



## COUNCIL COMMITTEE MEETING

City Hall Council Chambers, 298 W Washington  
Tuesday, November 15, 2022 at 5:30 PM

### AGENDA

#### CALL TO ORDER

#### OATH OF OFFICE

1. Administer Oath of Office to Newly Elected Council Member

#### PERSONNEL COMMITTEE

Ricky Thurman, chair; Justin Haschke, Gerald Cook, Mark McClinton

2. Discuss and Consider Step Increases and Evaluations for Executive Staff

#### DEVELOPMENT SERVICES COMMITTEE

Gerald Cook, chair; Justin Haschke, David Baskett, Mark McClinton

3. Discussion of Occupancy Limitations for Residential Structures to Determine if Further Action is Warranted.
4. Review a revised draft ordinance Relating to the Multifamily Permitting and Inspection Program Funded for FY 2022-2023
5. Consider Entering Into an Agreement with Property Owner and Buyer to Waive Civil Penalties Contingent Upon the Removal of the Structure Within 45 Days of Conveyance
6. Review of R-2.5, Integrated Housing Zoning District, Paragraph 12 and Discuss Recommended Action Per Direction of City Manager and Legal Counsel

#### PUBLIC HEALTH AND SAFETY COMMITTEE

Bob Newby, chair; LeAnn Durfey, Lonn Reisman, Ricky Thurman

7. Consider Application from Careflight for EMS/Ambulance Permit
8. Discuss Towing Issues at Local Apartments

#### PUBLIC WORKS COMMITTEE

Mark McClinton, chair; LeAnn Durfey, Ricky Thurman, David Baskett

9. Authorize Phase 3 - of the 536 Water Well Field Development agreement to begin Construction and Supplemental Services
10. Review Professional Services Agreement with Jacob & Martin for Brick Street Design on College from Columbia to Barton

#### NOMINATIONS COMMITTEE

Lonn Reisman, chair; LeAnn Durfey, David Baskett, Bob Newby

11. Discuss Vacancies and Annual Appointments for Citizen Boards and Commissions

#### TOURISM AND VISITORS BUREAU COMMITTEE

LeAnn Durfey, chair; Lon Reisman, Bob Newby, Gerald Cook

- [12.](#) Discuss and Consider Hotel Occupancy Taxes (HOT) & Short-Term Rental (STR) Reporting & Collection Services
- [13.](#) Discuss Implementation of Wayfinding Signs through National Sign Plazas
- [14.](#) Discuss Having a Digital Sign Placed for Advertisements, Schedule of Events, etc. for the City of Stephenville

## **ADJOURN**

*Note: The Stephenville City Council may convene into Executive Session on any matter related to any of the above agenda items for a purpose, such closed session allowed under Chapter 551, Texas Government Code.*

***In accordance with the Americans with Disabilities Act, persons who need accommodation to attend or participate in this meeting should contact City Hall at 254-918-1287 within 48 hours prior to the meeting to request such assistance.***

In the name and by the authority of

**THE STATE OF TEXAS**

**OATH OF OFFICE**

I, **Lonn Reisman**, do solemnly swear that I will faithfully execute the duties of the office of **Council Member Place 3 of the City of Stephenville** of the State of Texas, and will to the best of my ability preserve, protect, and defend the Constitution and laws of the United States and of this State, so help me God.

---

Lonn Reisman

Sworn to and subscribed before me by Lonn Reisman on this the 15<sup>th</sup> day of November, 2022.

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Sarah Lockenour, City Secretary



# STAFF REPORT

**SUBJECT:** Occupancy Limitations  
**MEETING:** Council Meeting – 15 Nov 2022  
**DEPARTMENT:** Development Services  
**STAFF CONTACT:** Steve Killen

## BACKGROUND:

Currently, city zoning regulations limit unrelated persons to a maximum of three persons per residence. The Development Services Committee will determine if any action is warranted.

If action is deemed necessary, a public hearing before the Planning and Zoning Commission and a recommendation to the full City Council will be required.



# STAFF REPORT

**SUBJECT:** Review of Draft Ordinance  
**MEETING:** Council Meeting – 15 Nov 2022  
**DEPARTMENT:** Development Services  
**STAFF CONTACT:** Steve Killen

## BACKGROUND:

A multifamily permitting and inspection program was approved in the FY2023 budget.

The attached draft is a second attempt to establish the program through enabling language and ordinance adoption.

# Development Services



Item 4.





**ORDINANCE NO. 2022-O-XX**

**AN ORDINANCE OF THE CITY OF STEPHENVILLE CREATING CHAPTER 98 OF THE CITY OF STEPHENVILLE CODE OF ORDINANCES TO BE TITLED "MULTIFAMILY HOUSING STANDARDS" AND PROVIDING FOR AN EFFECTIVE DATE**

WHEREAS, the Development Services Department worked with the Development Services Committee to present for consideration rules and regulations to ensure safe multifamily housing; and

WHEREAS, the City Council of the City of Stephenville wishes to formally establish rules and regulations for the operation of multifamily housing properties ensuring the protection of the health, safety and welfare of the occupants.

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

SECTION 1.

The Code of Ordinances of the City of Stephenville is hereby amended by the addition of the following:

**TITLE 9 - GENERAL REGULATIONS  
CHAPTER 98 – MULTIFAMILY HOUSING STANDARDS**

**ARTICLE I – Definitions**

**Sec. 98.01 Definitions**

For the purposes of this chapter, the following words, terms and phrases shall have the meaning ascribed to them except where the context clearly indicates a different meaning:

*Department.* The City of Stephenville Development Services Department.

*Director.* The Director of the Development Services Department or his/her designee.

*Dwelling.* Any building or portion thereof which is designed and used exclusively for residential purposes.

*Dwelling, multifamily.* A building having accommodations for five or more families living independently of each other. This excludes recreational vehicle camps, hotels, motels or resort facilities. Occupancy is restricted to one family per unit.

*Minimum Standards.* All multifamily dwellings must be maintained in a manner that meet or exceed the City's adopted International Codes.

*Sections 98.02 - 98.09 Reserved for future use*

**ARTICLE II - Inspections**

**Sec. 98.02 Inspections**

Service requests made to the Department for alleged violations shall result in the city making contact with property management to schedule an inspection.



Interior inspections of occupied units shall not be performed without consent of the resident, arranged by either property management, or, city staff.

If an alleged violation is confirmed to not meet the city’s minimum standards, the city shall issue notice for the correction of the violation within a prescribed compliance period.

The city will thereafter conduct subsequent, follow-up inspections to determine compliance. If two or more re-inspections are required for a noted violation before the minimum standards violation is corrected, the property owner shall be charged a one-hundred-dollar (\$100.00) reinspection fee for the third and each subsequent reinspection until compliance.

Civil Complaints to the Municipal Court resulting in a minimum standards violation conviction shall also prompt interior inspections as referenced in this section.

**ARTICLE III – Revocation of Certificate of Occupancy**  
**Sec. 98.03 Revocation of Certificate of Occupancy**

The Certificate of Occupancy for a multifamily property will be subject to revocation when:

- There is repeated failure to comply with the requirements of this chapter;
- One or more dwelling units have been substandard for more than sixty days following the delivery of notice of violation;
- If the property has confirmed violations that present imminent threats to the life, health or safety of any person.

The Director of Development Services shall provide notice of revocation by certified mail, personal service, or courier-receipted commercial delivery sent to the address provided on the licensee’s application. The revocation may be appealed to the City Manager by filing a written notice of appeal with the Director of Development Services within ten days of delivery of the notice of revocation. The City Manager, or a designated representative of the City Manager, shall provide an opportunity for a hearing on the appeal and shall render a decision on the appeal within ten days of the date of the hearing. The decision of the City Manager, or the designated representative, shall be final.

**SECTION 3.**

If any section or part of this ordinance is held by a court of competent jurisdiction to be unconstitutional or invalid, such judgement shall not affect, impair, or invalidate the remaining provisions of this Ordinance but shall be confined in its operation to the specific section or sections that are held unconstitutional or invalid.

**SECTION 4.**

This ordinance shall become effective immediately upon its passage.

**PASSED AND APPROVED** this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_

Doug Svien, Mayor

ATTEST:

\_\_\_\_\_  
Sarah Lockenour, City Secretary

\_\_\_\_\_  
Reviewed by Jason M. King,  
City Manager

\_\_\_\_\_  
Randy Thomas, City Attorney  
Approved as to form and legality



# STAFF REPORT

**SUBJECT:** Dangerous Building Order and Accruing Civil Penalties for 1206 Cage  
**MEETING:** Council Meeting – 15 Nov 2022  
**DEPARTMENT:** Development Services  
**STAFF CONTACT:** Steve Killen

## RECOMMENDATION:

Staff recommends entering into an agreement with property owner and buyer to waive civil penalties contingent upon the removal of the structure within 45 days of conveyance.

## BACKGROUND:

On November 8, 2018, the Board of Appeals imposed a Dangerous Building order on 1206 Cage. The property has been accruing civil penalties since that date.

The property owner has entered a contract to sale the property. However, the city cannot release the Dangerous Building Order until the building is either repaired or demolished, which has prevented closing.

## PROPOSAL:

The owner and buyer are proposing:

1. Payment to the city in the amount of \$1,000
2. The seller will escrow funds in the amount of \$8,500, payable to the city, should be building not be removed within 45 days of closing.
3. The agreement will authorize the city to take action to remove and/or the building, utilizing the escrowed funds.
4. If city action is required and the removal costs exceed the escrowed funds, the property owner will be invoiced accordingly. Failure to pay will result in a demolition/abatement lien.

## FISCAL IMPACT SUMMARY:

Removal of dilapidated structure resulting in an increase in the property value and a positive impact on ad valorem tax roll.

## ALTERNATIVES:

The following alternatives are provided for consideration:

1. Approve, resulting in removal of structure pursuant to agreement.
2. Deny. Removal of the structure would be contingent on owner action, or execution of the demolition provision of the order by the city. City action will lead to incurred expenses invoiced to the owner and a subsequent lien for non-payment.

City of Stephenville  
c/o Jason King  
298 W. Washington St.  
Stephenville, TX 76401

October 11, 2022

Re: Lien against 1206 Cage Street, Stephenville, TX ("Property")

Dear Mr. King:

My name is Curt Garrison and I am the owner of the Property. The Property currently has several liens filed against it for fines assessed by the City related to the structure located on the Property. I currently have the Property under contract to be sold to Dell Burdick.

I am requesting that the City accept the sum of \$1,000.00 to release all liens against the Property which are related to such fines, so that the sale to Mr. Burdick may be completed. Additionally, as evidenced by his signature below, Dell Burdick or I will have the structure that is currently on the Property removed within 45 days after the closing of the sale of the Property to Dell Burdick. Additionally, the contract will require \$8,500.00 to remain in escrow with the title company to ensure for the payment of such removal, and be payable directly to the City if such removal does not occur. The City will be allowed to demolish the structure and utilize the escrowed funds in the event the removal does not occur withing the 45-day period.

The structure shall not be relocated within Erath County, Texas and in the event the removal costs exceed the \$8,500.00 the owner of the Property will be invoiced for such additional funds. Failure to pay such additional funds will result in a demolition/abatement lien against the Property.

If you are in agreement, or need any additional information, please contact Dell Burdick at 254-485-9159.

Respectfully,

Curt Garrison

Agreed:

  
Dell Burdick



# STAFF REPORT

**SUBJECT:** Review of R-2.5, Integrated Housing Zoning District - Paragraph 12  
**MEETING:** Council Meeting – 15 Nov 2022  
**DEPARTMENT:** Development Services  
**STAFF CONTACT:** Steve Killen

## RECOMMENDATION:

Staff recommends that paragraph 12 be repealed with all other provisions remaining in force.

## BACKGROUND:

City Ordinance 2021-0-28 was adopted in September 2021. Since that time, paragraph 12 of the adopted ordinance has been further reviewed and discussed with Legal Counsel. Repealing Paragraph 12 will require any deviations from the R-2.5 zoning requirements to be reviewed by the Board of Adjustments.

A public hearing before the Planning and Zoning Commission and a recommendation to the full City Council will be required.

## Sec. 154.05.8 Integrated housing district (R-2.5).

**5.8.A Description.** This integrated residential housing district provides for medium-density city neighborhood development. The primary land use allows for single-family dwellings, two-to-four family dwelling units, patio homes, condominiums and townhomes. Generally, this district is for developments resulting in individually platted homes or dwelling units and generally, owner occupied. Recreational, religious and educational uses are also permitted so as to contribute to the natural elements of a convenient, balanced and attractive neighborhood. Development within this district is intended to be protected from the encroachment of land activities that do not contribute to the aesthetic and functional well being of the intended district environment. The Integrated Housing District will be applicable to for all Residential Districts, B-1 Neighborhood Business District (B-1), Central Business District (B-3), and Downtown District (DT).

### 5.8.B Permitted Uses.

1. Single-family detached dwelling, limited to occupancy by a family having no more than three individuals who are unrelated by blood, legal adoption, marriage or conservatorship. The owner and any agent of the owner shall be legally responsible for directly or indirectly allowing, permitting, causing, or failing to prohibit residential use of a dwelling in this district by more than three unrelated individuals;
2. Two-to-four family dwellings, with each family limited as in division (1) above;
3. Townhouse dwellings, with each family limited as in division (1) above;
4. Condominium dwellings, with each family limited as in division (1) above;

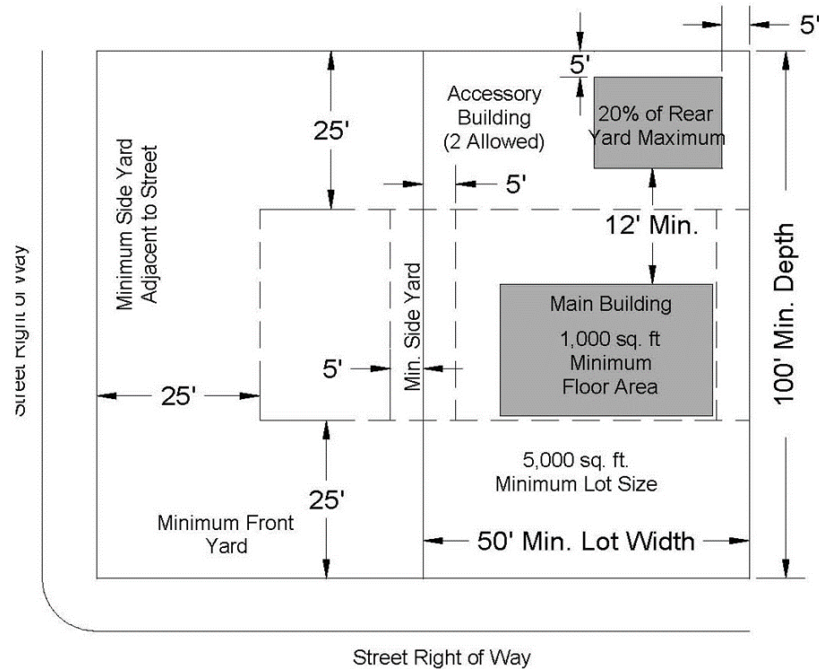
### 5.8.C Conditional Uses.

1. Home occupation;
2. Common facilities as the principal use of one or more platted lots in a subdivision;
3. Adult and/or children's day care centers;
4. Foster group home; and
5. Residence hall.

### 5.8.D Height, Area, Yard and Lot Coverage Requirements.

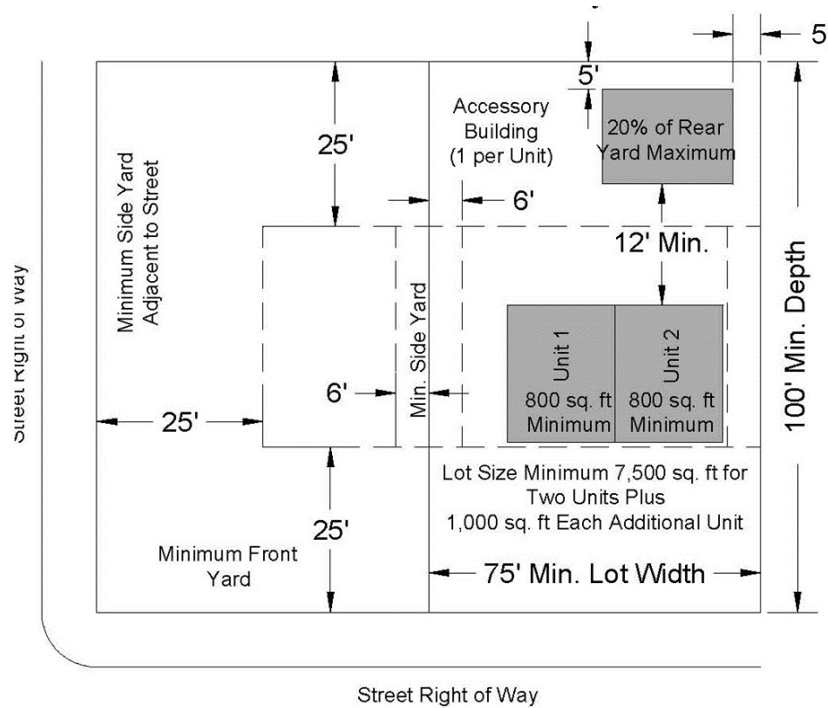
- A. Single family dwelling.
  1. Minimum lot area: 3,000 ft<sup>2</sup>.
  2. Minimum lot width and lot frontage: 50 feet.
  3. Minimum lot depth: 60 feet.
  4. Minimum depth of front setback: 15 feet.
  5. Minimum depth of rear setback: 15 feet.
  6. Minimum width of side setback:
    - a. Internal lot: five feet.
    - b. Corner lot: 15 feet from intersecting side street.
  7. Building size:
    - a. Maximum coverage as a percentage of lot area: 40%.

- b. Single family dwelling: 1,000 ft<sup>2</sup>.
- 8. Accessory buildings:
  - a. Maximum accessory buildings coverage of rear yard: 20%.
  - b. Maximum number of accessory buildings: one.
  - c. Minimum depth of side setback: five feet.
  - d. Minimum depth of rear setback: five feet.
  - e. Minimum depth from the edge of the main building: 12 feet.
- 9. Maximum height of structures: 35 feet.
- 10. Public, semi-public or public service buildings, hospitals, institutions or schools may not exceed a height of 60 feet. Churches, temples and mosques may not exceed 75 feet, if the building is set back from each yard line at least one foot for each two feet additional height above the height limit in this district.



- B. Two-to-four family.
  - 1. Minimum lot area: 7,500 ft<sup>2</sup> for two dwelling units, plus 1,000 ft<sup>2</sup> for each additional dwelling unit.
  - 2. Minimum lot width and lot frontage: 75 feet.
  - 3. Minimum lot depth: 100 feet.
  - 4. Minimum depth of front setback: 15 feet.
  - 5. Minimum depth of rear setback: 15 feet.
  - 6. Minimum width of side setback:
    - a. Internal lot: six feet.

- b. Corner lot: 15 feet from intersecting side street.
- 7. Building size:
  - a. Maximum coverage as a percentage of lot area: 40%.
  - b. Minimum area of each dwelling unit: 800 ft<sup>2</sup>.
- 8. Accessory buildings:
  - a. Maximum accessory building coverage of rear yard: 20%.
  - b. Maximum area of each accessory building: 200 ft<sup>2</sup>.
  - c. Maximum number of accessory buildings: one per unit.
  - d. Minimum depth of side setback: five feet.
  - e. Minimum depth of rear setback: five feet.
  - f. Minimum depth from the edge of the main building: 12 feet.
- 9. Maximum height of structures: 35 feet.
- 10. Public, semi-public or public service buildings, hospitals, institutions or schools may not exceed a height of 60 feet. Churches, temples and mosques may not exceed 75 feet, if the building is set back from each yard line at least one foot for each two feet additional height above the height limit in this district.

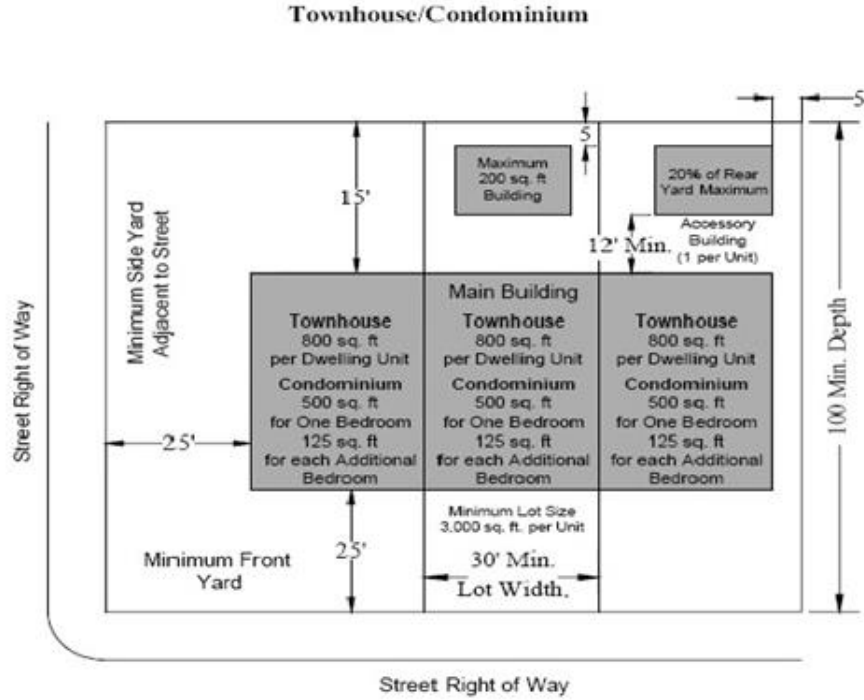


C. Townhouse/Condominium.

- 1. Minimum lot area: 3,000 ft<sup>2</sup> per unit.
- 2. Minimum average lot width and lot frontage: 30 feet.
- 3. Minimum lot depth: 100 feet.



