantially their state as of the Effective Date, unless otherwise approved in advance by Licensor in writing. On or before expiration or termination of this License for any reason, Licensee shall, at its sole cost and expense, surrender the Premises to Licensor pursuant to the terms and conditions set forth in **Section 24** hereof.
- 11.7 Licensor may direct one or more of its field engineers or inspectors to observe or inspect the construction and/or maintenance of the Pipeline at any time for compliance with the Drawings and Specifications and Legal Requirements (defined below). Licensee shall reimburse Licensor for the cost of such observation or inspection related services pursuant to **Section 8**. If ordered at any time to halt construction or maintenance of the Pipeline by Licensor's personnel due to non-compliance with the Drawings and Specifications or any other hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor has no duty or obligation to observe or inspect, or to halt work on, the Pipeline, it being solely Licensee's responsibility to ensure that the Pipeline is constructed and maintained in strict accordance with the Drawings and Specifications and in a safe and workmanlike manner in compliance with all terms hereof. Neither the exercise of, nor the failure by Licensor to exercise, any right granted by this Section will alter in any way the liability allocation provided by this License. If at any time Licensee shall, in the sole judgment of Licensor, fail to properly perform its obligations under this **Section 11**, Licensor may, at its option and at Licensee's sole expense, arrange for the performance of such work as it deems necessary for the safety of its operations and activities. Licensee shall promptly reimburse Licensor for all costs and expenses of such work, pursuant to the terms of **Section 8**. Licensor's failure to perform any obligations of Licensee shall not alter the liability allocation hereunder.
- 11.8 Cutting head must travel at 0.0% grade (or downward) beginning 25' (minimum) from centerline of track until it reaches a point 25' (minimum) from the centerline of track. Minimum pressure must be applied to pumping the slurry to the cutting head during drilling. This will deter the bentonite slurry used for lubrication from seeping up and fouling the track roadbed. A Flagman must be present during installation and will monitor the ballast and roadbed.

12. Boring and Excavation.

- 12.1 Prior to Licensee conducting any boring, excavation, or similar work on or about any portion of the Premises, Licensee shall contact the applicable State's call-before-you-dig utility location service to have 3<sup>rd</sup> parties mark the location of utilities. Licensee shall explore the proposed location for such work with hand tools to a depth of at least three (3) feet below the surface of the ground to determine whether pipelines or other structures exist below the surface, provided, however, that in lieu of the foregoing hand-tool exploration, Licensee shall have the right to use suitable detection equipment or other generally accepted industry practice (e.g., consulting with the United States Infrastructure Corporation) to determine the existence or location of pipelines and other subsurface structures prior to drilling or excavating with mechanized equipment. Licensee shall request information from Licensor concerning the existence and approximate location of Licensor's underground lines, utilities, and pipelines at or near the vicinity of the proposed Pipeline by contacting Licensor's Telecommunications Helpdesk, currently at 1-800-533-2891 (option 1, then option 7), at least ten (10) business days prior to installation of the Pipeline. Upon receiving Licensee's timely request, Licensor will provide Licensee with the information Licensor has in its possession regarding any existing underground lines, utilities, and pipelines at or near the vicinity of the proposed Pipeline and, if applicable, identify the location of such lines on the Premises pursuant to Licensor's standard procedures. Licensor does not warrant the accuracy or completeness of information relating to subsurface conditions of the Premises and Licensee's operations will be subject at all times to the liability provisions herein.
- 12.2 For all bores greater than 26-inch diameter and at a depth less than 10.0 feet below bottom of rail, a soil investigation must be performed by Licensee and reviewed by Licensor prior to construction. This study is to determine if granular material is present, and to prevent subsidence during the installation process. If the investigation determines in Licensor's reasonable opinion that granular material is present, Licensor may select a new location for Licensee's use, or may require Licensee to furnish for Licensor's review and approval, in Licensor's sole discretion, a remedial plan to deal with the granular material. Once Licensor has approved any such remedial plan in writing, Licensee shall, at Licensee's sole cost and expense, carry out the approved plan in accordance with all terms thereof and hereof.
- 12.3 No wells shall be installed without prior written approval from Licensor.
- 12.4 Any open hole, boring, or well constructed on the Premises by Licensee shall be safely covered and secured at all times when Licensee is not working in the actual vicinity thereof. Following completion of that portion of the work, all holes or borings constructed on the Premises by Licensee shall be:
- 12.4.1 filled in to surrounding ground level with compacted bentonite grout; or
- 12.4.2 otherwise secured or retired in accordance with any applicable Legal Requirement. No excavated materials may remain on Licensor's property for more than ten (10) days, but must be properly disposed of by Licensee in accordance with applicable Legal Requirements.

**LIABILITY AND INSURANCE**

13. Liability and Indemnification.

- 13.1 For purposes of this License: (a) "**Indemnitees**" means Licensor and Licensor's affiliated companies, partners, successors, assigns, legal representatives, officers, directors, shareholders, employees, and agents; (b) "**Liabilities**" means all claims, liabilities, fines, penalties, costs, damages, losses, liens, causes of action, suits, demands, judgments, and expenses (including, without limitation, court costs, reasonable attorneys' fees, costs of investigation, removal and remediation, and governmental oversight costs) environmental or otherwise; and (c) "**Licensee Parties**" means Licensee and Licensee's officers, agents, invitees,

licensees, employees, or contractors, or any party directly or indirectly employed by any of them, or any party they control or exercise control over.

- 13.2 **TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS INDEMNITEES FOR, FROM, AND AGAINST ANY AND ALL LIABILITIES OF ANY NATURE, KIND, OR DESCRIPTION DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM, OR RELATED TO (IN WHOLE OR IN PART):**
- 13.2.1 **THIS LICENSE, INCLUDING, WITHOUT LIMITATION, ITS ENVIRONMENTAL PROVISIONS,**
- 13.2.2 **ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LICENSE,**
- 13.2.3 **LICENSEE'S OCCUPATION AND USE OF THE PREMISES,**
- 13.2.4 **THE ENVIRONMENTAL CONDITION AND STATUS OF THE PREMISES CAUSED BY OR CONTRIBUTED TO BY LICENSEE, OR**
- 13.2.5 **ANY ACT OR OMISSION OF ANY LICENSEE PARTY.**
- 13.3 **TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE NOW AND FOREVER WAIVES AND WILL INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM ANY AND ALL CLAIMS THAT BY VIRTUE OF ENTERING INTO THIS LICENSE, LICENSOR IS A GENERATOR, OWNER, OPERATOR, ARRANGER, OR TRANSPORTER FOR THE PURPOSES OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT, AS AMENDED ("CERCLA") OR OTHER ENVIRONMENTAL LAWS (DEFINED BELOW). NOTHING IN THIS LICENSE IS MEANT BY EITHER PARTY TO CONSTITUTE A WAIVER OF ANY INDEMNITEE'S COMMON CARRIER DEFENSES AND THIS LICENSE SHOULD NOT BE SO CONSTRUED. IF ANY AGENCY OR COURT CONSTRUES THIS LICENSE TO BE A WAIVER OF ANY INDEMNITEE'S COMMON CARRIER DEFENSES, LICENSEE AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND INDEMNITEES FOR ANY LIABILITIES RELATED TO THAT CONSTRUCTION OF THIS LICENSE. IN NO EVENT AS BETWEEN LICENSOR AND LICENSEE AS TO USE OF THE PREMISES AS CONTEMPLATED BY THIS LICENSE SHALL LICENSOR BE RESPONSIBLE TO LICENSEE FOR THE ENVIRONMENTAL CONDITION OF THE PREMISES.**
- 13.4 **IF ANY EMPLOYEE OF ANY LICENSEE PARTY ASSERTS THAT HE OR SHE IS AN EMPLOYEE OF ANY INDEMNITEE, TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM AND AGAINST ANY LIABILITIES ARISING OUT OF OR RELATED TO (IN WHOLE OR IN PART) ANY SUCH ASSERTION INCLUDING, BUT NOT LIMITED TO, ASSERTIONS OF EMPLOYMENT BY AN INDEMNITEE RELATED TO THE FOLLOWING OR ANY PROCEEDINGS THEREUNDER: THE FEDERAL EMPLOYERS' LIABILITY ACT, THE SAFETY APPLIANCE ACT, THE LOCOMOTIVE INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.**
- 13.5 **THE FOREGOING OBLIGATIONS OF LICENSEE SHALL NOT APPLY TO THE EXTENT LIABILITIES ARE PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY INDEMNITEE, BUT SHALL APPLY TO ALL OTHER LIABILITIES, INCLUDING THOSE ARISING FROM OR ATTRIBUTED TO ANY OTHER ALLEGED OR ACTUAL NEGLIGENCE, INTENTIONAL ACTS, OR STRICT LIABILITY OF ANY INDEMNITEE.**
- 13.6 Upon written notice from Licensor, Licensee agrees to assume the defense of any lawsuit or other proceeding brought against any Indemnitee by any entity, relating to any matter covered by this License for which Licensee has an obligation to assume liability for and/or save and hold harmless



any Indemnitee. Licensee shall pay all costs and expenses incident to such defense, including, but not limited to, reasonable attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments.

14. Personal Property Risk of Loss. **ALL PERSONAL PROPERTY, INCLUDING, BUT NOT LIMITED TO, FIXTURES, EQUIPMENT, OR RELATED MATERIALS UPON THE PREMISES WILL BE AT THE RISK OF LICENSEE ONLY, AND NO INDEMNITEE WILL BE LIABLE FOR ANY DAMAGE THERETO OR THEFT THEREOF, WHETHER OR NOT DUE IN WHOLE OR IN PART TO THE NEGLIGENCE OF ANY INDEMNITEE.**

15. Insurance. Licensee shall, at its sole cost and expense, procure and maintain during the term of this License the following insurance coverage:

15.1 Commercial General Liability "CGL" Insurance.

- a. The policy will provide a minimum of \$5,000,000 per occurrence and an aggregate limit of at least \$10,000,000 but in no event will the coverage be in an amount less than the amount otherwise carried by Licensee. Coverage must be purchased on a post 2004 ISO occurrence form or equivalent and include coverage for, but not limited to, the following:
  - Bodily Injury and Property Damage
  - Personal Injury and Advertising Injury
  - Fire legal liability
  - Products and completed operations
  - Contractual Liability for an "Insured Contract" consistent with the definition under the standard ISO general liability policy form.
- b. This policy will include the following endorsements or language, which shall be indicated on or attached to the certificate of insurance:
  - The definition of "Insured Contract" will be amended to remove any exclusion or other limitation for any work being done within 50 feet of Licensor's property;
  - Waiver of subrogation in favor of and acceptable to Licensor;
  - Additional insured endorsement in favor of and acceptable to Licensor and Jones Lang LaSalle Brokerage, Inc. to include coverage for ongoing and completed operations;
  - Separation of insureds;
  - The policy shall be primary and non-contributing with respect to any insurance carried by Licensor.
- c. The parties agree that the workers' compensation and employers' liability related exclusions in the CGL policy(s) are intended to apply to employees of the policyholder and will not apply to Licensor's employees.
- d. No other endorsements that limit coverage with respect to Licensee's obligations under this agreement may be included on the policy.

15.2 Business Automobile Insurance.

- a. The insurance will provide minimum coverage with a combined single limit of at least \$1,000,000 per accident, and include coverage for, but not limited to the following:
  - Bodily injury and property damage.
  - Any and all vehicles owned, used or hired.
- b. The policy will include the following endorsements or language, which will be indicated on or attached to the certificate of insurance:
  - Waiver of subrogation in favor of and acceptable to Licensor;
  - Additional insured endorsement in favor of and acceptable to Licensor;
  - Separation of insureds;
  - The policy shall be primary and non-contributing with respect to any insurance carried by Licensor.

15.3 Workers' Compensation and Employers' Liability Insurance.

- a. The policy will provide coverage of all employees performing any part of the installation or maintenance of the Pipeline including coverage for, but not limited to:
  - Licensee's statutory liability under the workers' compensation laws of the state(s) in which the work or services under this agreement are to be performed. The policy will cover all of Licensee's employees, regardless of whether such coverage is optional under the law of that state(s).
  - Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.
- b. The policy will include contain the following endorsements or language, which shall be indicated on or attached to the certificate of insurance:
  - Waiver of subrogation in favor of and acceptable to Licensor.

15.4 Railroad Protective Liability Insurance. The policy will name only Licensor as the Insured and will provide coverage of at least \$5,000,000 per occurrence and \$10,000,000 in the aggregate. The coverage obtained under this policy shall only be effective during the initial installation and/or construction of the Pipeline. **THE CONSTRUCTION OF THE PIPELINE SHALL BE COMPLETED WITHIN ONE (1) YEAR OF THE EFFECTIVE DATE.** If further maintenance of the Pipeline is needed at a later date, an additional Railroad Protective Liability Insurance Policy shall be required. The policy will be issued on a standard ISO form CG 00 35 12 04 and include the following:

- Endorsed to include the Pollution Exclusion Amendment.
- Endorsed to include the Limited Seepage and Pollution Endorsement.
- Endorsed to remove any exclusion for punitive damages.
- Endorsed to include Evacuation Expense Coverage Endorsement.
- No other endorsements restricting coverage may be added.
- The original policy must be provided to Licensor and Licensee shall not perform any work or services of any kind under this agreement until Licensor has reviewed and approved the policy.
- The definition of "Physical Damage to Property" will be endorsed to read: "means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured's care, custody and control (including, but not limited to rolling stock and their contents, mechanical construction equipment or motive power equipment, railroad tracks, roadbeds, catenaries, signals, tunnels, bridges and buildings) arising out of the acts or omissions of the contractor named on the Declarations."

In lieu of providing a Railroad Protective Liability Policy, for a period of one (1) year from the Effective Date, Licensee may participate in Licensor's Blanket Railroad Protective Liability Insurance Policy available to Licensee or its contractor. The limits of coverage are the same as above. The cost is \$1,266.00.

- Licensee may **elect** to participate in Licensor's Blanket Policy;
- Licensee **declines** to participate in Licensor's Blanket Policy.

15.5 Intentionally deleted.

15.6 Other Requirements:

- 15.6.1 Where allowable by law, no exclusion for punitive damages may be included in any policy.
- 15.6.2 Licensee agrees to waive its right of recovery against Licensor for all claims and suits against Licensor. In addition, Licensee's insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against Licensor for all claims and suits. Licensee further waives its right of recovery, and its insurers also waive their right of

subrogation against Licensor for loss of Licensee's owned or leased property or property under Licensee's care, custody, or control.

- 15.6.3 Allocated Loss Expense, including but not limited to defense costs and expenses, will be in addition to all policy limits for coverage under the insurance requirements.
- 15.6.4 Licensee is not allowed to self-insure without the prior written consent of Licensor. If Licensor allows Licensee to self-insure, Licensee shall directly cover any self-insured retention or other financial responsibility for claims in lieu of insurance. Any and all Licensor liabilities that would otherwise be covered by Licensee's insurance in accordance with the provisions of this agreement, will be covered as if Licensee elected not to include a self-insured retention or other financial responsibility for claims.
- 15.6.5 Prior to entering the Premises or commencing any work related to the installation or subsequent maintenance of the Pipeline, Licensee shall furnish to Licensor an acceptable certificate(s) of insurance from an authorized representative evidencing the required coverage(s), endorsements, and amendments.
- 15.6.6 Licensee shall notify BNSF in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration of any insurance requirement.
- 15.6.7 Any insurance policy shall be written by a reputable insurance company acceptable to Licensor or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.
- 15.6.8 If the coverage provided by any of the insurance policies required by this agreement is purchased on a "claims made" basis, Licensee hereby agrees to maintain coverage in force for a minimum of three years after expiration, cancellation or termination of this agreement.
- 15.6.9 Licensee agrees to provide evidence to Licensor that it has the required coverage in place at least annually or in the event of a renewal or material change of coverage
- 15.6.10 Licensee represents that this License has been thoroughly reviewed by Licensee's insurance agent(s)/broker(s), and that Licensee has instructed them to procure the insurance coverage required by this License.
- 15.6.11 Not more frequently than once every five years, Licensor may, at its discretion, reasonably modify the insurance requirements to reflect the then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.
- 15.6.12 If Licensee will subcontract any portion of the operation, Licensee shall require that the subcontractor provide and maintain insurance coverage(s) as set forth herein, naming Licensor as an additional insured. In addition, Licensee shall require that the subcontractor shall release, defend and indemnify Licensee to the same extent and under the same terms and conditions as Licensee is required to release, defend and indemnify Licensor under this agreement.
- 15.6.13 Failure to provide evidence as required by this section shall entitle, but not require, Licensor to terminate this License immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Licensee's obligations hereunder.
- 15.6.14 The fact that Licensee obtains insurance (including, without limitation, self-insurance) shall not release or diminish Licensee's liabilities or obligations including, without limitation, the liabilities and obligations under the indemnity provisions of the License. Damages recoverable by Licensor shall not be limited by the amount of the required insurance coverage.

- 15.6.15 In the event of a claim or lawsuit involving BNSF arising out of this Agreement, Licensee will make the policy covering such claims or lawsuits available to BNSF.
- 15.6.16 If Licensee maintains broader coverage and/or higher limits than the minimum requirements in this Agreement, BNSF requires and shall be entitled to the broader coverage and/or the higher limits. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to BNSF.
- 15.6.17 These insurance provisions are intended to be a separate and distinct obligation on the part of the Licensee. Therefore, these provisions shall be enforceable and Licensee shall be bound thereby regardless of whether or not indemnity provisions are determined to be enforceable in the jurisdiction in which the work or services are performed under this License.
- 15.6.18 For purposes of this **Section 15**, Licensor shall mean "Burlington Northern Santa Fe, LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

## **COMPLIANCE WITH LAWS, REGULATIONS, AND ENVIRONMENTAL MATTERS**

16. Compliance with Laws, Rules, and Regulations.
- 16.1 Licensee shall observe and comply with any and all applicable federal, state, local, and tribal laws, statutes, regulations, ordinances, orders, covenants, restrictions, or decisions of any court of competent jurisdiction ("**Legal Requirements**") relating to the construction, maintenance, and use of the Pipeline and the use of the Premises.
- 16.2 Prior to entering the Premises, Licensee shall and shall cause its contractor(s) to comply with all of Licensor's applicable safety rules and regulations. Licensee must ensure that each of its employees, contractors, agents or invitees entering upon the Premises completes the safety orientation program at the Website "www.BNSFcontractor.com" (the "**Safety Orientation**") within one year prior to entering upon the Premises. Additionally, Licensee must ensure that each and every employee of Licensee, its contractors, agents and invitees possess a card certifying completion of the Safety Orientation prior to entering upon the Premises. Licensee must renew (and ensure that its contractors, agents or invitees, as applicable, renew) the Safety Orientation annually.
- 16.3 Licensee shall obtain on or before the date it or its contractor enters the Premises, any and all additional rights-of way, easements, licenses and other agreements relating to the grant of rights and interests in and/or access to the Premises (collectively, the "**Rights**") and such other rights, licenses, permits, authorizations, and approvals (including without limitation, any necessary local, state, federal or tribal authorizations and environmental permits) that are necessary in order to permit Licensee to construct, maintain, own and operate the Pipeline and otherwise to perform its obligations hereunder in accordance with the terms and conditions hereof.
- 16.4 Licensee shall either require that the initial stated term of each such Rights be for a period that does not expire, in accordance with its ordinary terms, prior to the last day of the term of this License or, if the initial stated term of any such Right expires in accordance with its ordinary terms on a date earlier than the last day of the term of this License, Licensee shall, at its cost, exercise any renewal rights thereunder, or otherwise acquire such extensions, additions and/or replacements as may be necessary, in order to cause the stated term thereof to be continued until a date that is not earlier than the last day of the term of this License.
- 16.5 Upon the expiration or termination of any Right that is necessary in order for Licensee to own, operate or use the Pipeline in accordance with the terms and conditions of this License, this License thereby shall automatically expire upon such expiration or termination of the Right.