4. Minimum depth of front setback: 15 feet.
5. Minimum depth of rear setback: 15 feet.
6. Minimum width of side setback:
  - a. Internal lot: five feet.
  - b. Corner lot: 15 feet from intersecting side street.
7. Building size:
  - a. Maximum building coverage as a percentage of lot area: 40%
  - b. Minimum area of each Townhouse dwelling unit: 800 ft<sup>2</sup>.
  - c. Minimum area of each Condominium of each dwelling unit: 500 ft<sup>2</sup> for one bedroom or less, plus 125 ft<sup>2</sup> of floor area for each additional bedroom.
8. Accessory buildings:
  - a. Maximum accessory building coverage of rear yard: 20%.
  - b. Maximum area of each accessory building: 200 ft<sup>2</sup>.
  - c. Maximum number of accessory buildings: one per unit.
  - d. Minimum depth of side setback: five feet.
  - e. Minimum depth of rear setback: five feet.
  - f. Minimum depth from the edge of the main building: 12 feet.
9. Maximum height of structures: 35 feet.
10. Public, semi-public or public service buildings, hospitals, institutions or schools may not exceed a height of 60 feet. Churches, temples and mosques may not exceed 75 feet, if the building is set back from each yard line at least one foot for each two feet additional height above the height limit in this district.
11. Maximum density of Townhome or Condominium Housing within the R-2.5 District shall not exceed 14 units per acres with each unit platted separately.
12. Deviations from the required standards within the R-2.5 district will be subject to site plan review by the Planning and Zoning Commission and subsequent approval by City Council. Site plans should include renderings with elevations, a finish schedule and incorporate architectural designs that complement the existing structures of the area of integration.



**5.8. EParking Regulations.** Lots in this District shall provide a minimum of two vehicle parking spaces per dwelling unit, with a driveway connecting the parking spaces with a street or alley, and meet all the pertinent requirements contained in Section 154.11 *Parking spaces for vehicles* of this ordinance.

( Ord. No. 2021-O-28 , § 1, passed 9-7-2021)

Evaluation Only.  
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APPLICATION FOR  
EMS/AMBULANCE PERMIT

DATE: 11/1/22

APPLICANT: Care Flite

ADDRESS: 630 N. Graham St. Stephenville, TX

MAILING ADDRESS (IF DIFFERENT): 3110 S. Great Southwest Pkwy, Grand Prairie TX

PHONE: 972-339-4200 NO. OF YEARS IN EMS BUSINESS: 40 + 75052

LIST LEVEL AND TYPE OF SERVICE TO BE PROVIDED:

BLS and ALS

LIST NUMBER OF AMBULANCE UNITS AND NUMBER OF PERSONNEL TO BE PROVIDED:

1 Ambulance

2 employees 1 Paramedic 1 EMT

HOURS OF OPERATION AND AVAILABILITY: 24 hours 7 days

LIST ANY EXPERIENCE THE APPLICANT HAS HAD IN RENDERING SUCH SERVICES

Care Flite has been delivering BLS and ALS since 1979

If a partnership, the names, of all partners, general and limited. If a corporation, its name, date, and place of incorporation, the address of its principal place of business, the names of all its officers and directors. (Provide this information on a separate page.)

NAME OF COMPANY: Care Flite - Non Profit


ADDRESS: 3108 S. Great Southwest Pkwy Grand Prairie

PHONE: 972-339-4260 TX 75052

INSURANCE COMPANY: VFIS Nation Fire  
 AGENT: Cottingham Butler  
 POLICY NUMBER: VFNU-TR 0022977  
 EFFECTIVE PERIOD: 10-1-2022 - 10-1-2023  
 AMOUNT OF LIABILITY: \$10,000

PLEASE ATTACH COPIES OF **CURRENT INSURANCE POLICY AND TEXAS DEPARTMENT OF HEALTH PROVIDER LICENSE.**

I certify that the statements in this application are true and correct. I realize they will be investigated and thereby authorize the release of any pertinent and appropriate information. I understand that misrepresentations on my part in completing this application will cause my application to become null and void.

SIGNED:   
 DATE: 11/10/22

RECEIVED BY: Jeri Johnson, CSO DATE: 11/10/2022

REVIEWED BY PUBLIC HEALTH AND SAFETY COMMITTEE: \_\_\_\_\_

APPROVED BY COUNCIL: \_\_\_\_\_

FEE PAID: \_\_\_\_\_



CAREFLI-01

BNELSON

Item 7.

# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
10/4/2022

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

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> WinStar Insurance Group LLC 13625 Ronald W Reagan Blvd Bldg. 3, Suite 100 Cedar Park, TX 78613	<b>CONTACT NAME:</b> Bianca Nelson	
	<b>PHONE (A/C, No, Ext):</b>	<b>FAX (A/C, No):</b>
<b>E-MAIL ADDRESS:</b> bnelson@vfistx.com		
<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b>
<b>INSURER A:</b> National Union Fire Ins Co of Pittsburgh		<b>19445</b>
<b>INSURED</b>  CareFlite 3110 S. Great Southwest Pkwy Grand Prairie, TX 75052		
<b>INSURER B:</b>		
<b>INSURER C:</b>		
<b>INSURER D:</b>		
<b>INSURER E:</b>		
<b>INSURER F:</b>		

### COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO JECT <input type="checkbox"/> LOC OTHER:			VFNU-TR-0022977	10/1/2022	10/1/2023	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Per occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 10,000,000 PRODUCTS - COMP/OP AGG \$ 10,000,000
A	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY			VFNU-TR-0022977	10/1/2022	10/1/2023	COMBINED SINGLE LIMIT (Per accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
A	<b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$			VFNU-TR-0022977	10/1/2022	10/1/2023	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y/N N/A If yes, describe under DESCRIPTION OF OPERATIONS below						PER STATUTE OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

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

### CERTIFICATE HOLDER

### CANCELLATION

City of Stephenville, Texas Attn: Sheryl Truss 298 W Washington St. Stephenville, TX 76401	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE <i>Bianca Nelson</i>
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ACORD 25 (2016/03)

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**TEXAS**  
Health and Human  
Services

**Texas Department of State  
Health Services**

This certifies that

**CAREFLITE-GROUND**

License Number: 300046

has submitted acceptable evidence of compliance with the Texas Health and Safety Code, Chapter 773, the Texas EMS Act, and is hereby granted a License as a **TEXAS EMERGENCY MEDICAL SERVICES PROVIDER**. This License is not transferable and is valid only for use by the provider named above.

JOHN HELLERSTEDT MD  
COMMISSIONER

Expiration Date: 11/30/2023

If you have a complaint about the services you have received from this EMS Provider or if you have a reason to believe that a violation of Texas EMS regulations has occurred, please report your concerns to the Texas Department of State Health Services at:  
**1-800-452-6086** or by email to **EMS\_Complaint@dshs.texas.gov**

Document Number: 7809



# STAFF REPORT

**SUBJECT:** Discuss Towing Issues at Local Apartments

**DEPARTMENT:** Police

**STAFF CONTACT:** Dan M. Harris, Jr.

**RECOMMENDATION:**

Discuss next-steps regarding Non-Consent towing complaints taking place at local apartment complexes.

**BACKGROUND:**

The City of Stephenville and the Stephenville Police Department have received multiple complaints regarding Non-Consent towing taking place at apartment complexes throughout the city. These complaints involve one local towing company. Chapter 2308 of the Texas Occupations Code regulates vehicle towing along with Chapter 111 of our city code of ordinances, Tow Trucks and Wreckers.

**FISCAL IMPACT SUMMARY:**

N/A

**ALTERNATIVES**

## OCCUPATIONS CODE

## TITLE 14. REGULATION OF MOTOR VEHICLES AND TRANSPORTATION

## SUBTITLE A. REGULATIONS RELATED TO MOTOR VEHICLES

## CHAPTER 2308. VEHICLE TOWING AND BOOTING

## SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2308.001. SHORT TITLE. This chapter may be cited as the Texas Towing and Booting Act.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 845 (S.B. 2153), Sec. 2, eff. September 1, 2009.

Sec. 2308.002. DEFINITIONS. In this chapter:

(1) "Advisory board" means the Towing and Storage Advisory Board.

(1-a) "Boot" means a lockable road wheel clamp or similar vehicle immobilization device that is designed to immobilize a parked vehicle and prevent its movement until the device is unlocked or removed.

(1-b) "Booting company" means a person that controls, installs, or directs the installation and removal of one or more boots.

(1-c) "Boot operator" means an individual who installs or removes a boot on or from a vehicle.

(2) "Commission" means the Texas Commission of Licensing and Regulation.

(3) "Consent tow" means any tow of a motor vehicle in which the tow truck is summoned by the owner or operator of the vehicle or by a person who has possession, custody, or control of the vehicle. The term does not include an incident management tow or a private property tow.

(4) "Department" means the Texas Department of Licensing and Regulation.

(5) "Driver's license" has the meaning assigned by Section 521.001, Transportation Code.

(5-a) "Incident management tow" means any tow of a vehicle in which the tow truck is summoned to the scene of a traffic accident or to an



incident, including the removal of a vehicle, commercial cargo, and commercial debris from an accident or incident scene.

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(5-b) "Local authority" means a state or local governmental entity authorized to regulate traffic or parking and includes:

(A) an institution of higher education; and

(B) a political subdivision, including a county, municipality, special district, junior college district, housing authority, or other political subdivision of this state.

(6) "Nonconsent tow" means any tow of a motor vehicle that is not a consent tow, including:

(A) an incident management tow; and

(B) a private property tow.

(7) "Parking facility" means public or private property used, wholly or partly, for restricted or paid vehicle parking. The term includes:

(A) a restricted space on a portion of an otherwise unrestricted parking facility; and

(B) a commercial parking lot, a parking garage, and a parking area serving or adjacent to a business, church, school, home that charges a fee for parking, apartment complex, property governed by a property owners' association, or government-owned property leased to a private person, including:

(i) a portion of the right-of-way of a public roadway that is leased by a governmental entity to the parking facility owner; and

(ii) the area between the facility's property line abutting a county or municipal public roadway and the center line of the roadway's drainage way or the curb of the roadway, whichever is farther from the facility's property line.

(7-a) "Parking facility authorized agent" means an employee or agent of a parking facility owner with the authority to:

(A) authorize the removal of a vehicle from the parking facility on behalf of the parking facility owner; and

(B) accept service on behalf of the parking facility owner of a notice of hearing requested under this chapter.

(8) "Parking facility owner" means:

(A) an individual, corporation, partnership, limited partnership, limited liability company, association, trust, or other legal entity owning or operating a parking facility;

(B) a property owners' association having control under a dedicatory instrument, as that term is defined in Section 202.001, Property

Code, over assigned or unassigned parking areas; or

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(C) a property owner having an exclusive right under a dedicatory instrument, as that term is defined in Section 202.001, Property Code, to use a parking space.

(8-a) "Peace officer" means a person who is a peace officer under Article 2.12, Code of Criminal Procedure.

(8-b) "Private property tow" means any tow of a vehicle authorized by a parking facility owner without the consent of the owner or operator of the vehicle.

(9) Repealed by Acts 2017, 85th Leg., R.S., Ch. 919 (S.B. 1501), Sec. 20(a)(2), and Ch. 967 (S.B. 2065), Sec. 14.012(a)(1), eff. June 15, 2017.

(10) "Public roadway" means a public street, alley, road, right-of-way, or other public way, including paved and unpaved portions of the right-of-way.

(11) "Tow truck" means a motor vehicle, including a wrecker, equipped with a mechanical device used to tow, winch, or otherwise move another motor vehicle. The term does not include:

(A) a motor vehicle owned and operated by a governmental entity, including a public school district;

(B) a motor vehicle towing:

(i) a race car;

(ii) a motor vehicle for exhibition; or

(iii) an antique motor vehicle;

(C) a recreational vehicle towing another vehicle;

(D) a motor vehicle used in combination with a tow bar, tow dolly, or other mechanical device if the vehicle is not operated in the furtherance of a commercial enterprise;

(E) a motor vehicle that is controlled or operated by a farmer or rancher and used for towing a farm vehicle;

(F) a motor vehicle that:

(i) is owned or operated by an entity the primary business of which is the rental of motor vehicles; and

(ii) only tows vehicles rented by the entity;

(G) a truck-trailer combination that is owned or operated by a dealer licensed under Chapter 2301 and used to transport new vehicles during the normal course of a documented transaction in which the dealer is a party and ownership or the right of possession of the transported vehicle is conveyed or transferred; or

(H) a car hauler that is used solely to transport, other than  
in a consent or nonconsent tow, motor vehicles as cargo:

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(i) in the course of:

(a) a prearranged shipping transaction; or

(b) a commercial transaction for transport of a damaged vehicle arranged or authorized by an insurance company and delivered to a salvage pool operator as defined by Section 2302.001; or

(ii) for use in mining, drilling, or construction operations.

(12) "Towing company" means an individual, association, corporation, or other legal entity that controls, operates, or directs the operation of one or more tow trucks over a public roadway in this state but does not include a political subdivision of the state.

(13) "Unauthorized vehicle" means a vehicle parked, stored, or located on a parking facility without the consent of the parking facility owner.

(14) "Vehicle" means a device in, on, or by which a person or property may be transported on a public roadway. The term includes an operable or inoperable automobile, truck, motorcycle, recreational vehicle, or trailer but does not include a device moved by human power or used exclusively on a stationary rail or track.

(15) "Vehicle owner" means a person:

(A) named as the purchaser or transferee in the certificate of title issued for the vehicle under Chapter 501, Transportation Code;

(B) in whose name the vehicle is registered under Chapter 502, Transportation Code, or a member of the person's immediate family;

(C) who holds the vehicle through a lease agreement;

(D) who is an unrecorded lienholder entitled to possess the vehicle under the terms of a chattel mortgage; or

(E) who is a lienholder holding an affidavit of repossession and entitled to repossess the vehicle.

(16) "Vehicle storage facility" means a vehicle storage facility, as defined by Section 2303.002, that is operated by a person who holds a license issued under Chapter 2303 to operate the facility.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 757 (S.B. 702), Sec. 3, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 845 (S.B. 2153), Sec. 3, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1310 (H.B. 2571), Sec. 1, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 353 (H.B. 3510), Sec. 4, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 127 (S.B. 1820), Sec. 1, eff. May 23, 2015.

Acts 2017, 85th Leg., R.S., Ch. 919 (S.B. 1501), Sec. 6, eff. June 15, 2017.

Acts 2017, 85th Leg., R.S., Ch. 919 (S.B. 1501), Sec. 20(a)(2), eff. June 15, 2017.

Acts 2017, 85th Leg., R.S., Ch. 967 (S.B. 2065), Sec. 14.002, eff. June 15, 2017.

Acts 2017, 85th Leg., R.S., Ch. 967 (S.B. 2065), Sec. 14.012(a)(1), eff. June 15, 2017.

Acts 2021, 87th Leg., R.S., Ch. 591 (S.B. 860), Sec. 1, eff. September 1, 2021.

Sec. 2308.004. EXEMPTION. Sections 2308.151(b), 2308.2085, 2308.257, and 2308.258 do not apply to:

(1) a person who, while exercising a statutory or contractual lien right with regard to a vehicle:

(A) installs or removes a boot; or

(B) controls, installs, or directs the installation and removal of one or more boots; or

(2) a commercial office building owner or manager who installs or removes a boot in the building's parking facility.

Added by Acts 2009, 81st Leg., R.S., Ch. 845 (S.B. 2153), Sec. 4, eff. September 1, 2009.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 919 (S.B. 1501), Sec. 7, eff. September 1, 2018.

Acts 2017, 85th Leg., R.S., Ch. 967 (S.B. 2065), Sec. 14.003, eff. September 1, 2018.

#### SUBCHAPTER B. ADVISORY BOARD

Sec. 2308.051. TOWING, STORAGE, AND BOOTING ADVISORY BOARD. (a) The advisory board consists of the following members appointed by the president:

officer of the commission with the approval of the commission:

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- (1) one representative of a towing company operating in a county with a population of less than one million;
- (2) one representative of a towing company operating in a county with a population of one million or more;
- (3) one representative of a vehicle storage facility located in a county with a population of less than one million;
- (4) one representative of a vehicle storage facility located in a county with a population of one million or more;
- (5) one parking facility representative;
- (6) one peace officer from a county with a population of less than one million;
- (7) one peace officer from a county with a population of one million or more;
- (8) one representative of a member insurer, as defined by Section 462.004, Insurance Code, of the Texas Property and Casualty Insurance Guaranty Association who writes automobile insurance in this state; and
- (9) one person who operates both a towing company and a vehicle storage facility.

(b) The advisory board must include representation for each classification of towing.

(c) An appointment to the advisory board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 457 (H.B. 2548), Sec. 7, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 845 (S.B. 2153), Sec. 5, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 845 (S.B. 2153), Sec. 6, eff. September 1, 2009.

Acts 2017, 85th Leg., R.S., Ch. 919 (S.B. 1501), Sec. 8, eff. June 15, 2017.

Acts 2017, 85th Leg., R.S., Ch. 967 (S.B. 2065), Sec. 14.004, eff. June 15, 2017.

Sec. 2308.052. TERMS; VACANCIES. (a) Advisory board members serve terms of six years, with the terms of two or three members, as appropriate, expiring on February 1 of each odd-numbered year. Item 8.

(b) A member may not serve more than two full consecutive terms.

(c) If a vacancy occurs during a term, the presiding officer of the commission shall appoint a replacement who meets the qualifications of the vacated position to serve for the remainder of the term.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.

Sec. 2308.053. PRESIDING OFFICER. The presiding officer of the commission shall appoint one of the advisory board members to serve as presiding officer of the advisory board for a term of one year. The presiding officer of the advisory board may vote on any matter before the advisory board.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.

Sec. 2308.054. COMPENSATION; REIMBURSEMENT OF EXPENSES. Advisory board members may not receive compensation but are entitled to reimbursement for actual and necessary expenses incurred in performing the functions of the advisory board, subject to the General Appropriations Act.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.

Sec. 2308.056. GENERAL POWERS AND DUTIES. The executive director or commission, as appropriate, may take action as necessary to administer and enforce this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.

Sec. 2308.057. RULES. (a) The commission shall adopt rules for permitting tow trucks and licensing towing operators, towing companies, booting companies, and boot operators. The commission may adopt different rules applicable to each type of permit or license.

(a-1) The commission shall adopt rules for denial of applications and permits if the applicant, a partner, principal, officer, or general manager 30

of the applicant, or other license or permit holder has:

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(1) a criminal conviction, or has pleaded guilty or nolo contendere to an offense, before the date of the application, for:

(A) a felony; or

(B) a misdemeanor punishable by confinement in jail or by a fine in an amount that exceeds \$500;

(2) violated an order of the commission or executive director, including an order for sanctions or administrative penalties;

(3) failed to submit a license or permit bond in an amount established by the commission;

(4) knowingly submitted false or incomplete information on the application; or

(5) filed an application to permit a tow truck previously permitted by a license or permit holder.

(b) The commission by rule shall adopt:

(1) standards of conduct for license and permit holders under this chapter; and

(2) requirements for a consent tow, private property tow, and incident management tow.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 845 (S.B. 2153), Sec. 7, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1310 (H.B. 2571), Sec. 2, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 353 (H.B. 3510), Sec. 5, eff. September 1, 2011.

Sec. 2308.0575. RULES ON FEES; CONTRACT FOR STUDY; CONFIDENTIAL INFORMATION. (a) To protect the public health and safety, the commission by rule shall establish:

(1) the fees that may be charged in connection with a private property tow;

(2) the maximum amount that may be charged for fees, other than tow fees, that may be assessed by a towing company in connection with a private property tow; and

(3) a maximum amount that may be charged for the following private property tows:

- (A) standard light-duty tows of motor vehicles with a gross weight rating of 10,000 pounds or less; Item 8.
- (B) medium-duty tows of motor vehicles with a gross weight rating of more than 10,000 pounds, but less than 25,000 pounds; and
- (C) heavy-duty tows of motor vehicles with a gross weight rating that exceeds 25,000 pounds.

(b) In adopting rules under Subsection (a), the commission shall contract for a study that:

- (1) examines towing fee studies conducted by municipalities in this state; and
- (2) analyzes the cost of towing services by company, the consumer price index, the geographic area, and individual cost components.

(c) The commission may structure the maximum amounts that may be charged for private property tows based on hourly or flat fees or by geographic location.

(d) The commission shall maintain the confidentiality of information contained in a study conducted under this section that is claimed to be confidential for competitive purposes and may not release information that identifies a person or company. The confidential information is exempt from disclosure under Chapter 552, Government Code.

(e) To protect the confidentiality of the information, the commission shall aggregate the information to the maximum extent possible considering the purpose of the study.

(f) The department shall contract to conduct a study on private property towing fees under this section at least once every two years.

Added by Acts 2009, 81st Leg., R.S., Ch. 1310 (H.B. 2571), Sec. 3, eff. September 1, 2010.

Sec. 2308.058. FEES. The commission shall establish and collect reasonable and necessary fees in amounts sufficient to cover the costs of administering this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.

Sec. 2308.059. PERIODIC INSPECTIONS. (a) The department may enter and inspect at any time during business hours:

- (1) the place of business of any person regulated under this chapter; or



(2) any place in which the department has reasonable cause to believe that a license or permit holder is in violation of this chapter in violation of a rule or order of the commission or executive director. Item 8.

(b) Repealed by Acts 2017, 85th Leg., R.S., Ch. 919 (S.B. 1501), Sec. 20(a)(3), eff. June 15, 2017.

(c) Repealed by Acts 2017, 85th Leg., R.S., Ch. 919 (S.B. 1501), Sec. 20(a)(3), eff. June 15, 2017.

(d) In conducting an inspection under this section, the department may inspect a vehicle, a facility, business records, or any other place or thing reasonably required to enforce this chapter or a rule or order adopted under this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 919 (S.B. 1501), Sec. 9, eff. June 15, 2017.

Acts 2017, 85th Leg., R.S., Ch. 919 (S.B. 1501), Sec. 20(a)(3), eff. June 15, 2017.

Sec. 2308.060. POWERS AND DUTIES OF ADVISORY BOARD. The advisory board shall provide advice and recommendations to the department on technical matters relevant to the administration and enforcement of this chapter, including examination content, licensing standards, continuing education requirements, and maximum amounts that may be charged for fees related to private property tows.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1310 (H.B. 2571), Sec. 4, eff. September 1, 2009.

Sec. 2308.061. PERSONNEL. The department may employ personnel necessary to administer and enforce this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.

#### SUBCHAPTER C. TOW TRUCK PERMIT REQUIREMENTS

Sec. 2308.101. PERMIT REQUIRED. A tow truck may not be used for consent towing or nonconsent towing on a public roadway in this state unless an appropriate permit has been issued for the tow truck under this subchapter. Each tow truck requires a separate permit.

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Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.

Sec. 2308.102. APPLICATION REQUIREMENTS. (a) An applicant for a permit under this subchapter must submit to the department:

- (1) a completed application on a form prescribed by the executive director;
- (2) evidence of insurance or financial responsibility required under this subchapter;
- (3) the required fees; and
- (4) any other information required by the executive director.

(b) The department may conduct an examination of any criminal conviction of an applicant, including by obtaining any criminal history record information permitted by law.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.

Sec. 2308.103. REQUIREMENTS FOR INCIDENT MANAGEMENT TOWING PERMIT.

(a) An incident management towing permit is required for a tow truck used to perform any nonconsent tow initiated by a peace officer, including a tow authorized under Section 545.3051, Transportation Code.

(b) To be eligible for an incident management towing permit, an applicant must submit evidence that:

- (1) the tow truck is equipped to tow light-duty or heavy-duty vehicles according to the manufacturer's towing guidelines;
- (2) the applicant has at least \$500,000 of liability insurance for the tow truck; and
- (3) the applicant has at least \$50,000 of cargo insurance for the tow truck.

(c) A tow truck permitted under this section may also be used for private property towing and consent towing.

(d) Repealed by Acts 2017, 85th Leg., R.S., Ch. 919 (S.B. 1501), Sec. 20(a)(4), and Ch. 967 (S.B. 2065), Sec. 14.012(a)(2), eff. June 15, 2017.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007. Item 8.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 919 (S.B. 1501), Sec. 20(a)(4), eff. June 15, 2017.

Acts 2017, 85th Leg., R.S., Ch. 967 (S.B. 2065), Sec. 14.012(a)(2), eff. June 15, 2017.

Sec. 2308.104. REQUIREMENTS FOR PRIVATE PROPERTY TOWING PERMIT. (a) A private property towing permit is required for a tow truck used to perform a nonconsent tow authorized by a parking facility owner under this chapter.

(b) To be eligible for a private property towing permit, an applicant must submit evidence that:

- (1) the tow truck is equipped to tow light-duty or heavy-duty vehicles according to the manufacturer's towing guidelines;
- (2) the applicant has at least \$300,000 of liability insurance for the tow truck; and
- (3) the applicant has at least \$50,000 of cargo insurance for the tow truck.

(c) A tow truck permitted under this section may also be used for consent towing but not for incident management towing.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.

Sec. 2308.105. REQUIREMENTS FOR CONSENT TOWING PERMIT. (a) A consent towing permit is required for a tow truck used to perform a consent tow authorized by the vehicle owner.

(b) To be eligible for a consent towing permit, an applicant must submit evidence that:

- (1) the tow truck is equipped to tow light-duty or heavy-duty vehicles according to the manufacturer's towing guidelines; and
- (2) the applicant has at least \$300,000 of liability insurance for the tow truck.

(c) A tow truck permitted under this section may not be used for nonconsent towing, including incident management towing and private property towing.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.

Sec. 2308.106. DEPARTMENT APPROVAL; ISSUANCE OF PERMIT. (a) The department shall issue a permit under this subchapter to an applicant who meets the requirements for a permit. The department may deny an application if the applicant has had a permit revoked under this chapter.

(b) The department shall issue a certificate containing a single unique permit number for each tow truck, regardless of whether the permit holder holds more than one permit.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.

Sec. 2308.107. PERMIT RENEWAL. (a) A permit issued under this chapter is valid for one year. The department may adopt a system under which permits expire at different times during the year.

(b) The department shall notify the permit holder at least 30 days before the date a permit expires. The notice must be in writing and sent to the permit holder's last known address according to the records of the department.

(c) A permit holder may renew a permit under this chapter by:

- (1) paying a fee for each tow truck; and
- (2) providing to the department evidence of continuing insurance or financial responsibility in an amount required by this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.

Sec. 2308.108. CAB CARDS. (a) The department shall issue a cab card for each tow truck issued a permit. The cab card must:

- (1) show the permit number of the certificate issued under Section 2308.106(b);
- (2) show the type of permit issued;
- (3) show the vehicle unit number;
- (4) show the vehicle identification number; and
- (5) contain a statement that the vehicle has been issued a permit under this subchapter.

(b) The department shall issue a cab card when the department issues or renews a permit under this subchapter.

(c) A permit holder must keep the cab card in the cab of each permitted tow truck.

(d) The department may order a permit holder to surrender a cab card if the permit is suspended or revoked under this chapter. Item 8.

(e) If the department determines that the cab card system described by Subsections (a) through (c) is not an efficient means of enforcing this subchapter, the executive director by rule may adopt an alternative method that is accessible by law enforcement personnel in the field and provides for the enforcement of the permit requirements of this subchapter.

(f) A cab card or a permit issued under the alternative method described in Subsection (e) must be valid for the same duration as a certificate issued under Section 2308.106.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.

Sec. 2308.109. DISPLAY OF INFORMATION ON TOW TRUCK. (a) A permit holder shall display on each permitted tow truck:

- (1) the permit holder's name;
- (2) the permit holder's telephone number;
- (3) the city and state where the permit holder is located; and
- (4) the permit number for the tow truck.

(b) The information required to be displayed must be:

(1) printed in letters and numbers that are at least two inches high and in a color that contrasts with the color of the background surface; and

(2) permanently affixed in conspicuous places on both sides of the tow truck.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.

Sec. 2308.110. FINANCIAL RESPONSIBILITY. (a) A permit holder shall maintain liability insurance for each tow truck according to the requirements under this subchapter.

(b) Unless state law permits a tow truck to be self-insured, any insurance required for a tow truck must be obtained from an insurer authorized to do business in this state.

(c) An applicant or permit holder must file with the department evidence of insurance as required by this subchapter.

(d) A permit holder shall keep evidence of insurance in a form approved by the department in the cab of each permitted tow truck.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, September 1, 2007.

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## SUBCHAPTER D. LICENSE REQUIREMENTS

Sec. 2308.151. LICENSE OR LOCAL AUTHORIZATION REQUIRED. (a) Unless the person holds an appropriate license under this subchapter, a person may not:

- (1) perform towing operations; or
- (2) operate a towing company.

(b) Unless prohibited by a local authority under Section 2308.2085, a person may:

- (1) perform booting operations; and
- (2) operate a booting company.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 845 (S.B. 2153), Sec. 8, eff. September 1, 2009.

Acts 2017, 85th Leg., R.S., Ch. 919 (S.B. 1501), Sec. 10, eff. September 1, 2018.

Acts 2017, 85th Leg., R.S., Ch. 967 (S.B. 2065), Sec. 14.005, eff. September 1, 2018.

Reenacted and amended by Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 12.002, eff. September 1, 2019.

Sec. 2308.152. GENERAL LICENSE APPLICATION REQUIREMENTS. An applicant for a license under this subchapter must submit to the department:

- (1) a completed application on a form prescribed by the executive director;
- (2) the required fees; and
- (3) any other information required by commission rule.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.

Sec. 2308.153. INCIDENT MANAGEMENT TOWING OPERATOR'S LICENSE. (a) An incident management towing operator's license is required to operate a tow truck permitted under Section 2308.103.

(b) An applicant for an incident management towing operator's license must: Item 8.

(1) hold a valid driver's license issued by a state in the United States; and

(2) be certified by a program approved by the department.

(c) A person holding a license described by this section may work at a vehicle storage facility regulated under Chapter 2303.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 757 (S.B. 702), Sec. 5, eff. September 1, 2009.

Acts 2017, 85th Leg., R.S., Ch. 1057 (H.B. 2615), Sec. 2, eff. September 1, 2017.

Sec. 2308.154. PRIVATE PROPERTY TOWING OPERATOR'S LICENSE. (a) A private property towing operator's license is required to operate a tow truck permitted under Section 2308.104.

(b) An applicant for a private property towing operator's license must:

(1) hold a valid driver's license issued by a state in the United States; and

(2) be certified by a program approved by the department.

(c) A person holding a license described by this section may work at a vehicle storage facility regulated under Chapter 2303.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 757 (S.B. 702), Sec. 6, eff. September 1, 2009.

Acts 2017, 85th Leg., R.S., Ch. 1057 (H.B. 2615), Sec. 3, eff. September 1, 2017.

Sec. 2308.155. CONSENT TOWING OPERATOR'S LICENSE. (a) A consent towing operator's license is required to operate a tow truck permitted under Section 2308.105.

(b) An applicant for a consent towing operator's license must hold a valid driver's license issued by a state in the United States.

(c) A person holding a license described by this section may work at a vehicle storage facility regulated under Chapter 2303.

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Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 757 (S.B. 702), Sec. 7, eff. September 1, 2009.

Acts 2017, 85th Leg., R.S., Ch. 1057 (H.B. 2615), Sec. 4, eff. September 1, 2017.

Sec. 2308.156. NONTRANSFERABILITY OF LICENSE. A license issued by the executive director is valid throughout this state and is not transferable.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.

Sec. 2308.157. REQUIREMENT FOR INITIAL RENEWAL OF INCIDENT MANAGEMENT TOWING OPERATOR'S LICENSE. To renew an incident management towing operator's license the first time, a license holder must complete a professional development course relating to incident management towing that is approved and administered by the department.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 757 (S.B. 702), Sec. 9, eff. September 1, 2009.

Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 1.23, eff. September 1, 2021.

Sec. 2308.158. ALCOHOL AND DRUG TESTING OF TOWING OPERATORS. (a) A towing company shall establish an alcohol and drug testing policy for towing operators. A towing company that establishes an alcohol and drug testing policy under this subsection may adopt the model alcohol and drug testing policy adopted by the commission or may use another alcohol and drug testing policy that the department determines is at least as stringent as the policy adopted by the commission.

(b) The commission by rule shall adopt a model alcohol and drug testing policy for use by a towing company. The model alcohol and drug



testing policy must be designed to ensure the safety of the public through appropriate alcohol and drug testing and to protect the rights of employees. The model alcohol and drug testing policy must:

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(1) require at least one scheduled drug test each year for each towing operator; and

(2) authorize random, unannounced alcohol and drug testing for towing operators.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 757 (S.B. 702), Sec. 10, eff. September 1, 2009.

Sec. 2308.159. LICENSE RENEWAL. (a) A license issued under this subchapter is valid for one year. The department may adopt a system under which licenses expire at different times during the year.

(b) The department shall notify the license holder at least 30 days before the date a license expires. The notice must be in writing and sent to the license holder's last known address according to the records of the department.

(c) A license holder may renew a license issued under this chapter by:

(1) submitting an application on a form prescribed by the executive director;

(2) submitting evidence demonstrating compliance with the requirements for the license type as required by this chapter or commission rule;

(3) paying a renewal fee; and

(4) completing any applicable continuing education requirements.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 353 (H.B. 3510), Sec. 6, eff. September 1, 2011.

Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 1.24, eff. September 1, 2021.

#### SUBCHAPTER E. LOCAL REGULATION OF TOWING AND BOOTING

## Sec. 2308.201. TOW TRUCK REGULATION BY POLITICAL SUBDIVISIONS.

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A political subdivision of this state may regulate the operation of a tow truck to the extent allowed by federal law, except that a political subdivision may not issue a more restrictive regulation for the use of lighting equipment on a tow truck than is imposed by Title 7, Transportation Code.

(b) A political subdivision may not require the registration of a tow truck that performs consent tows in the political subdivision unless the owner of the tow truck has a place of business in the territory of the political subdivision.

(c) A political subdivision may require the registration of a tow truck that performs a nonconsent tow in the political subdivision, regardless of whether the owner of the tow truck has a place of business in the territory of the political subdivision.

(d) A political subdivision may not require a person who holds a driver's license or commercial driver's license to obtain a license or permit for operating a tow truck unless the person performs nonconsent tows in the territory of the political subdivision. A fee charged for a license or permit may not exceed \$15.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 30.150(a), eff. Sept. 1, 1997.  
Amended by Acts 2001, 77th Leg., ch. 1303, Sec. 1, eff. Sept. 1, 2001;  
Acts 2003, 78th Leg., ch. 1034, Sec. 9, eff. Sept. 1, 2003.  
Renumbered from Transportation Code, Section 643.201 and amended by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.01, eff. September 1, 2007.

Sec. 2308.202. REGULATION BY POLITICAL SUBDIVISIONS OF FEES FOR NONCONSENT TOWS. The governing body of a political subdivision may regulate the fees that may be charged or collected in connection with a nonconsent tow originating in the territory of the political subdivision if the private property tow fees:

- (1) are authorized by commission rule; and
- (2) do not exceed the maximum amount authorized by commission rule.

Added by Acts 2003, 78th Leg., ch. 1034, Sec. 10, eff. Sept. 1, 2003.  
Renumbered from Transportation Code, Section 643.203 by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.01, eff. September 1, 2007.  
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1310 (H.B. 2571), Sec. 5, eff.  
September 1, 2010.

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Sec. 2308.203. TOWING FEE STUDIES. (a) The governing body of a political subdivision that regulates nonconsent tow fees shall establish procedures by which a towing company may request that a towing fee study be performed.

(b) The governing body of the political subdivision shall establish or amend the allowable fees for nonconsent tows at amounts that represent the fair value of the services of a towing company and are reasonably related to any financial or accounting information provided to the governing body.

Added by Acts 2003, 78th Leg., ch. 1034, Sec. 10, eff. Sept. 1, 2003.  
Renumbered from Transportation Code, Section 643.204 by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.01, eff. September 1, 2007.

Sec. 2308.205. TOWING OF VEHICLES TO LICENSED VEHICLE STORAGE FACILITIES OR OTHER LOCATIONS ON PARKING FACILITIES. (a) A towing company that makes a nonconsent tow shall tow the vehicle to a vehicle storage facility that is operated by a person who holds a license to operate the facility under Chapter 2303, unless:

- (1) the towing company agrees to take the vehicle to a location designated by the vehicle's owner; or
- (2) the vehicle is towed under:
  - (A) rules adopted under Subsection (a-1); or
  - (B) Section 2308.259(b).

(a-1) The commission shall adopt rules authorizing a towing company that makes a nonconsent tow from a parking facility to tow the vehicle to another location on the same parking facility under the direction of:

- (1) the parking facility owner;
- (2) a parking facility authorized agent; or
- (3) a peace officer.

(b) A storage or notification fee imposed in connection with a motor vehicle towed to a vehicle storage facility is governed by Chapter 2303.

(c) Except as provided by this chapter, Article 18.23, Code of Criminal Procedure, or Chapter 2303, a fee may not be charged or collected without the prior written consent of the vehicle owner or operator.

Added by Acts 2003, 78th Leg., ch. 1034, Sec. 10, eff. Sept. 1, 2003.  
Amended by:

Acts 2005, 79th Leg., Ch. 1197 (H.B. 480), Sec. 5, eff. September 2005.

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Renumbered from Transportation Code, Section 643.206 and amended by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.01, eff. September 1, 2007.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 919 (S.B. 1501), Sec. 11, eff. June 15, 2017.

Acts 2017, 85th Leg., R.S., Ch. 919 (S.B. 1501), Sec. 12, eff. June 15, 2017.

Acts 2017, 85th Leg., R.S., Ch. 967 (S.B. 2065), Sec. 14.006, eff. June 15, 2017.

Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 12.003, eff. September 1, 2019.

Sec. 2308.2065. FEES FOR NONCONSENT TOWS; REFUNDS. (a) A license or permit holder may not charge a fee for a nonconsent tow that is greater than:

(1) the fee for a nonconsent tow established under Section 2308.0575; or

(2) a fee for a nonconsent tow authorized by a political subdivision.

(b) A license or permit holder may not charge a fee for a service related to a nonconsent tow that is not included in the list of fees established:

(1) under Section 2308.0575; or

(2) by a political subdivision.

(c) The department may require a license or permit holder to refund to a vehicle owner or operator the:

(1) amount charged to the owner or operator in excess of the amounts established by commission rule or by a political subdivision; or

(2) total amount of the charges for a service not listed in the amounts established by commission rule or by a political subdivision.

Added by Acts 2011, 82nd Leg., R.S., Ch. 353 (H.B. 3510), Sec. 7, eff. September 1, 2011.

Sec. 2308.208. MUNICIPAL OR COUNTY ORDINANCE REGULATING UNAUTHORIZED VEHICLES AND TOWING OF MOTOR VEHICLES. The governing body of a municipality or the commissioners court of a county may adopt an ordinance

that is identical to this chapter or that imposes additional requirements that exceed the minimum standards of this chapter but may not adopt an ordinance conflicting with this chapter.

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Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Renumbered from Transportation Code, Section 684.101 by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.02, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1310 (H.B. 2571), Sec. 8, eff. September 1, 2009.

Sec. 2308.2085. LOCAL AUTHORITY REGULATION OF BOOTING ACTIVITIES.

(a) A local authority may regulate, in areas in which the entity regulates parking or traffic, booting activities, including:

(1) operation of booting companies and operators that operate on a parking facility;

(2) any permit and sign requirements in connection with the booting of a vehicle; and

(3) fees that may be charged in connection with the booting of a vehicle.

(b) Regulations adopted under this section must:

(1) incorporate the requirements of Sections 2308.257 and 2308.258;

(2) include procedures for vehicle owners and operators to file a complaint with the local authority regarding a booting company or operator; and

(3) provide for the imposition of a penalty on a booting company or operator for a violation of Section 2308.258.

Added by Acts 2009, 81st Leg., R.S., Ch. 845 (S.B. 2153), Sec. 11, eff. September 1, 2009.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 919 (S.B. 1501), Sec. 13, eff. June 15, 2017.

Acts 2017, 85th Leg., R.S., Ch. 967 (S.B. 2065), Sec. 14.007, eff. June 15, 2017.

Sec. 2308.209. TOW ROTATION LIST IN CERTAIN COUNTIES. (a) Repealed by Acts 2009, 81st Leg., R.S., Ch. 87, Sec. 27.002(37), eff. September 1, 2009.

(b) This section applies only to the unincorporated area of a count

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- (1) with a population of 450,000 or more that is adjacent to county with a population of 3.3 million or more;
- (2) with a population of less than 10,000 that is located in a national forest; or
- (3) adjacent to a county described by Subdivision (2) that has a population of less than 75,000.

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(c) The sheriff's office may maintain a list of towing companies to perform nonconsent tows of motor vehicles initiated by a peace officer investigating a traffic accident or a traffic incident. The towing companies must operate in a county to which this section applies.

(d) A peace officer initiating a nonconsent tow of a motor vehicle involved in a traffic accident or traffic incident that the officer is investigating shall notify the sheriff's office that the tow is being initiated. The sheriff's office shall contact successive towing companies on the tow rotation list until a company agrees to carry out the tow.

(e) The sheriff's office may assess a towing company an administrative fee to be included on the tow rotation list in an amount not to exceed the amount necessary to implement this section.

(f) The commissioners court of a county in which a list is maintained under Subsection (c) shall adopt policies to implement this section in a manner that ensures:

- (1) equal distribution of nonconsent tows among the towing companies that perform nonconsent tows in the county; and
- (2) consumer protection, including fair pricing, for owners or operators of motor vehicles towed by towing companies on the tow rotation list.

(g) The sheriff's office shall make a list maintained under this section available for public inspection.

(h) In a county in which a list is maintained under Subsection (c), a person commits an offense if:

- (1) the person arrives at the scene of a traffic accident or traffic incident to perform a nonconsent tow of a motor vehicle without first being contacted by the sheriff's office;
- (2) the person directly or indirectly solicits, on streets located in the county, towing services, including towing, removing, repairing, wrecking, storing, trading, selling, or purchasing related to a vehicle that has been damaged in an accident to the extent that it cannot be normally and safely driven; or
- (3) the person enters the scene of a traffic accident, traffic incident, or other area under the control of a peace officer without the

permission of the peace officer.

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(i) An offense under Subsection (h) is a misdemeanor punishable by a fine of not less than \$1 or more than \$200.

Added by Acts 2007, 80th Leg., R.S., Ch. 162 (S.B. 500), Sec. 1, eff. September 1, 2007.

Transferred from Transportation Code, Section 643.209 by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(109), eff. September 1, 2009.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.002(37), eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 108, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 102 (H.B. 2213), Sec. 1, eff. May 23, 2015.

Sec. 2308.210. ROADWAY CLEARANCE PROGRAM IN CERTAIN COUNTIES;  
OFFENSE. (a) In this section, "freeway" has the meaning assigned by Section 541.302, Transportation Code.

(b) The commissioners court of a county adjacent to a county with a population of more than 3.3 million by order may establish a program:

(1) for maintaining the safe movement of traffic on county freeways; and

(2) under which a peace officer designated by the sheriff's office or the commissioners court is authorized to direct, at the scene of an incident or remotely, a towing company, only for the purpose of the program, to:

(A) remove from a freeway, including the shoulder of a freeway, a vehicle that is impeding the safe movement of traffic; and

(B) relocate the vehicle to the closest safe location for the vehicle to be stored.

(c) An order under Subsection (b) must ensure the protection of the public and the safe and efficient operation of towing and storage services in the county.

(d) The commissioners court of a county operating a program under this section:

(1) may enter into an agreement with a federal agency, state agency, municipality, adjacent county, metropolitan rapid transit authority, or regional planning organization or any other governmental entity for the purpose of carrying out the program; and

(2) may apply for grants and other funding to carry out the program.

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(e) A towing company or towing operator commits an offense if the company or operator violates a provision of an order establishing a program under this section relating to:

(1) the presence of a tow truck at the scene of an incident on a freeway or other area under the jurisdiction of the program; or

(2) the offering of towing or related services on a freeway or other area under the jurisdiction of the program.

(f) An offense under Subsection (e) is a misdemeanor punishable by a fine of not less than \$1 or more than \$200.

Added by Acts 2017, 85th Leg., R.S., Ch. 919 (S.B. 1501), Sec. 14, eff. June 15, 2017.

#### SUBCHAPTER F. UNAUTHORIZED VEHICLES

Sec. 2308.251. PROHIBITION AGAINST UNATTENDED VEHICLES IN CERTAIN AREAS. (a) The owner or operator of a vehicle may not leave unattended on a parking facility a vehicle that:

(1) is in or obstructs a vehicular traffic aisle, entry, or exit of the parking facility;

(2) prevents a vehicle from exiting a parking space in the facility;

(3) is in or obstructs a fire lane marked according to Subsection (c);

(4) does not display the special license plates issued under Section 504.201, Transportation Code, or the disabled parking placard issued under Chapter 681, Transportation Code, for a vehicle transporting a disabled person and is in a parking space that is designated for the exclusive use of a vehicle transporting a disabled person; or

(5) is leaking a fluid that presents a hazard or threat to persons or property.