17. Environmental.

- 17.1 Licensee shall strictly comply with Environmental Laws (as defined below). Licensee shall not maintain a treatment, storage, transfer or disposal facility, or underground storage tank, as defined by Environmental Laws on the Premises. Licensee shall not release or suffer the release of oil or Hazardous Materials (as defined below) on or about the Premises.
- 17.2 Except as specifically set forth in Section 4 of this License, Licensee covenants that it will not handle or transport Hazardous Materials through the Pipeline or on Licensor's property. Upon request by Licensor, Licensee agrees to furnish Licensor with proof, satisfactory to Licensor, that Licensee is in compliance with the provisions of this **Section 17.2**.
- 17.3 Licensee shall give Licensor immediate notice to Licensor's Resource Operations Center at (800) 832-5452 of any known (i) release of Hazardous Materials on, from, or affecting the Premises, (ii) violation of Environmental Laws, or (iii) inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Licensee's use of the Premises. Licensee shall use its best efforts to immediately respond to any release on, from, or affecting the Premises. Licensee also shall give Licensor prompt notice of all measures undertaken on behalf of Licensee to investigate, remediate, respond to or otherwise cure such release or violation.
- 17.4 If Licensor has notice from Licensee or otherwise of a release or violation of Environmental Laws arising in any way with respect to the Pipeline which occurred or may occur during the term of this License, Licensor may require Licensee, at Licensee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises or Licensor's right-of-way.
- 17.5 Licensee shall immediately report to Licensor's Resource Operations Center at (800) 832-5452 any conditions or activities upon the Premises known to Licensee which create a risk of harm to persons, property or the environment and shall take all reasonable actions necessary to prevent injury to persons, property, or the environment arising out of such conditions or activities; provided, however, that Licensee's reporting to Licensor shall not relieve Licensee of any obligation whatsoever imposed on it by this License. Licensee shall promptly respond to Licensor's request for information regarding said conditions or activities.
- 17.6 During the term of this License, Licensor may, at Licensor's option, require Licensee to conduct an environmental audit, including but not limited to sampling, of the Premises through an environmental consulting engineer acceptable to Licensor, at Licensee's sole cost and expense, to determine if any noncompliance or environmental damage to the Premises has occurred during occupancy thereof by Licensee. The audit shall be conducted to Licensor's satisfaction and a copy of the audit report shall promptly be provided to Licensor for its review. Licensee shall pay all expenses for any remedial or corrective action that may be required as a result of said audit to correct any noncompliance or environmental damage, and Licensee shall diligently pursue and complete all necessary work prior to termination of this License. Licensee's obligations under this Section 17.6 shall survive termination of this License.
- 17.7 Notwithstanding anything in this Section 17, the parties agree that Licensor has no duty or obligation to monitor Licensee's use of the Premises to determine Licensee's compliance with Environmental Laws, it being solely Licensee's responsibility to ensure that Licensee's use of the Premises is compliant. Neither the exercise nor the failure by Licensor to exercise any rights granted in this Section will alter the liability allocation provided by this License.
- 17.8 "**Environmental Law(s)**" shall mean any federal, state, local, or tribal law, statute, ordinance, code, rule, regulation, policy, common law, license, authorization, decision, order, or injunction which pertains to health, safety, any Hazardous Material, or the environment (including but not limited to ground, air, water, or noise pollution or contamination, and underground or above-ground tanks) and shall include, without limitation, CERCLA 42 U.S.C. §9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §5101 et seq.; the Federal Water Pollution Control Act, 33 U.S.C.

§1251 et seq.; the Clean Air Act, 42 U.S.C. §7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. §2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. §300f et seq.; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. 11001 et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136 to 136y; the Oil Pollution Act, 33 U.S.C. 2701 et seq.; and the Occupational Safety and Health Act, 29 U.S.C. 651 et seq.; all as have been amended from time to time, and any other federal, state, local, or tribal environmental requirements, together with all rules, regulations, orders, and decrees now or hereafter promulgated under any of the foregoing, as any of the foregoing now exist or may be changed or amended or come into effect in the future.

- 17.9 **"Hazardous Material(s)"** shall include but shall not be limited to any substance, material, or waste that is regulated by any Environmental Law or otherwise regulated by any federal, state, local, or tribal governmental authority because of toxic, flammable, explosive, corrosive, reactive, radioactive or other properties that may be hazardous to human health or the environment, including without limitation asbestos and asbestos-containing materials, radon, petroleum and petroleum products, urea formaldehyde foam insulation, methane, lead-based paint, polychlorinated biphenyl compounds, hydrocarbons or like substances and their additives or constituents, pesticides, agricultural chemicals, and any other special, toxic, or hazardous (i) substances, (ii) materials, or (iii) wastes of any kind, including without limitation those now or hereafter defined, determined, or identified as "hazardous chemicals", "hazardous substances," "hazardous materials," "toxic substances," or "hazardous wastes" in any Environmental Law.

### **DISCLAIMER OF WARRANTIES**

18. No Warranties.

18.1 **LICENSOR'S DUTIES AND WARRANTIES ARE LIMITED TO THOSE EXPRESSLY STATED IN THIS LICENSE AND SHALL NOT INCLUDE ANY IMPLIED DUTIES OR IMPLIED WARRANTIES, NOW OR IN THE FUTURE. NO REPRESENTATIONS OR WARRANTIES HAVE BEEN MADE BY LICENSOR OTHER THAN THOSE CONTAINED IN THIS LICENSE. LICENSEE HEREBY WAIVES ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PREMISES OR WHICH MAY EXIST BY OPERATION OF LAW OR IN EQUITY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, HABITABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

18.2 **LICENSOR MAKES NO WARRANTY, REPRESENTATION OR CONDITION OF ANY KIND, EXPRESS OR IMPLIED, CONCERNING (A) THE SCOPE OF THE LICENSE OR OTHER RIGHTS GRANTED HEREUNDER TO LICENSEE OR (B) WHETHER OR NOT LICENSEE'S CONSTRUCTION, MAINTENANCE, OWNERSHIP, USE OR OPERATION OF THE PIPELINE WILL VIOLATE OR INFRINGE UPON THE RIGHTS, INTERESTS AND ESTATES OF THIRD PARTIES, INCLUDING, WITHOUT LIMITATION, ANY LEASES, USE RIGHTS, EASEMENTS AND LIENS OF ANY THIRD PARTY.**

19. Disclaimer of Warranty for Quiet Enjoyment. **LICENSOR DOES NOT WARRANT ITS TITLE TO THE PREMISES NOR UNDERTAKE TO DEFEND LICENSEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE.**

20. Eviction at Risk of Licensee. In case of the eviction of Licensee by anyone owning, claiming title to, or claiming any interest in the Premises, or by the abandonment by Licensor of the affected rail corridor, Licensor shall not be liable (i) to refund Licensee any compensation paid hereunder, except for the pro-rata part of any recurring charge paid in advance, or (ii) for any damages or costs Licensee sustains in connection with the eviction.

### **LIENS AND TAXES**

21. Liens and Charges. Licensee shall promptly pay and discharge any and all liens arising out of any construction, alterations or repairs done, suffered or permitted to be done by Licensee on the Premises. Licensor is hereby authorized to post any notices or take any other action upon or with respect to the

Premises that is or may be permitted by law to prevent the attachment of any such liens to the Premises; provided, however, that failure of Licensor to take any such action shall not relieve Licensee of any obligation or liability under this **Section 21** or any other Section of this License.

22. Taxes. Licensee shall pay when due any taxes, assessments or other charges (collectively, "**Taxes**") levied or assessed by any governmental or quasi-governmental body upon the Pipeline or any other improvements constructed or installed on the Premises by or for Licensee (collectively, the "**Improvements**") or any Taxes levied or assessed against Licensor or the Premises that are attributable to the Improvements.

### **DEFAULT, TERMINATION, AND SURRENDER**

23. Default and Termination. In addition to and not in limitation of Licensor's right to terminate for failure to provide evidence of insurance as required pursuant to the terms of **Section 15**, the following events are also deemed to be events of default pursuant to which Licensor has the right to terminate as set forth below:

- 23.1 If default shall be made in any of Licensee's covenants, agreements, or obligations contained in this License and Licensee fails to cure said default within thirty (30) days after written notice is provided to Licensee by Licensor, or in case of any assignment or transfer of this License in violation of **Section 26** below, Licensor may, at its option, terminate this License by serving five (5) days' notice in writing upon Licensee. Notwithstanding the foregoing, Licensor shall have the right to terminate this License immediately if Licensee fails to provide evidence of insurance as required in **Section 15**.
- 23.2 Should Licensee not comply fully with the obligations of **Section 17** regarding the handling or transporting of Hazardous Materials, notwithstanding anything contained in any other provision of this License, Licensor may, at its option, terminate this License by serving five (5) days' notice in writing upon Licensee.
- 23.3 Any waiver by Licensor of any default or defaults shall not constitute a waiver of the right to terminate this License for any subsequent default or defaults, nor shall any such waiver in any way affect Licensor's ability to enforce any Section of this License. The remedies set forth in this **Section 23** shall be in addition to, and not in limitation of, any other remedies that Licensor may have at law or in equity.
- 23.4 In addition to and not in limitation of Licensor's rights to terminate this License for failure to provide evidence of insurance or occurrence of defaults as described above, this License may be terminated by either party, at any time, by serving thirty (30) days' written notice of termination upon the other party. Such termination shall not release either party hereto from any liability or obligation under the License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or thereafter in case by the terms of the License it is provided that anything shall or may be done after termination hereof.

24. Surrender of the Premises.

- 24.1 On or before expiration or termination of this License for any reason, Licensee shall, at its sole cost and expense:
- 24.1.1 if so directed by Licensor in writing, remove the Improvements, the Pipeline and all appurtenances thereto, or, at the sole discretion of Licensor, fill and cap or otherwise appropriately decommission the Pipeline with a method satisfactory to Licensor;
- 24.1.2 report and restore any damage to the Premises or Licensor's other property arising from, growing out of, or connected with Licensee's use of the Premises;
- 24.1.3 remedy any unsafe conditions on the Premises created or aggravated by Licensee; and

- 24.1.4 leave the Premises in substantially the condition which existed as of the Effective Date, or as otherwise agreed to by Licensor.
- 24.2 Upon any expiration or termination of this License, if Licensee fails to surrender the Premises to Licensor or if Licensee fails to complete its obligations under **Section 24.1** above (the "**Restoration Obligations**"), Licensee shall have a limited license to enter upon the Premises solely to the extent necessary for Licensee to complete the Restoration Obligations, and all liabilities and obligations of Licensee hereunder shall continue in effect until the Premises are surrendered and the Restoration Obligations are completed. Neither termination nor expiration shall release Licensee from any liability or obligation under this License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination, or, if later, the date when Licensee surrenders the Premises and all of the Restoration Obligations are completed.
- 24.3 If Licensee fails to complete the Restoration Obligations within thirty (30) days after the date of such termination of its tenancy, then Licensor may, at its election, either: (i) remove the Pipeline and the other Improvements or otherwise restore the Premises, and in such event Licensee shall, within thirty (30) days after receipt of bill therefor, reimburse Licensor for cost incurred, (ii) upon written notice to Licensee, take and hold the Pipeline and the other Improvements and personal property as its sole property, without payment or obligation to Licensee therefor, or (iii) specifically enforce Licensee's obligation to restore and/or pursue any remedy at law or in equity against Licensee for failure to so restore. Further, if Licensor has consented to the Pipeline and the other Improvements remaining on the Premises following termination, Licensee shall, upon request by Licensor, provide a bill of sale in a form acceptable to Licensor conveying the Pipeline and the other Improvements to Licensor for no additional consideration.

## **MISCELLANEOUS**

25. Successors and Assigns. All provisions contained in this License shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and assigns of Licensor and Licensee to the same extent as if each such successor and assign was named a party to this License.
26. Assignment.
- 26.1 Licensee may not sell, assign, transfer, or hypothecate this License or any right, obligation, or interest herein (either voluntarily or by operation of law, merger, or otherwise) without the prior written consent of Licensor, which consent may not be unreasonably withheld or delayed by Licensor. Any attempted assignment by Licensee in violation of this **Section 26** shall be a breach of this License and, in addition, shall be voidable by Licensor in its sole and absolute discretion.
- 26.2 For purposes of this **Section 26**, the word "assign" shall include without limitation (a) any sale of the equity interests of Licensee following which the equity interest holders of Licensee immediately prior to such sale own, directly or indirectly, less than 50% of the combined voting power of the outstanding voting equity interests of Licensee, (b) any sale of all or substantially all of the assets of (i) Licensee and (ii) to the extent such entities exist, Licensee's parent and subsidiaries, taken as a whole, or (c) any reorganization, recapitalization, merger or consolidation involving Licensee. Notwithstanding the foregoing, any reorganization, recapitalization, merger or consolidation following which the equity interest holders of Licensee immediately prior to such reorganization, recapitalization, merger or consolidation own, directly or indirectly, at least 50% of the combined voting power of the outstanding voting equity interests of Licensee or any successor thereto or the entity resulting from such reorganization, recapitalization, merger or consolidation shall not be deemed an assignment. THIS LICENSE SHALL NOT RUN WITH THE LAND WITHOUT THE EXPRESS WRITTEN CONSENT OF LICENSOR, SUCH CONSENT TO BE IN LICENSOR'S SOLE DISCRETION.
- 26.3 Notwithstanding the provisions of **Section 26.1** above or anything contained in this License to the contrary, if Licensee sells, assigns, transfers, or hypothecates this License or any interest herein in contravention of the provisions of this License (a "**Purported Assignment**") to another party



(a "**Purported Transferee**"), the Purported Transferee's enjoyment of the rights and privileges granted under this License shall be deemed to be the Purported Transferee's agreement to be bound by all of the terms and provisions of this License, including but not limited to the obligation to comply with the provisions of **Section 15** above concerning insurance requirements. In addition to and not in limitation of the foregoing, Licensee, for itself, its successors and assigns, shall indemnify, defend and hold harmless Licensor for all Liabilities of any nature, kind or description of any person or entity directly or indirectly arising out of, resulting from or related to (in whole or in part) a Purported Assignment. The provisions of this **Section 26.3** shall survive the expiration or earlier termination of this License.

26.4 Licensor shall have the right to transfer and assign, in whole or in part, all of its rights and obligations under this License, and upon any such transfer or assignment, Licensor shall be released from any further obligations hereunder, and Licensee agrees to look solely to the successor in interest of Licensor for the performance of such obligations.

27. Notices. Any notice, invoice, or other writing required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address for such party specified below, or to such other address as the party to be notified may designate by giving the other party no less than thirty (30) days' advance written notice of such change in address.

If to Licensor: Jones Lang LaSalle Brokerage, Inc.  
2650 Lou Menk Drive, MOB1  
Fort Worth, TX 76131  
Attn: Permits/Licenses

with a copy to: BNSF Railway Company  
2650 Lou Menk Dr.  
Fort Worth, TX 76131  
Attn: Senior Manager Real Estate

If to Licensee: City of Montgomery  
101 Old Plantersville Road  
Montgomery, TX 77316

28. Survival. Neither termination nor expiration will release either party from any liability or obligation under this License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration, or, if later, the date when the Pipeline and the other Improvements are removed and the Restoration Obligations are completed in accordance with the terms hereof.

29. Recordation. It is understood and agreed that this License shall not be placed or allowed to be placed on public record.

30. Applicable Law. All questions concerning the interpretation or application of provisions of this License shall be decided according to the substantive laws of the State of Texas without regard to conflicts of law provisions.

31. Severability. To the maximum extent possible, each provision of this License shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this License shall be prohibited by, or held to be invalid under, applicable law, such provision shall be ineffective solely to the extent of such prohibition or invalidity, and this shall not invalidate the remainder of such provision or any other provision of this License.

32. Integration. This License is the full and complete agreement between Licensor and Licensee with respect to all matters relating to Licensee's use of the Premises, and supersedes any and all other agreements between the parties hereto relating to Licensee's use of the Premises as described herein. However,

nothing herein is intended to terminate any surviving obligation of Licensee or Licensee's obligation to defend and hold Licensor harmless in any prior written agreement between the parties.

33. Joint and Several Liability. If Licensee consists of two or more parties, all the covenants and agreements of Licensee herein contained shall be the joint and several covenants and agreements of such parties.
34. Waiver. The waiver by Licensor of the breach of any provision herein by Licensee shall in no way impair the right of Licensor to enforce that provision for any subsequent breach thereof.
35. Interpretation.
- 35.1 This License shall be interpreted in a neutral manner, and not more strongly for or against any party based upon the source of the draftsmanship; both parties hereby agree that this License shall not be subject to the principle that a contract would be construed against the party which drafted the same. Article titles, headings to sections and paragraphs and the table of contents (if any) are inserted for convenience of reference only and are not intended to be a part or to affect the meaning or interpretation hereof. The exhibit or exhibits referred to herein shall be construed with and as an integral part of this License to the same extent as if they were set forth verbatim herein.
- 35.2 As used herein, "include", "includes" and "including" are deemed to be followed by "without limitation" whether or not they are in fact followed by such words or words of like import; "writing", "written" and comparable terms refer to printing, typing, lithography and other means of reproducing words in a visible form; references to any person are also to that person's successors and permitted assigns; "hereof", "herein", "hereunder" and comparable terms refer to the entirety hereof and not to any particular article, section, or other subdivision hereof or attachment hereto; references to any gender include references to the masculine or feminine as the context requires; references to the plural include the singular and vice versa; and references to this License or other documents are as amended, modified or supplemented from time to time.
36. Counterparts. This License may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original but which together shall constitute one and the same instrument, and the signature pages from any counterpart may be appended to any other counterpart to assemble fully executed documents, and counterparts of this License may also be exchanged electronically and any electronic version of any party's signature shall be deemed to be an original signature for all purposes.
37. Licensor's Representative. Jones Lang LaSalle Brokerage, Inc. is acting as representative for BNSF Railway Company.

**END OF PAGE – SIGNATURE PAGE FOLLOWS**

This License has been duly executed by the parties hereto as of the Effective Date.

**LICENSOR:**

**BNSF Railway Company**, a Delaware corporation

By: Jones Lang LaSalle Brokerage, Inc.  
2650 Lou Menk Drive, MOB1  
Fort Worth, TX 76131

By: \_\_\_\_\_  
Shane Krueger  
Vice President Permits and Special Projects

**LICENSEE:**

**City of Montgomery**, a Texas municipality

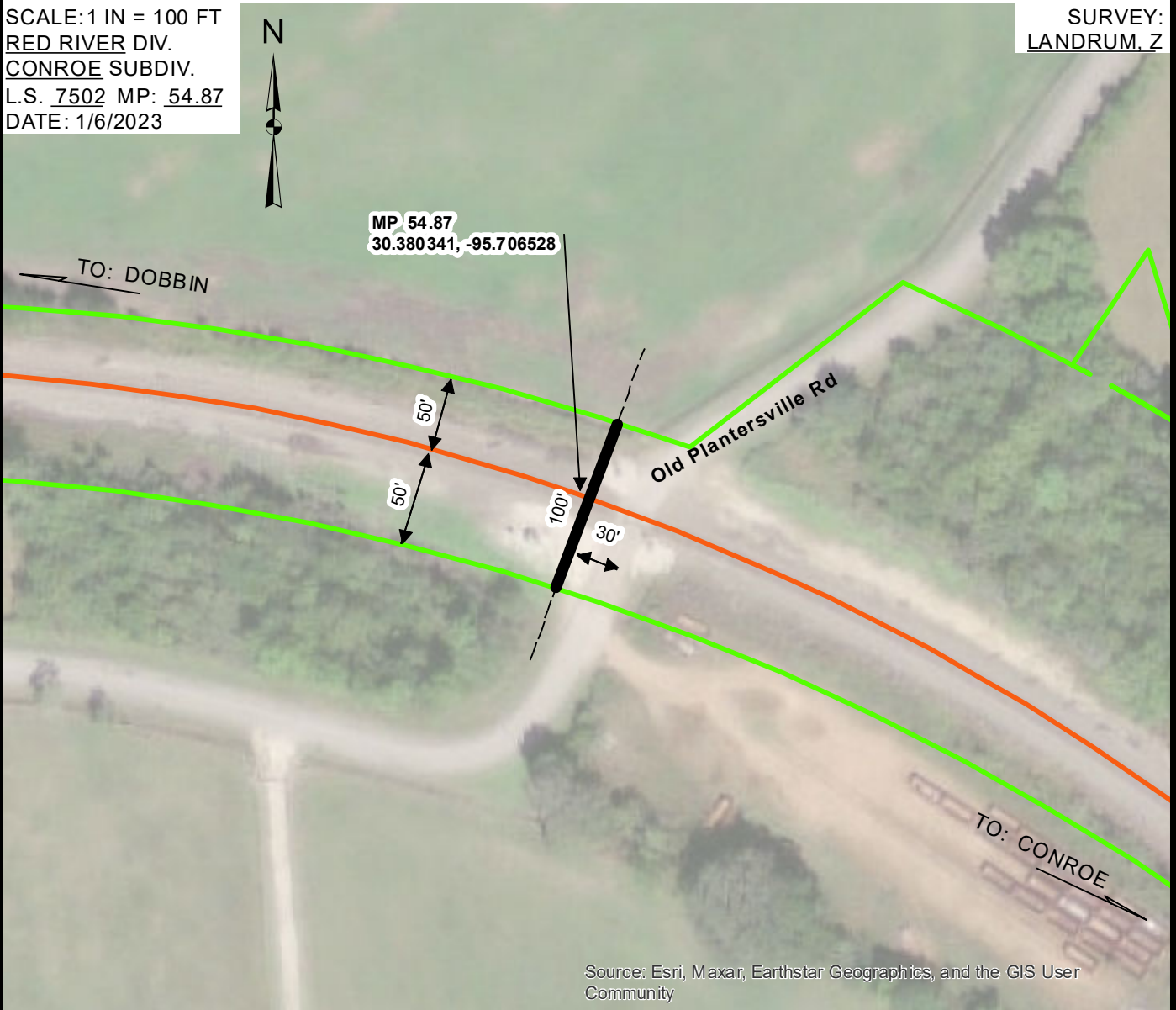
By: \_\_\_\_\_

Title: \_\_\_\_\_

# EXHIBIT "A"

SCALE: 1 IN = 100 FT  
 RED RIVER DIV.  
 CONROE SUBDIV.  
 L.S. 7502 MP: 54.87  
 DATE: 1/6/2023

SURVEY:  
 LANDRUM, Z



DESCRIPTION OF PIPELINE  
 PIPELINE SHOWN BOLD

	CARRIER PIPE	CASING PIPE		CARRIER PIPE	CASING PIPE
SIZE:	6"	12"	LENGTH ON R/W:	100'	100'
CONTENTS:	SANITARY SEWER		WORKING PRESSURE:	10 PSI	
PIPE MATERIAL:	PVC	STEEL	BURY: BASE/RAIL TO TOP OF CASING		12'
SPECIFICATIONS / GRADE:	SDR-26	ASTM A 36	BURY: NATURAL GROUND		9'
WALL THICKNESS:	0.255"	0.25"	BURY: ROADWAY DITCHES		9'
COATING:	-	COAL TAR ENAMEL	CATHODIC PROTECTION		NO

VENTS: NUMBER \_ \_ SIZE \_ \_ HEIGHT OF VENT ABOVE GROUND \_ \_  
 NOTE: CASING TO BE INSTALLED BY HORIZONTAL DIRECTIONAL DRILL

MONTGOMERY  
 COUNTY OF MONTGOMERY

STATE OF TX

ANA



Certificate of Coverage

Item 2.