(b) Subsection (a) does not apply to an emergency vehicle that is owned by, or the operation of which is authorized by, a governmental entity.

(c) If a government regulation governing the marking of a fire lane applies to a parking facility, a fire lane in the facility must be marked as provided by the regulation. If a government regulation on the marking of a fire lane does not apply to the parking facility, all curbs of fire lanes must be painted red and be conspicuously and legibly marked with th



warning "FIRE LANE--TOW AWAY ZONE" in white letters at least three inches tall, at intervals not exceeding 50 feet.

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Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 20.003(j), eff. September 1, 2005.

Renumbered from Transportation Code, Section 684.011 and amended by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.03, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 757 (S.B. 702), Sec. 11, eff. September 1, 2009.

Sec. 2308.252. REMOVAL AND STORAGE OF UNAUTHORIZED VEHICLE. (a) A parking facility owner may, without the consent of the owner or operator of an unauthorized vehicle, cause the vehicle and any property on or in the vehicle to be removed and stored at a vehicle storage facility at the vehicle owner's or operator's expense if:

(1) signs that comply with Subchapter G prohibiting unauthorized vehicles are located on the parking facility at the time of towing and for the preceding 24 hours and remain installed at the time of towing;

(2) the owner or operator of the vehicle has received actual notice from the parking facility owner that the vehicle will be towed at the vehicle owner's or operator's expense if it is in or not removed from an unauthorized space;

(3) the parking facility owner gives notice to the owner or operator of the vehicle under Subsection (b); or

(4) on request the parking facility owner provides to the owner or operator of the vehicle information on the name of the towing company and vehicle storage facility that will be used to remove and store the vehicle and the vehicle is:

(A) left in violation of Section 2308.251 or 2308.253; or

(B) in or obstructing a portion of a paved driveway or abutting public roadway used for entering or exiting the facility.

(b) A parking facility owner is considered to have given notice under Subsection (a)(3) if:

(1) a conspicuous notice has been attached to the vehicle's front windshield or, if the vehicle has no front windshield, to a conspicuous part of the vehicle stating:

(A) that the vehicle is in a parking space in which the vehicle is not authorized to be parked;

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(B) a description of all other unauthorized areas in the parking facility;

(C) that the vehicle will be towed at the expense of the owner or operator of the vehicle if it remains in an unauthorized area of the parking facility; and

(D) a telephone number that is answered 24 hours a day to enable the owner or operator of the vehicle to locate the vehicle; and

(2) a notice is mailed after the notice is attached to the vehicle as provided by Subdivision (1) to the owner of the vehicle by certified mail, return receipt requested, to the last address shown for the owner according to the vehicle registration records of the Texas Department of Motor Vehicles, or if the vehicle is registered in another state, the appropriate agency of that state.

(c) The notice under Subsection (b) (2) must:

(1) state that the vehicle is in a space in which the vehicle is not authorized to park;

(2) describe all other unauthorized areas in the parking facility;

(3) contain a warning that the unauthorized vehicle will be towed at the expense of the owner or operator of the vehicle if it is not removed from the parking facility before the 15th day after the postmark date of the notice; and

(4) state a telephone number that is answered 24 hours a day to enable the owner or operator to locate the vehicle.

(d) The mailing of a notice under Subsection (b) (2) is not required if after the notice is attached under Subsection (b) (1) the owner or operator of the vehicle leaves the vehicle in another location where parking is unauthorized for the vehicle according to the notice.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 442, Sec. 1, eff. Jan. 1, 2004.

Amended by:

Acts 2005, 79th Leg., Ch. 1197 (H.B. 480), Sec. 6, eff. September 1, 2005.

Renumbered from Transportation Code, Section 684.012 and amended by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.03, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1310 (H.B. 2571), Sec. 9, eff. September 1, 2009.

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Acts 2013, 83rd Leg., R.S., Ch. 764 (S.B. 1053), Sec. 2, eff. September 1, 2013.

Sec. 2308.253. UNATTENDED VEHICLES ON PARKING FACILITY OF APARTMENT COMPLEX; REMOVAL AND STORAGE OF VEHICLES. (a) This section applies only to a parking facility serving or adjacent to an apartment complex consisting of one or more residential apartment units and any adjacent real property serving the apartment complex.

(b) The owner or operator of a vehicle may not leave unattended on a parking facility a vehicle that:

(1) obstructs a gate that is designed or intended for the use of pedestrians or vehicles;

(2) obstructs pedestrian or vehicular access to an area that is used for the placement of a garbage or refuse receptacle used in common by residents of the apartment complex;

(3) is in or obstructs a restricted parking area or parking space designated under Subchapter G, including a space designated for the use of employees or maintenance personnel of the parking facility or apartment complex;

(4) is in a tow away zone, other than a fire lane covered by Section 2308.251(c), that is brightly painted and is conspicuously and legibly marked with the warning "TOW AWAY ZONE" in contrasting letters at least three inches tall;

(5) is a semitrailer, trailer, or truck-tractor, as defined by Chapter 502, Transportation Code, unless the owner or operator of the vehicle is permitted under the terms of a rental or lease agreement with the apartment complex to leave the unattended vehicle on the parking facility; or

(6) is leaking a fluid that presents a hazard or threat to persons or property.

(c) A parking facility owner may not have an emergency vehicle described by Section 2308.251(b) towed from the parking facility.

(d) Except as provided by a contract described by Subsection (e), a parking facility owner may not have a vehicle towed from the parking facility merely because the vehicle does not display an unexpired license plate or registration insignia issued for the vehicle under Chapter 502, Transportation Code, or the vehicle registration law of another state or country.

(e) A contract provision providing for the towing from a parking facility of a vehicle that does not display an unexpired license plate or registration insignia is valid only if the provision requires the owner or operator of the vehicle to be given at least 10 days' written notice that the vehicle will be towed from the parking facility at the vehicle owner's or operator's expense if it is not removed from the parking facility. The notice must:

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(1) state:

(A) that the vehicle does not display an unexpired license plate or registration insignia;

(B) that the vehicle will be towed at the expense of the owner or operator of the vehicle if the vehicle does not display an unexpired license plate or registration insignia; and

(C) a telephone number that is answered 24 hours a day to enable the owner or operator of the vehicle to locate the vehicle; and

(2) be:

(A) delivered in person to the owner or operator of the vehicle;

(B) sent by certified mail, return receipt requested, to that owner or operator; or

(C) attached:

(i) to the vehicle's front windshield;

(ii) to the vehicle's driver's side window; or

(iii) if the vehicle has no front windshield or driver's side window, to a conspicuous part of the vehicle.

(f) This section may not be construed:

(1) to authorize the owner or operator of a vehicle to leave an unattended vehicle on property that is not designed or intended for the parking of vehicles; or

(2) to limit or restrict the enforcement of Chapter 683, Transportation Code, the abandoned motor vehicle law.

(g) A provision of an apartment lease or rental agreement entered into or renewed on or after January 1, 2004, that is in conflict or inconsistent with this section is void and may not be enforced.

Added by Acts 2003, 78th Leg., ch. 442, Sec. 2, eff. Jan. 1, 2004.

Renumbered from Transportation Code, Section 684.0125 and amended by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.03, eff. September 1, 2007.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1291 (H.B. 2305), Sec. 9, eff. March 1, 2015.

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Acts 2017, 85th Leg., R.S., Ch. 919 (S.B. 1501), Sec. 15, eff. June 15, 2017.

Sec. 2308.254. LIMITATION ON PARKING FACILITY OWNER'S AUTHORITY TO REMOVE UNAUTHORIZED VEHICLE. A parking facility owner may not have an unauthorized vehicle removed from the facility except:

(1) as provided by this chapter or a municipal ordinance that complies with Section 2308.208; or

(2) under the direction of a peace officer or the owner or operator of the vehicle.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Renumbered from Transportation Code, Section 684.013 and amended by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.03, eff. September 1, 2007.

Sec. 2308.255. TOWING COMPANY'S AUTHORITY TO TOW AND STORE UNAUTHORIZED VEHICLE. (a) A towing company may, without the consent of an owner or operator of an unauthorized vehicle, tow the vehicle to and store the vehicle at a vehicle storage facility at the expense of the owner or operator of the vehicle if:

(1) the towing company has received written verification from the parking facility owner that:

(A) the signs required by Section 2308.252(a)(1) are posted; or

(B) the owner or operator received notice under Section 2308.252(a)(2) or the parking facility owner gave notice complying with Section 2308.252(a)(3); or

(2) on request the parking facility owner provides to the owner or operator of the vehicle information on the name of the towing company and vehicle storage facility that will be used to tow and store the vehicle and the vehicle is:

(A) left in violation of Section 2308.251;

(B) in or obstructing a portion of a paved driveway; or

(C) on a public roadway used for entering or exiting the facility and the tow is approved by a peace officer.

(b) A towing company may not tow an unauthorized vehicle except under:

- (1) this chapter;
- (2) a municipal ordinance that complies with Section 2308.208, or
- (3) the direction of:
- (A) a peace officer; or
  - (B) the owner or operator of the vehicle.

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(c) Only a towing company that is insured against liability for property damage incurred in towing a vehicle may tow and store an unauthorized vehicle under this section.

(d) A towing company may tow and store a vehicle under Subsection (a) only if the parking facility owner:

(1) requests that the towing company tow and store the specific vehicle; or

(2) has a standing written agreement with the towing company to enforce parking restrictions in the parking facility.

(e) When a tow truck is used for a nonconsent tow authorized by a peace officer under Section 545.3051, Transportation Code, the operator of the tow truck and the towing company are agents of the law enforcement agency and are subject to Section 545.3051(e), Transportation Code.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 1197 (H.B. 480), Sec. 7, eff. September 1, 2005.

Renumbered from Transportation Code, Section 684.014 and amended by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.03, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1310 (H.B. 2571), Sec. 10, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 353 (H.B. 3510), Sec. 9, eff. September 1, 2011.

Acts 2017, 85th Leg., R.S., Ch. 919 (S.B. 1501), Sec. 16, eff. June 15, 2017.

Acts 2017, 85th Leg., R.S., Ch. 967 (S.B. 2065), Sec. 14.008, eff. June 15, 2017.

Sec. 2308.2555. REMOVAL OF CERTAIN UNAUTHORIZED VEHICLES IN RURAL AREAS. (a) This section applies only to an abandoned vehicle that has damaged a fence on private property in a rural area.

(b) A law enforcement agency directing a towing company or tow operator to remove an abandoned vehicle that is located on private property shall provide the towing company or tow operator with the name and telephone number of the property owner or the owner's agent if the owner or agent has provided the information to the law enforcement agency.

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(c) A towing company or tow operator provided with information under Subsection (b) shall contact the property owner or the owner's agent before entering private property to tow a vehicle described by Subsection (a).

Added by Acts 2009, 81st Leg., R.S., Ch. 757 (S.B. 702), Sec. 12, eff. September 1, 2009.

Redesignated from Occupations Code, Section 2308.257 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(49), eff. September 1, 2011.  
Redesignated from Occupations Code, Section 2308.257 by Acts 2011, 82nd Leg., R.S., Ch. 353 (H.B. 3510), Sec. 10, eff. September 1, 2011.

Sec. 2308.2565. VEHICLE STORAGE FACILITY DUTY TO REPORT AFTER ACCEPTING UNAUTHORIZED VEHICLE. (a) Except for an incident management tow requested by a law enforcement agency, a vehicle storage facility accepting a vehicle that is towed under this chapter shall within two hours after receiving the vehicle report to the police department of the municipality from which the vehicle was towed or, if the vehicle was towed from a location that is not in a municipality with a police department, to the sheriff of the county from which the vehicle was towed:

- (1) a general description of the vehicle;
- (2) the state and number of the vehicle's license plate, if any;
- (3) the vehicle identification number of the vehicle, if it can be ascertained;
- (4) the location from which the vehicle was towed; and
- (5) the name and location of the vehicle storage facility in which the vehicle is being stored.

(b) A law enforcement agency may request a vehicle storage facility to provide a report, in a manner prescribed by the law enforcement agency, of incident management tows within the jurisdiction of the agency. A vehicle storage facility must provide the report not later than 48 hours after the time the facility receives the request.

Added by Acts 2011, 82nd Leg., R.S., Ch. 353 (H.B. 3510), Sec. 11, eff. September 1, 2011.

Sec. 2308.257. BOOTING OF UNAUTHORIZED VEHICLE. (a) A parking facility owner may, without the consent of the owner or operator of an unauthorized vehicle, cause a boot to be installed on the vehicle in the parking facility if signs that comply with Subchapter G prohibiting unauthorized vehicles are located on the parking facility at the time of the booting and for the preceding 24 hours and remain installed at the time of the booting.

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(b) A boot operator that installs a boot on a vehicle must affix a conspicuous notice to the vehicle's front windshield or driver's side window stating:

(1) that the vehicle has been booted and damage may occur if the vehicle is moved;

(2) the date and time the boot was installed;

(3) the name, address, and telephone number of the booting company;

(4) a telephone number that is answered 24 hours a day to enable the owner or operator of the vehicle to arrange for removal of the boot;

(5) the amount of the fee for removal of the boot and any associated parking fees;

(6) notice of the right of a vehicle owner or vehicle operator to a hearing under Subchapter J; and

(7) in the manner prescribed by the local authority, notice of the procedure to file a complaint with the local authority for violation of this chapter by a boot operator.

(c) On removal of a boot, the boot operator shall provide a receipt to the vehicle owner or operator stating:

(1) the name of the person who removed the boot;

(2) the date and time the boot was removed;

(3) the name of the person to whom the vehicle was released;

(4) the amount of fees paid for removal of the boot and any associated parking fees; and

(5) the right of the vehicle owner or operator to a hearing under Subchapter J.

(d) The booting company shall maintain a copy of the receipt at its place of business for a period of three years. A peace officer has the right, on request, to inspect and copy the records to determine compliance with the requirements of this section.

(e) A booting company shall accept payment by an electronic check, debit card, or credit card for any fee or charge associated with the removal of a boot. A booting company may not collect a fee for any charge



associated with the removal of a boot from a person who offers to pay the charge with an electronic check, debit card, or credit card form of payment that the booting company is not equipped to accept. Item 8.

Added by Acts 2009, 81st Leg., R.S., Ch. 845 (S.B. 2153), Sec. 12, eff. September 1, 2009.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 919 (S.B. 1501), Sec. 17, eff. June 15, 2017.

Acts 2017, 85th Leg., R.S., Ch. 967 (S.B. 2065), Sec. 14.009, eff. June 15, 2017.

Sec. 2308.258. BOOT REMOVAL. (a) A booting company responsible for the installation of a boot on a vehicle shall remove the boot not later than one hour after the time the owner or operator of the vehicle contacts the company to request removal of the boot.

(b) A booting company shall waive the amount of the fee for removal of a boot, excluding any associated parking fees, if the company fails to have the boot removed within the time prescribed by Subsection (a).

(c) A booting company responsible for the installation of more than one boot on a vehicle may not charge a total amount for the removal of the boots that is greater than the amount of the fee for the removal of a single boot.

Added by Acts 2017, 85th Leg., R.S., Ch. 919 (S.B. 1501), Sec. 18, eff. June 15, 2017.

Added by Acts 2017, 85th Leg., R.S., Ch. 967 (S.B. 2065), Sec. 14.010, eff. June 15, 2017.

Sec. 2308.259. TOWING COMPANY'S AUTHORITY TO TOW VEHICLE FROM UNIVERSITY PARKING FACILITY. (a) In this section:

(1) "Special event" means a university-sanctioned, on-campus activity, including parking lot maintenance.

(2) "University" means:

(A) a public senior college or university, as defined by Section 61.003, Education Code; or

(B) a private or independent institution of higher education, as defined by Section 61.003, Education Code.

(b) Subject to Subsection (c), an individual designated by a university may, to facilitate a special event, request that a vehicle

parked at a university parking facility be towed to another location on university campus.

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(c) A vehicle may not be towed under Subsection (b) unless signs complying with this section are installed on the parking facility for the 72 hours preceding towing enforcement for the special event and for 48 hours after the conclusion of the special event.

(d) Each sign required under Subsection (c) must:

(1) contain:

(A) a statement of:

(i) the nature of the special event; and

(ii) the dates and hours of towing enforcement; and

(B) the number, including the area code, of a telephone that is answered 24 hours a day to identify the location of a towed vehicle;

(2) face and be conspicuously visible to the driver of a vehicle that enters the facility;

(3) be located:

(A) on the right or left side of each driveway or curb-cut through which a vehicle can enter the facility, including an entry from an alley abutting the facility; or

(B) at intervals along the entrance so that no entrance is farther than 25 feet from a sign if:

(i) curbs, access barriers, landscaping, or driveways do not establish definite vehicle entrances onto a parking facility from a public roadway other than an alley; and

(ii) the width of an entrance exceeds 35 feet;

(4) be made of weather-resistant material;

(5) be at least 18 inches wide and 24 inches tall;

(6) be mounted on a pole, post, wall, or free-standing board; and

(7) be installed so that the bottom edge of the sign is no lower than two feet and no higher than six feet above ground level.

(e) If a vehicle is towed under Subsection (b), personnel must be available to:

(1) release the vehicle within two hours after a request for release of the vehicle; and

(2) accept any payment required for the release of the vehicle.

(f) A university may not charge a fee for a tow under Subsection (b) that exceeds 75 percent of the private property tow fee established under Section 2308.0575.

(g) A vehicle towed under Subsection (b) that is not claimed by the vehicle owner or operator within 48 hours after the conclusion of the

special event may only be towed:

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- (1) without further expense to the vehicle owner or operator; and
- (2) to another location on the university campus.

(h) The university must notify the owner or operator of a vehicle towed under Subsection (b) of the right of the vehicle owner or operator to a hearing under Subchapter J.

Added by Acts 2017, 85th Leg., R.S., Ch. 919 (S.B. 1501), Sec. 18, eff. June 15, 2017.

Added by Acts 2017, 85th Leg., R.S., Ch. 967 (S.B. 2065), Sec. 14.010, eff. June 15, 2017.

#### SUBCHAPTER G. SIGNS PROHIBITING UNAUTHORIZED VEHICLES AND DESIGNATING RESTRICTED AREAS

Sec. 2308.301. GENERAL REQUIREMENTS FOR SIGN PROHIBITING UNAUTHORIZED VEHICLES. (a) Except as provided by Subsection (a) (2) (B) and Section 2308.304 or 2308.305, an unauthorized vehicle may not be towed under Section 2308.252(a) (1) or booted under Section 2308.257 unless a sign prohibiting unauthorized vehicles on a parking facility is:

(1) facing and conspicuously visible to the driver of a vehicle that enters the facility;

(2) located:

(A) on the right or left side of each driveway or curb-cut through which a vehicle can enter the facility, including an entry from an alley abutting the facility; or

(B) at intervals along the entrance so that no entrance is farther than 25 feet from a sign if:

(i) curbs, access barriers, landscaping, or driveways do not establish definite vehicle entrances onto a parking facility from a public roadway other than an alley; and

(ii) the width of an entrance exceeds 35 feet;

(3) permanently mounted on a pole, post, permanent wall, or permanent barrier;

(4) installed on the parking facility; and

(5) installed so that the bottom edge of the sign is no lower than five feet and no higher than eight feet above ground level.

(b) Except as provided by Section 2308.305, an unauthorized vehicle may be towed under Section 2308.252(a) (1) or booted under Section 2308.257 only if each sign prohibiting unauthorized vehicles:

(1) is made of weather-resistant material;

- (2) is at least 18 inches wide and 24 inches tall;
- (3) contains the international symbol for towing vehicles;
- (4) contains a statement describing who may park in the parking facility and prohibiting all others;
- (5) bears the words, as applicable:
  - (A) "Unauthorized Vehicles Will Be Towed or Booted at Owner's or Operator's Expense";
  - (B) "Unauthorized Vehicles Will Be Towed at Owner's or Operator's Expense"; or
  - (C) "Unauthorized Vehicles Will Be Booted at Owner's or Operator's Expense";
- (6) contains a statement of the days and hours of towing and booting enforcement; and
- (7) contains a number, including the area code, of a telephone that is answered 24 hours a day to enable an owner or operator of a vehicle to locate a towed vehicle or to arrange for removal of a boot from a vehicle.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Renumbered from Transportation Code, Section 684.031 and amended by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.04, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 845 (S.B. 2153), Sec. 13, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 353 (H.B. 3510), Sec. 12, eff. September 1, 2011.

Sec. 2308.302. COLOR, LAYOUT, AND LETTERING HEIGHT REQUIREMENTS. (a) Except as provided by Section 2308.305, each sign required by this chapter must comply with the color, layout, and lettering height requirements of this section.

(b) A bright red international towing symbol, which is a solid silhouette of a tow truck towing a vehicle on a generally rectangular white background, at least four inches in height, must be on the uppermost portion of a sign or on a separate sign placed immediately above the sign.

(c) The portion of the sign immediately below the international towing symbol must:

- (1) in lettering at least two inches in height, contain the words, as applicable:

- (A) "Towing and Booting Enforced";
- (B) "Towing Enforced"; or
- (C) "Booting Enforced"; and

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(2) consist of white letters on a bright red background.

(d) Except as provided by Subsection (e), the next lower portion of the sign must contain the remaining information required by Section 2308.301(b) displayed in bright red letters at least one inch in height on a white background.

(e) The bottommost portion of the sign must contain the telephone numbers required by Section 2308.301(b), in lettering at least one inch in height and may, if the facility owner chooses or if an applicable municipal ordinance requires, include the name and address of the storage facility to which an unauthorized vehicle will be removed. The lettering on this portion of the sign must consist of white letters on a bright red background.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Renumbered from Transportation Code, Section 684.032 and amended by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.04, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 845 (S.B. 2153), Sec. 14, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 353 (H.B. 3510), Sec. 13, eff. September 1, 2011.

#### Sec. 2308.303. TELEPHONE NUMBER FOR LOCATING TOWED VEHICLE REQUIRED.

If a parking facility owner posts a sign described by Sections 2308.301 and 2308.302, the owner of a vehicle that is towed from the facility under this chapter must be able to locate the vehicle by calling the telephone number on the sign.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Renumbered from Transportation Code, Section 684.033 and amended by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.04, eff. September 1, 2007.