Member ID: 6827

Member:

Nici Browe
City Secretary
Montgomery
PO Box 708
Montgomery, Texas 77356-0708

Company Affording Coverage:

Texas Municipal League Intergovernmental Risk Pool
PO Box 149194 Austin, Texas 78714-9194
(512) 491-2300 or (800) 537-6655
Fax: (512) 491-2404

Certificate Holder:

BNSF Railway Company
2650 Lou Menk Drive
Fort Worth, TX 76131

This is to certify that the coverages listed below have been provided to the member and are in effect at this time. Notwithstanding any requirements, terms, or conditions of any other contract or agreement with respect to which this certificate may be issued or may pertain, the coverage afforded by TMLIRP described herein is subject only to the terms, exclusions and additions of TMLIRP's coverage contracts between TMLIRP and its member(s). Coverage is continuous until canceled.

Workers' Compensation

Effective Date: 10/01/2022

Anniversary Date: 10/01/2023

Limit of Liability: Statutory

DESCRIPTION:

BNSF Pipeline License - Tracking #22W-16150 and 22W-16213

Cancellation: Should any of the above described coverages be canceled before the anniversary date thereof, TMLIRP will endeavor to mail 30 days written notice to the above named certificate holder, but failure to mail such notice shall impose no obligation or liability of any kind upon TMLIRP.

Authorized Representative: Corby Bittner

Date Issued:

[Handwritten signature of Corby Bittner]

03/29/2023

## WAIVER OF SUBROGATION

### Waiver of our Right of Recovery From Others Endorsement

This endorsement forms a part of the **Declarations** to which attached, effective on the inception date of the coverage unless otherwise stated herein, and modifies such coverage as is afforded by the provisions of the coverage shown below:

#### WORKERS' COMPENSATION

Member Name : Montgomery  
 Member ID : 6827  
 Effective Date : 10/01/2022

We have the right to recover our payments from anyone liable for an injury covered hereunder. We will not enforce our right against the person or organization named below where you are required by a written contract to obtain this waiver from us.

This endorsement shall not operate directly or indirectly to benefit anyone not named below.

#### Schedule

Name of person or organization: BNSF Railway Company  
 2650 Lou Menk Drive  
 Fort Worth, TX 76131

Description of operations: BNSF Pipeline License - Tracking #22W-16150 and  
 22W-16213

## EMPLOYERS' LIABILITY

This endorsement forms a part of the **Declarations** to which attached, effective on the inception date of the coverage unless otherwise stated herein, and modifies such coverage as is afforded by the provisions of the coverage shown below:

### WORKERS' COMPENSATION

Member Name : Montgomery  
Member ID : 6827  
Effective Date : 10/01/2022

While the Fund does not believe that governmental entities can be held liable for exemplary or punitive damages in a work-related death case and by this endorsement does not waive any defense of governmental immunity to be so asserted; the Fund does agree to defend the Member against such claims and should the highest Court in this state decide that governmental entities such as the employer-member are liable for exemplary or punitive damages in a work-related death case, the Fund will pay all monetary damages the Member shall become legally obligated to pay, but not to exceed :

**\$ 500,000**



Certificate of Coverage

Item 2.

**Member ID:6827**

**Member:**  
 Nici Browe  
 City Secretary  
 Montgomery  
 PO Box 708  
 Montgomery, Texas 77356-0708

**Company Affording Coverage:**  
 Texas Municipal League Intergovernmental Risk Pool  
 PO Box 149194 Austin, Texas 78714-9194  
 (512) 491-2300 or (800) 537-6655  
 Fax: (512) 491-2404

**Certificate Holder:**  
 BNSF Railway Company  
 2650 Lou Menk Drive  
 Fort Worth, Texas 76131


**This is to certify that the coverages listed below have been provided to the member and are in effect at this time. Notwithstanding any requirements, terms, or conditions of any other contract or agreement with respect to which this certificate may be issued or may pertain, the coverage afforded by TMLIRP described herein is subject only to the terms, exclusions and additions of TMLIRP's coverage contracts between TMLIRP and its member(s). Coverage is continuous until canceled.**

<b>General Liability</b>	Effective Date: 11/01/2022 Anniversary Date: 10/01/2023	<b>Auto Liability</b>	Effective Date: 11/01/2022 Anniversary Date: 10/01/2023
Limits of Liability(Each Occurrence):	\$1,000,000	Limits of Liability(Each Occurrence):	\$1,000,000
Sudden Events involving Pollution(Each Occurrence):	\$1,000,000	Deductible per Occurrence:	\$1,000
Annual Aggregate:	\$2,000,000	<b>Auto Physical Damage</b>	Effective Date: _____ Anniversary Date: _____
Deductible per Occurrence:	\$0	Limits of Liability:	_____
<b>Law Enforcement Liability</b>	Effective Date: _____ Anniversary Date: _____	Collision Deductible:	_____
Limits of Liability(Each Occurrence):	_____	Comprehensive Deductible:	_____
Annual Aggregate:	_____		
Deductible per Occurrence:	_____		
<b>Errors and Omissions Liability</b>	Effective Date: _____ Anniversary Date: _____		
Limits of Liability(Wrongful Act):	_____		
Annual Aggregate:	_____		
Deductible per Occurrence:	_____		

**DESCRIPTION:**  
 Evidence of coverage with respect to Pipeline Licenses: Tracking #22W-16150 & 22W-16213. Indemnification Under Contract (EL217), and Covered Contract Exception - Railroad Agreement (EL270) endorsements attached. Coverage is primary and non-contributory. Waiver of Subrogation applies.

Cancellation: Should any of the above described coverages be canceled before the anniversary date thereof, TMLIRP will endeavor to mail 30 days written notice to the above named certificate holder, but failure to mail such notice shall impose no obligation or liability of any kind upon TMLIRP.

**Authorized Representative: Corby Bittner**



**Date Issued:**  
 03/29/2023



**INDEMNIFICATION UNDER CONTRACT**

This endorsement forms a part of the **Declarations** to which attached, effective on the inception date of the coverage unless otherwise stated herein, and modifies such coverage as is afforded by the provisions of the coverage shown below:

**GENERAL LIABILITY**

Member Name : Montgomery  
Member ID : 6827  
Effective Date : 11/01/2022

It is agreed that coverage is provided for the liability assumed by the **Fund Member** to indemnify the person or organization named below under a contract between such person or organization and the **Fund Member**, but such coverage shall not exceed the limits of coverage set forth in the **Declarations**.

Person or Organization: BNSF Railway Company

Address : 2650 Lou Menk Dr

City, State & Zip Code : Fort Worth, Texas 76131

**Description**

BNSF Tracking #22W-16150 & 22W-16213

**INDEMNIFICATION UNDER CONTRACT**

This endorsement forms a part of the **Declarations** to which attached, effective on the inception date of the coverage unless otherwise stated herein, and modifies such coverage as is afforded by the provisions of the coverage shown below:

**COMMERCIAL AUTOMOBILE LIABILITY**

Member Name : Montgomery  
Member ID : 6827  
Effective Date : 11/01/2022

It is agreed that coverage is provided for the liability assumed by the **Fund Member** to indemnify the person or organization named below under a contract between such person or organization and the **Fund Member**, but such coverage shall not exceed the limits of coverage set forth in the **Declarations**.

Person or Organization: BNSF Railway Company

Address : 2650 Lou Menk Dr

City, State & Zip Code : Fort Worth, Texas 76131

**Description**

BNSF Tracking #22W-16150 & 22W-16213

**COVERED CONTRACT EXCEPTION – RAILROAD AGREEMENT**

This endorsement forms a part of the **Declarations** to which attached, effective on the inception date of the coverage unless otherwise stated herein, and modifies such coverage as is afforded by the provisions of the coverage shown below:

**GENERAL LIABILITY**

Member Name : Montgomery  
Member ID : 6827  
Effective Date : 11/01/2022

Notwithstanding the exceptions set forth under paragraphs 4. and 8.a. to the definition of **covered contract** under Part II of the Liability Coverage Document, it is agreed that the **contract** designated below is to be considered a **covered contract**.

**Designated Contract**

BNSF Railway Company - Tracking #22W-16150 & 22W-16213

Montgomery City Council  
**AGENDA REPORT**

<b>Meeting Date:</b> April 11, 2023	<b>Budgeted Amount:</b> N/A
<b>Department:</b> Admin	<b>Prepared By:</b> Dave McCorquodale

**Subject**

Consideration and possible action on A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF MONTGOMERY DESIGNATING AUTHORIZED SIGNATORIES FOR CONTRACTUAL DOCUMENTS AND DOCUMENTS FOR REQUESTING FUNDS PERTAINING TO THE COMMUNITY DEVELOPMENT BLOCK GRANT · DISASTER RECOVERY PROGRAM (CDBG-DR) CONTRACT NUMBER 19-076-017-B366.

**Recommendation**

Adopt the Resolution as presented.

**Discussion**

This resolution affirms signatories on GLO grant-related documents and is needed for a GLO Monitoring Review of the grant by the GLO. This review is a standard process for every grant provided by the GLO. It affirms that all activities related to the procurement of services, financial transactions, and construction activities related to the grant conform to state and federal law.

**Approved By**

Assistant City Administrator & Planning & Development Director	Dave McCorquodale	Date: 04/04/2023
City Administrator	Gary Palmer	Date: 04/04/2023

RESOLUTION No. \_\_\_\_\_

RESOLUTION AUTHORIZING SIGNATORIES

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF MONTGOMERY DESIGNATING AUTHORIZED SIGNATORIES FOR CONTRACTUAL DOCUMENTS AND DOCUMENTS FOR REQUESTING FUNDS PERTAINING TO THE COMMUNITY DEVELOPMENT BLOCK GRANT · DISASTER RECOVERY PROGRAM (CDBG-DR) CONTRACT NUMBER 19-076-017-B366.

WHEREAS, the City of Montgomery has received a 2016 Flood Allocation Community Development Block Grant - Disaster Recovery program award to provide Flood & Drainage Facilities, Sewer Facilities, Water Facilities; and

WHEREAS, it is necessary to appoint persons to execute contractual documents and documents requesting funds from the Texas General Land Office and;

WHEREAS, an original signed copy of the CDBG-DR Depository/Authorized Signatories Designation Form is to be submitted with a copy of this Resolution, and;

WHEREAS, the City of Montgomery acknowledges that in the event that an authorized signatory of the City changes (elections, illness, resignations, etc.) the City must provide CDBG-DR with the following:

- a resolution stating who the new authorized signatories are (not required if this original resolution names only the title and not the name of the signatory); and
- a revised CDBG-DR *Depository/ Authorized Signatories Designation Form*.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF MONTGOMERY, TEXAS, AS FOLLOWS:

SECTION 1: The Mayor, City Administrator, Assistant City Administrator, and Director of Planning and Development are authorized to execute contractual documents between the Texas General Land Office and the City for the 2016 Flood Allocation Community Development Block Grant Disaster Recovery Program.

SECTION 2: The City Administrator, City Secretary, Assistant City Administrator, Director of Planning and Development, and City Senior Accountant are authorized to execute the State of Texas Purchase Voucher and Request for Payment Form documents required for requesting funds approved in the 2016 Flood Allocation Community Development Block Grant Disaster Recovery Program.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MONTGOMERY, TEXAS, ON APRIL 11, 2023.

APPROVED:

ATTEST:

\_\_\_\_\_  
Bryan Sanford  
Mayor

\_\_\_\_\_  
Nicola Browe  
City Secretary

Montgomery City Council  
**AGENDA REPORT**

<b>Meeting Date:</b> April 11, 2023	<b>Budgeted Amount:</b> N/A
<b>Department:</b> Admin	<b>Prepared By:</b> Dave McCorquodale

**Subject**

Consideration and possible action on Cost/Price Analysis and Profit Negotiation Procedures for federal grants.

**Recommendation**

Approve the updated cost/price analysis and profit negation for federal grants as presented.

**Discussion**

This updated cost/price analysis and profit negation policy and procedures is related *only* to federal grants (and the city’s GLO grant is a federally funded grant) and is needed for a grant monitoring review by the GLO. This review is a standard process for every grant provided by the GLO that uses federal funds. This update ensures we have policies and procedures in place that match current grant funding requirements. City staff worked with our grant administrator on the update project.

**Approved By**

Assistant City Administrator & Planning & Development Director	Dave McCorquodale	Date: 04/05/2023
City Administrator	Gary Palmer	Date: 04/05/2023

## **CITY OF MONTGOMERY**

### **Cost/Price Analysis and Profit Negotiation Policy for Federal Grants**

The purpose of this policy is to provide the City of Montgomery with sound guidelines to perform cost-price analysis and profit negotiations as elements of federal contract procurement processes regulated by the 2 CFR §200.318(i) General procurement standards, 2 CFR §200.324(a) Contract cost and price, and 2 CFR §200.324(b) Contract Cost and Price.

The City of Montgomery will conduct an “independent analysis” to evaluate cost and price prior to review of proposals, in order to ensure that the proposed costs are allowable, reasonable, and allocable. To determine the reasonableness of proposed costs, the City will obtain cost breakdowns showing all the elements of the scope of work and perform a cost analysis using the appropriate set of principles. If they are significantly different, the City will evaluate its initial estimate, compare it to the proposals received, and identify the appropriate price.

#### **Cost Analysis**

The City will prepare an independent Cost Analysis before receiving bids, proposals, and contract modifications, which includes the review and evaluation of the separate cost elements, including labor, supplies, equipment, profit, overhead, and general conditions.

An independent estimate will be made before receiving bids or proposals if one of the following applies when: evaluating competitive proposals

- there is a sole source or non-competitive proposal,
- only one bid is received after soliciting bids,
- the City does not have enough data to establish cost reasonableness, and the grantee is considering awarding the contract to a single bidder,
- negotiating modifications to contracts that impact the price or estimated cost,
- terminating a contract and the contractor is entitled to payment of reasonable costs incurred, or,
- awarding a cost-reimbursement contract

#### **Price Analysis**

The City of Montgomery will compare competitive prices received in response to the solicitation to each other, and will:

- compare proposed prices to prices on existing contracts or contracts proposed in the recent past, and will factor in any changing conditions, including market, inflation, material price changes
- apply rough approximations and review significant inconsistencies, which may require a deeper look at prices to determine if the items are truly comparable. The types of approximations might include price per pound, per square foot, per hour or other typical unit pricing mechanism
- review price lists, catalogs or market prices of similar products to determine the market prices generally available to the public

**Non-competitive Proposals (Sole Source)**

The City may receive a Non-competitive proposals, for which one of the following situations exists:

- the item is available only from a single source;
- the disaster emergency will not permit a delay resulting from competitive solicitation;
- the Federal agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the Grantee; or
- after solicitation of a number of sources, competition is determined inadequate.

If one of these occurs, the City will obtain a breakdown of proposed costs and perform a cost analysis on those costs. The major categories of costs include both direct costs (direct labor, equipment, supplies, travel and per diem, subcontractors and other direct costs) and indirect costs (overhead, general and administrative expenses and profit). In the process of analyzing costs, profit should be analyzed separately, based on complexity of the work, risk to the contractor, investment required, amount of subcontracting involved, and typical profit in the industry.

**Negotiation of Profit**

The City will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work. The offeror's qualifications are evaluated and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms that are a potential source to perform the proposed effort.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MONTGOMERY, TEXAS, ON APRIL 11, 2023.**

**APPROVED:**

**ATTEST:**

\_\_\_\_\_  
Bryan Sanford  
Mayor

\_\_\_\_\_  
Nicola Browe  
City Secretary



Montgomery City Council  
**AGENDA REPORT**

<b>Meeting Date:</b> April 11, 2023	<b>Budgeted Amount:</b> N/A
<b>Department:</b> Admin	<b>Prepared By:</b> Dave McCorquodale

**Subject**

Consideration and possible action on an update to the City's financial policy and procedures for federal grants.

**Recommendation**

Approve the updated financial policy and procedures for federal grants as presented.

**Discussion**

This updated financial policy and procedures is related *only* to federal grants (and the city's GLO grant is a federally funded grant) and is needed for a grant monitoring review by the GLO. This review is a standard process for every grant provided by the GLO that uses federal funds. This update ensures we have policies and procedures in place that match current grant funding requirements. City staff worked with our grant administrator on the update project.

**Approved By**

Assistant City Administrator & Planning & Development Director	Dave McCorquodale	Date: 04/05/2023
City Administrator	Gary Palmer	Date: 04/05/2023

## CITY OF MONTGOMERY FINANCIAL POLICY AND PROCEDURES FOR FEDERAL GRANTS

### INTRODUCTION

The purpose of financial management policies is to provide sound guidelines for planning the City's financial future. The City of Montgomery considers the expenditure of funds to be an important responsibility and requires all persons involved with the purchase of goods or services to exercise good judgment in spending taxpayers' money.

### SCOPE OF AUTHORITY

The City Administrator is responsible for the expenditure of all City funds.

### FINANCIALS

#### 1. **Bank Depository**

The City maintains funds in a Bank, designated as its depository for banking services. The City Council reviews the selection every two years unless circumstances deem otherwise.

#### 2. **Accounts Payable**

Eight (8) individuals are authorized to sign checks written on the bank depository account. Authorized signatories are the Mayor, the five (5) City Council Members, City Administrator, and Assistant City Administrator. All checks require two (2) signatures. No exceptions.

#### 3. **Accounting**

The Finance Office / Senior Accountant is responsible for establishing the structure for the Chart of Accounts and for assuring that procedures are in place to properly record financial transactions and report the City's financial position. The Senior Accountant shall provide financial reports to the City Council monthly.

#### 4. **Audit of Accounts**

An independent audit of the City accounts is performed annually. The Independent Auditor is retained by and is accountable directly to the City Council. The City Council reviews the selection every five years unless circumstances deem otherwise.

#### 5. **Internal Controls**

Whenever possible, written procedures will be established, maintained, and assessed per 2 CFR 200.303 by the Finance Office / Senior Accountant for all functions involving cash handling and/or accounting throughout the City. These procedures will embrace the general concepts of fiscal responsibility set forth in this policy statement. Whenever possible, the City ensures duties and responsibilities are segregated so that no one individual has complete authority over a financial transaction.

### PROCEDURES FOR SUBMITTING REQUESTS FOR PAYMENTS

#### 1. **Input Invoice into Record Keeping System**

All invoices are entered into the City's integrated financial software system. All checks and invoices are accounted for and summarized in the monthly financial statement. Paper copies of all checks and invoices are kept and audited annually, along with the computer records as backup documents.

#### 2. **Review of Invoice**

The Finance Office / Senior Accountant distributes the invoices to the appropriate department for review, coding, and approval that the work performed and/or materials received. The Finance Office / Senior Accountant reviews invoices and appropriate back-ups such as packing slips or receipts. The Finance Office / Senior Accountant also verifies the appropriate account code for the line-item expenses per department on the invoice and prepares the check for the invoices to be reviewed and signed by the City Administrator, Assistant City Administrator, Mayor or member of the City Council.

**3. Allowability of Costs**

The Finance Office / Senior Accountant and/or the City's federally procured grant administrator reviews each invoice for allowability of costs as stated in 2 CFR 200 Subpart E – Cost Principles.

**4. Unnecessary or duplicative purchases**

The Finance Office / Senior Accountant and/or the City's federally procured grant administrator will review each invoice for unnecessary or duplicative purchases per 2 CFR 200.318 (d).

**5. Issue Payment**

The Finance Office / Senior Accountant writes the checks. All checks require two (2) signatures. Authorized signatories are the Mayor, the five (5) City Council Members, City Administrator, and Assistant City Administrator. All checks registers - computer or manual are reviewed by the City Council, City Administrator, and Assistant City Administrator.

**6. Timeline for Payment**

The Finance Office / Senior Accountant is responsible for ensuring that checks are signed and disbursed within five (5) calendar days for the Texas Department of Agriculture and three (3) calendar days for the Texas General Land Office of receiving grant funds.

**7. Payment Reconciliation**

The Finance Office / Senior Accountant reconciles all City bank accounts.

**8. Record Keeping**

The City Secretary maintains all records for the City, including but not limited to payments requests, invoices, canceled check copies, bank statements showing receipt of grant money, etc.

**GRANT PAYMENTS PROCEDURES**

1. Invoices are received, and, if necessary, a request for payment or a request for reimbursement is prepared by the Finance Office / Senior Accountant and/or the City's federally procured grant administrator. Proper signatures are obtained from the authorized signatures for the grants. The Finance Office / Senior Accountant and/or the City's federally procured grant administrator review the invoice and compare it to the grant budget.
2. The Finance Office / Senior Accountant, City Administrator, or Assistant City Administrator must approve all invoices. Approval is acknowledged by initialing the original invoice or through City Council action.
3. Once grant funds are received, and invoice approval is acknowledged by signature on the original invoice, a demand check is entered into the system by a staff from the Finance Office / Senior Accountant, then printed. Two (2) signatures appear on the approved checks. Authorized signatories are the Mayor, the five (5) City Council Members, City Administrator, and Assistant City Administrator. Checks are then disbursed to the appropriate vendors. The Senior Accountant ensures that checks are signed and disbursed within three (3) calendar days of receiving grant funds for the Texas General Land Office and within five (5) calendar days for the Texas Department of Agriculture.
4. Copies of the request for payment, invoice, canceled check copy, and bank statement showing receipt of grant money is retained in the grant file in City Secretary's office.
5. The Finance Office / Senior Accountant is responsible for reconciling the monthly bank statements.

**CASH MANAGEMENT AND DISBURSEMENT - TIMELY EXPENDITURES**

The City shall make timely payments to vendors and minimize the time between transferring funds from the State Treasury and disbursement of funds to vendors in compliance with the terms and conditions of the federal contract, grant, regulation, or statute.

To ensure vendor compliance, invoices/pay applications/pay estimates will be reviewed for accuracy for such items but not limited to change order approvals, outstanding lien/payments to subcontractors, labor standards, and verification of work completed as invoiced prior to disbursement or request for funds from State Agency. The City shall notify a vendor of an error in an invoice submitted for payment by the vendor.

**ADVANCE PAYMENT PROCEDURES**

All advanced payments using federal grant funds will be disbursed within three (3) calendar days of receiving grant funds for the Texas General Land Office and within five (5) calendar days for the Texas Department of Agriculture, in accordance with 2 CFR 200.305(b), and in accordance with the provisions in the contract with the vendor.

When requesting advance payment, the city will proceed as follows:

1. The City Finance Office / Senior Accountant and/or the City's federally procured grant administrator reviews the invoices received to ensure compliance;
2. The City Administrator or Assistant City Administrator approves the invoices;
3. The City Finance Office / Senior Accountant and/or the City's federally procured grant administrator submits the request for payment (RFP) to the state or federal agency on behalf of the City. The submission includes copies of the invoices and any supporting documentation or deliverables;
4. The City waits for the release of funds to pay invoices approved by the City's team;
5. The City Finance Office / Senior Accountant and/or the City's federally procured grant administrator monitors the Texas Comptroller's Website and signals the City's team when federal or state funds have been released;
6. The City Finance Office / Senior Accountant prepares and issues the check once receiving confirmation that the funds have been released and notifies the vendor when the check is ready.

Advance payments of federal grant funds will be deposited and maintained in a separate insured account. The City will maintain advance payments of federal awards in interest-bearing accounts unless the following apply: City receives less than \$120,000 in Federal awards per year; the City is not expected to earn interest in excess of \$500 per year on Federal cash balances; or the depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources. (2 CFR 200.302(b)(6) and 200.305)

These Policies and Procedures are implemented through the City of Montgomery administrative team of:

- Mayor
- Council Members
- City Engineer
- City Administrator
- Assistant City Administrator
- City Secretary
- Senior Accountant
- Director of Planning and Development
- Director of Public Works

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MONTGOMERY, TEXAS, ON APRIL 11, 2023.**

**APPROVED:**

**ATTEST:**

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Bryan Sanford  
Mayor

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Nicola Browe  
City Secretary

Montgomery City Council  
**AGENDA REPORT**

<b>Meeting Date:</b> April 11, 2023	<b>Budgeted Amount:</b> N/A
<b>Department:</b> Admin	<b>Prepared By:</b> Dave McCorquodale

**Subject**

Consideration and possible action on an update to the City's procurement policy and procedures for federal grants.

**Recommendation**

Approve the updated procurement policy and procedures for federal grants as presented.

**Discussion**

This updated procurement policy and procedures is related *only* to federal grants (and the city's GLO grant is a federally funded grant) and is needed for a grant monitoring review by the GLO. This review is a standard process for every grant provided by the GLO that uses federal funds. This update ensures we have policies and procedures in place that match current grant funding requirements. City staff worked with our grant administrator on the update project.

<b>Approved By</b>		
Assistant City Administrator & Planning & Development Director	Dave McCorquodale	Date: 04/06/2023
City Administrator	Gary Palmer	Date: 04/06/2023

**CITY OF MONTGOMERY**  
**PROCUREMENT POLICIES AND PROCEDURES FOR STATE AND FEDERAL GRANTS**

The City of Montgomery follows the procurement standards in 2 CFR 200.317 – 2CFR 200.327 and Appendix II to Part 200 for procurement actions to be funded with Federal funds. All attempts are made to adhere to these policies and procedures, and updates are made as needed. The entirety of the language found in 2 CFR 200.317 – 2 CFR 200.327 may not be applicable in all instances, programs, and/or situations. This document contains the most current 2 CFR 200.317 – 2 CFR 200.327 language available at the adoption of these policies and procedures.

**FEDERAL POLICY**

**§200.317 Procurements by states.**

When procuring property and services under a Federal award, a State must follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will comply with §§200.321, 200.322, and 200.323 and ensure that every purchase order or other contract includes any clauses required by §200.327. All other non-Federal entities, including subrecipients of a State, must follow the procurement standards in §§200.318 through 200.327.

**§200.318 General procurement standards.**

(a) The non-Federal entity must have and use documented procurement procedures, consistent with State, local, and tribal laws and regulations and the standards of this section, for the acquisition of property or services required under a Federal award or subaward. The non-Federal entity's documented procurement procedures must conform to the procurement standards identified in §§200.317 through 200.327.

(b) Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(c)(1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

(2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a State, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

(d) The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services. Competition requirements will be met with documented procurement actions using strategic sourcing, shared services, and other similar procurement arrangements.

(f) The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(g) The non-Federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(h) The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. See also §200.214.

(i) The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to, the following: Rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(j)(1) The non-Federal entity may use a time-and-materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time-and-materials type contract means a contract whose cost to a non-Federal entity is the sum of:

(i) The actual cost of materials; and

(ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

(2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

(k) The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

[85 FR 49543, Aug. 13, 2020, as amended at 86 FR 10440, Feb. 22, 2021]

### **§200.319 Competition.**

(a) All procurement transactions for the acquisition of property or services required under a Federal award must be conducted in a manner providing full and open competition consistent with the standards of this section and §200.320.

(b) In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

(1) Placing unreasonable requirements on firms in order for them to qualify to do business;

(2) Requiring unnecessary experience and excessive bonding;

(3) Noncompetitive pricing practices between firms or between affiliated companies;

(4) Noncompetitive contracts to consultants that are on retainer contracts;

(5) Organizational conflicts of interest;

(6) Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and

(7) Any arbitrary action in the procurement process.

(c) The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(d) The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:

(1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and

(2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(e) The non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.

(f) Noncompetitive procurements can only be awarded in accordance with §200.320(c).

#### **§200.320 Methods of procurement to be followed.**

The non-Federal entity must have and use documented procurement procedures, consistent with the standards of this section and §§200.317, 200.318, and 200.319 for any of the following methods of procurement used for the acquisition of property or services required under a Federal award or sub-award.

(a) *Informal procurement methods.* When the value of the procurement for property or services under a Federal award does not exceed the *simplified acquisition threshold (SAT)*, as defined in §200.1, or a lower threshold established by a non-Federal entity, formal procurement methods are not required. The non-Federal entity may use informal procurement methods to expedite the completion of its transactions and minimize the associated administrative burden and cost. The informal methods used for procurement of property or services at or below the SAT include:

(1) *Micro-purchases—(i) Distribution.* The acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (See the definition of *micro-purchase* in §200.1). To the maximum extent practicable, the non-Federal entity should distribute micro-purchases equitably among qualified suppliers.

(ii) *Micro-purchase awards.* Micro-purchases may be awarded without soliciting competitive price or rate quotations if the non-Federal entity considers the price to be reasonable based on research, experience, purchase history or other information and documents it files accordingly. Purchase cards can be used for micro-purchases if procedures are documented and approved by the non-Federal entity.

(iii) *Micro-purchase thresholds.* The non-Federal entity is responsible for determining and documenting an appropriate micro-purchase threshold based on internal controls, an evaluation of risk, and its documented procurement procedures. The micro-purchase threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations. Non-Federal entities may establish a threshold higher than the Federal threshold established in the Federal Acquisition Regulations (FAR) in accordance with paragraphs (a)(1)(iv) and (v) of this section.



(iv) *Non-Federal entity increase to the micro-purchase threshold up to \$50,000.* Non-Federal entities may establish a threshold higher than the micro-purchase threshold identified in the FAR in accordance with the requirements of this section. The non-Federal entity may self-certify a threshold up to \$50,000 on an annual basis and must maintain documentation to be made available to the Federal awarding agency and auditors in accordance with §200.334. The self-certification must include a justification, clear identification of the threshold, and supporting documentation of any of the following:

- (A) A qualification as a low-risk auditee, in accordance with the criteria in §200.520 for the most recent audit;
- (B) An annual internal institutional risk assessment to identify, mitigate, and manage financial risks; or,
- (C) For public institutions, a higher threshold consistent with State law.

(v) *Non-Federal entity increase to the micro-purchase threshold over \$50,000.* Micro-purchase thresholds higher than \$50,000 must be approved by the cognizant agency for indirect costs. The non-federal entity must submit a request with the requirements included in paragraph (a)(1)(iv) of this section. The increased threshold is valid until there is a change in status in which the justification was approved.

(2) *Small purchases—(i) Small purchase procedures.* The acquisition of property or services, the aggregate dollar amount of which is higher than the micro-purchase threshold but does not exceed the simplified acquisition threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources as determined appropriate by the non-Federal entity.

(ii) *Simplified acquisition thresholds.* The non-Federal entity is responsible for determining an appropriate simplified acquisition threshold based on internal controls, an evaluation of risk and its documented procurement procedures which must not exceed the threshold established in the FAR. When applicable, a lower simplified acquisition threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations.

(b) *Formal procurement methods.* When the value of the procurement for property or services under a Federal financial assistance award exceeds the SAT, or a lower threshold established by a non-Federal entity, formal procurement methods are required. Formal procurement methods require following documented procedures. Formal procurement methods also require public advertising unless a non-competitive procurement can be used in accordance with §200.319 or paragraph (c) of this section. The following formal methods of procurement are used for procurement of property or services above the simplified acquisition threshold or a value below the simplified acquisition threshold the non-Federal entity determines to be appropriate:

(1) *Sealed bids.* A procurement method in which bids are publicly solicited and a firm fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bids method is the preferred method for procuring construction, if the conditions.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

- (A) A complete, adequate, and realistic specification or purchase description is available;
- (B) Two or more responsible bidders are willing and able to compete effectively for the business; and

(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

(A) Bids must be solicited from an adequate number of qualified sources, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publicly advertised;

(B) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;

(C) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;

(D) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(2) *Proposals.* A procurement method in which either a fixed price or cost-reimbursement type contract is awarded. Proposals are generally used when conditions are not appropriate for the use of sealed bids. They are awarded in accordance with the following requirements:

(i) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Proposals must be solicited from an adequate number of qualified offerors. Any response to publicized requests for proposals must be considered to the maximum extent practical;

(ii) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and making selections;

(iii) Contracts must be awarded to the responsible offeror whose proposal is most advantageous to the non-Federal entity, with price and other factors considered; and

(iv) The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby offeror's qualifications are evaluated and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms that are a potential source to perform the proposed effort.

(c) *Noncompetitive procurement.* There are specific circumstances in which noncompetitive procurement can be used. Noncompetitive procurement can only be awarded if one or more of the following circumstances apply:

(1) The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (see paragraph (a)(1) of this section);

(2) The item is available only from a single source;

(3) The public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation;

(4) The Federal awarding agency or pass-through entity expressly authorizes a noncompetitive procurement in response to a written request from the non-Federal entity; or

(5) After solicitation of a number of sources, competition is determined inadequate.

**§200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.**

(a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(b) Affirmative steps must include:

(1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

(4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

(5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

(6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (b)(1) through (5) of this section.

### **§200.322 Domestic preferences for procurements.**

(a) As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

(b) For purposes of this section:

(1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

### **§200.323 Procurement of recovered materials.**

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

### **§200.324 Contract cost and price.**

(a) The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.

(b) The non-Federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under subpart E of this part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.

(d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

### **§200.325 Federal awarding agency or pass-through entity review.**

(a) The non-Federal entity must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the non-Federal entity desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(b) The non-Federal entity must make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:

(1) The non-Federal entity's procurement procedures or operation fails to comply with the procurement standards in this part;

(2) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;

(3) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a "brand name" product;

(4) The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.

(c) The non-Federal entity is exempt from the pre-procurement review in paragraph (b) of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.

(1) The non-Federal entity may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third-party contracts are awarded on a regular basis;

(2) The non-Federal entity may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the non-Federal entity that it is complying with these standards. The non-Federal entity must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

### **§200.326 Bonding requirements.**

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

(a) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that

the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

(b) A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor’s requirements under such contract.

(c) A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

### **§200.327 Contract provisions.**

The non-Federal entity’s contracts must contain the applicable provisions described in Appendix II to this part.

### **Appendix II to Part 200 - Contract Provisions for Non-Federal Entity Contracts Under Federal Awards**

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by [41 U.S.C. 1908](#), must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under [41 CFR Part 60](#), all contracts that meet the definition of “federally assisted construction contract” in [41 CFR Part 60-1.3](#) must include the equal opportunity clause provided under [41 CFR 60-1.4\(b\)](#), in accordance with [Executive Order 11246](#), “Equal Employment Opportunity” ([30 FR 12319](#), 12935, [3 CFR Part, 1964-1965 Comp.](#), p. 339), as amended by [Executive Order 11375](#), “Amending [Executive Order 11246](#) Relating to Equal Employment Opportunity,” and implementing regulations at [41 CFR part 60](#), “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

(D) [Davis-Bacon Act](#), as amended ([40 U.S.C. 3141-3148](#)). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the [Davis-Bacon Act](#) ([40 U.S.C. 3141-3144](#), and [3146-3148](#)) as supplemented by Department of Labor regulations ([29 CFR Part 5](#), “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act ([40 U.S.C. 3145](#)), as supplemented by Department of Labor regulations ([29 CFR Part 3](#), “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) [Contract Work Hours and Safety Standards Act](#) ([40 U.S.C. 3701-3708](#)). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with [40 U.S.C. 3702](#) and [3704](#), as supplemented by Department of Labor regulations ([29 CFR Part 5](#)). Under [40 U.S.C. 3702](#) of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of [40 U.S.C. 3704](#) are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous.

These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

**(F) Rights to Inventions Made Under a Contract or Agreement.** If the Federal award meets the definition of “funding agreement” under [37 CFR § 401.2](#) (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of [37 CFR Part 401](#), “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

**(G) Clean Air Act** ([42 U.S.C. 7401-7671q](#).) and the **Federal Water Pollution Control Act** ([33 U.S.C. 1251-1387](#)), as amended - Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the **Clean Air Act** ([42 U.S.C. 7401-7671q](#)) and the **Federal Water Pollution Control Act** as amended ([33 U.S.C. 1251-1387](#)). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

**(H) Debarment and Suspension** (Executive Orders 12549 and 12689) - A contract award (see [2 CFR 180.220](#)) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at [2 CFR 180](#) that implement Executive Orders 12549 ([3 CFR part 1986](#) Comp., p. 189) and 12689 ([3 CFR part 1989](#) Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than [Executive Order 12549](#).

**(I) Byrd Anti-Lobbying Amendment** ([31 U.S.C. 1352](#)) - Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by [31 U.S.C. 1352](#). Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

**(J) See § 200.323\***

**(K) See § 200.216\*\***

**(L) See § 200.322\*\*\***

**\*§ 200.323 Procurement of recovered materials.**

A [non-Federal entity](#) that is a [state](#) agency or agency of a political subdivision of a [state](#) and its [contractors](#) must comply with section 6002 of the [Solid Waste Disposal Act](#), as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at [40 CFR part 247](#) that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

**\*\*§ 200.216 Prohibition on certain telecommunications and video surveillance services or equipment.**

**(a) [Recipients](#)** and sub [recipients](#) are prohibited from obligating or expending [loan](#) or grant funds to:

**(1)** Procure or obtain;

**(2)** Extend or renew a [contract](#) to procure or obtain; or

**(3)** Enter into a [contract](#) (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in [Public Law 115-232](#), section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any [subsidiary](#) or affiliate of such entities).

**(i)** For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any [subsidiary](#) or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

(b) In implementing the prohibition under [Public Law 115-232](#), section 889, subsection (f), paragraph (1), heads of executive agencies administering [loan](#), grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

(c) See [Public Law 115-232](#), section 889 for additional information.

(d) See also [§ 200.471](#).

**\*\*\*§ 200.322 Domestic preferences for procurements.**

(a) As appropriate and to the extent consistent with law, the [non-Federal entity](#) should, to the greatest extent practicable under a [Federal award](#), provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United [States](#) (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all [subawards](#) including all [contracts](#) and purchase orders for work or products under this award.

(b) For purposes of this section:

(1) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

## IMPLEMENTATION PROCEDURES

### Procurement Cycle Steps

**Need Defined**—The City of Montgomery Auditor’s Office submits request and specifications. Purchaser reviews request and specifications for unnecessary or duplicative items in accordance with 2 CFR 200.318 (d).

**Procurement Method Selected**—Based on type and estimated cost of good/service as well as purchasing authority, purchaser determines the procurement method that will result in a best value acquisition for the City.

1. All procurement transactions will be conducted in a manner providing full and open competition.
  - a. No unreasonable requirements are placed on firms in order for them to qualify.
  - b. No unnecessary experience or excessive bonding required.
  - c. Noncompetitive pricing practices between firms or between affiliated companies is disallowed.
  - d. Noncompetitive contracts are disallowed except for when there is an approved exception
  - e. No organizational conflicts of interest
  - f. If a “brand name” product is specified, an equal or like product is acceptable.
  - g. A vendor that intends to respond to the Request for Proposals, Request for Qualifications and/or Invitation for Bid may not participate in the development or drafting of specifications, requirements, statements of work, or invitations for bids or requests for proposals, including, but not limited to, the development of the scoring criteria, the final selection of firms to be contacted, or the scoring of proposals.
2. All procurement transactions shall incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured.
3. All procurement transactions will include review potential for entering into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services to foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government
4. All procurement transactions will include review potential for the use of Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

5. All procurement transactions will include review the use of value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions.
6. All procurement transactions will include reviewing the manner for determining that no other contract other than time and materials type contract is suitable, and include a price ceiling that if exceeded, the contractor exceeds at their own risk.
7. All procurement transactions will consider the responsibility, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims.
8. All procurement transactions shall identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.
9. If the City uses a prequalified list when acquiring goods or services, The City of Montgomery will ensure the list is updated regularly, provides enough qualified sources to ensure maximum open and free competition.
10. All procurement transactions must conform to applicable local, state, and federal laws and regulations.

**Contract Cost and Price** - A cost or price analysis must be conducted in connection with every procurement action more than the federal Simplified Acquisition Threshold including contract modifications (2 CFR 200.323).

The simplified acquisition threshold for federal procurement actions is currently set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions) and in accordance with 41 U.S.C. 1908 as \$150,000, but this threshold is periodically adjusted for inflation. 2 C.F.R. §200.88

The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, an independent estimate must be made before receiving bids or proposals. 2 C.F.R. § 200.323(a).

Cost analysis is the evaluation of the separate elements (e.g., labor, materials, etc.) that make up a contractor's total cost proposal or price (for both new contracts and modifications) to determine if they are allowable, directly related to the requirement and ultimately, reasonable.

Price analysis is essentially price comparison. It is the evaluation of a proposed price (i.e., lump sum) without analyzing any of the separate cost elements of which it is composed.

**Solicitation**— The City of Montgomery purchasing authority or designated individuals create the appropriate solicitation document, with terms and conditions and evaluation criteria clearly defined, and notifies vendor sources for an informal or formal bid process.

Those closely involved in the establishment of the written selection criteria and selection shall have no potential conflicts of interest with any of the individuals, firms, or agencies under review (e.g., family relationships, close friendships, business dealings). Any person who might potentially receive benefits from grant-assisted activities may not participate in the decision-making process. Nepotism and conflict of interest regulations can be found in the Texas Government Code Chapter 573, Texas Local Government Code Chapter 171, and 2 CFR 200.318(c)(1).

Small and minority businesses, women's business enterprises, and labor surplus area firms are encouraged to participate. If the awarded vendor is a prime contractor and may use subcontractors, the following affirmative steps are required of the prime contractor:

- a. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- b. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- e. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

**Receipt of Bids and Responses to Solicitation**—Vendors submit their response to the solicitation.

**Evaluation and Awards**— The City of Montgomery Selection Committee reviews the responses from vendors, determines compliance with the solicitation and makes an award recommendation based on the pre-defined best value criteria.



**Negotiation of Profit** - Federal Guidelines require negotiations of profit as a separate element of the price for each contract and modification in which there is no price competition and, in all cases, where cost analysis must be performed. 2 C.F.R. § 200.323(b)

**Contracting** – The City Administrator, Assistant Administrator and the City Attorney ensures all vendor contracts conform to Federal and State requirements including incorporating Appendix II to Part 200 - Contract Provisions for Non-Federal Entity Contracts Under Federal Awards. Contracts will also identify the responsibility, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims.