Sec. 2308.304. DESIGNATION OF RESTRICTED PARKING SPACES ON OTHERWISE UNRESTRICTED PARKING FACILITY. A parking facility owner may designate one or more spaces as restricted parking spaces on a portion of an otherwise unrestricted parking facility. Instead of installing a sign at each

entrance to the parking facility as provided by Section 2308.301(a)(2) Item 8.  
owner may place a sign that prohibits unauthorized vehicles from parking in designated spaces and that otherwise complies with Sections 2308.301 and 2308.302:

(1) at the right or left side of each entrance to a designated area or group of parking spaces located on the restricted portion of the parking facility; or

(2) at the end of a restricted parking space so that the sign, the top of which must not be higher than seven feet above the ground, is in front of a vehicle that is parked in the space and the rear of which is at the entrance of the space.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Renumbered from Transportation Code, Section 684.034 and amended by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.04, eff. September 1, 2007.

Sec. 2308.305. INDIVIDUAL PARKING RESTRICTIONS IN RESTRICTED AREA.

(a) A parking facility owner who complies with Sections 2308.301 and 2308.302 may impose further specific parking restrictions in an area to which the signs apply for individual spaces by installing or painting a weather-resistant sign or notice on a curb, pole, post, permanent wall, or permanent barrier so that the sign is in front of a vehicle that is parked in the space and the rear of which is at the entrance of the space.

(b) The top of the sign or notice may not be higher than seven feet above the ground.

(c) The sign or notice must include an indication that the space is reserved for a particular unit number, person, or type of person.

(d) The letters on the sign or notice must be at least two inches in height and must contrast to the color of the curb, wall, or barrier so they can be read during the day and at night. The letters are not required to be illuminated or made of reflective material.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Renumbered from Transportation Code, Section 684.035 and amended by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.04, eff. September 1, 2007.

SUBCHAPTER H. REGULATION OF PARKING ON CERTAIN PUBLIC ROADWAY AREAS

Sec. 2308.351. REMOVAL OF UNAUTHORIZED VEHICLE FROM LEASED RIGHT-OF-WAY. Unless prohibited by the lease, a parking facility owner or towing company may remove an unauthorized vehicle parked in a leased area described by Section 2308.002(7)(B)(i) if the owner or towing company gives notice under Section 2308.252(a)(1), (2), or (3) and otherwise complies with this chapter.

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Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Renumbered from Transportation Code, Section 684.051 and amended by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.05, eff. September 1, 2007.

Sec. 2308.352. REMOVAL OF UNAUTHORIZED VEHICLE FROM AREA BETWEEN PARKING FACILITY AND PUBLIC ROADWAY. Unless prohibited by a municipal ordinance, a parking facility owner or towing company may remove an unauthorized vehicle any part of which is in an area described by Section 2308.002(7)(B)(ii) if notice provided by Section 2308.252(a)(2) or (3) is given and the owner or towing company has otherwise complied with this chapter.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Renumbered from Transportation Code, Section 684.052 and amended by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.05, eff. September 1, 2007.

Sec. 2308.353. REMOVAL UNDER GOVERNMENTAL ENTITY'S AUTHORITY OF UNAUTHORIZED VEHICLE PARKED IN RIGHT-OF-WAY. (a) A governmental entity that has jurisdiction over a public roadway and that has posted one or more signs in the right-of-way stating that parking is prohibited in the right-of-way may:

(1) remove or contract with a towing company to remove an unauthorized vehicle parked in the right-of-way of the public roadway; or

(2) grant written permission to an abutting parking facility owner to:

(A) post one or more "No parking in R.O.W." signs along a common property line of the facility and the roadway; and

(B) remove vehicles from the right-of-way of the public roadway under this chapter.

(b) A sign under Subsection (a)(2) must:

(1) state that a vehicle parked in the right-of-way may be towed at the expense of the owner or operator of the vehicle;

(2) be placed facing the public roadway:

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(A) on the parking facility owner's property not more than two feet from the common boundary line; and

(B) at intervals so that no point in the boundary line is less than 25 feet from a sign posted under this subsection; and

(3) in all other respects comply with Subchapter G.

(c) After signs have been posted under Subsection (b), the parking facility owner or a towing company may remove an unauthorized vehicle from the right-of-way subject to the governmental entity's written permission given under Subsection (a)(2).

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Renumbered from Transportation Code, Section 684.053 and amended by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.05, eff. September 1, 2007.

Sec. 2308.354. AUTHORITY FOR REMOVAL OF VEHICLE FROM PUBLIC ROADWAY.

(a) Under an ordinance of a municipality regulating the parking of vehicles in the municipality, to aid in the enforcement of the ordinance, an employee designated by the municipality may be authorized to:

(1) immobilize a vehicle parked in the municipality;

(2) remove an immobilized vehicle from a public roadway in the municipality; and

(3) request the removal and storage of a vehicle that is located in an area where on-street parking is regulated by the ordinance and that:

(A) is parked illegally; or

(B) is parked legally and:

(i) has been unattended for more than 48 hours; and

(ii) the employee has reasonable grounds to believe is abandoned.

(b) A parking facility owner or towing company may not remove a vehicle from a public roadway except under:

(1) this chapter or a municipal ordinance that complies with Section 2308.208; or

(2) the direction of a peace officer, a municipal employee under Subsection (a)(3), or the owner or operator of the vehicle.

(c) Subsection (a) does not apply to a vehicle owned by an electric, gas, water, or telecommunications utility while the vehicle is parked for the purpose of conducting work on a facility of the utility that is located below, above, or adjacent to the street.



Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 301, Sec. 1, eff. Sept. 1, 2001.

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Renumbered from Transportation Code, Section 684.054 and amended by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.05, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1298 (H.B. 2346), Sec. 1, eff. September 1, 2009.

Acts 2021, 87th Leg., R.S., Ch. 231 (H.B. 914), Sec. 1, eff. September 1, 2021.

#### SUBCHAPTER I. REGULATION OF TOWING COMPANIES AND PARKING FACILITY OWNERS

Sec. 2308.401. PARKING FACILITY OWNER PROHIBITED FROM RECEIVING FINANCIAL GAIN FROM TOWING COMPANY OR BOOTING COMPANY. (a) A parking facility owner may not directly or indirectly accept anything of value from:

(1) a towing company in connection with the removal of a vehicle from a parking facility; or

(2) a booting company in connection with booting a vehicle in a parking facility.

(b) A parking facility owner may not have a direct or indirect monetary interest in:

(1) a towing company that for compensation removes unauthorized vehicles from a parking facility in which the parking facility owner has an interest; or

(2) a booting company that for compensation boots vehicles in a parking facility in which the parking facility owner has an interest.

(c) This section does not apply to a sign required under Section 2308.301 provided by a towing or booting company to a parking facility owner.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Renumbered from Transportation Code, Section 684.081 by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.06, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 845 (S.B. 2153), Sec. 16, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 353 (H.B. 3510), Sec. 14, eff. September 1, 2011.

Sec. 2308.402. TOWING COMPANY AND BOOTING COMPANY PROHIBITED FROM FINANCIAL INVOLVEMENT WITH PARKING FACILITY OWNER. (a) A towing company or booting company may not directly or indirectly give anything of value to a parking facility owner in connection with:

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- (1) the removal of a vehicle from a parking facility; or
- (2) the booting of a vehicle in a parking facility.

(b) A towing company or booting company may not have a direct or indirect monetary interest in a parking facility:

- (1) from which the towing company for compensation removes unauthorized vehicles; or
- (2) in which the booting company for compensation installs boots on unauthorized vehicles.

(c) This section does not apply to a sign required under Section 2308.301 provided by a towing or booting company to a parking facility owner.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Renumbered from Transportation Code, Section 684.082 by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.06, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 845 (S.B. 2153), Sec. 17, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 353 (H.B. 3510), Sec. 15, eff. September 1, 2011.

Sec. 2308.403. LIMITATION ON LIABILITY OF PARKING FACILITY OWNER FOR REMOVAL OR STORAGE OF UNAUTHORIZED VEHICLE. A parking facility owner who causes the removal of an unauthorized vehicle is not liable for damages arising from the removal or storage of the vehicle if the vehicle:

- (1) was removed in compliance with this chapter; and
- (2) is:

(A) removed by a towing company insured against liability for property damage incurred in towing a vehicle; and

(B) stored by a vehicle storage facility insured against liability for property damage incurred in storing a vehicle.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Renumbered from Transportation Code, Section 684.083 by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.06, eff. September 1, 2007.

Sec. 2308.404. CIVIL LIABILITY OF TOWING COMPANY, BOOTING COMPANY, PARKING FACILITY OWNER FOR VIOLATION OF CHAPTER. (a) A towing company, booting company, or parking facility owner who violates this chapter is liable to the owner or operator of the vehicle that is the subject of the violation for:

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(1) damages arising from the removal, storage, or booting of the vehicle; and

(2) towing, storage, or booting fees assessed in connection with the vehicle's removal, storage, or booting.

(b) A vehicle's owner or operator is not required to prove negligence of a parking facility owner, towing company, or booting company to recover under Subsection (a).

(c) A towing company, booting company, or parking facility owner who intentionally, knowingly, or recklessly violates this chapter is liable to the owner or operator of the vehicle that is the subject of the violation for \$1,000 plus three times the amount of fees assessed in the vehicle's removal, towing, storage, or booting.

(d) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 353, Sec. 19(a)(3), eff. September 1, 2011.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Renumbered from Transportation Code, Section 684.084 by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.06, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 845 (S.B. 2153), Sec. 18, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 845 (S.B. 2153), Sec. 19, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1310 (H.B. 2571), Sec. 12, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 353 (H.B. 3510), Sec. 19(a)(3), eff. September 1, 2011.

Sec. 2308.405. CRIMINAL PENALTY. A person commits an offense if the person violates this chapter. An offense under this section is a misdemeanor punishable by a fine of not less than \$500 or more than \$1,500 unless it is shown on trial of the offense that the person knowingly or intentionally violated this chapter, in which event the offense is a Class B misdemeanor.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 1197 (H.B. 480), Sec. 8, eff. September 1, 2005.

Item 8.

Renumbered from Transportation Code, Section 684.085 by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.06, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1310 (H.B. 2571), Sec. 13, eff. September 1, 2009.

Sec. 2308.406. VIOLATION OF CHAPTER; INJUNCTION. A violation of this chapter may be enjoined under Subchapter E, Chapter 17, Business & Commerce Code.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Renumbered from Transportation Code, Section 684.086 by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.06, eff. September 1, 2007.

Sec. 2308.407. MINOR SIGN OR LETTERING HEIGHT VARIATIONS. A minor variation of a required or minimum height of a sign or lettering is not a violation of this chapter.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Renumbered from Transportation Code, Section 684.087 by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.06, eff. September 1, 2007.

#### SUBCHAPTER J. RIGHTS OF OWNERS AND OPERATORS OF STORED OR BOOTED VEHICLES

Sec. 2308.451. PAYMENT OF COST OF REMOVAL, STORAGE, AND BOOTING OF VEHICLE. (a) If in a hearing held under this chapter the court finds that a person or law enforcement agency authorized, with probable cause, the removal and storage in a vehicle storage facility of a vehicle, the person who requested the hearing shall pay the costs of the removal and storage.

(b) If in a hearing held under this chapter the court does not find that a person or law enforcement agency authorized, with probable cause, the removal and storage in a vehicle storage facility of a vehicle, the towing company, vehicle storage facility, or parking facility owner or law enforcement agency that authorized the removal shall:

- (1) pay the costs of the removal and storage; or
- (2) reimburse the owner or operator for the cost of the removal and storage paid by the owner or operator.

(c) If in a hearing held under this chapter the court finds that a person authorized, with probable cause, the booting of a vehicle in a parking facility, the person who requested the hearing shall pay the costs of the booting.

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(c-1) If, in a hearing held under this chapter, regardless of whether the court finds that there was probable cause for the removal and storage of a vehicle, the court finds that the towing charge collected exceeded fees regulated by a political subdivision or authorized by this chapter or Chapter 2303, the towing company shall reimburse the owner or operator of the vehicle an amount equal to the overcharge.

(d) If in a hearing held under this chapter the court does not find that a person authorized, with probable cause, the booting of a vehicle, the person that authorized the booting shall:

- (1) pay the costs of the booting and any related parking fees; or
- (2) reimburse the owner or operator for the cost of the booting and any related parking fees paid by the owner or operator.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 30.159(a), eff. Sept. 1, 1997.

Renumbered from Transportation Code, Section 685.002 by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.07, eff. September 1, 2007.  
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 845 (S.B. 2153), Sec. 21, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 845 (S.B. 2153), Sec. 22, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1310 (H.B. 2571), Sec. 14, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(50), eff. September 1, 2011.

Sec. 2308.452. RIGHT OF OWNER OR OPERATOR OF VEHICLE TO HEARING. The owner or operator of a vehicle that has been removed and placed in a vehicle storage facility or booted without the consent of the owner or operator of the vehicle is entitled to a hearing on whether probable cause existed for the removal and placement or booting.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 30.159(a), eff. Sept. 1, 1997.

Renumbered from Transportation Code, Section 685.003 by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.07, eff. September 1, 2007.

Amended by:

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Acts 2009, 81st Leg., R.S., Ch. 845 (S.B. 2153), Sec. 23, eff. September 1, 2009.

Sec. 2308.453. JURISDICTION. A hearing under this chapter shall be in any justice court in:

- (1) the county from which the motor vehicle was towed; or
- (2) for booted vehicles, the county in which the parking facility is located.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 30.159(a), eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 669, Sec. 144, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 737 (H.B. 2630), Sec. 4, eff. September 1, 2005.

Renumbered from Transportation Code, Section 685.004 by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.07, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 845 (S.B. 2153), Sec. 24, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1310 (H.B. 2571), Sec. 15, eff. September 1, 2009.

Reenacted by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 18.006, eff. September 1, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 238 (H.B. 338), Sec. 1, eff. June 14, 2013.

Sec. 2308.454. NOTICE TO VEHICLE OWNER OR OPERATOR. (a) If before a hearing held under this chapter the owner or operator of a vehicle pays the costs of the vehicle's removal or storage, the towing company or vehicle storage facility that received the payment shall at the time of payment give the owner or operator written notice of the person's rights under this chapter.

(b) The operator of a vehicle storage facility that sends a notice under Subchapter D, Chapter 2303, shall include with that notice a notice of the person's rights under this chapter.

(c) If before a hearing held under this chapter the owner or operator of a vehicle pays the costs for removal of a boot, the booting company

shall at the time of payment give the owner or operator written notice of the person's rights under this chapter. Item 8.

(d) The booting operator that places a notice on a booted vehicle under Section 2308.257 shall include with that notice a notice of the person's rights under this chapter.

(e) If the towing company or vehicle storage facility that received the payment fails to furnish to the owner or operator of the vehicle the name, address, and telephone number of the parking facility owner or law enforcement agency that authorized the removal of the vehicle, the towing company or vehicle storage facility that received the payment is liable if the court, after a hearing, does not find probable cause for the removal and storage of the vehicle.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 30.159(a), eff. Sept. 1, 1997.  
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.841, eff. Sept. 1, 2003.

Renumbered from Transportation Code, Section 685.005 and amended by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.07, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 845 (S.B. 2153), Sec. 25, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1310 (H.B. 2571), Sec. 16, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(51), eff. September 1, 2011.

Sec. 2308.455. CONTENTS OF NOTICE. The notice under Section 2308.454 must include:

(1) a statement of:

(A) the person's right to submit a request within 14 days for a court hearing to determine whether probable cause existed to remove, or install a boot on, the vehicle;

(B) the information that a request for a hearing must contain;

(C) any filing fee for the hearing; and

(D) the person's right to request a hearing in any justice court in:

(i) the county from which the vehicle was towed; or

(ii) for booted vehicles, the county in which the parking facility is located;

(2) the name, address, and telephone number of the towing company that removed the vehicle or the booting company that booted the vehicle;

(3) the name, address, telephone number, and county of the vehicle storage facility in which the vehicle was placed;

(4) the name, street address including city, state, and zip code, and telephone number of the person, parking facility owner, or law enforcement agency that authorized the removal of the vehicle; and

(5) the name, address, and telephone number of each justice court in the county from which the vehicle was towed or, for booted vehicles, the county in which the parking facility is located, or the address of an Internet website maintained by the Office of Court Administration of the Texas Judicial System that contains the name, address, and telephone number of each justice court in that county.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 30.159(a), eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 737 (H.B. 2630), Sec. 5, eff. September 1, 2005.

Renumbered from Transportation Code, Section 685.006 and amended by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.07, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 845 (S.B. 2153), Sec. 26, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1310 (H.B. 2571), Sec. 17, eff. September 1, 2009.

Reenacted by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 18.007, eff. September 1, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 238 (H.B. 338), Sec. 2, eff. June 14, 2013.

Sec. 2308.456. REQUEST FOR HEARING. (a) Except as provided by Subsections (c) and (c-1), a person entitled to a hearing under this chapter must deliver a written request for the hearing to the court before the 14th day after the date the vehicle was removed and placed in the vehicle storage facility or booted, excluding Saturdays, Sundays, and legal holidays.



(b) A request for a hearing must contain:

- (1) the name, address, and telephone number of the owner or operator of the vehicle;
- (2) the location from which the vehicle was removed or in which the vehicle was booted;
- (3) the date when the vehicle was removed or booted;
- (4) the name, address, and telephone number of the person or law enforcement agency that authorized the removal or booting;
- (5) the name, address, and telephone number of the vehicle storage facility in which the vehicle was placed;
- (6) the name, address, and telephone number of the towing company that removed the vehicle or of the booting company that installed a boot on the vehicle;
- (7) a copy of any receipt or notification that the owner or operator received from the towing company, the booting company, or the vehicle storage facility; and
- (8) if the vehicle was removed from or booted in a parking facility:

(A) one or more photographs that show the location and text of any sign posted at the facility restricting parking of vehicles; or

(B) a statement that no sign restricting parking was posted at the parking facility.

(c) If notice was not given under Section 2308.454, the 14-day deadline for requesting a hearing under Subsection (a) does not apply, and the owner or operator of the vehicle may deliver a written request for a hearing at any time.

(c-1) The 14-day period for requesting a hearing under Subsection (a) does not begin until the date on which the towing company or vehicle storage facility provides to the vehicle owner or operator the information necessary for the vehicle owner or operator to complete the material for the request for hearing required under Subsections (b) (2) through (6).

(d) A person who fails to deliver a request in accordance with Subsection (a) waives the right to a hearing.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Renumbered from Transportation Code Sec. 685.005 and amended by Acts 1997, 75th Leg., ch. 165, Sec. 30.159(a), eff. Sept. 1, 1997.

Renumbered from Transportation Code, Section 685.007 and amended by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.07, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 845 (S.B. 2153), Sec. 27, eff. September 1, 2009.

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Acts 2009, 81st Leg., R.S., Ch. 1310 (H.B. 2571), Sec. 18, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 18.008, eff. September 1, 2011.

Sec. 2308.458. HEARING. (a) A hearing under this chapter shall be held before the 21st calendar day after the date the court receives the request for the hearing.

(b) The court shall notify the person who requested the hearing for a towed vehicle, the parking facility owner or law enforcement agency that authorized the removal of the vehicle, the towing company, and the vehicle storage facility in which the vehicle was placed of the date, time, and place of the hearing in a manner provided by Rule 21a, Texas Rules of Civil Procedure. The notice of the hearing to the towing company and the parking facility owner or law enforcement agency that authorized the removal of the vehicle must include a copy of the request for hearing. Notice to the law enforcement agency that authorized the removal of the vehicle is sufficient as notice to the political subdivision in which the law enforcement agency is located.

(b-1) At a hearing under this section:

(1) the burden of proof is on the person who requested the hearing; and

(2) hearsay evidence is admissible if it is considered otherwise reliable by the justice of the peace.

(b-2) The court shall notify the person who requested the hearing for a booted vehicle, the parking facility in which the vehicle was booted, and the booting company of the date, time, and place of the hearing in a manner provided by Rule 21a, Texas Rules of Civil Procedure. The notice of hearing to the person that authorized the booting of the vehicle must include a copy of the request for hearing.

(c) The issues in a hearing regarding a towed vehicle under this chapter are:

(1) whether probable cause existed for the removal and placement of the vehicle;

(2) whether a towing charge imposed or collected in connection with the removal or placement of the vehicle was greater than the amount authorized by the political subdivision under Section 2308.201 or 2308.202;

(3) whether a towing charge imposed or collected in connection with the removal or placement of the vehicle was greater than the amount authorized under Section 2308.203; or

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(4) whether a towing charge imposed or collected in connection with the removal or placement of the vehicle was greater than the amount authorized under Section 2308.0575.

(c-1) The issues in a hearing regarding a booted vehicle under this chapter are:

(1) whether probable cause existed for the booting of the vehicle; and

(2) whether a boot removal charge imposed or collected in connection with the removal of the boot from the vehicle was greater than the amount authorized by the political subdivision under Section 2308.2085.

(d) The court shall make written findings of fact and a conclusion of law.

(e) The court may award:

(1) court costs and attorney's fees to the prevailing party;

(2) the reasonable cost of photographs submitted under Section 2308.456(b)(8) to a vehicle owner or operator who is the prevailing party;

(3) an amount equal to the amount that the towing charge or booting removal charge and associated parking fees exceeded fees regulated by a political subdivision or authorized by this code or by Chapter 2303; and

(4) reimbursement of fees paid for vehicle towing, storage, or removal of a boot.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Renumbered from Transportation Code Sec. 685.007 and amended by Acts 1997, 75th Leg., ch. 165, Sec. 30.159(a), eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1034, Sec. 17, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 737 (H.B. 2630), Sec. 7, eff. September 1, 2005.

Renumbered from Transportation Code, Section 685.009 and amended by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.07, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 845 (S.B. 2153), Sec. 28, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1310 (H.B. 2571), Sec. 19, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 353 (H.B. 3510), Sec. 16, eff. September 1, 2011.

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Sec. 2308.459. APPEAL. An appeal from a hearing under this chapter is governed by the rules of procedure applicable to civil cases in justice court, except that no appeal bond may be required by the court.

Added by Acts 2005, 79th Leg., Ch. 737 (H.B. 2630), Sec. 8, eff. September 1, 2005.

Renumbered from Transportation Code, Section 685.010 by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.07, eff. September 1, 2007.

Sec. 2308.460. ENFORCEMENT OF AWARD. (a) An award under this chapter may be enforced by any means available for the enforcement of a judgment for a debt.

(b) The department shall suspend a license holder's license on the license holder's failure to pay a final judgment awarded to an owner or operator of a vehicle before the 60th day after the date of the final judgment. The department must provide notice of the suspension to the license holder at least 30 days before the date the license is to be suspended.

(c) The owner or operator of the vehicle shall submit a certified copy of the final judgment to the department.

(d) On receipt of the certified copy of the unpaid final judgment, the department shall disqualify a person from renewing a license or permit or deny the person the opportunity of taking a licensing examination on the grounds that the person, towing company, or vehicle storage facility has not paid a final judgment awarded to an owner or operator of a vehicle.

(e) The department shall reinstate the license on submission of evidence satisfactory to the department of payment of the final judgment by the person, towing company, or vehicle storage facility.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.08, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1310 (H.B. 2571), Sec. 20, eff. September 1, 2009.

#### SUBCHAPTER K. ENFORCEMENT

Sec. 2308.501. ADMINISTRATIVE PENALTY. (a) The commission may impose an administrative penalty on a person under Subchapter F, Chapter 51, regardless of whether the person holds a registration, permit, or license under this chapter, if the person violates:

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- (1) this chapter or a rule adopted under this chapter; or
- (2) a rule or order of the executive director or commission.

(b) An administrative penalty may not be imposed unless the person charged with a violation is provided the opportunity for a hearing.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.09, eff. September 1, 2007.

Sec. 2308.502. CEASE AND DESIST ORDER; INJUNCTION; CIVIL PENALTY.

(a) The executive director may issue a cease and desist order as necessary to enforce this chapter if the executive director determines that the action is necessary to prevent a violation of this chapter and to protect public health and safety.

(b) The attorney general or executive director may institute an action for an injunction or a civil penalty under this chapter as provided by Section 51.352.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.09, eff. September 1, 2007.

Sec. 2308.503. SANCTIONS. The department may impose sanctions as provided by Section 51.353.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.09, eff. September 1, 2007.

Sec. 2308.504. CRIMINAL PENALTY; LICENSING. (a) A person commits an offense if the person:

- (1) violates the permitting or licensing requirements of this chapter;
- (2) performs towing without a license to perform towing in this state;
- (3) employs an individual who does not hold the appropriate license required by this chapter; or
- (4) falsifies a certification or training.

(b) An offense under this section is a Class C misdemeanor. An offense under this section is enforceable by law enforcement.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.09, September 1, 2007.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 353 (H.B. 3510), Sec. 17, eff. September 1, 2011.

Sec. 2308.505. CRIMINAL PENALTY; TOWING. (a) A person commits an offense if the person:

(1) violates an ordinance, resolution, order, rule, or regulation of a political subdivision adopted under Section 2308.201, 2308.202, or 2308.2085 for which the political subdivision does not prescribe the penalty;

(2) charges or collects a fee in a political subdivision that regulates the operation of tow trucks under Section 2308.201 or 2308.202 or booting under Section 2308.2085 that is not authorized or is greater than the authorized amount of the fee;

(3) charges or collects a fee greater than the amount authorized under Section 2308.204;

(4) charges or collects a fee in excess of the amount filed with the department under Section 2308.206;

(5) violates Section 2308.205; or

(6) violates a rule of the department applicable to a tow truck, towing company, or booting company.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than \$200 or more than \$1,000 per violation. An offense under this section is enforceable by law enforcement.

Renumbered from Transportation Code, Section 643.253(d) and amended by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.10, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 845 (S.B. 2153), Sec. 29, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 353 (H.B. 3510), Sec. 18, eff. September 1, 2011.



CHAPTER 111. - TOW TRUCKS AND WRECKERS

Sec. 111.01. - Compliance with state law.

Any person operating a tow truck and/or wrecker shall comply with all applicable state laws. A failure to comply with applicable state laws is a violation of this chapter.

(Ord. 2006-32, passed 11-7-2006)

Sec. 111.02. - Definitions.

For the purposes of this chapter, the following words, terms and phrases shall have the meaning ascribed to them except where the context clearly indicates a different meaning:

*Accident or collision.* Any occurrence which renders a vehicle wrecked or disabled.

*Certificate holder.* Any person possessing a current, valid Certificate of Registration to engage in the wrecker business in the City of Stephenville.

*Certificate of registration.* Written authorization granted by the Chief of Police, under the provisions of this chapter, to a wrecker company having a place of business within the city or outside the city operating a tow truck that performs nonconsent tows inside the city.

*Consent tow.* Any tow of a motor vehicle initiated by the owner or operator of the vehicle or by a person who has possession, custody, or control of the vehicle. The term does not include the tow of a motor vehicle initiated by a peace officer.

*Manufacturer's certificate.* A plate permanently affixed to either a truck, wrecker equipment or tow sling by the manufacturer of the equipment which states the vehicle's or equipment's gross poundage capacity.

*Owner.* Any person who holds the legal title to a motor vehicle, or has the legal right of possession thereof. This does not include any person who has gained possession of a motor vehicle only as a result of wrecker services performed.

*Person.* An individual, a corporation, a partnership, joint venture, or association.

*Repossession.* A tow made by, or on behalf of, a lien holder taking possession of collateral.



*Rotation list.* A list prepared in accordance with the provisions of this chapter, of wrecker companies which have applied and qualified to appear thereon, and which maintain inspected tow trucks of a capacity required to be on said list.

*Tow truck/wrecker.* A motor vehicle equipped with a mechanical device used to tow, winch or otherwise move another motor vehicle.

*Vehicle.* Every device in, upon, or by which any person or property is or may be transported or drawn upon a public highway, including, but not limited to, motor vehicles, but not including devices moved only by human power, or used exclusively on stationary rails or tracks.

*Wrecker business.* The business of towing vehicles not belonging to the wrecker company on a public street within the incorporated limits of Stephenville for compensation, or with the expectation of compensation including, but not limited to, compensation for towing, storage, and repair. It does not include a business towing a vehicle to a point outside the city when the owner requests that it be towed to a point outside the city, except as otherwise provided in this chapter.

*Wrecker company.* Any person or business engaged in the wrecker business.

(Ord. 2006-32, passed 11-7-2006)

Sec. 111.03. - Fees.

The City Council shall establish a fee required or authorized under this chapter by separate ordinance.

(Ord. 2006-32, passed 11-7-2006)

Sec. 111.04. - Requirements to perform nonconsent tows.

- (A) It shall be unlawful for a person to operate a tow truck that performs nonconsent tows in the city unless the person has a Certificate of Registration issued by the Chief of Police, except as provided in division (B)(9) below.
- (B) An applicant for a Certificate of Registration to perform nonconsent tows shall submit, on a form provided by the Chief of Police, an application containing or accompanied by the following:
  - (1)

The owner's name, the trade name, principal business address, and telephone number that is answered during normal business hours, of the wrecker company;

- (2) The list of wreckers proposed to be operated by the wrecker company, including but not limited to the motor vehicle identification number, make, unit number and the name of the owner of the wrecker listed (the wrecker company affiliate), if different from the wrecker company applying for the Certificate of Registration;
- (3) A certificate of insurance indicating that all state insurance requirements are met;
- (4) A certificate of on-hook cargo insurance to cover damage to a towed vehicle;
- (5) A copy of a vehicle storage facility license issued by the Texas Department of Transportation;
- (6) A copy of the motor carrier certificate of registration issued by the Texas Department of Transportation;
- (7) A copy of fees as posted on the Texas Department of Transportation website; and
- (8) Any other documents as reasonably required by the Chief of Police.
- (9) This chapter does not apply to nor prohibit a wrecker company, which obtained a motor carrier certificate of registration from the Texas Department of Transportation and having a place of business outside the incorporated city limits, from making a consent tow within the city.

Sec. 111.05. - Certificate of registration for nonconsent tows, issuance and expiration.

- (A) The Chief of Police or authorized designee shall register a wrecker company and issue a Certificate of Registration which is determined to be in compliance with the requirements of state law for conducting non-consent tows. However, the Chief of Police may deny an application for a Certificate of Registration, if the applicant:
  - (1) Has had a registration revoked;
  - (2) Operates a tow truck after the state registration has been revoked;
  - (3) Causes or allows the operation of a tow truck by an unlicensed driver on the public roadways;
  - (4) Operates a tow truck performing nonconsent tows on the public roadways

without a Certificate of Registration;

- (5) Submits false information on a registration application;
  - (6) Fails to maintain insurance required by state law for the operation of a wrecker company or its equipment;
  - (7) Fails to comply with all applicable state laws or city ordinances to include zoning laws; or
  - (8) Fails to meet any other legal requirement of obtaining such Certificate of Registration.
- (B) The term of each Certificate of Registration and placement on the rotation list shall run concurrent to licenses and registrations that are issued by the Texas Department of Transportation, Motor Carriers Division. Renewal of the certification and placement on the rotation list will be granted only upon compliance with the provisions of this chapter and any other applicable laws, ordinances, or regulations which shall be in effect at the time of the renewal application.
- (C) Each wrecker company which has received a Certificate of Registration shall at all times carry a copy of its Certificate of Registration in each wrecker it operates.
- (D) Each wrecker company which has received a Certificate of Registration shall be responsible for updating the information provided in the application by submitting supplemental information to the Chief of Police. Failure to provide updated information, such as, but not limited to, replacement or additions of tow trucks, drivers' license suspensions or revocations, change in insurance company, revocation of required insurance or expiration of storage facility license, shall be grounds for suspension or revocation of a Certificate of Registration and removal from rotation list.

(Ord. 2006-32, passed 11-7-2006)

Sec. 111.06. - Rotation list established for nonconsent tows.

The Chief of Police shall establish and maintain a rotation list, from which list wreckers shall be picked to answer calls for non-consent tows. Each wrecker business that applies and meets the requirements herein shall be entitled to one place on the appropriate list. The names of the wrecker companies on the list shall be listed in numerical order, beginning with the date the application is approved.

(Ord. 2006-32, passed 11-7-2006)

Sec. 111.07. - Rotation list qualifications.

- (A) A wrecker company shall submit an application for placement on the rotation list to the Chief of Police, containing or accompanied by the following to verify qualifications and requirements:
- (1) A copy of a vehicle storage facility license issued by the Texas Department of Transportation for a storage facility located within the incorporated limits of the city or within five miles of the corporate limits of the city where all motor vehicles it tows on behalf of the city shall be stored at all times;
  - (2) Acknowledgment that the company has registered and received a Certificate of Registration for each tow truck it owns or will use while on the rotation list. The wrecker company must maintain at least one wrecker;
  - (3) Acknowledgment that the company maintains 24-hour wrecker service and provides the Police Department with a local telephone number which is answered 24 hours a day;
  - (4) Acknowledgment that the company is able to respond to any location in the city within 30 minutes of being notified by telephone;
  - (5) Acknowledgment that the company has someone available 24 hours a day to release any vehicle impounded within one hour of a request by the owner or the Police Department;
  - (6) A list of all drivers and drivers' driving records, obtained from the Texas Department of Public Safety. Said list shall be updated as new drivers are added or when a driver's license is suspended or revoked;
  - (7) A certificate from the appropriate tax assessor-collector agency that certifies that all city taxes on all properties, real and personal, to be used in connection with the applicant's wrecker business are current. The certificate shall list the name of the wrecker business, its subsidiaries or assumed names; and
  - (8) A statement from the Community Development Division of the City of Stephenville indicating compliance with all zoning laws and other applicable ordinances.

(B)

A wrecker company will automatically be removed from the rotation list on the expiration date of its Certificate of Registration, and will be placed back on the list only upon compliance with the provisions of this chapter and any other applicable laws, ordinances, or regulations which shall be in effect at the time of the renewal request application.

(C) In order to be placed on the rotation list each wrecker shall meet the following minimum requirements:

- (1) Shall display in a permanent manner the name and phone number of the holder of the Certificate of Registration on both sides of each wrecker. The lettering must be at least two inches high, and lettering must be in a color that will contrast to the color of the tow truck;
- (2) Shall be in a condition such that it can be safely and reliably used as a wrecker;
- (3) Shall include the Manufacturer's Certificate and be equipped with a power-operated winch, winch line and boom, with a rated or tested lifting capacity of not less than 8,000-pound single-line capacity; and
- (4) Shall carry at all times the following standard equipment:
  - (a) Slings and/or tow bars along with "J" hooks and chains;
  - (b) Safety chain;
  - (c) A working ten-pound fire extinguisher (or the equivalent);
  - (d) Shovel;
  - (e) Wrecker bar;
  - (f) Broom;
  - (g) Dolly (except for slide-bed tow trucks);
  - (h) Ropes or other device for securing steering wheel;
  - (i) Overhead visi-bar or beacon-type light visible from front and rear; and
  - (j) Tow lights.

(D) Placement on the rotation list shall be denied if the safety requirements are not met.

(Ord. 2006-32, passed 11-7-2006)

Sec. 111.08. - Suspension and removal from the nonconsent rotation list.

The Chief of Police may suspend or revoke a Certificate of Registration or remove a wrecker company from a place on the rotation list pursuant to this chapter, if a wrecker company or any of its tow trucks fails to comply with any of the requirements in this chapter.

(Ord. 2006-32, passed 11-7-2006)

Sec. 111.09. - Inspection of wrecker equipment and storage facilities.

Any wrecker company, Certificate Holder or applicant, by virtue of making an application with the city, agrees to allow during normal business hours, the inspection of wreckers, wrecker equipment, and storage facilities for compliance under this chapter. This authority shall be cumulative of any other authority held by the Chief of Police, other law enforcement officials, or other legally authorized public officials.

(Ord. 2006-32, passed 11-7-2006)

Sec. 111.10. - Procedures for notifying wrecker services.

- (A) When the police officer investigating an incident determines that a tow truck is necessary to move the vehicle, the officer shall contact the vehicle owner to determine which wrecker company to contact. The owner of the vehicle shall designate a wrecker company, auto repair shop, automobile dealer or automobile club. If an owner does not have a preference, the wrecker company next up on the rotation list will be contacted.
- (B) If the owner of a vehicle is not available or is physically unable to designate the wrecker company, auto repair shop, automobile dealer or automobile club he or she desires to remove the vehicle, then the police officer shall communicate that fact to the dispatcher and advise as to the type of wrecker required. The dispatcher shall call the wrecker company next in line on the rotation list.
- (C) If the wrecker company, after arrival at the scene, determines that assistance is needed, the wrecker company may use assets from that same wrecker company or call another wrecker company for assistance. If the wrecker company does not have the necessary equipment and does not have a preference of a wrecker company to contact, they may ask the officer to contact another wrecker company for assistance, and the police officer on the scene will call for the wrecker that is next on the rotation list.

- (D) Failure of any wrecker company to deliver a wrecker to the scene within 30 minutes of being notified without justification acceptable to the police officer on the scene shall cause the wrecker company to forfeit that call. Additionally, the Chief of Police shall have the discretion to suspend or revoke a wrecker company from a place on the rotation list for failure to timely respond.
- (E) In any circumstance in which a vehicle or other object is so located on a public street as to constitute a hazard or obstacle, or to interfere with traffic, or in the event a stolen vehicle is found or in any other circumstance in which a police officer in the course of his or her duty directs the removal of a vehicle from or to any location, any police officer may require its removal at the owner's expense, by any practical means, including but not limited to, use of a wrecker selected by the owner, or failing that, selected by the use of the rotation list.
- (F) A wrecker business may be dispatched to the scene of accident, at the discretion of the Police Department, without consideration of the rotation list if:
  - (1) The wrecker business has specific or specialized equipment that can be used to reduce potential of additional bodily injury or additional damage to property;
  - (2) The wrecker business has specific or specialized equipment that can be used for cleanup at the accident; or
  - (3) The wrecker business is the only such business with a wrecker large enough to move a vehicle or obstacle.

(Ord. 2006-32, passed 11-7-2006)

Sec. 111.11. - Parking of wrecker at the scene of a collision.

Whenever a wrecker arrives at the place where a motor vehicle has been disabled by an accident, the wrecker driver shall park his or her wrecker as close to the street curb as possible and otherwise park the wrecker in such a manner as not to interfere with traffic, or the officer's ability to process an accident location or crime scene.

(Ord. 2006-32, passed 11-7-2006)

Sec. 111.12. - Wrecker drivers to obey orders of police officer.

It shall be unlawful for the driver of any wrecker arriving at the place where any accident has occurred or an abandoned vehicle is located to disobey any lawful order given by any police officer of the city investigating such accident or to interfere in any manner with such officer in the performance of his or her duty.

(Ord. 2006-32, passed 11-7-2006)

Sec. 111.13. - Duty to remove debris.

It shall be the duty of each wrecker that removes a wrecked, damaged or disabled vehicle from the place where an accident has occurred to clear and remove from the street and adjacent right-of-way any and all debris, parts or glass accumulated as a result of the accident from the street. If two or more wreckers are required at the location, the wrecker drivers will share the responsibility for removing debris and will take primary responsibility for the area around the vehicle they were called to tow.

(Ord. 2006-32, passed 11-7-2006)

Sec. 111.14. - General prohibitions.

- (A) It shall be unlawful for any person to drive, or cause to be driven, a wrecker to or near the scene of a collision on a street within the city unless such person has been called to the scene by the Police Department or by a party involved in the collision. The prohibition of this section shall not be applicable when such actions are necessary to prevent death or bodily injury to any person involved in a collision. An exception is also allowed if the tow truck is driving by during the normal course of business and is not intentionally trying to circumvent the provisions of the rotation list.
- (B) It shall be unlawful for any person to engage in nonconsent tows in the city unless such person possesses a current, valid Certificate of Registration. The Police Department shall be authorized to summon wreckers without Certificate of Registration in emergency situations.
- (C) It shall be unlawful for any person to operate a tow truck in the city, unless it is equipped as required by state law. A tow truck and its required equipment shall be in safe operating condition at all times when the tow truck is operating on the public roadway.



(Ord. 2006-32, passed 11-7-2006)

Sec. 111.15. - Removal of motor vehicles from private property.

The driver of a tow truck who removes a vehicle from private property, without the consent of the owner of the vehicle, shall notify the Stephenville Police Department within one hour of such removal. The information to be provided in such notification shall include:

- (A) The date, time and location of the removal;
- (B) The physical description and license or registration number of the vehicle;
- (C) The name of the Certificate Holder which performed the removal; and
- (D) The storage location of the vehicle.

(Ord. 2006-32, passed 11-7-2006)

Sec. 111.16. - Repossession of vehicles.

The driver of a tow truck who removes a vehicle for the purpose of repossessing the vehicle shall be required to do the following:

- (A) Contact the Police Department prior to making such repossession; and
- (B) Present a written notice from the lien holder requesting such repossession which shall include the following information:
  - (1) Name of owner of said vehicle;
  - (2) Date, time and location of the removal;
  - (3) The physical description and license or registration number of the vehicle;
  - (4) The name of the certificate holder which is to perform the removal; and
  - (5) The storage location of the vehicle.

(Ord. 2006-32, passed 11-7-2006)

Sec. 111.17. - Effective date.

The provisions within this chapter shall become effective 30 days after approved by vote of the City Council. The requirements for Certificates of Registration and requests for placement on the rotation list shall become effective on the date that renewal of required licenses and registrations are required.

(Ord. 2006-32, passed 11-7-2006)

Secs. 111.18—111.98. - Reserved.

Sec. 111.99. - Penalty.

Each officer, agent or employee of any corporation and every other person who violates or fails to comply with, or who aids or abets in the violation of, any provision of this chapter, or fails to obey, observe or comply with any other decision, rule or regulation, direction, demand or requirement of the city, shall be guilty of a Class "C" misdemeanor, and upon conviction shall be punished by a fine not exceeding \$500.00. Each day any provision of this chapter, or any rule, regulation or order of the city relevant thereto is violated shall constitute a separate offense, and the fact that the city may have caused prosecution for violation of its rules, regulations or orders under the penal section of this chapter shall not operate to prevent or limit the exercise of the authority of the city to suspend, revoke, alter or amend permits or certificates as provided in this chapter.

(Ord. 2006-32, passed 11-7-2006)

# STAFF REPORT

**SUBJECT:** 536 Water Well Field Development - Construction and Supplemental Services  
**MEETING:** Public Works Committee Meeting – 15 NOV 2022  
**DEPARTMENT:** Public Works  
**STAFF CONTACT:** Nick Williams

## RECOMMENDATION:

Staff recommends authorizing Provenance Engineering to initiate Phase 3 of the 536 Well Field development agreement to activate the budgeted Construction and Supplemental Services for \$243,000.

## BACKGROUND:

On April 6, 2021 council approved Phases 1 and 2 of the 536 Well Field Development agreement for design and bidding services for \$450,000.

The well drilling project was awarded on August 16, 2022 to Hydro-Resources, Inc. for \$2,732,209. The well driller is scheduled to mobilize on November 21, 2022. The work is expected to be complete by or before September of 2023.

## PROPOSAL:

A copy of the originally-approved professional services proposal is attached. Phases 1 and 2 of the agreement provided for the design of five (5) new water supply wells including mechanical, civil, and electrical components.

The agreement is Supplemental Services must be approved in writing with council authorization.

## FISCAL IMPACT SUMMARY:

Funding has been appropriated in the 2022 Certificates of Obligation in the amount of \$20,000,000 and specifically includes the Construction Phase and Supplemental Services for the 536 Well Field.

The phase one basic design services, including the preparation of construction drawings and detailed specifications was awarded for \$450,000. The Construction Phase and Supplemental Services are \$88,000 and \$155,000 respectively for a total of \$243,000.

## ATTACHMENTS:

[536 Well Field Development – Professional Services Proposal](#)



# 536 Well Field – Contract Proposal



**PROVENANCE**  
ENGINEERING  
*Rooted to Be Uniquely Different*





March 25, 2021

Mr. Nick Williams  
City of Stephenville  
298 W. Washington St.  
Stephenville, TX 76401

Subject: 536 Well Field Development – Contract Proposal

Dear Mr. Williams:

I am pleased to present our proposal for the 536 Well Field Development. I have prepared this proposal for your review and consideration based upon our discussions. Please find the attached items for your review and comment.