**Contract Oversight** – The City Senior Accountant ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders based on the scope of work defined in the Solicitation when reviewing deliverables from the contractors.

**Record Documentation** – The City Secretary will maintain records documenting the history of procurement. These records will include but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

## METHODS OF PROCUREMENT

The City of Montgomery will use one of the following five methods of procurement described at 2 CFR Section 200.320: (1) procurement by micro-purchases, (2) procurement by small purchase procedures, (3) procurement by sealed bids, (4) procurement by competitive proposals, or (5) procurement by noncompetitive proposals.

### 1. Simplified Acquisition Procedures for Purchases Below Micro-Purchase Threshold

For purposes of this section, the micro-purchase threshold is \$3,000.

Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (§200.67 Micro-purchase). To the extent practicable, The City of Montgomery must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable.

### 2. Small Purchase

Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that cost less than the lesser of the Federal Simplified Acquisition Threshold or the \$50,000 threshold defined in state law (Local Government Code §262.003 for counties and §252.021 for municipalities. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.

For service contracts that are under the small purchase threshold and do not fall under professional services as defined in Section 2254.002(2) of Local Government Code, the City of Montgomery may receive quotes and award the contract to any reasonable and responsible bidder. The local governing body has the final authority to award contracts.

### 3. Construction and Materials Contracts

In order for sealed bidding to be feasible, the following conditions should be present:

- a. A complete, adequate, and realistic specification or purchase description is available;
- b. Two or more responsible bidders are willing and able to compete effectively for the business; and
- c. The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

If sealed bids are used, the following requirements apply:

- a. Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publicly advertised;
- b. The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;

- c. All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;
- d. A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
- e. Any or all bids may be rejected if there is a sound documented reason.

**4. Professional Services Contracts**

This method is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

- a. Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical.
- b. Proposals must be solicited from an adequate number of qualified sources.
- c. The City of Montgomery must have a written method for conducting technical evaluations of the proposals received and for selecting recipients.
- d. Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and
- e. The City of Montgomery may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated, and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

**5. Noncompetitive Proposals**

This method may be used only when one or more of the following circumstances apply:

- a. The item is available only from a single source.
- b. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation.
- c. The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request; or
- d. After solicitation of a number of sources, competition is determined inadequate.

These Policies and Procedures are implemented through the City of Montgomery administrative team of:

- Mayor
- Council Members
- City Engineer
- City Administrator
- Assistant City Administrator
- City Secretary
- Senior City Accountant
- Director of Planning and Development
- Director of Public Works

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MONTGOMERY, TEXAS, ON APRIL 11, 2023.**

**APPROVED:**

**ATTEST:**

\_\_\_\_\_  
Byron Sanford, Mayor

\_\_\_\_\_  
Nicola Browe, City Secretary

**Montgomery City Council  
AGENDA REPORT**

<b>Meeting Date:</b> April 11, 2023	<b>Budgeted Amount:</b> N/A
<b>Department:</b> Admin	<b>Prepared By:</b> Dave McCorquodale

**Subject**

Consideration and possible action on a rezoning request from Cornerstone Community Church located at 14740 Liberty Street.

- a) Acceptance of the Final Report from the Planning and Zoning Commission.
- b) Convene into a Public Hearing to hear comments on the proposed rezoning of the property.
- c) Consideration and approval of AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF MONTGOMERY, TEXAS AMENDING THE ZONING CLASSIFICATIONS AS DEFINED IN THE CITY CODE OF ORDINANCES CHAPTER 98, "ZONING," FOR A 0.295-ACRE TRACT SITUATED IN THE JOHN CORNER SURVEY, ABSTRACT NUMBER 8, MONTGOMERY COUNTY, TEXAS COMMONLY REFERRED TO AS A PORTION OF 14740 LIBERTY STREET, MONTGOMERY COUNTY, TEXAS FROM "R-1" SINGLE-FAMILY RESIDENTIAL ZONING DISTRICT, AS FOUND ON THE CITY'S OFFICIAL ZONING MAP TO "I" INSTITUTIONAL ZONING DISTRICT CLASSIFICATION; AND TO AMEND THE OFFICIAL ZONING MAP; PROVIDING A SAVINGS CLAUSE; PROVIDING A REPEALING CLAUSE; AND PROVIDING AN EFFECTIVE DATE UPON PASSAGE AND PUBLICATION.

**Recommendation**

Receive the P&Z Report, hold the Public Hearing, and adopt the Ordinance as presented to rezone the property to I-Institutional.

**Discussion**

Cornerstone Community Church recently purchased 0.295-acre parcel from the property owner to the south as part of a plan for future improvements. The property is currently zoned R1-Single Family Residential. The church is requesting to rezone the property to I-Institutional. The P&Z Commission held Public Hearings on April 4th and recommend approval of the rezoning request.

Legal notice was published on March 20<sup>th</sup> and 13 letters were mailed to surrounding property owners. No objections have been received by staff or by the P&Z Commission at their Public Hearings. One adjacent owner called city hall to clarify the details of the rezoning request but had no concerns.

**Approved By**

Assistant City Administrator & Planning & Development Director	Dave McCorquodale	Date: 04/05/2023
City Administrator	Gary Palmer	Date: 04/05/2023

# PLANNING & ZONING COMMISSION RECOMMENDATION AND REPORT

TO: MONTGOMERY MAYOR AND CITY COUNCIL

FROM: PLANNING & ZONING COMMISSION

CC: GARY PALMER, CITY ADMINISTRATOR  
DAVE MCCORQUODALE, DIRECTOR OF PLANNING & DEVELOPMENT  
NICI BROWE, CITY SECRETARY

SUBJECT: REPORT CONCERNING A PROPOSED RECLASSIFICATION OF A 0.295-ACRE TRACT SITUATED IN THE JOHN CORNER SURVEY, ABSTRACT NUMBER 8, IN MONTGOMERY COUNTY, TEXAS COMMONLY KNOWN AS 14740 LIBERTY STREET, MONTGOMERY, TEXAS 77356 FROM R1-SINGLE FAMILY RESIDENTIAL TO I-INSTITUTIONAL.

Mayor and Members of City Council,

Pursuant to Sections 98-30 and 98-53 of the City of Montgomery Code of Ordinances (“the Code”), the Montgomery Planning and Zoning Commission met on April 4, 2023 to consider a request from Cornerstone Community Church to reclassify the property as I-Institutional. A map of the property with the current zoning overlay is attached as Exhibit “A.”

After duly noticed public hearings with an opportunity for public comments concerning the requested rezoning classification, the Commission found:

- The property is currently zoned R1-Single-Family Residential and was originally part of an adjacent 1.0-acre tract whose owner recently sold 0.295-acres to the church.
- The rezoning request for the parcel to be I-Institutional is consistent with the proposed use and with the adjacent church property zoning. R-1 single-family residential lies to the west, Planned Development zoning overlay with single-family homes lies to the east. While R1-Single Family Residential lies to the north and south, the expectation is that these properties will be rezoned to B-Commercial as they redevelop. The City’s Future Land Use Plan identifies this corridor as future B-Commercial zoning.

- Adequate development regulations are in place to ensure no negative effects on surrounding properties if the rezoning is approved. The church property is currently being platted to reflect a 25-foot vegetative setback (Sec. 78-162) and side & rear yards (Sec. 98-239), adjacent to single-family properties.
- The Commission found the request to be consistent with the Comprehensive Plan and not contrary to the interest of the community. The Planning & Zoning Commission recommends approval of the rezoning request to reclassify the land use zoning designation of said tract to I-Institutional.
- By a vote of 4-0 the Planning and Zoning Commission hereby presents this Recommendation and Report pursuant to Section 98-30 of the City Code, recommending to **approve** reclassification of the land use zoning designation of said property on the Official Zoning Map of Montgomery Texas to I-Institutional, thereby subject to all the requirements of Chapter 98 of the City of Montgomery Code of Ordinances for that designation.

I, Jeffrey Waddell, Chairman of the Montgomery Planning and Zoning Commission, certify this Report to be true and correct to the best of my knowledge.

Signed: Jeffrey Waddell  
Jeffrey Waddell, Chairman

Attest: Nici Browe  
Nici Browe, City Secretary





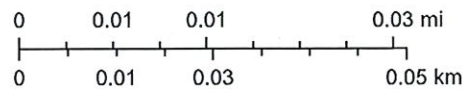
Requesting to rezone 0.3 acres from R1-Single Family Residential to I-Institutional

0.3 Acres 477.3 Feet

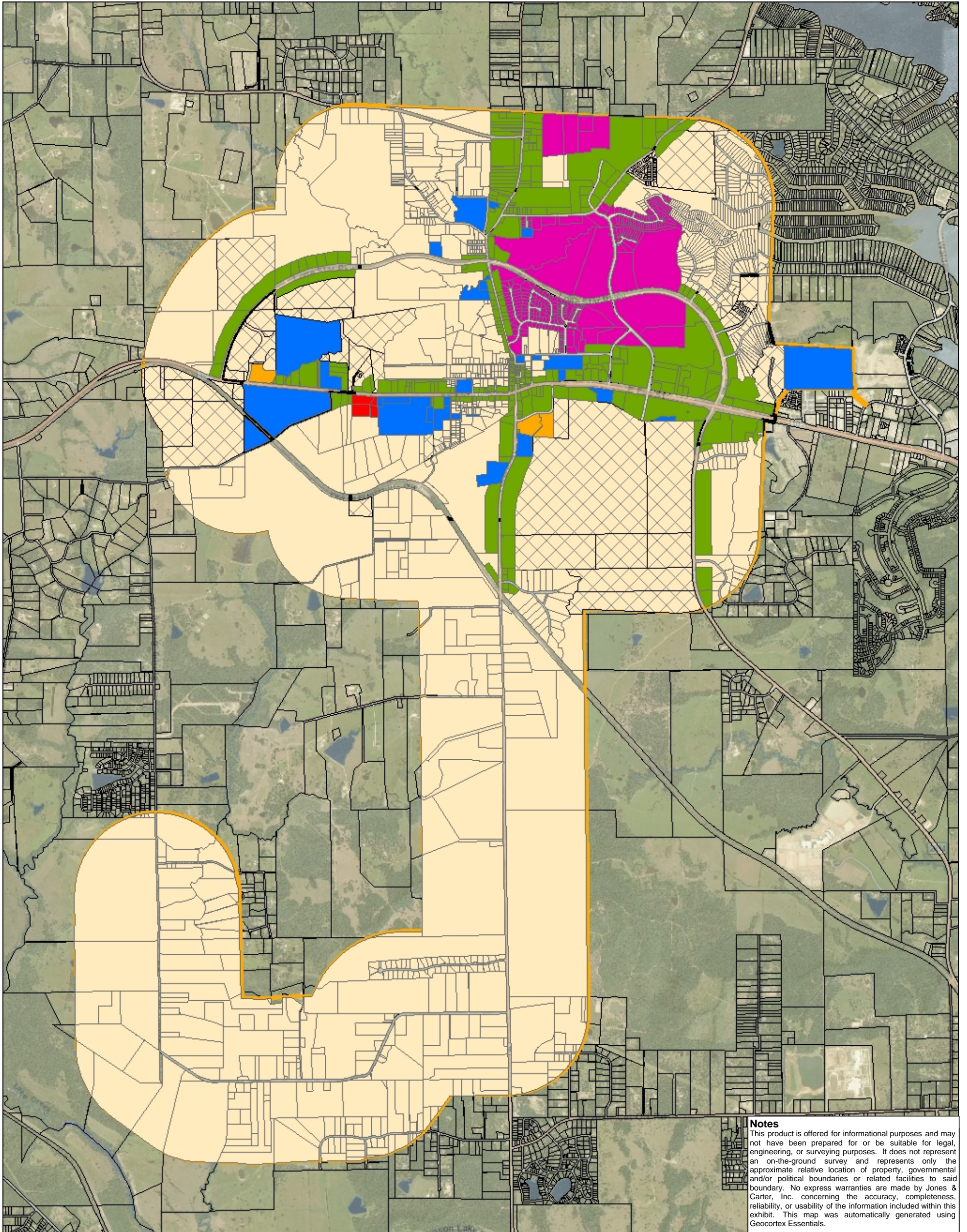
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- Abstracts
- World Transportation
- Parcels
- Lot Lines
- Parcel ID



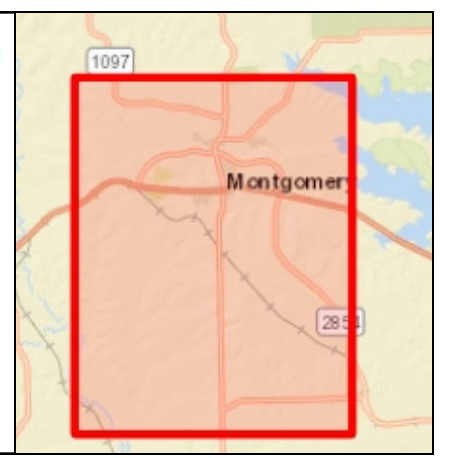
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**Notes**  
 This product is offered for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property, governmental and/or political boundaries or related facilities to said boundary. No express warranties are made by Jones & Carter, Inc. concerning the accuracy, completeness, reliability, or usability of the information included within this exhibit. This map was automatically generated using Geocortex Essentials.

### Legend

- Future Land Use**
- Commercial
  - Industrial
  - Institutional
  - Multi-Family
  - P.D.D.
  - Residential - Low
  - Residential - High
- City Limit**
- City ETJ**
- MOAD Districts**



1 inch equals 3500 Feet

**ORDINANCE NO. 2023-\_\_\_\_\_**

**AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF MONTGOMERY, TEXAS AMENDING THE ZONING CLASSIFICATIONS AS DEFINED IN THE CITY CODE OF ORDINANCES CHAPTER 98, "ZONING," FOR A 0.295-ACRE TRACT SITUATED IN THE JOHN CORNER SURVEY, ABSTRACT NUMBER 8, MONTGOMERY COUNTY, TEXAS COMMONLY REFERRED TO AS A PORTION OF 14740 LIBERTY STREET, MONTGOMERY COUNTY, TEXAS FROM "R-1" SINGLE-FAMILY RESIDENTIAL ZONING DISTRICT, AS FOUND ON THE CITY'S OFFICIAL ZONING MAP TO "I" INSTITUTIONAL ZONING DISTRICT CLASSIFICATION; AND TO AMEND THE OFFICIAL ZONING MAP; PROVIDING A SAVINGS CLAUSE; PROVIDING A REPEALING CLAUSE; AND PROVIDING AN EFFECTIVE DATE UPON PASSAGE AND PUBLICATION.**

**WHEREAS**, the City Council has passed the City of Montgomery Zoning Ordinance providing certain rules and regulations concerning zoning within the City of Montgomery, as found in the Code of Ordinances ("CODE") at Chapter 98; and

**WHEREAS**, the Property described in attached Exhibit "A," (the "Property") is currently zoned "R-1" (Single-Family Residential) on the City's Official Zoning Map; and

**WHEREAS**, the Owner, Cornerstone Community Church of Montgomery, has requested that the City Council rezone the Property as "I" Institutional as authorized by Section 98-30 of the CODE; and

**WHEREAS**, the Planning and Zoning Commission conducted two public hearings on the proposed zoning reclassification of the Property on April 4, 2023; and

**WHEREAS**, pursuant to Section 98-30(c) of the CODE, the City Planning and Zoning Commission has submitted a Final Report to the City Council in which it has voted to approve and recommend that the Property be reclassified as "I" Institutional consistent with its proposed use; and

**WHEREAS**, a public hearing was also conducted on April 11, 2023 before the City Council, as authorized by Section 98-30(d) of the CODE, in order to consider the Final Report and the proposed amendment of the zoning classification of the Property to; and

**WHEREAS**, the City Council finds that all notifications and other procedures required by Section 98-30 of the CODE have been followed; and

**WHEREAS**, the City Council has determined that it is not contrary to the interests of the citizens of the City that the Property should be reclassified as "I" Institutional Zoning.



**NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MONTGOMERY, MONTGOMERY COUNTY, TEXAS THAT:**

**Section 1. Adoption of Recitals.** The recitals in the preamble to this Ordinance are hereby adopted as the findings and conclusions of the City Council.

**Section 2. Amendment to the City Zoning Map.** Pursuant to Section 98-30 of the Code of Ordinances, City of Montgomery, Texas, the Official Zoning Map of the City of Montgomery is hereby amended so that the zoning classification of the Property as described in the attached Exhibit "A", is reclassified as I-Institutional.

**Section 3. Codification of this Ordinance.** Wherever any provision of this Ordinance provides for the amendment of the Code of Ordinances, City of Montgomery, Texas, such provision shall be liberally construed to provide for the codification of the specified provision and for such other provisions of the Ordinance that the codifier in its discretion deems appropriate to codify. The codifier may change the designation or numbering of chapters, articles, divisions or sections as herein specified in order to provide for logical ordering of similar or related topics and to avoid the duplicative use of chapter, article or section numbers. Neither the codification nor any application of the codified Ordinance shall be deemed invalid on the basis of a variance in the number or section of this Ordinance and its codified provisions. The failure to codify the specified provisions of this Ordinance shall not affect their validity or enforcement.

**Section 4. Repeals all Ordinance in Conflict with this Ordinance.**

Any and all provisions of ordinances in conflict with this Ordinance are hereby expressly repealed.

**Section 5. Savings Clause.**

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional, void, or invalid, the validity of the remaining portion of this Ordinance shall not be affected hereby, it being the intention of the City Council of the City of Montgomery in adopting and of the Mayor in approving this Ordinance, that no portion hereof or provisions or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality or invalidity of any other portion, provision or regulation.

**Section 6. Effective Date.**

The effective date of this Ordinance shall be upon its passage and publication.

PASSED AND APPROVED this 11th day of April, 2023.

---

Byron Sanford, Mayor

ATTEST:

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Nicola Browe, City Secretary

APPROVED AS TO FORM:

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Alan P. Petrov, City Attorney

DRAFT

# Cornerstone Church Rezoning Map

Exhibit "A"

Item 7.



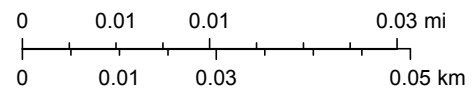
Requesting to rezone 0.3 acres from R1-Single Family Residential to I-Institutional

0.3 Acres 477.3 Feet

3/24/2023, 9:16:48 AM

1:1,128

- Abstracts
- Lot Lines
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- Parcels
- Parcel ID



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Montgomery City Council  
**AGENDA REPORT**

<b>Meeting Date: April 11, 2023</b>	<b>Budgeted Amount: N/A</b>
<b>Department: Public Works</b>	<b>Prepared By: Mike Muckleroy</b>

**Subject**

Consideration and possible action on an Ordinance Adopting the Standards of Care for 2023 Youth Programs.

**Recommendation**

Adopt the Ordinance Adopting the Standards of Care for 2023 Youth Programs as presented.

**Discussion**

The Standards of Care complies with Section 42.041 of the Texas Human Resources Code. The ordinance includes staffing ratios, minimum staffing qualifications, minimum facility, health, and safety standards, and mechanisms for monitoring and enforcing the adopted local standards. It is a requirement by the State of Texas to receive a license/permit to be a government entity exempt from child-care facility regulations. Parents must be informed that the program is not licensed by the state and the program may not be advertised as a child-care facility. This item is a necessity for our summer camp program planned for June 2023.

<b>Approved By</b>		
Public Works Director	Mike Muckleroy	Date: 04/05/2023
City Administrator	Gary Palmer	Date: 04/05/2023

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE ADOPTING THE STANDARDS OF CARE FOR 2023 FOR YOUTH PROGRAMS OFFERED BY THE CITY OF MONTGOMERY, TEXAS; PROVIDING THAT THIS ORDINANCE IS CUMULATIVE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, pursuant to section 42.041(b)(14) of the Texas Human Resources Code, the City of Montgomery, Texas ("City") is not required to obtain a license from the Department of Family and Protective Services to operate an elementary – age (ages 5-13) recreation program provided that the governing body of the City annually adopts standards of care by ordinance after a public hearing; and

**WHEREAS**, Section 42.041(b)(14) of the Texas Human Resources Code requires that the standards of care adopted by the City are provided to the parents of each program participant and that the standards of care include: staffing ratios, minimum staff qualifications, minimum facility, health, and safety standards, and mechanisms for monitoring and enforcing the adopted local standards; and further provided that parents be informed that the program is not licensed by the state and the program may not be advertised as a child-care facility; and

**WHEREAS**, the City finds that a public hearing was held prior to the adoption of this ordinance.

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

**SECTION 1.** In accordance with section 42.041(b)(14) of the Texas Human Resources Code, the City of Montgomery City Council hereby adopts the Standards of Care for 2023 for the elementary-age recreation programs operated by the City of Montgomery that are attached hereto as **Exhibit A** and incorporated by reference as if fully set out herein.

**SECTION 2.** The ordinance shall be cumulative of all provisions of ordinances and of the Code of the City of Montgomery, Texas, as amended, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances and such Code, in which event conflicting provisions of such ordinances and such Code are hereby repealed.