- Contract Agreement
- Exhibit A – Engineering Services Scope of Service
- Exhibit B – Fee Summary
- Exhibit C – Project Map
- Exhibit D – Opinion of Probable Construction Cost

I am excited about and honored with the opportunity to continue to work with you and your staff. Should you have questions or concerns regarding the proposal please feel free to contact me at (817) 694-6324.

Sincerely,

Kent Riker, P.E.  
President



THIS IS AN AGREEMENT effective as of April 6, 2021 (“Effective Date”) between City of Stephenville (“Owner”) and Provenance Engineering, LLC. (“Engineer”).

Owner’s Project, of which Engineer’s services under this Agreement are a part, is generally identified as follows: 536 Well Field Development (“Project”).

Engineer’s services under this Agreement are generally identified as follows: Design, Bid and Construction Phase Services of the development of the 536 Well Field including five water supply wells, pumps, pump controls, new service roads, electrical power and new raw water transmission pipeline. (“Services”).

---

Owner and Engineer further agree as follows:

1.01 *Basic Agreement and Period of Service*

- A. Engineer shall provide or furnish the Services set forth in this Agreement. If authorized by Owner, or if required because of changes in the Project, Engineer shall furnish services in addition to those set forth above (“Additional Services”).
- B. Engineer shall complete its Services within the following specific time period: 30 months including design, bidding, and construction presuming there are no delays between each phase. Design will be completed within 12 months.
- C. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer’s Services is impaired, or Engineer’s Services are delayed or suspended, then the time for completion of Engineer’s Services, and the rates and amounts of Engineer’s compensation, shall be adjusted equitably.

2.01 *Payment Procedures*

- A. *Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and submit the invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt. If Owner fails to make any payment due Engineer for Services, Additional Services, and expenses within 30 days after receipt of Engineer’s invoice, then (1) the amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day, and (2) in addition, Engineer may, after giving seven days written notice to Owner, suspend Services under this Agreement until Engineer has been paid in full all amounts due for Services, Additional Services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.
- B. *Payment:* As compensation for Engineer providing or furnishing Services and Additional Services, Owner shall pay Engineer as set forth in Paragraphs 2.01, 2.02 (Services), and 2.03 (Additional Services). If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Engineer in writing of the specific basis for doing so, may withhold only that portion so disputed, and agrees to pay the undisputed portion.



## 2.02 *Basis of Payment—Lump Sum*

- A. Owner shall pay Engineer for Services as follows:
  - 1. A Lump Sum amount of \$693,000.00 unless prior OWNER approval in writing.
    - a. Payments to be made by Owner based on work progression.
  - 2. In addition to the Lump Sum amount, reimbursement for the following expenses: NONE
- B. The portion of the compensation amount billed monthly for Engineer's Services will be based upon Engineer's estimate of the percentage of the total Services actually completed during the billing period.

## 3.01 *Termination*

- A. The obligation to continue performance under this Agreement may be terminated:
  - 1. For cause,
    - a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the Agreement's terms through no fault of the terminating party. Failure to pay Engineer for its services is a substantial failure to perform and a basis for termination.
    - b. By Engineer:
      - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
      - 2) upon seven days written notice if the Engineer's Services are delayed for more than 90 days for reasons beyond Engineer's control, or as the result of the presence at the Site of undisclosed Constituents of Concern, as set forth in Paragraph 5.01.I. The Owner anticipates lead-based paint may be present and therefore shall not be consider a Constituent of Concern.
    - c. Engineer shall have no liability to Owner on account of a termination for cause by Engineer.
    - d. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under Paragraph 3.01.A.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.
  - 2. For convenience, by Owner effective upon Engineer's receipt of written notice from Owner.



- B. In the event of any termination under Paragraph 3.01, Engineer will be entitled to invoice Owner and to receive full payment for all Services and Additional Services performed or furnished in accordance with this Agreement, plus reimbursement of expenses incurred through the effective date of termination in connection with providing the Services and Additional Services, and Engineer's consultants' charges, if any.

#### 4.01 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 4.01.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise, nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.

#### 5.01 *General Considerations*

- A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer. Subject to the foregoing standard of care, Engineer and its consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- B. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Project site, nor for any failure of a Constructor to comply with laws and regulations applicable to such Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.
- C. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish and perform its work.





- D. Engineer's opinions (if any) of probable construction cost are to be made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual construction cost will not vary from opinions of probable construction cost prepared by Engineer. If Owner requires greater assurance as to probable construction cost, then Owner agrees to obtain an independent cost estimate.
- E. Engineer shall not be responsible for any decision made regarding the construction contract requirements, or any application, interpretation, clarification, or modification of the construction contract documents other than those made by Engineer or its consultants.
- F. All documents prepared or furnished by Engineer are instruments of service, and Engineer retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed. Owner shall have a limited license to use the documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment due and owing for all Services and Additional Services relating to preparation of the documents and subject to the following limitations:
1. Owner acknowledges that such documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer;
  2. any such use or reuse, or any modification of the documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and consultants;
  3. Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the documents without written verification, completion, or adaptation by Engineer; and
  4. such limited license to Owner shall not create any rights in third parties.
- G. Owner and Engineer may transmit, and shall accept, Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol.
- H. To the fullest extent permitted by law, Owner and Engineer (1) waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project, and (2) agree that Engineer's total liability to Owner under this Agreement shall be limited to \$40,000 or the total amount of compensation received by Engineer, whichever is greater.



- I. The parties acknowledge that Engineer's Services do not include any services related to unknown or undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an unknown or undisclosed Constituent of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of Services on the portion of the Project affected thereby until such portion of the Project is no longer affected, or terminate this Agreement for cause if it is not practical to continue providing Services.
- J. Owner and Engineer agree to negotiate each dispute between them in good faith during the 30 days after notice of dispute. If negotiations are unsuccessful in resolving the dispute, then the dispute shall be mediated. If mediation is unsuccessful, then the parties may exercise their rights at law.
- K. This Agreement is to be governed by the law of the state in which the Project is located.
- L. Engineer's Services and Additional Services do not include: (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission; (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances; (3) providing surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements; or (4) providing legal advice or representation.
- M. Liquidated Damages - Failure to meet the time lines for completion of work identified in (the project schedule - or other appropriate language) will result in liquidated damages of \$50.00 per consecutive calendar day until the work identified in "Exhibit A" - Scope of Services is submitted. Liquidated damages are only applicable to items under the control of ENGINEER and will not be enforced due to circumstances out of the control of ENGINEER.

#### 6.01 *Total Agreement*

- A. This Agreement (including any expressly incorporated attachments), constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

#### *Definitions*

- B. *Constructor*—Any person or entity (not including the Engineer, its employees, agents, representatives, and consultants), performing or supporting construction activities relating to the Project, including but not limited to contractors, subcontractors, suppliers, Owner's work forces, utility companies, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.
- C. *Constituent of Concern*—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA");



(b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5101 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, State, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

*Attachments:*           “Exhibit A”, Engineer’s Scope of Services  
                                  “Exhibit B”, Fee Summary  
                                  “Exhibit C”, Project Map  
                                  “Exhibit D”, Opinion of Probable Construction Cost



IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Owner: City of Stephenville

Engineer Provenance Engineering, LLC.

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

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

Print name: Doug Svien

Print name: Kent W. Riker, P.E.

Title: Honorable Mayor

Title: President

Date Signed: \_\_\_\_\_

Date Signed: \_\_\_\_\_

Engineer License or Firm's Certificate No.: 20783

State of: Texas

Address for Owner's receipt of notices:

Address for Engineer's receipt of notices:

City of Stephenville  
298 W Washington Street  
Stephenville, Texas 76401  
254.918.1223

Provenance Engineering, LLC.  
401 Russell Lane  
Weatherford, Texas 76087  
817.775.7172

IN DUPLICATE



# EXHIBIT - A





## Project Description

The following scope of SERVICES clarifies and describes the SERVICES and associated project tasks to be performed and completed by the ENGINEER. SERVICES under this "EXHIBIT A" includes engineering services associated with the 536 Well Field Development Project. The OWNER desires the development of the 536 Property site as a new water supply to maximize the amount of water the City of Stephenville can receive from the 536 Well Field Development to supplement the water demand for the current population as well as for the projected growth. The OWNER has previously completed a feasibility study that recommended developing five new production wells into the Trinity Aquifer on the 536 Property. The proposed new wells will be collected via a proposed new raw water collection system that will connect at the point along Highway 67 as shown in "EXHIBIT C". The OWNER also desires the ENGINEER perform a Desktop Feasibility Concept Study to provide an initial determination if the water management strategy of Aquifer Storage and Recovery warrants further study by the OWNER at the 536 Property. Aquifer Storage and Recovery (ASR) is the intentional recharge of water to aquifers for subsequent recovery or environmental benefit. The proposed five new wells will require new power supply, service roads, and well fencing. The project will include:

**Basic Services** – Preliminary Design, Detail Design, Final Design, Bidding Services, and Construction Services for the following:

- Five (5) new water supply wells
  - Hydrogeology – well drilling, casing, gravel pack
  - Mechanical – pump design, well head, isolation valves and flow meter
  - Civil – well pad, fencing
  - Electrical – well pump motor and wiring, site lighting
  - Instrumentation & Control – pump, flow meter and valve control instruments, SCADA communication system
- Site Improvements
  - Civil – well collection system, roadway, drainage, gate entry
  - Electrical – power supply
  - Instrumentation & Control – basic site security measures including SCADA communication system
- New raw water transmission pipeline
  - Civil – 10-inch raw water transmission pipeline

**Supplemental Services** – Additional services at the OWNERs request include the following:

- ASR Desktop Feasibility Concept
  - Source water options evaluation
  - Siting options evaluation
- Funding Support Services
  - Assist the OWNER by providing exhibits, figures, and OPCC
- Resident Project Representative Services
  - Onsite representation during construction



## Basic Services

Upon receipt of notice to proceed, the ENGINEER will begin Basic Services as outlined herein. The scope of SERVICES includes the development of a detailed drawings set, front-end documents, and technical specifications for the OWNER to bid the designed improvements.

The Basic Scope of SERVICES is separated into the following phases:

- **Phase 1 Design Services**
- **Phase 2 Bidding Services**
- **Phase 3 Construction Services**

Listed below is a specific description to be performed as part of the project.

### Phase 1 Design Services

**\$385,000.00**

As part of the Design Services Phase, the ENGINEER will design the infrastructure required for the 536 Well Field Development. Key aspects of Phase 1 are listed below.

- **Deliverables:** Kick-off meeting agenda and minutes  
Monthly project status reports  
Detail Design Submittal  
Final Design Submittal
- **Meetings:** Kick-off meeting and site tour of existing facilities  
Monthly Conference Calls  
Detail Design Submittal Review  
Final Design Submittal Review

Design services will generally include the followings tasks and sub-tasks:

#### Task 1.100 – Project Management

The ENGINEER will manage the day-to-day progress of the project.

**101. Project Setup** –The ENGINEER will follow quality procedures to setup the project reporting and control structure internally.

**1.110. Communication with OWNER** – The ENGINEER will maintain consistent communication with the OWNER through the established protocol agreed upon by OWNER.

**111. Standing Conference Call** –The ENGINEER will have a standing monthly call with the OWNER’s Project Manager to discuss the current project status report.

**112. Invoice Management** – The ENGINEER will submit a monthly invoice to the OWNER with the current project status report to the OWNER.

**1.120. Progress Management** – During the course of the project, ENGINEER will manage the day-to-day progress of the project. The ENGINEER will track the scope, schedule, and budget regularly. The ENGINEER will perform the following sub-tasks.



**121. Documentation** – Develop document management protocols for processing and documenting design drawings, calculations, OWNER decisions, and communication.

**122. Project Status Report** – Develop a project status report highlighting current scope and schedule progress; identifying potential changes to the scope of services; invoice status; on-going list of outstanding issues; decision log; and action item log.

**1.130. Kick-off Meeting** – Conduct a project kick-off meeting with OWNER to review the project scope of services and schedule, define lines of communication and protocols, review deliverables, and develop success factors for completing the project. The ENGINEER will conduct site investigation tour of the OWNER's facilities with the OWNER's staff.

**1.140. Quality Assurance / Quality Control (QA/QC)** – – The Engineer will follow internal QA/QC processes throughout the project. These processes include internal checking of calculations, review of documents, and checking of submittals. Deliverables will be submitted internally for Engineer's QA/QC Review by a senior level Engineer(s) and construction specialist(s) who is not directly involved with the design of the project.

#### **Task 1.200 – Preliminary Design**

**1.210. Data Gathering** – The ENGINEER will collect, and review data required for the analysis from the OWNER and other agencies. The data gathering will include, at a minimum, the following:

- All previous studies pertaining to the project site or impacting the site in any way.
- All facility record drawings related to infrastructure improvements within the project area for completed improvement projects, as well as any roadway, water, sanitary, sewer or storm water improvements pertinent to the project.
- OWNER's existing GIS data including: plats, tract maps, or right-of-way maps and easements; utility maps (water, sanitary sewer, storm sewer); contour maps (if required, ENGINEER will augment OWNER contour data with 1-ft. LIDAR contour data from TNRRIS); and high-resolution aerial photography.
- Projects in progress – OWNER will help identify and assist ENGINEER to coordinate with other proposed projects within project area currently under design or construction.

**1.220. Geotechnical Analysis** - The ENGINEER will perform a geotechnical analysis of the proposed new service roads. The geotechnical analysis will include the following:

- Subsurface exploration including up to ten (10) sample bores to a depth of 15-ft.
- Laboratory tests for classification purposes and strength characteristics.
- Engineering services that address soil conditions for proposed service roads and pads.
- Prepare a geotechnical report that presents the results of the field and laboratory data as well as analysis and recommendations. The data contained in the geotechnical report will be made available to contractors during the bidding process for information purposes.

**1.230. Survey** – The ENGINEER will perform a design level survey. The survey will include the following:





- 100-foot wide along the proposed pipeline and service road route at the locations specified on "Exhibit C".
- Locate visible topographic features such as marked and existing utilities and their appurtenances, iron pins (if found), edge of pavement, structures, and fences.
- Establish control points along the route including up to four (4) permanent control points.

**1.240. Conceptual Design** – The ENGINEER will perform a conceptual design up to a 30% level of detail. The design will incorporate the following disciplines: hydrogeology, mechanical, civil. The detailed design process will be conducted in the following tasks.:

**241. Conceptual Drawings** – Develop a conceptual plan for well field and well site to be reviewed and confirmed with the OWNER.

**242. Technical Memorandum** – Develop will develop a concise basis of design memorandum to confirm the key design parameters needed for detailed design.

**243. Submittal** – The ENGINEER will deliver one (1) electronic set to the OWNER for review and comment.

**244. Submittal Review Workshop** – The ENGINEER will conduct a review meeting with the OWNER approximately two (2) weeks after the submission of the Conceptual Design Submittal, an approximate 30-percent level of design.

### **Task 1.300 – Detailed Design**

The detailed design includes tasks necessary to design the modifications and improvements as outlined in the preliminary design to the 60% level of detail. The design will incorporate the following disciplines: hydrogeology, mechanical, civil, geotechnical, electrical, instrumentation, and control. The detailed design process will be conducted in the following tasks.

**1.310. Drawings** – The ENGINEER will develop design and details drawings to the 60% level of detail. The ENGINEER will perform the following sub-tasks.

**311. Well** – Develop plan, section, and detail drawings for each well. Design well pump to hydraulically perform under various operational conditions.

**312. Well Site** – Develop plans and details including site grading, well site gate, and well site fence for each of the five proposed wells.

**313. 536 Property Improvements** – Develop plans and detail drawings for the service roads to well sites, property entry gate, and any required security measures.

**314. Well Collection System** – Develop plan, profile, and detail drawings for the new well collection system. Include hydraulic models as required to develop hydraulic losses.

**315. Raw Water Transmission Pipeline** – Develop plan, profile, and details drawings for the new raw water transmission pipeline to TH #1.

**316. Submittal** – The ENGINEER will deliver one (1) electronic set to the OWNER for review and comment.



**1.320. Specifications** – The ENGINEER will prepare detail specifications for use in bidding and constructing the project. The ENGINEER will do the following sub-tasks.

**321. Technical Specifications** – Develop detailed equipment, materials and all other specification sections generally considered to be necessary for detailing the construction of the project.

**322. Submittal** – The ENGINEER will submit the Specifications in one (1) electronic set to the OWNER for review and comment.

**1.330. Opinion of Probable Cost** –The ENGINEER will prepare an opinion of probable cost for the project based upon the complete detail design documents.

**1.340. Detail Design Submittal Review Meeting** – The ENGINEER will conduct a review meeting with the OWNER approximately two (2) weeks after the submission of the Detail Design Submittal, an approximate 60-percent level of design.

#### **Task 1.400 – Final Design**

The final design includes those tasks necessary to finalize the design outlined in the Detailed Design Submittal. The final design will incorporate the following disciplines: hydrogeology, civil, mechanical, electrical, instrumentation and control. The final design process will be conducted in the following tasks.

**1.410. Drawings** – The ENGINEER will revise design and detail drawings based on comments from the Review Meeting. The ENGINEER will perform the following sub-tasks.

**411. Revise Drawings** – Revise drawings based on the comments from the OWNER.

**412. Details** – Develop project details to include in drawing set.

**413. Submittal** – Submit the Final Design Drawings in one (1) electronic set to the OWNER for review and comment.

**1.420. Specifications** – The ENGINEER will revise and prepare specifications for use in bidding and constructing the project. The ENGINEER will perform the following sub-tasks.

**421. Front End Documents** – Include the Engineer's Standard General Conditions section of specifications and modify as necessary in Supplementary Conditions for the project. Documents shall include General and Special Conditions, Bid Proposal Forms, Instructions to Bidders, and all other sections generally considered to be necessary for solicitation of bids.

**422. Technical Specifications** – Revise equipment, materials, and other specifications.

**423. Bid Tab** – Include equipment and material quantities in bid tab.

**424. Submittal** – Submit the Final Design Drawings in one (1) electronic set to the OWNER for review and comment.



**1.430. Opinion of Probable Cost** –The ENGINEER will prepare an opinion of probable cost for the project based upon the complete final design documents.

**1.440. Final Design Submittal Review Meeting** – The ENGINEER will conduct a review meeting with the OWNER approximately two (2) weeks after the submission of the Final Design Submittal, an approximate 100-percent level of design.

**Task 1.500 – Permitting**

**1.510. TCEQ Regulatory Compliance** – The ENGINEER will coordinate with the TCEQ for required regulatory compliance.

**511. Submit Detailed Design** – Submit letter and 60% drawings to the TCEQ at the detailed design phase on behalf of the OWNER.

**512. Submit Drawings and Specifications** – Submit final design drawings and technical specifications to the TCEQ on behalf of the OWNER. Respond to requests for additional information from TCEQ.

**513. Modifications to Design** – If required, update plans and specifications with any modifications requested by TCEQ prior to bidding.

**1.520. Middle Trinity Groundwater Conservation District (MTGCD)** – The ENGINEER will coordinate with the MTGCD for all required regulatory permits and compliance needs.

**521. Submit Well Registration and Production Permitting** – Submit application and supporting documentation needed by MTGCD to evaluate the application on behalf of the OWNER.

**522. Respond to MTGCD Requests** – Respond to requests for additional information from MTGCD on behalf of the OWNER.

**523. Modifications to Design** – If required, update plans and specifications with any modifications requested by MTGCD prior to bidding.

**Phase 1 Supplemental Services**

**\$43,000.00**

\*Supplemental Services are not part of the Basic Services. Supplemental Services may be enacted upon request of OWNER. The ENGINEER shall provide a fee proposal upon request of OWNER for all Supplemental Services. The ENGINEER shall not begin working without written approval from the OWNER.

**SS Task 1.100 – ASR Desktop Feasibility Study**

The ENGINEER will perform an initial determination if the water management strategy of Aquifer Storage and Recovery warrants further study by the OWNER. This conceptual study will evaluate the 536 Property as a potential site. The findings will be delivered in a concise technical memorandum to the OWNER. The ENGINEER will do the following sub-tasks.

**1.110 Water Supply Options** – Identify the availability of source water(s) for injection (recharge) and the volume of water for recharge. This will include a historic search into the



surface water availability over the last 10-20 years. Estimate OWNER population growth and future water demands. Our Team will prepare various hypothetical thresholds based on flow and/or water stages to determine if and for what duration the OWNER would not be able to utilize an ASR system for storage.

**1.120. Alternative Supply** – Assess the opportunities to utilize water reuse for ASR.

**1.130. Planning Analysis** – Assist in determining the compatibility of recharge water with surface water management plans and permit conditions. Our Team will work with the OWNER to review their current contract with the Upper Leon River Municipal Water District (ULRMWD) and determine what, if any, environmental thresholds might determine the time periods and volumes the OWNER can inject into an ASR system.

**1.140. Subsurface Assessment** – The availability of potentially suitable sand units in the Trinity Aquifer to serve as viable ASR horizon(s) for the anticipated volume of water to be injected. The suitability of sand units will be based on geologic structure, stratigraphy, and mineralogy.

**1.150. Siting Options** – Assess if the OWNER has adequate land holdings for a potential ASR well field(s).

**1.160. Ordinance Options** – Evaluate OWNER ordinance options that would allow the OWNER to utilize the area inside the OWNER's City limits for a potential ASR well field.

**1.170. Opinion of Cost** – Provide a planning level opinion of probable cost for up to three options available to the OWNER.

### **SS Task 1.200 – Funding Support Services**

The ENGINEER will aid the OWNER in preparing documents to request funding from a government or private funding agency at the OWNERs request. The OWNER will complete all paperwork necessary for the funding request. The ENGINEER will provide support to the OWNER in the development of exhibits, figures, and OPCC to accompany the paperwork. It is assumed the ENGINEER will not attend meeting(s) with funding agency.

### **Phase 2 Bidding Services**

**Estimated \$22,000.00**

*\*Phase 2 will commence only upon written authorization from the Owner.* Phase 2 services are estimated at \$22,000.00 in 2021 dollars and are acceptable at least until May of 2022. The final amount will be finalized and agreed upon with written authorization to proceed.

The Bidding Phase services will include those tasks necessary to advertise, bid, and provide a recommendation of award of Construction Contract. Key aspects of Phase 2 are listed below.

- Deliverables: Project Advertisement  
Bid Documents  
Answer Bidder Questions



- Addenda (if necessary)
- Contractor Award Recommendation Letter
- Conform to Bid Documents
- Meetings:
  - Pre-Bid meeting
  - Bid Opening

Specific tasks to be performed for the Bidding Phase are listed below.