**SECTION 3.** It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses, and phrases of this ordinance are severable, and, if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

**SECTION 4.** This ordinance shall take effect upon adoption.

Adopted and Effective: \_\_\_\_\_

**CITY OF MONTGOMERY, TEXAS**

\_\_\_\_\_  
Byron Sanford, Mayor

**APPROVED AS TO FORM**

\_\_\_\_\_  
Alan P. Petrov, City Attorney

DRAFT

# Standards of Care

## City of Montgomery

*(To be reviewed by City Administrator, City Attorney and presented to City Council)*

The City of Montgomery Public Works/Parks and Recreation will enforce the Standard of Care to comply with Section 42.041 of the Texas Human Resources Code regarding Child Care Licensing Standards. The City of Montgomery Public Works/Parks and Recreation will implement the Standards of Care for Youth Programs. The programs are not licensed by the state and the program is not advertised as a childcare facility.

### General Administration

#### 1. Coordination

- A. The governing body of the City of Montgomery Youth Program(s) is the City of Montgomery Council *\*Once reviewed by council. \**
- B. Implementing Standard of Care of the Youth Program(s) is the responsibility of Public Works/ Parks and Recreation Director and employees in the division.
- C. Standards of Care will apply to Youth Program(s) consisting of Day Camp(s) may be during School Holidays and/or School Vacation.
- D. Each location holding the Youth Program will hold a current copy of the Standard of Care.
- E. Parents/Guardians will have a current copy of the Standard of Care available.
- F. Criminal Backgrounds and Drug test will be conducted to any Program Staff. In the effect of any felony or misdemeanor in the following offenses, they will not be considered for the position(s) needed:
  - (1) Against an individual or family
  - (2) Public Indecency
  - (3) Possession or distribution of any controlled substance.

#### 2. Definitions

- A. *City*: City of Montgomery
- B. *City Council*: City Council of the City of Montgomery
- C. *Department*: Public Works/ Parks and Recreation Department of the City of Montgomery
- D. *Youth Program(s)*: City of Montgomery Youth Programs consisting of Day Camp Program(s).
- E. *Recreational Program(s)*: City of Montgomery program(s) for the recreational

purpose for the community.

- F. *Program Handbook*: Handbook containing the policies, procedures, information relevant to program(s).
- G. *Parent/Guardian*: The adult(s) who has legal custody over the minor participating on the program.
- H. *Participants*: The minor participating in the program with parent/guardian consent.
- I. *MISD*: Montgomery Independent School District.
- J. *Department Director*: City of Montgomery Public Works/ Park and Recreation Department Director.
- K. *Events & Recreational Specialist*: Coordinator of the recreational programs and Events organized by the City of Montgomery.
- L. *Recreational Coordinator*: The Events & Recreational Specialist actively representing the recreation coordinator and other recreation positions as needed.
- M. *Recreation Leader*: Seasonal and/or part-time Staff hired by the City of Montgomery for the purpose of the recreational care of the participants.

### 3. Registration

For the Youth to be able to enroll in the program, the parent/guardian will need to fill out the following:

- A. Registration Form including the following:
  - (1) Participant's name, address, home telephone number.
  - (2) Parent/Guardian name, address, and telephone number.
  - (3) Emergency contact information.
- B. Child Release Authorization Form including the following:
  - (1) Participant's name, address, home telephone number.
  - (2) Parent/Guardian name, address, and telephone number.
  - (3) Authorized adults to drop-off/pick- participant.

### 4. Suspected Abuse

Any suspicion of child abuse or neglect will be reported in line with the Texas Family Code. In the event of a City Staff being involved in an incident with a youth that could be interpret as child abuse, the incident must be reported immediately to Recreation Coordinator and Public Works/ Parks and Recreation Director. The Police Department, City Attorney, City Administrator, and any other agency, as it may be appropriate, will be notified immediately.

Texas state law requires the staff of these Programs to report any suspected abuse or neglect of a child to the Texas Department of Protective and Regulatory Services or a law enforcement agency. Failure to report suspected abuse is punishable by fines up to \$1,000 and/ or confinement up to 180 days. Confidential reports may be made by calling. 1-800-252-5400.



## **Staff Responsibilities and Training**

### **5. Recreation Coordinator Qualifications**

- A. Recreation Coordinators will be a full-time employee of the City of Montgomery Public Works/ Parks and Recreation Department and required to have all qualifications as outlined in the Job Description on file at the Personnel Department.
- B. Recreation Coordinator(s) must be at least 21 years old.
- C. Recreation Coordinator(s) must have two years of experience planning and implementing recreational activities.
- D. Recreation Coordinators must successfully complete and maintain a certification in First Aid and Cardiopulmonary Resuscitation (CPR) based on industry standards. The Recreation Coordinators must also attend a minimum of twenty hours of training annually to include child abuse prevention guidelines, appropriate touch, center and Program safety standards and general Staff training as identified in the Staff Training Manual.
- E. Recreation Coordinators must pass a background investigation and drug screen.

### **6. Recreation Coordinator's Responsibilities**

- A. Recreation Coordinators are directly responsible to administer the Program operations in compliance with the adopted Standards of Care.
- B. Recreation Coordinators are responsible to make recommendations for hire, train, supervise, and evaluate Recreation Leaders.
- C. Recreation Coordinators are responsible to plan, implement, and evaluate Programs.

### **7. Recreation Leader Qualifications**

- A. Recreation Leaders will be part-time employees of the City of Montgomery Public Works/ Parks and Recreation Department and required to have all qualifications as outlined in the Job Description on file at the Personnel Department.
- B. Recreation Leaders working with youth must be age 18 or older and possess a High School Diploma or GED.
- C. Recreation Leaders should be able to consistently exhibit competency, good judgment, and self-control when working with youth.
- D. Recreation Leaders must relate to parents, youth and Staff with courtesy, respect, tolerance, and patience.
- E. Recreation Leaders must successfully complete and maintain a certification in First Aid and Cardiopulmonary Resuscitation (CPR) based on industry standards. They must also attend twenty hours of training annually to include child abuse prevention guidelines, appropriate touch, center and Program safety standards and general staff training as identified in the Staff Training Manual.
- F. Recreation Leaders must pass a background investigation and drug screen.

## 8. Recreation Leader Responsibilities

- A. Recreation Leaders will be responsible to provide youth with an environment in which they can feel safe, enjoy wholesome recreation and education activities.
- B. Recreation Leaders will be responsible to know and follow all City, Departmental, and Program standards, policies, and procedures that apply to Programs.
- C. Recreation Leaders must ensure that youth are released only to a Parent/Guardian, or an adult authorized by the Parent/ Guardian on the Authorization Release Form. Any unfamiliar adult will have to provide ID/DL as verification of identity with the forms filed by parents/guardians. Failure to identify the adult will result in immediate notification of the parent/guardian and the proper authorities.

## 9. Training

- A. The Department is responsible for providing 20 hours of training and orientation to Staff working with youth and for specific job responsibilities. Recreation Coordinators will provide each Recreation Leader with a training specific to each Program. There will be formal training sessions covering all areas of the Program.
- B. Program Staff must be familiar with the Standards of Care for Youth Program operation as adopted by the City Council.
- C. Program Staff must be familiar with the Program's policies including discipline, guidance, and release of youth.
- D. Program Staff will be trained in appropriate procedures to handle emergencies.
- E. Program Staff will be trained in areas including City, Departmental, and Program policies and procedures, provision of recreation and education activities, safety issues, basic child psychology, and organization.
- F. Program Staff will be required to sign an acknowledgement that they received the required training.

# Program Operations

## 10. Staff Participant Ratio

- A. In a Program, the standard ratio of Participants to Staff will be 10 to 1 up to age 12 and 15-1 for youth 13 and over. In the event a Staff is unable to report to a Program Site, a replacement will be assigned.
- B. Each youth shall have a Program Staff who is responsible for him or her and who is aware of the youth's habits, interests, and any special problems as identified by the Parent/ Guardian during the registration process.

## 11. Discipline

- A. Program Staff will implement discipline and guidance in a consistent manner based on the best interests of Program Participants.
- B. There must be no cruel or harsh punishment or treatment of any kind.
- C. Corporal punishment is prohibited.
- D. Program Staff may use brief, supervised separation from the group if necessary.
- E. As necessary, Program Staff will initiate discipline reports to the Parent/Guardian of youth. Parent/Guardian will be asked to sign discipline reports to indicate they have been advised about specific problems and/or incidents.
- F. After a certain amount and/or severe nature of discipline reports it may result in a youth being suspended from the Program.
- G. In the occasion where there is a danger to Participants and/or Staff, the offending youth will be removed from the Program Site as soon as possible.

## 12. Recreational Activities/ Fieldtrips

- A. Program Staff will attempt to provide activities according to the Participants' ages, interests, and abilities. The activities must be appropriate to Participants' health, safety, and well-being. The activities must also be flexible and promote the Participants' emotional, social, and mental growth.
- B. Program Staff will attempt to provide activity time frames that include:
  - (1) alternating active and passive activities.
  - (2) opportunity for individual and group activities, and
  - (3) outdoor time each day if the weather allows it.
- C. Program Staff will be attentive and considerate of the Participants' safety during fieldtrips and any transportation provided by the Program.
  - (1) During trips, Program Staff must have immediate access to emergency medical forms and emergency contact information for each youth.
  - (2) Program Staff must have a written list of the Participants in the group and must check the roll frequently.
  - (3) Program Staff must have access to first aid supplies.

## 13. Communications

- A. The Recreation Coordinator will post the following telephone numbers accessible to all Program Staff as necessary:
  - (1) 911 for any Medical and Safety Emergencies
  - (2) Montgomery County Fire Station
  - (3) City of Montgomery City Hall
  - (4) City of Montgomery Public Works/Parks and Recreation Department.
  - (5) City of Montgomery and MISD Police Department
  - (6) Appropriate numbers for MISD maintenance and transportation (if applicable)

# Facility Standards

## 14. Safety

- A. Program Staff will inspect Program site daily to detect sanitation and safety concerns that might affect the health and safety of the Participants.
- B. Any building(s), ground(s), and equipment on the Program Site will be inspected, cleaned, repaired, and maintained to protect the health of the Participants.
- C. Program equipment and supplies must be safe for the Participants' use.
- D. Program Staff must have First Aid supplies accessible in a designated location at each site, during transportation to an off-site activity, and for the duration of any off-site activity.
- E. Program air conditioners, electric fans, and heaters must be mounted out of Participants' reach or have safeguards that keep youth from being injured.
- F. Program porches and platforms more than 30 inches above the ground must be equipped with railings youth can reach.

## 15. Fire

- A. In case of fire, danger of fire, explosion, or other emergency, Program Staff's priority is to evacuate youth to a designated safe area.
- B. The Program Site will have an annual fire inspection by the local Fire Marshal, and the resulting report will detail any safety concerns observed. Any report forwarded to the Recreational Coordinator will be reviewed and deadlines and criteria for compliance will be established.
- C. Each Program site must have an appropriate number of fire extinguishers approved by the Fire Marshal accessible to all Program Staff. The fire extinguishers must be inspected monthly by the Recreational Coordinator and documented. All Program Staff will be trained in the proper use of fire extinguishers.
- D. Fire drills will be initiated at Program Sites based on the following schedule:
  - (1) Day Camp Program: A fire drill will be conducted once or twice depending on the length of day camp.

## 16. Health

- A. Illness or Injury
  - (1) A youth who is considered to be a health or safety concern to other Participants or Staff will not be admitted to the Program.
  - (2) Illnesses and injuries will be handled in a manner to protect the health of all Participants and Staff.
  - (3) Program Staff will follow plans to provide emergency care for injured youth with symptoms of an acute illness as specified in the Program manual.
  - (4) Program Staff will follow the recommendation of the Texas Department of Health concerning the admission or readmission of any youth after a communicable disease.
- B. Program Staff will not administer medication unless is part of administering First Aid.

### **C. Toilet Facilities**

- (1) The Program Site will have inside toilets located and equipped so youth can use them independently and Program Staff can supervise as needed.
- (2) There must be one flush toilet for every 30 youth. Urinals may be counted in the ratio of toilets to youth, but they must not exceed 50% of the total number of toilets.
- (3) An appropriate and adequate number of lavatories will be provided.
- (4) Toilet facilities may be provided in a building adjacent to the Program Site.

### **D. Sanitation**

- (1) The Program Sites must have adequate light, ventilation, and heat.
- (2) The Program must have an adequate supply of water meeting the standards of the Texas Department of Health for drinking water and ensure that it will be supplied to the Participants in a safe and sanitary manner.
- (3) Program Staff must see that garbage is removed from buildings daily.

## **17. Complaints**

A. Parent/ Guardian or Participant complaints will be reviewed by the Recreation Coordinator for assessment.

- (1) The Recreational Coordinator will initiate a corrective action concerning the complaint.
- (2) The disposition of all complaints will be included in monthly reports to the Director of Public Works/ Parks and Recreations.
- (3) Complaints of serious nature will be included in the quarterly report to the Director of Public Works/ Parks and Recreations.

B. Parent/ Guardian or Participant complaints beyond Recreation Coordinator:

- (1) The coordinator will immediately contact the Director of Public Works/ Parks and Recreations.
- (2) Recreation Coordinator will commence a dialog with the complainant to establish an appropriate response.
- (3) Director of Public Works/ Parks and Recreations will initiate a corrective action concerning the complaint.
- (4) There will be immediate notification to the Director of Public Works/ Parks and Recreations by the Recreation Coordinator concerning the nature and disposition of the complaint.

# GENERAL PROGRAM INFORMATION

## ***Registration Procedures***

Registration for City of Montgomery Programs is on a first-come, first-served basis with a limit on active participants. The Parent/Guardian must submit the electronic registration form and authorization release form online.

## ***Participant's Information Files***

Parents/Guardian must complete a set of registration forms for each youth and each Program. The registration forms must include the youth's personal information, emergency information and authorized persons to whom a youth can be released. In the event of shared custody, the Program will comply with court documents that must be provided. A copy of these forms will be kept on file at the Public Works/Parks and Recreation office and a copy will be kept at each Program Site during active program(s). Parent/ Guardian is responsible for providing updated information in writing to the Recreational Coordinator. All written correspondence regarding changes and/or updates for the Participant's will be kept on file for two years at the appropriate Center.

## ***Attendance***

Youth enrolled in a Program will be signed in upon arrival to the Program site. The City of Montgomery is not responsible for youth until the youth has checked-in at the Program. When a youth is absent, the Parent/ Guardian should call and leave a message at the Parks and Recreation Office. The following information will be requested: youth's name, the program they are enrolled and the reason for the absence. Program Staff will not call Parent/ Guardian to verify an absence if the youth is not in attendance.

## ***Lunch/Snacks***

Snacks will not be provided for youth program. Parent/Guardian will be responsible of providing lunch and snacks. Program Staff will provide a small break(s) for snacks in addition to one hour of lunch time. Food cannot be required to be heated or refrigerated.

## ***Behavioral Reports***

Behavioral reports are issued to youth who continue to act inappropriately, are disruptive, or create a safety concern after receiving a warning and/or time-out. Parent/Guardian will sign each report and receive a copy the following day after an incident. A youth will be suspended for three days after the third report and will be withdrawn from the Program after the fourth report is received in each session. Suspended youth and Parent/ Guardian must attend a conference with the Recreation Coordinator. Depending on the severity of the incident, suspension or termination may be enforced on the first occurrence. An example of immediate suspension or termination may be for hitting another youth or Staff or leaving the area without supervision.

## ***Child Release/Sign-Out***

The registration form includes a section for the Parent/ Guardian to provide the names of those persons allowed to pick up their youth(s) from the Program. Formal identification will be required by anyone picking up a youth. The following procedures will be always followed:

- A. When a Parent/Guardian or authorized person comes to pick up the youth, they are to sign the youth out. Honking or waiving for the youth to come to the car is not acceptable.

- B. Until familiarity is established, identification will be required. When an unauthorized person comes to pick up a youth, the following procedures will be followed:
- (1) Staff will require identification on anyone they are not familiar with.
  - (2) The sign-out policy and the reason for it will be explained to the person desiring to take the youth.
  - (3) The Parent/Guardian will be called at work or at home to inform them of the person on site asking to pick up their youth. The Parent/ Guardian will be asked for their pre-recorded password to verify that Staff is talking to the Parent/Guardian
  - (4) Once permission is granted, the youth will be released to the person on site.
  - (5) If the Parent/Guardian cannot be reached or does not grant permission, the youth will not be released to the unauthorized person.
  - (6) If the unauthorized person remains persistent to take a youth without proper permission, the police will be notified, and the situation will be handled as a potential criminal incident.

### ***Withdrawal Procedures***

Any Parent/Guardian requesting to withdraw their youth from an ongoing Day Camp Program should notify the Program in writing. Any outstanding Program fees will need to be updated. If a youth is withdrawn from the Program, they may be readmitted only if there are no outstanding balances and as space allows.

### ***Condition of Participants***

Parents are responsible for informing the City of Montgomery of any special needs, concerns, or information regarding their youth's health. All youths must be able to participate in the full range of activities offered. Any youth meeting any of the following criteria will not be admitted to the Program:

- (1) A condition preventing the youth from participating comfortably in the Program activities.
- (2) A condition resulting in greater need for care the Staff is unable to provide without compromising the health, safety, and supervision of the other Participants or Staff.
- (3) The youth has a fever greater than 100 degrees.
- (4) The youth has symptoms and signs of possible severe illness to include, but not limited to lethargy, uncontrolled breathing, diarrhea, vomiting, rash with fever, mouth sores, wheezing, or sudden behavior change, will not be admitted until medical evaluation indicates that the youth can be included in the Program's activities.
- (5) The youth has been diagnosed with a communicable disease until medical evaluation determines the youth is no longer communicable.
- (6) The youth vomited in the morning prior to coming to the Program.
- (7) Youth must be clear of symptoms for 24 hours before returning to the Program.

Parent/Guardian will be notified by phone if youth become ill during the Program. If the Parent/Guardian cannot be reached, the emergency contact will be called. Any youth experiencing a fever over 100 degrees, vomiting, diarrhea, or contagious skin or eye infections will be removed from common areas and should be picked up within one hour of contact with the Parent/Guardian.

Parent/ Guardian must provide written statement from the doctor stating the youth is free from contagious disease before returning after a contagious illness.

In the event of critical illness or injury, proper medical personnel and Parent/ Guardian will be notified. At the discretion of the medical personnel, the youth may be transported to an emergency

room or clinic by ambulance or by the Parent/Guardian. Parent/Guardian will be responsible for any expenses incurred.

### ***Parent/Child Communication***

When Parent/ Guardian needs to contact their youth at the Program, for emergency reasons only, they must call Parks and Recreation Office. The city staff will contact the Recreational Coordinator, at that time the Recreational Coordinator may provide the message to the youth.

### ***Discipline/Dismissal***

The Program has limited tolerance towards behavioral problems. Staff will be consistent in the disciplinary procedures for all youth. All forms of disciplinary action taken will be documented with the date, time, nature of offense, and disciplinary action taken. The documentation will be accessible only to Program Staff, appropriate parks and recreation personnel and Parent/ Guardian upon request.

*The following is our adopted disciplinary procedure:*

**1<sup>ST</sup> Warning** = A clear message. Tell the youth what they did wrong, why it was wrong, and what will happen if it happens again. Parent/ Guardian may be notified at pick-up.

**2<sup>nd</sup> Warning** = Youth is taken out of game/activity. Time out should not be for more than 10 minutes. Incident report written and Parent/ Guardian notified at pick up.

**3<sup>rd</sup> Warning** = For repeated offenses youth may be sent home and/or suspended for 1-3 days. Before coming back to the Program, a meeting with the Parent/ Guardian, youth, referring Staff member, and Recreation Coordinator will take place.

**4<sup>th</sup> Warning** = Dismissed from program for the remainder of the season.

The offenses need not be related to one another.

A youth may be dismissed if they are picked up late three times.

A youth may be dismissed for non-payment of fees.

The Recreation Coordinator and Director of Public Works/ Parks and Recreation reserve the right to skip any of the above steps of disciplinary actions depending on the severity of the behavior.

Each youth is informed of all the rules and consequences. If a serious incident takes place (i.e., injury to another youth or Staff) the youth may be sent home immediately without going through the steps above. Incident reports and discipline reports will stay in effect until the program concludes for the season. It is expected that all youth will enjoy the program and stay in the program. Staff will be available if a youth is experiencing any difficulties in or with the Program.

These guidelines are subject to change throughout the year to better operate the program. Notification will be made in writing of any changes made and the date that the changes will be in effect.



Montgomery City Council  
**AGENDA REPORT**

<b>Meeting Date:</b> April 11, 2023	<b>Budgeted Amount:</b> N/A
<b>Department:</b> Admin	<b>Prepared By:</b> Dave McCorquodale

**Subject**

Calling a Public Hearing for a rezoning request from "R1"-Single Family Residential to "B"-Commercial for a 0.552-acre parcel of land located at 14640 Liberty Street as submitted by Evan Ballew.

**Recommendation**

Call a Public Hearing on the rezoning request for May 9, 2023 at 6:00 pm.

**Discussion**

Attached is the rezoning application and cover letter. The Planning & Zoning Commission will hold Public Hearings on the request at their May 2<sup>nd</sup> meeting.

City Council will receive the P&Z recommendation, hold a Public Hearing, and act on the request at the May 9<sup>th</sup> City Council meeting.

<b>Approved By</b>		
Assistant City Administrator & Planning & Development Director	Dave McCorquodale	Date: 04/05/2023
City Administrator	Gary Palmer	Date: 04/05/2023



**JLA Realty**  
**The Evan Ballew Group**  
14375 Liberty St., Suite 106  
Montgomery, TX 77356  
(936) 290-0206

To whom it may concern:

I, Evan Ballew, am a lifetime resident of Montgomery. I currently lease office space in The Westmont Building for my real estate business. I am pursuing the opportunity to rezone the tract of land I purchased at 14640 Liberty St for commercial use. My plan is to use the dwelling for my real estate office. I believe this is in line with the City's Future Land Use Plan and I look forward to following through with my plan for this tract. Your consideration is greatly appreciated!

Thank You,

Evan Ballew



# Rezoning Application

City of Montgomery  
101 Old Plantersville Road  
Montgomery, Texas 77316  
(936) 597-6434

Upon completion return application to [dmccorquodale@ci.montgomery.tx.us](mailto:dmccorquodale@ci.montgomery.tx.us)

### Contact Information

Property Owner(s): Evan Ballew

Address: 2470 N. Mt. Mariah Rd. Montgomery, TX

Zip Code: 77356 Phone: (936) 581-9959

Email Address: evan@evanballewgroup.com

Applicants: Evan Ballew

Address: \_\_\_\_\_

Zip Code: \_\_\_\_\_ Phone: \_\_\_\_\_

Email Address: \_\_\_\_\_

### Parcel Information

Property Identification Number (MCAD R#): 31343

Legal Description: Corner John, Tract 16, Acres .57

Street Address or Location: 14640 Liberty St.

Acreage: .55 Present Zoning: Residential Present Land Use: Residential

Proposed Zoning: Commercial Proposed Land Use: Office Space

Is the proposed use in compliance with the Future Land Use Plan?  YES  NO

### Additional Information

Owner(s) of record for the above described parcel:

Signature: [Signature] Date: 3/10/2023

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Note: Signatures are required for all owners of record for the property proposed for Special Use Permit. Attach additional signatures on a separate sheet of paper.

<h2>Date Received</h2> <p>Office Use</p>	
--	--

# JOHN CORNER SURVEY ABSTRACT NO. 8

Called 0.439 AC  
85 X225  
CF 2013-044645  
283/212 MCDR

BUFFALO SPRINGS  
SECTION TWO  
C&B Z, SHT. 641, M.C.M.R.

FINAL  
SURVEY  
FOR: SHUNTERIO DUCKETT  
14640 LIBERTY STREET  
MONTGOMERY, TEXAS 77366

BEING 0.552 acre of land, situated in the JOHN CORNER SURVEY, ABSTRACT NO. 8, Montgomery County, Texas, being a portion of that same called 120 by 210 tract (0.57 Ac) as described in deed recorded under Clerk's File No. 9710260 of the Real Property Records of Montgomery County, Texas, and being further described by attached metes and bounds.

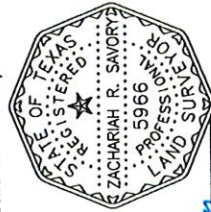
Record data as shown hereon was relied upon in part and taken from a Commitment for Title Insurance issued by the following qualified provider:  
Old Republic National Title Ins. Co.  
C.F. No. 1502988  
Effective date: 03/02/15

-Survey is valid only if print has original signature of surveyor on it. Declaration is made to original purchaser of this survey. It is not transferable to additional institutions or subsequent owners.

-Surveyor has not performed a complete abstract of subject property and does not certify to easements or restrictions not shown. Check with your local governing agencies for any additional easements, building lines, or other restrictions not reflected on recorded deeds.

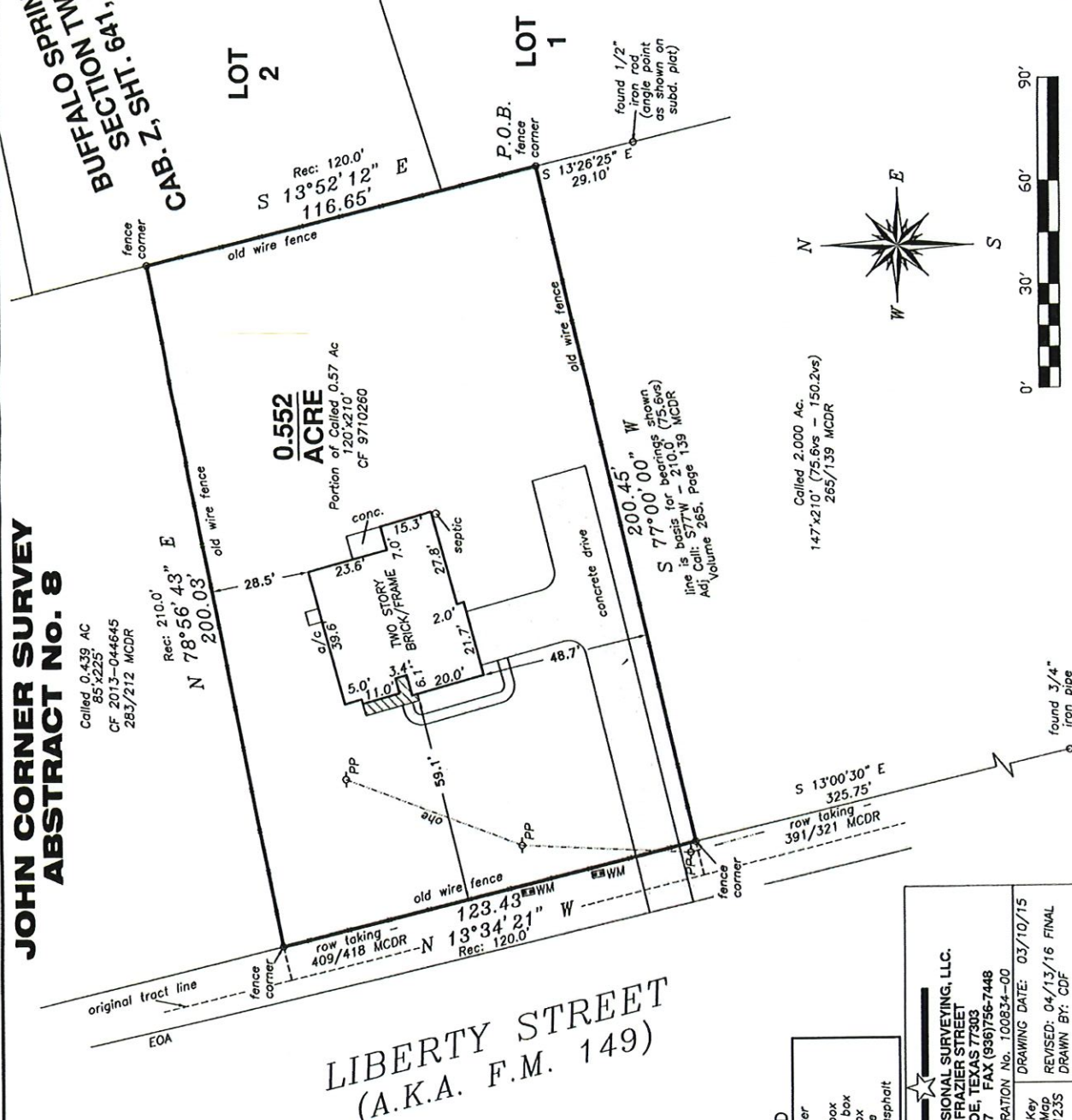
Subject property shown hereon is located in Zone X, and does not appear to lie within the 100-year flood plain, according to the F.E.M.A. Flood Insurance Rate Map, Community Panel 48339C 0200 G, effective 08/18/14.  
Information is based on graphic plotting only. Surveyor assumes no responsibility for exact determination.

I hereby certify that this survey was made on the ground under my supervision and that this drawing correctly represents the facts found at the time of survey and substantially conforms to the current Texas Society of Professional Surveyors Standards and Specification for a Category 1A, Condition II Survey.



Date of Survey: 03/04/15 JB  
Date of Slab: 02/10/16 JVB  
Date of Final: 04/13/16 JMW

Zachariah R. Savory  
Registered Professional Land Surveyor No. 5966



- LEGEND**
- wm = water meter
  - lp = light pole
  - cbt = cable tv box
  - tel. = telephone box
  - elec. = electric box
  - pp = power pole
  - ea = edge of asphalt

TEXAS PROFESSIONAL SURVEYING, L.L.C.  
3032 N. FRAZIER STREET  
CONROE, TEXAS 77303  
(936)756-7447 FAX (936)756-7448  
FIRM REGISTRATION No. 100834-00

PROJECT NO. D130-01  
DRAWING DATE: 03/10/15  
REVISIONS: 04/13/16 FINAL  
DRAWN BY: CDF

Montgomery City Council  
**AGENDA REPORT**

<b>Meeting Date: April 11, 2023</b>	<b>Budgeted Amount: \$175,000</b>
<b>Department: Public Works</b>	<b>Prepared By: Mike Muckleroy</b>

**Subject**

Consideration and possible action regarding the bid results for the “Flagship Boulevard Storm Sewer and Pavement Replacement” project.

**Recommendation**

Reject all bids submitted and modify the bid package to the specifications that WGA is recommending.

**Discussion**

Attached in this presentation is an email from our City Engineer, Mr. Chris Roznovsky, which gives the discussion details needed.

**Approved By**

Public Works Director	Mike Muckleroy	Date: 04/06/2023
City Administrator	Gary Palmer	Date: 04/06/2023



**Engineer's Cost Estimate**  
**Flagship Boulevard - Storm Sewer Rehabilitation**  
**City of Montgomery**  
 10/20/2022

Item No.	Description	Quantity	Unit	Unit Price	Cost
<u>General</u>					
1	Contractor Mobilization, Bonds, & Insurance	1	LS	\$ 10,000	\$ 10,000
2	Trench Safety	636	LF	2	2,000
3	Stormwater Pollution Prevention Plan	1	LS	3,000	3,000
4	Site Restoration - Turf/Landscape	1	LS	5,000	5,000
5	6" Concrete Pavement and Subgrade	1,191	SY	90	108,000
6	Traffic Control	1	LS	5,000	5,000
7	6" Curb	567	LF	10	6,000
8	Pavement Removal and Disposal	1,191	SY	7	9,000
<u>Storm Sewer</u>					
9	36" Storm Sewer Pipe Replacement with Reinforced Concrete Pipe	78	LF	150	12,000
10	48" Storm Sewer Pipe Replacement with Reinforced Concrete Pipe	558	LF	175	98,000
11	Remove and Dispose Existing Storm Sewer	1	LS	5,000	5,000
				<b>Subtotal</b>	\$ 258,000
				<b>Contingencies (10%)</b>	\$ 26,000
				<b>Engineering</b>	\$ 11,000
				<b>Construction Administration and Inspection</b>	\$ 18,000
				<b>Additional Services and Reimbursables</b>	\$ 7,500
				<b>Total</b>	<b>\$ 320,500</b>

## Notes:

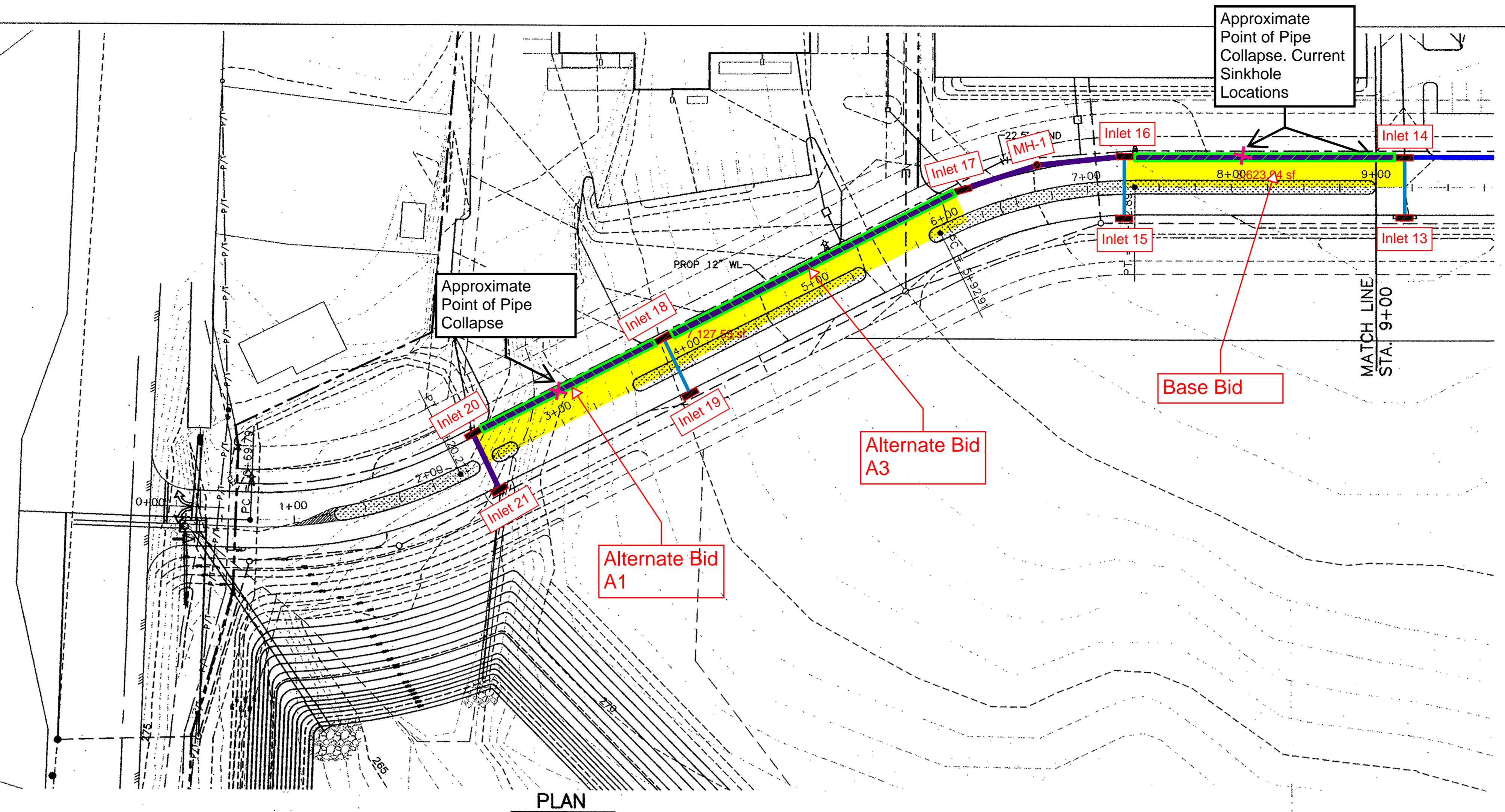
- 1 All values rounded up to the nearest thousand.
- 2 This estimate is based on my best judgement as a design professional familiar with the construction industry. We cannot and do not guarantee that bids will not vary from this cost estimate.

CVR/akg

Z:\00574 (City of Montgomery)\002 2022 CCT\ENGR\Flagship Storm Sewer\Flagship Storm Rehab Cost Estimate.xlsx

**LEGEND**

- 18" HDPE
- 36" HDPE
- 48" HDPE
- 18" RCP Replacement
- 36" RCP Replacement
- 48" RCP Replacement
- Collapse Location
- Storm Sewer Inlet
- Storm Sewer Manhole



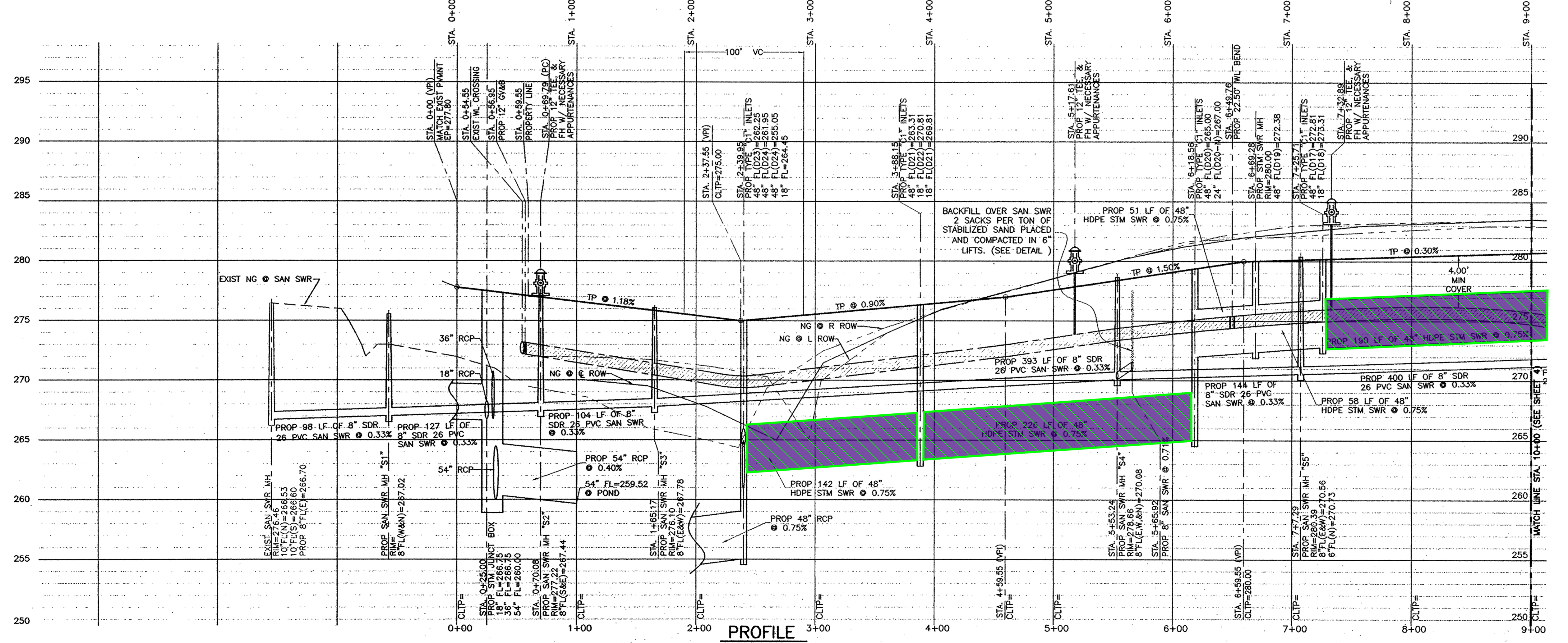
**LEGEND:**

- FF - FINISH FLOOR
- TW - TOP OF WALK
- TC - TOP OF CURB
- TP - TOP OF PAVEMENT
- FL - FLOW LINE
- TG - TOP OF GRATE
- MEP - MATCH EXISTING PAVEMENT
- I = 11.80 IN/HR (100 YEAR STORM EVENT)
- TC = 10 MINUTES

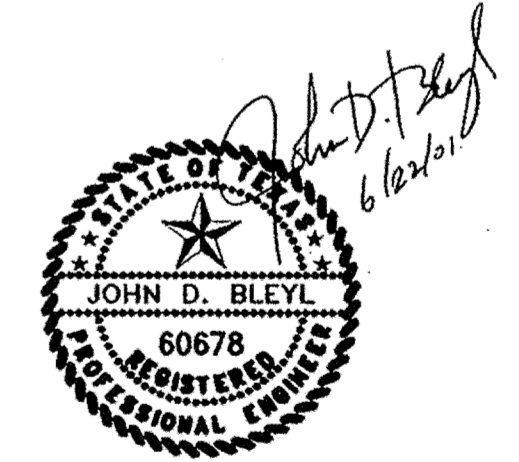
➔ DIRECTION OF TRAFFIC

- DRAWING NOTES:**
- REVISIONS TO THESE ENGINEERING PLANS MUST BE AUTHORIZED BY BLEYL & ASSOCIATES PRIOR TO CONSTRUCTION.
  - THE CONTRACTOR SHALL:
    - A.) NOTIFY BLEYL & ASSOCIATES AND THE MONTGOMERY COUNTY ENGINEER PRIOR TO CONSTRUCTION.
  - FLOOD PLAIN: THIS PROJECT LIES WITHIN ZONE "X" IN ACCORDANCE WITH FEMA MAP PANEL NO. 189, COMMUNITY MAP PANEL NO.48339C0189 F, CONROE, MONTGOMERY COUNTY, TEXAS EFFECTIVE DATE DECEMBER, 19, 1996.
  - ELEVATIONS ARE BASED UPON F.I.R.M. BENCHMARK RM 140, ELEV.=242.71.
  - HYDROMULCH ALL DISTURBED AREAS.

PLAN  
SCALE: 1" = 50'



PROFILE  
SCALE: HORIZONTAL: 1" = 50' VERTICAL: 1" = 5'



REVISION					
REV.	DATE	BY	CHK	APP	COMMENTS
0	06/21/01	LPF			ISSUED FOR APPROVAL

**Bleyl & Associates**  
Project Engineering & Management

300 W. DAVIS SUITE 535  
CONROE, TEXAS 77301  
936-441-7833 PHONE  
936-760-3833 FAX

**PLAN & PROFILE**  
**FLAGSHIP BOULEVARD**  
STA. 0+00 - 9+00  
MONTGOMERY TRACE CENTER  
A 38.229 ACRE TRACT OF LAND  
IN THE JOHN CORNER SURVEY, A-8  
MONTGOMERY COUNTY, TEXAS

SCALE: 1"=50' HORZ.; 1"=5' VERT. PREPARED FOR:  
DATE: JUNE, 2001 ROBERT EASLEY  
DRAWN BY: LANCE FERRY 1450 CAMPBELL  
PROJECT MANAGER: JOHN D. GERDES, E.I.T. HOUSTON, TX 70555  
(281) 356-7934

JOB NO. 1220 SHEET 9 OF 14

**LEGEND**

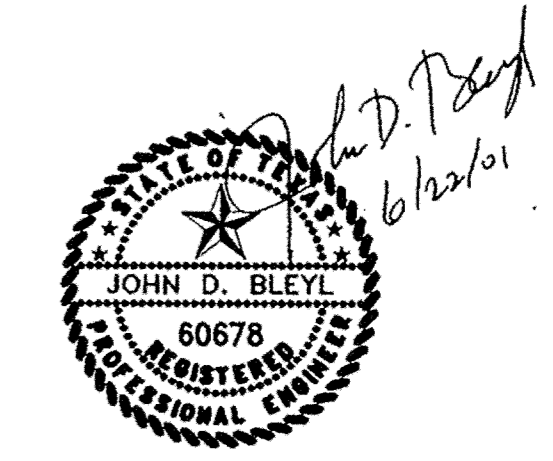
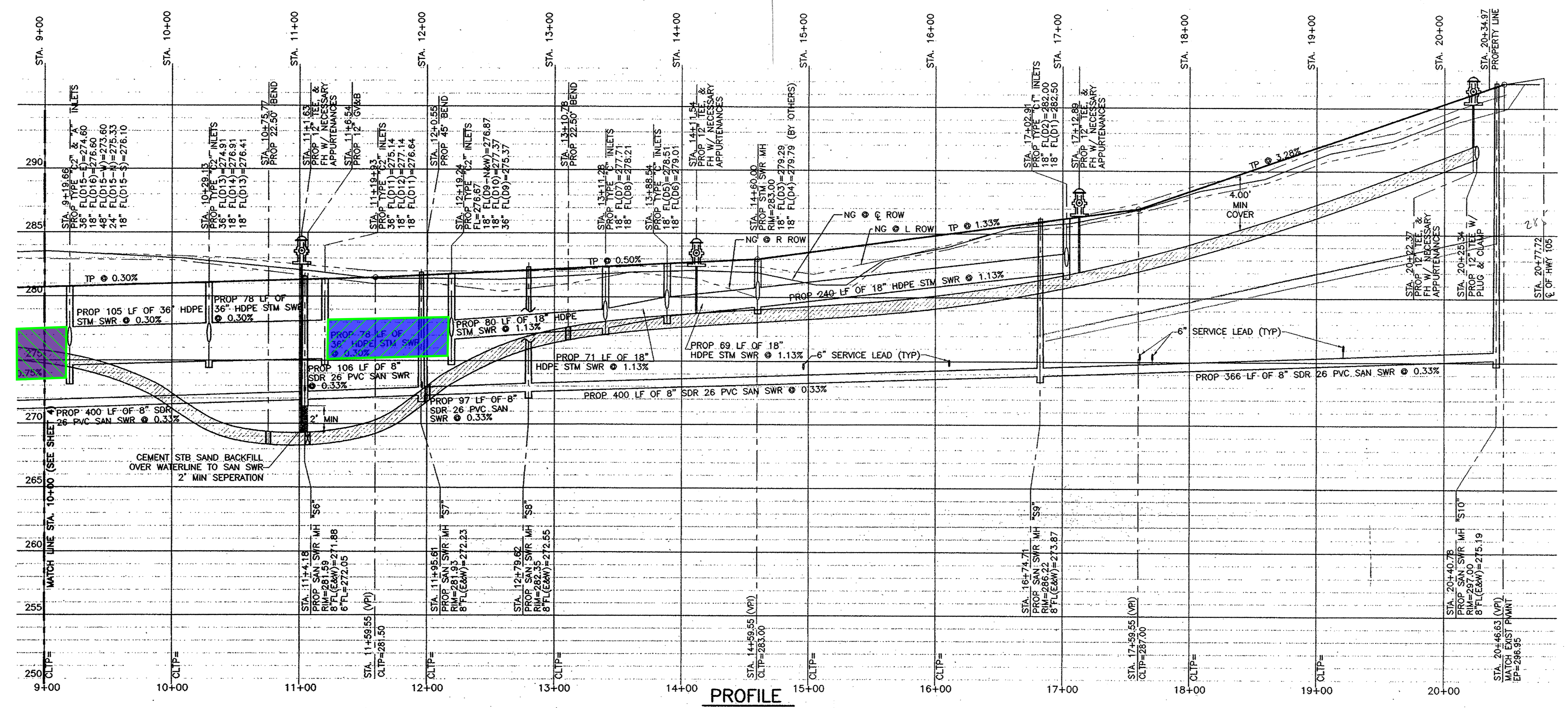
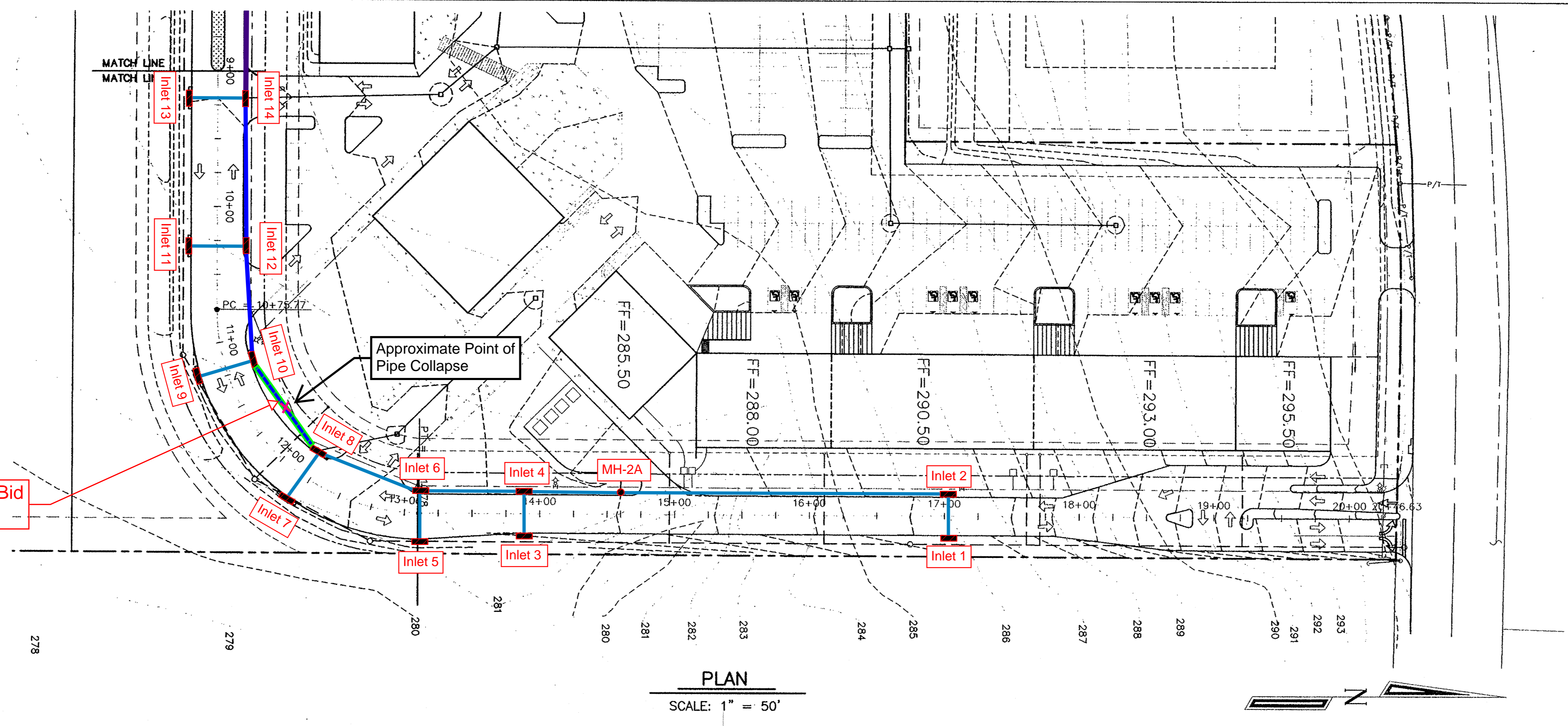
- 18" HDPE
- 36" HDPE
- 48" HDPE
- 18" RCP Replacement
- 36" RCP Replacement
- 48" RCP Replacement
- Collapse Location
- Storm Sewer Inlet
- Storm Sewer Manhole

**LEGEND:**

- FF - FINISH FLOOR
- TW - TOP OF WALK
- TC - TOP OF CURB
- TP - TOP OF PAVEMENT
- FL - FLOW LINE
- TG - TOP OF GRATE
- MEP - MATCH EXISTING PAVEMENT
- I = 11.80 IN/HR (100 YEAR STORM EVENT)
- TC = 10 MINUTES

DIRECTION OF TRAFFIC

- DRAWING NOTES:**
- REVISIONS TO THESE ENGINEERING PLANS MUST BE AUTHORIZED BY BLEYL & ASSOCIATES PRIOR TO CONSTRUCTION.
  - THE CONTRACTOR SHALL:
    - NOTIFY BLEYL & ASSOCIATES AND THE MONTGOMERY COUNTY ENGINEER PRIOR TO CONSTRUCTION.
  - FLOOD PLAIN: THIS PROJECT LIES WITHIN ZONE "X" IN ACCORDANCE WITH FEMA MAP PANEL NO. 189, COMMUNITY MAP PANEL NO. 48339C0189 F. CONROE, MONTGOMERY COUNTY, TEXAS EFFECTIVE DATE DECEMBER, 19, 1996.
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REVISION					
REV.	DATE	BY	CHK	APP	COMMENTS
0	06/21/01	LPF			ISSUED FOR APPROVAL

**B & A Bleyl & Associates**  
Project Engineering & Management

300 W. DAVIS SUITE 635  
CONROE, TEXAS 77301  
936-441-7833 PHONE  
936-760-3033 FAX

**PLAN & PROFILE**  
FLAGSHIP BOULEVARD  
STA. 9+00 - 20+46.63  
MONTGOMERY TRACE CENTER  
A 38.229 ACRE TRACT OF LAND  
IN THE JOHN CORNER SURVEY, A-8  
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SCALE: 1"=50' HORZ; 1"=5' VERT.  
DATE: JUNE, 2001  
DRAWN BY: LANCE FERRY  
PROJECT MANAGER: JOHN D. GERDES, E.I.T.

PREPARED FOR:  
ROBERT EASLEY  
1450 CAMPBELL  
HOUSTON, TX 70555  
(281) 356-7934

JOB NO. 1220 SHEET 10 OF 14





Muckleroy, Mike <mmuckleroy@ci.montgomery.tx.us>

## Flagship Boulevard Bid

3 messages

Chris Roznovsky <CRoznovsky@wga-llp.com>

Wed, Apr 5, 2023 at 4:51 PM

To: "McCorquodale, Dave" <dmccorquodale@ci.montgomery.tx.us>, "Muckleroy, Mike" <mmuckleroy@ci.montgomery.tx.us>, Gary Palmer <gpalmer@ci.montgomery.tx.us>

Cc: Zachary Timms <ztimms@wga-llp.com>, Katherine Vu <KVu@wga-llp.com>, Ryan Patterson <rpatterson@wga-llp.com>

All,

We will need an agenda item next week for "Consideration and possible action regarding bid results for the Flagship Boulevard Storm Sewer and Pavement Replacement project."

When the project was put into the budget for \$175,000 construction cost it was done without the benefit of the completed video inspections to finalize the scope. Additionally, the original draft budget had \$250,000 which was later reduced due to budget constraints.

Attached is our estimate that was presented to council back in October for the project totaling \$284,000 for construction and contingencies (this estimate excluded the 18" pipe work).

As you aware the bid prices came in much higher than both the budget and our estimate.

Factors include:

1. The original estimate did not include the replacement of the 18" line that runs north south. This line is not in as bad of shape as the larger lines. The project was bid with this line and the associated pavement work, both street and sidewalk, impacted by it. This accounted for approximately \$70,000.
2. The original concrete pavement was based on 6" thick. After further consideration and per the City's Design manual streets like Flagship should be 8" thick not 6" so this was bid as 8" thick pavement.
3. One of the other main factors I the cost was the actual cost of the installation and disposal of the 48" pipe. This was estimated at \$175/LF and came in at \$300/LF.

Our recommendation is to do the following:

1. Modify the bid package to :
  - a. Make the base bid for only the lines that are showing active sinkholes on them.
  - b. Add alternate items for the items that are cracking or starting to collapse but have not show up as sinkholes. These lines still need to be replaced but can wait until a future budget year.
  - c. Add an alternate bid for high early strength vs. normal strength. Based on numbers from suppliers, without any mark up, high early strength is about \$30 per CY more than normal strength. High early strength will save us about 5 days of cure time but we need to look at actual cost to see if it is worth it.
2. After the modifications are made and based on the bid prices received we would expect new base bids to come in around \$175,000 which matches the budget. Attached is a cost estimate breaking down the base bid and alternates.
3. Below is a schedule assuming authorized to re-bid at the 4/11 meeting:
  - a. Complete Revisions to Plans and Specs – 4/13/23
  - b. To paper – 4/12/23
  - c. First Ad – 4/14/23

- d. 2<sup>nd</sup> Ad – 4/21/23
- e. Pre bid – 4/26/23
- f. Bid opening – 5/3/23
- g. ROA (Present to Council) – 5/9/23
- h. Contracts to Contractor – 5/10/23
- i. Contracts Returned and City Execute – 5/24/23
- j. NTP – 5/30/23
- k. Construction – Finish August 2023

Thanks,

**Chris Roznovsky, PE**

Practice Leader

Public Works



4526 Research Forest, Suite 175 | The Woodlands, TX 77381

C: 281-796-3101 | O: 713-789-1900

[croznovsky@wga-llp.com](mailto:croznovsky@wga-llp.com)



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**3 attachments**

 **Flagship Storm Rehab Cost Estimate 040523.pdf**  
135K

 **Flagship Storm and Pavement Replacement Exhibit 040523.pdf**  
182K

 **Flagship Storm Rehab Cost Estimate 102022.pdf**  
128K

To: "McCorquodale, Dave" <dmccorquodale@ci.montgomery.tx.us>, "Muckleroy, Mike" <mmuckleroy@ci.montgomery.tx.us>  
Gary Palmer <gpalmer@ci.montgomery.tx.us>  
Cc: Zachary Timms <ztimms@wga-llp.com>, Katherine Vu <KVu@wga-llp.com>, Ryan Patterson <rpatterson@wga-llp.com>

Let me know if you would like a memo format on this for the packet of if you will take the supporting information and the email below to provide the cover memo.

Thanks,

**Chris Roznovsky, PE**

Practice Leader

Public Works



4526 Research Forest, Suite 175 | The Woodlands, TX 77381

C: 281-796-3101 | O: 713-789-1900

[croznovsky@wga-llp.com](mailto:croznovsky@wga-llp.com)



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**Muckleroy, Mike** <mmuckleroy@ci.montgomery.tx.us> Thu, Apr 6, 2023 at 8:44 AM  
To: Chris Roznovsky <CRoznovsky@wga-llp.com>  
Cc: "McCorquodale, Dave" <dmccorquodale@ci.montgomery.tx.us>, Gary Palmer <gpalmer@ci.montgomery.tx.us>, Zachary Timms <ztimms@wga-llp.com>, Katherine Vu <KVu@wga-llp.com>, Ryan Patterson <rpatterson@wga-llp.com>

I am creating an agenda report for this now and will include your email as supporting documentation. You can have the floor when the item is presented.

*Mike Muckleroy  
City of Montgomery  
Director of Public Works  
101 Old Plantersville Rd.  
Montgomery, TX 77316  
City Hall Main: 936-597-6434*

Public Works Main: 936-597-6889

Direct: 936-597-6757

Cell: 936-521-5294

Fax: 936-597-6437

[mmuckleroy@ci.montgomery.tx.us](mailto:mmuckleroy@ci.montgomery.tx.us)

*ATTENTION PUBLIC OFFICIALS: A "Reply to All" of this e-mail could lead to violations of the Texas Open Meetings Act. A "Forward" of this e-mail to another public official could also lead to violations of the Texas Open Meetings Act if a quorum is eventually involved. Please reply only to the sender.*

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## Engineer's Cost Estimate

### Flagship Boulevard - Storm Sewer and Pavement Replacement City of Montgomery

4/5/2023

Item No.	Description	Quantity	Unit	Unit Price	Cost
<b>General</b>					
1	Contractor Mobilization, Bonds, & Insurance	1	LS	\$ 20,000	\$ 20,000
2	Tree and Plant Removal	1	LS	2,500	3,000
3	Concrete Truck Washout	1	LS	1,500	2,000
				Subtotal	25,000
<b>Base Bid (Inlet 14-16)</b>					
1	8" Concrete Pavement	400	SY	95	38,000
2	Traffic Control	1	LS	3,000	3,000
3	6" Curb	215	LF	10	3,000
4	Pavement Removal and Disposal	400	SY	18	8,000
5	8" Cement Stabilized Sand Subgrade	400	SY	25	10,000
6	Tie in to Existing Pavement	220	LF	9	2,000
7	48-Inch RCP Storm Sewer include Cement Sand Backfill	190	LF	300	57,000
8	Removal and Disposal of Existing Storm Sewer	190	LF	25	5,000
9	Connection to Inlet	2	EA	1,850	4,000
10	Block Sodding	211	SY	9	2,000
11	Reinforced Filter Fabric Fence	175	LF	4	1,000
12	Inlet Protection	2	EA	150	1,000
				Subtotal	134,000
<b>Alternate Bid A1 (Inlet 18 -20)</b>					
1	8" Concrete Pavement	456	SY	95	44,000
2	Traffic Control	1	LS	3,000	3,000
3	6" Curb	107	LF	10	2,000
4	Pavement Removal and Disposal	456	SY	18	9,000
5	8" Cement Stabilized Sand Subgrade	456	SY	25	12,000
6	Tie in to Existing Pavement	189	LF	9	2,000
7	48-Inch RCP Storm Sewer include Cement Sand Backfill	142	LF	300	43,000
8	Removal and Disposal of Existing Storm Sewer	142	LF	25	4,000
9	Connection to Inlet	2	EA	1,850	4,000
10	Block Sodding	140	SY	9	2,000
11	Reinforced Filter Fabric Fence	132	LF	4	1,000
12	Inlet Protection	2	EA	150	1,000
				Subtotal	127,000
<b>Alternate Bid A2 (Inlet 8-10)</b>					
1	Traffic Control	1	LS	1,000	1,000
2	36-Inch RCP Storm Sewer include Cement Sand Backfill	80	LF	200	16,000
3	Removal and Disposal of Existing Storm Sewer	80	LF	25	2,000
4	Connection to Inlet	2	EA	1,850	4,000
5	Block Sodding	100	SY	9	1,000
6	Reinforced Filter Fabric Fence	80	LF	4	1,000
7	Inlet Protection	2	EA	150	1,000
				Subtotal	26,000
<b>Alternate Bid A3 (Inlet 18 -17)</b>					
1	8" Concrete Pavement	570	SY	95	55,000
2	Traffic Control	1	LS	3,000	3,000
3	6" Curb	205	LF	10	3,000
4	Pavement Removal and Disposal	570	SY	18	11,000
5	8" Cement Stabilized Sand Subgrade	570	SY	25	15,000

6	Tie in to Existing Pavement	290	LF	9	3,000
7	48-Inch RCP Storm Sewer include Cement Sand Backfill	226	LF	300	68,000
8	Removal and Disposal of Existing Storm Sewer	226	LF	25	6,000
9	Connection to Inlet	2	EA	1,850	4,000
10	Block Sodding	204	SY	9	2,000
11	Reinforced Filter Fabric Fence	225	LF	4	1,000
12	Inlet Protection	2	EA	150	1,000
				Subtotal	172,000

<b>Subtotal (General + Base + A1 + A2 + A3)</b>	\$	484,000
<b>Contingencies (10%)</b>	\$	49,000
<b>Total</b>	\$	<b>533,000</b>

<b>Subtotal (General + Base)</b>	\$	159,000
<b>Contingencies (10%)</b>	\$	16,000
<b>Total</b>	\$	<b>175,000</b>

<b>Subtotal (General + Base + A2)</b>	\$	185,000
<b>Contingencies (10%)</b>	\$	19,000
<b>Total</b>	\$	<b>204,000</b>

<b>Subtotal (General + Base + A1 + A2)</b>	\$	312,000
<b>Contingencies (10%)</b>	\$	32,000
<b>Total</b>	\$	<b>344,000</b>

Notes:

- 1 All values rounded up to the nearest thousand.
- 2 This estimate is based on my best judgement as a design professional familiar with the construction industry. We cannot and do not guarantee that bids will not vary from this cost estimate.

CVR/akg

Z:\00574 (City of Montgomery)\002 2022 CCTV\ENGR\Flagship Storm Sewer\Flagship Storm Rehab Cost Estimate.xlsx