**Task 2.100 – Project Management**

**2.110. Communication with OWNER** – The ENGINEER will maintain consistent communication with the OWNER through the established protocol agreed upon.

**111. Standing Conference Call** – The ENGINEER will have a standing monthly call with the OWNER’s Project Manager to discuss the current project status report.

**112. Invoice Management** – The ENGINEER will submit a monthly invoice to the OWNER with the current project status report to the OWNER.

**2.120. Progress Management** – The ENGINEER will monitor the overall progress of Phase 2 services. The ENGINEER will do the following sub-tasks.

**121. Documentation** – Route Contracts for Execution and insertion into Conformed to Bid Documents. Document bid documents and communication.

**122. Project Status Report** – Develop a project status report highlighting current progress; distribution log; list of outstanding issues; and action item log.

**Task 2.200 – Contract Documents Bid Set**

**2.210. Seal and Sign** – The ENGINEER will incorporate the comments for the 100-percent review meeting. The ENGINEER will seal and sign the completed set of documents.

**2.220. Project Advertisement** – The ENGINEER will coordinate with city staff, create, and send bid advertisement to OWNER’s Purchasing Department. The ENGINEER will contact Contractors to help advertise the project.

**2.230. Contract Documents Distribution** – The ENGINEER will publish on CivCast (or similar platform) the contract bid documents to prospective bidders and vendors and maintain a log of distribution. The ENGINEER will charge bidders and vendors a fee for Contract Documents. The ENGINEER will provide two (2) sets of half-size drawings and specifications for the OWNER.

**2.240. Clarifications to Prospective Bidders** – The ENGINEER will provide clarifications and answer questions from prospective bidders made during the bidding phase. Two (2) rounds of written clarifications and responses to questions will be distributed to perspective bidders.

**2.250. Addenda** – Modification(s), if necessary, to the Contract Bid Documents will be distributed to perspective bidders via addenda.

**2.260. Conform to Bid Documents** – Once the OWNER has accepted a bid, the ENGINEER will conform the Bid Documents to include all addenda issued to form the Conform to Bid set of Contract Documents. The ENGINEER will provide up to six (6) sets of half-size drawings and specifications, as well as an electronic set, for OWNER’s use.



### Task 2.300 – Meeting

**2.310. Pre-Bid Meeting** – The ENGINEER will conduct one (1) pre-bid meeting. The pre-bid meeting will include a project overview presentation at a location designated by the OWNER and project site visit led by the ENGINEER with prospective bidders.

**2.320. Bid Opening Meeting** – The ENGINEER will attend the bid opening announcement led by the OWNER followed by a meeting to discuss the results.

### Task 2.400 – Evaluation of Bid Packets

**2.410. Bidding Log** – The ENGINEER will review all submitted bids for compliance with Contract Documents and provide OWNER a log of all valid bidders.

**2.420. Review Bids** – The ENGINEER will review valid submitted bids and verify apparent low bidder's references. The ENGINEER will make recommendations for contract award based upon 'best value' for the OWNER.

## Phase 3 Construction Services

**Estimated \$88,000.00**

*\*Phase 3 will commence only upon written authorization from the Owner.* Phase 3 services are estimated at \$88,000.00 in 2021 dollars and are acceptable at least until May of 2022. The final amount will be finalized and agreed upon with written authorization to proceed.

The Construction services will include those tasks necessary to represent the OWNER during the project construction. Key aspects of Phase 3 are listed below.

- Deliverables: Construction meeting minutes  
Contractor Payment Application recommendations  
Shop Drawing responses  
Request for Information responses  
Change Order recommendations, if required  
Field Order(s), if required  
Record Drawings
- Meetings: Construction Kickoff Meeting  
Construction progress meetings  
Equipment start-up and training  
Substantial completion inspection  
Final completion inspection

During the Construction Phase, the following tasks will be provided.

### Task 3.100 – Project Management

**3.110. Communication with OWNER** – The ENGINEER will maintain consistent communication with the OWNER through the established protocol agreed upon.



**111. Standing Conference Call** – The ENGINEER will have a standing monthly call with the OWNER’s Project Manager to discuss the current project status report.

**112. Invoice Management** – The ENGINEER will submit a monthly invoice to the OWNER with the current project status report to the OWNER.

**3.120. Progress Management** – The ENGINEER will monitor the overall progress of Phase 3 services including tracking the scope, schedule, and budget regularly. The ENGINEER will perform the following sub-tasks.

**121. Documentation** – Develop document management protocols for processing and documenting submittals, shop drawings, requests for information, operation and maintenance manuals, pay applications, field orders, change orders and as-built drawings.

**122. Project Status Report** – Develop a project status report highlighting key issues; identifying potential changes to the scope of SERVICES; invoice status; active submittal(s) and log; active RFI(s) status and log; CMR status and log; list of outstanding issues; decision log; and action item log.

#### **Task 3.200 – Submittals**

**3.210. Submittal Management** – The ENGINEER will use Project Mates platform to log-in, track, and distribute submittals internally and provide review comments to Contractor and OWNER. It is assumed an average of no more than two (2) resubmittals will be required.

**3.220. Construction Execution Plan** – The ENGINEER will review the Contractor’s execution plan and provide comments. The plan will be measured against the Contractors actual progress results.

**3.230. Shop Drawing** – The ENGINEER will perform technical and functional review of all shop drawings and other submittals and provide responses.

**3.240. Field Testing Reports** – The ENGINEER will review Field Test reports and flag any potential tests that do not conform to the Contract Document requirements.

**3.250. Contractor Payment Requests** – The ENGINEER will review all Contractor Payment Requests for accuracy and provide recommendations.

**3.260. Operation and Maintenance (O&M) Manuals** – The ENGINEER will review the O&M manuals for compliance with Contract Documents and provide comments.

#### **Task 3.300 – Request for Information (RFI)**

The ENGINEER will review and respond to all RFIs, as necessary, submitted by the Contractor. The ENGINEER will coordinate with the OWNER on RFIs that require information from the OWNER. Draft responses will be submitted to the OWNER for review and comment prior to submitting to the Contractor.

#### **Task 3.400 – Contract Modifications Requests**



**3.410. Field Order (FO) Management** – The ENGINEER will provide direction to the Contractor, as necessary, for modifications to the Bid Documents through FO to complete the Scope of SERVICES identified herein. FO are used to address unforeseen issues. FO will be submitted to the OWNER for review and comment before submitting to the Contractor.

**3.420. Change Order (CO) Management** – The ENGINEER will review and provide recommendation to the OWNER on all Change Order requests received by the Contractor. The ENGINEER will work with the OWNER to properly facilitate CO requests when appropriate.

**Task 3.500 – Construction Meetings**

**3.510. Construction Kick-off Meeting** – Conduct a construction kick-off meeting with the Contractor and OWNER to review the key construction processes outlined in Contract Documents, establish lines of communication and protocols, identify critical path of schedule, provide four (4) Conform to Bid Documents to Contractor, and issuing Notice to Proceed with executed Contracts to Contractor.

**3.520. Construction Meetings** – The ENGINEER will attend monthly construction progress meetings with OWNER and Contractor. An estimate of twelve (12) construction meetings are included, with one or two persons from the ENGINEER's project team attending.

**3.530. Site Visits** – The ENGINEER will make periodic visits, estimate of twelve (12), to the project site to observe the progress and quality of the various aspects of the Contractor's work.

**3.540. Substantial Completion Inspection** – The ENGINEER will participate in a substantial completion inspection and provide a list of noted items not in compliance with Construction Documents.

**3.550. Final Completion Inspection** – The ENGINEER will participate in a final completion inspection and provide a list of noted items not in compliance with Construction Documents.

**3.560. Equipment Start-up** – The ENGINEER will be on-site during equipment Start-up and witness field acceptance testing. Up to two (2) site visits are included.

**Task 3.700 – Record Drawings**

ENGINEER will develop As-Built drawings from the construction notes provided by the Contractor and OWNER. The Contractor and OWNER will provide ENGINEER with all field changes and notes to be incorporated into the As-Built documents. The ENGINEER will provide six (6) sets of half-size drawings and specifications and one (1) electronic copy for OWNER's use.

**Phase 3 Supplemental Services**

**\$155,000.00**

\*Supplemental Services are not part of the Basic Services. Supplemental Services may be enacted upon request of OWNER. The ENGINEER shall provide a fee proposal upon request of OWNER for all





Supplemental Services. The ENGINEER shall not begin working without written approval from the OWNER.

**SS Task 3.100 – Resident Project Representative**

The Resident Project Representative will provide experienced construction inspection and oversight services. The inspector will observe and document that the work is being performed in accordance with the project plans and specifications. Monitor contractor QA/QC plans, perform photographic documentation of construction activities and progress, observe all major materials deliveries, oversee startup and commissioning plans and activities, oversee Maintenance of Plant Operations (MOPO) plans and activities, monitor SWPPP activities, monitor contractor safety plans and practices, provide any special inspections, prepare OWNER'S punch lists and approve completed punch list items, and review redline as-built drawings. Key aspects of Task SS3.100 are listed below.

- Deliverables: Daily Field Reports  
Photo Documentation  
QA/QC compliance reports
- Meetings: Construction Progress Meetings  
Startup & Commissioning Meetings  
Contractor Safety Meetings

**3.110. Construction Safety** – Note if the CONTRACTOR'S construction safety program is not being followed. The Contractor shall be responsible for construction safety and not the RPR.

**3.120. On-Site Inspection and Oversight** – Be onsite when the rig spuds and daily during drilling. When on location, CCINC will monitor the drilling, measure drilling fluid properties, monitor sample collection, and describe the drill cuttings. Analyze the Borehole Geophysical Logs and Integrate Them with the Cuttings to Assist the ENGINEER and Contractor in Determining Screen Placement. Assist the Contractor in selecting the correct filter pack and screen based on sieve analyses of the appropriate samples. CCINC will monitor construction during pressure cementing of the casing and installation of the screen and filter pack.

**3.130. Construction QA/QC Management** – Provide ongoing Quality management and administration. Monitor well development and analyze a video survey of the well screens.

**3.140. Photographic Documentation** – Photograph, record and deliver photographs of construction activities, quality non-conformance issues, special photographs, and videos for the project record.

**3.150. Material and Equipment Certification** – Observe and record all major material and equipment deliveries for damage and conformance to project specifications and submittals.

**3.160. Startup and Commissioning** – Review startup and commissioning plans, participate in startup and commissioning planning meetings, oversee startup and commissioning activities, coordinate plant shutdowns and/or operational requirements with OWNER and CONTRACTOR, certify started and commissioned equipment and processes.



**3.170. Punch List** – Prepare the OWNER’S punch list and administer and certify completion of punch list items.

**3.180. Redline “As-Built” Drawings** – Review and approve a complete set of redline “As-Built” drawings for incorporation into the final project record. Analyze and Archive the Final Video Survey as a Final Inspection and Permanent Record.

## Time Period for Performance

Time periods for performance of the ENGINEER’s services.

<b>Phase 1 Design</b>	<b>12 months</b>
<b>Phase 2 Bidding</b>	<b>3 months</b>
<b>Phase 3 Construction</b>	<b>15 months</b>

## Method of Payment

The OWNER shall compensate ENGINEER on a lump sum basis in accordance with “EXHIBIT B” Fee Summary for the provided Basic Services described herein and the approved Supplemental Services described herein. Invoices shall be submitted monthly by the ENGINEER, in a format acceptable to the OWNER, based upon the percentage of SERVICES completed to date. The ENGINEER shall not exceed the stated fee amount without written approval from the OWNER. The ENGINEER shall seek written approval for any SERVICES outside of the stated scope before performing said SERVICES.

\*Phase 2 and Phase 3 will commence only upon written authorization from the Owner. Phase 2 services are estimated at \$22,000.00 and Phase 3 services are estimated at \$88,000.00 in 2021 dollars and are acceptable at least until May of 2022. The final amount will be finalized and agreed upon with written authorization to proceed.

## Assumptions

This Scope of SERVICES assumes the following:

- A two-week review period by OWNER for each submittal. All OWNER comments should be provided within the two-week review period. Any delays caused by the OWNER’S review shall be cause for an equitable extension of the design submittal timeline.

## Services Not Included

Any other services, including but not limited to the following, are not included in this Scope of SERVICES:

- Additional Construction Phase Services – The ENGINEER will perform the following Additional Construction Phase Services as requested in writing by the OWNER. A detailed scope, schedule and fee will be created upon request by the OWNER as these services are NOT included in this Scope of SERVICES or Fee.
  - SCADA wiring, termination, programming, integration
  - Geotechnical Construction Testing





- Services related to acquiring real property including but not limited to easements, right-of-way, and/or temporary right-of-entries.
- Preparation of Title Policies during property acquisition.
- Meetings beyond those identified in the scope.
- Preparation of platting documents and/or real property survey for site acquisition.
- Additional sets of bidding documents.
- Professional services associated with re-bidding the project.
- Construction Staking.
- Attendance at and/or preparation for more than one (1) Public Meetings.
- Making significant modifications to the plans and specifications after the preliminary submittals have been approved by OWNER.
- Any additional changes to the Contract Documents necessary to break the project into phases.
- Establish new survey monuments for any of the proposed sites.
- Sampling, testing, or analysis beyond that specifically included in the Scope of Services referenced herein above.
- Providing professional services associated with the discovery of any hazardous waste or materials in the project route.
- Assisting OWNER or Contractor in the defense or prosecution of litigation in connection with or in addition to those services contemplated by this Agreement. Such services, if any, will be furnished by Engineer on a fee basis negotiated by the respective parties outside of and in addition to this Agreement.
- Preparing applications for government grants, loans, or planning advances, and providing data for detailed applications.
- Franchise Utility Design.
- Appearing before regulatory agencies or courts as an expert witness in any litigation with third parties or condemnation proceedings arising from the development or construction of the Project, including the preparation of engineering data and reports for assistance to OWNER.
- Performance of miscellaneous and supplemental services related to the project as requested by OWNER, other than those described in Supplemental Services section.
- "Value engineering" after bidding
- Any other services not listed in the Scope of Services.



# EXHIBIT - B





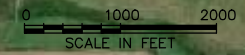
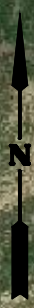
		CITY OF STEPHENVILLE 536 WELL FIELD DEVELOPMENT <b>PROFESSIONAL SERVICE FEE SUMMARY</b>		
<b>Phase 1 Services</b>	<b>Phase 1 - Design Phase Services</b>			
	Task 1.100 - Project Management		\$ 38,500	
	Task 1.200 - Preliminary Design		\$ 77,000	
	Task 1.300 - Detailed Design		\$ 154,000	
	Task 1.400 - Permitting		\$ 28,875	
	Task 1.500 - Final Design		\$ 86,625	
		<b>Sub-Total</b>		\$ 385,000
	<b>Supplemental Services</b>			
	Water Development Board Funding Supporting Services		\$ 15,000	
	ASR Desktop Feasibility Concept		\$ 28,000	
	<b>Sub-Total</b>		\$ 43,000	
	<b>Total fee for Design Phase Services</b>		<b>\$ 428,000</b>	
<b>Phase 2 and Phase 3 Services</b>	<b>Phase 2 Bid Phase Services</b>			\$ 22,000
		<b>Subtotal</b>		\$ 22,000
	<b>Phase 3 Construction Services</b>			
	Engineering Construction Administration Services		\$ 88,000	
		<b>Subtotal</b>		\$ 88,000
	<b>Supplemental Services</b>			
	Resident Project Representative - Estimated Services		\$ 155,000	
	<b>Subtotal</b>		\$ 155,000	
	<b>Base Services for 536 Well Field Fee</b>		\$ 495,000	
	<b>Supplemental Services</b>		\$ 198,000	
	<b>Total Fee Proposal</b>		<b>\$ 693,000</b>	
	<b>Opinion of Probable Construction Cost 536 Well Field</b>		<b>\$ 5,429,000</b>	



# EXHIBIT - C



REFERENCES: Proj: C:\\_SFA\Providence Engineering\Business Development - Documents\3 Pending Projects\002 Stephenville\9002.06.21\_536 Well Field\Exhibits\Wellfield 536 Site Layout.dwg LAYOUT: Layout1 USER: Mar 24, 2021 - 2:30pm



Item 9.

Signature Date



NO.	REVISION	DATE

IF BAR DOES NOT MEASURE IT, ADJUST SCALE ACCORDINGLY

SHEET TITLE: 536 WELL FIELD SITE LAYOUT  
 PROJECT TITLE: CITY OF STEPHENVILLE, TEXAS  
 536 WELL FIELD DEVELOPMENT

DATE:	MAR. 2021
CHECKED BY:	KWR
DESIGNED BY:	TAM
DRAWN BY:	TAM
PROJECT I.D.:	002.21.#
CONTRACT NO.:	#### #####
DRAWING NO.:	EXHIB 119

23 or 24





# EXHIBIT - D







 <div style="text-align: center;"> <p>City of Stephenville 536 WELL FIELD Opinion Of Probable Construction Cost March 25, 2021</p>  <p><b>PROVENANCE</b> ENGINEERING</p> </div>				
MATERIAL DESCRIPTION	UNIT	UNIT COST	QUANTITY	ITEM COST
<b>General Conditions</b>				
Mobilization/Demobilization (Not to Exceed 5% of CC)	LS	\$211,000	1	\$240,000
SWPPP, TPDES Best management Practices	LS	\$10,000	1	\$10,000
<b>Well Construction (5 Total Wells)</b>				
Well Development with Casing, Screen, Gravel Pack	EA	\$140,000	5	\$700,000
Furnish, Set & Pull Test Pump	EA	\$26,500	5	\$132,500
Pump Test	EA	\$12,000	5	\$60,000
Sealing Block & Wellhead Foundation	EA	\$8,000	5	\$40,000
Install Pump assembly	EA	\$44,000	5	\$220,000
Wellhead Piping, Valves, Fittings and Appurtenances	EA	\$13,000	5	\$65,000
Disinfection of Pump and Well	EA	\$2,750	5	\$13,750
Water Quality Analysis and Testing	EA	\$6,000	5	\$30,000
Electrical and Instrumentation per Well, Including Lightning Protection	EA	\$95,000	5	\$475,000
Security Fence and Gates	EA	\$10,000	5	\$50,000
Misc Site Improvements	LS	\$60,000	1	\$60,000
Drilling Equipment mobilization between sites	LS	\$15,000	1	\$15,000
<b>SUBTOTAL</b>				<b>\$1,862,000</b>
<b>Well Collection Piping, Roads, Pads &amp; Electrical Distribution</b>				
Service Roads installation	SY	\$22	7,000	\$154,000
Road base for Well Pads	SY	\$22	750	\$16,500
Rehabilitate Existing Service Roads	SY	\$15	12,000	\$180,000
Raw Road base	CY	\$30	15,000	\$450,000
Electrical Power Distribution for Wells	LS	\$825,000	1	\$825,000
Collection 6" C900 PVC Pipe	LF	\$45	7,700	\$346,500
Raw Water Transmision 10" C900 PVC Pipe	LF	\$60	12,000	\$720,000
<b>SUBTOTAL</b>				<b>\$2,692,000</b>
<b>COMBINED SUBTOTAL</b>				<b>\$4,804,000</b>
CONTINGENCY		13%		\$625,000
<b>TOTAL</b>				<b>\$5,429,000</b>
This Opinion of Probable Construction Cost was prepared by Kent W. Riker, P.E. # 103730, firm No. 20783, and shall not be used for construction permitting or other construction purposes.				

# STAFF REPORT



**SUBJECT:** Brick Street Reconstruction Design – Professional Services Proposal  
**MEETING:** Committee Meeting – 15 Nov 2022  
**DEPARTMENT:** Public Works  
**STAFF CONTACT:** Nick Williams

## RECOMMENDATION:

Staff recommends entering into a professional services agreement with Jacob and Martin, LLC. for the design of the brick street reconstruction project on College Street from Belknap Avenue to Barton Avenue.

## BACKGROUND:

In 2021, the 100 block of Graham Avenue on the east side of the courthouse was repaved with historic Thurber brick. Implementation of a brick street project was recently discussed again by council for the downtown area. The original Thurber brick paving on College Street from Belknap Avenue to Barton Avenue was overlaid with asphalt in the past.

Preliminary design of brick pavement improvements on College Street and Belknap Avenue, on the south and west sides respectively adjacent to the courthouse, including roadway and ADA sidewalk improvements, as well as the replacement of existing cast iron water lines and clay sewer lines, has been completed by Jacob and Martin. Final design is anticipated to be completed in December 2022. Construction of one or both blocks, if authorized by City Council, is expected to be completed in 2023.

## PROPOSAL:

The proposed scope of work in the professional services agreement provides detailed plans and specifications for the design of brick pavement improvements on College Street from Belknap Avenue to Barton Avenue, including roadway and ADA sidewalk improvements, as well as the replacement of existing cast iron water lines and clay sewer lines. Additionally, the agreement provides for materials testing (density and concrete) during the construction phase of the project.

The agreement provides for the design work to be completed within a five (5) month timeframe and provides a liquidated damages clause should the design not be completed on schedule.

Enclosed is an exhibit identifying the location of the proposed design work. A copy of the proposal is also attached.

## FISCAL IMPACT SUMMARY:

The agreement proposes to prepare contract documents including construction drawings, specifications, design layout, surveying, geotechnical work, as well as materials testing for a not-to-exceed sum of \$96,000.

Due to the full demolition and reconstruction of the pavement, including ADA accommodations, utility replacement, and drainage design, the opinion of probable construction cost is between \$900k and \$1 million.

The construction, if approved, is conservatively anticipated to take nine (9) months to complete to best coordinate with downtown businesses, events, and traffic.

Funds for the design cost would be allocated from the FY22-23 annual Pavement Maintenance Budget. Construction funds were not specifically accounted for in the FY22-23 budget for this capital project. A water main break which occurred during the recent construction of Atmos Energy's gas infrastructure improvements has accelerated the need for reconstruction of College from Columbia Avenue to Barton Avenue. Staff is currently coordinating with Atmos Energy on a cost share agreement for the brick pavement improvements.

## ALTERNATIVES:

The following alternatives are provided for consideration:

1. Do not recommend approval of the professional services agreement as presented or
2. Recommend an alternate scope of work.

ADVANTAGES:

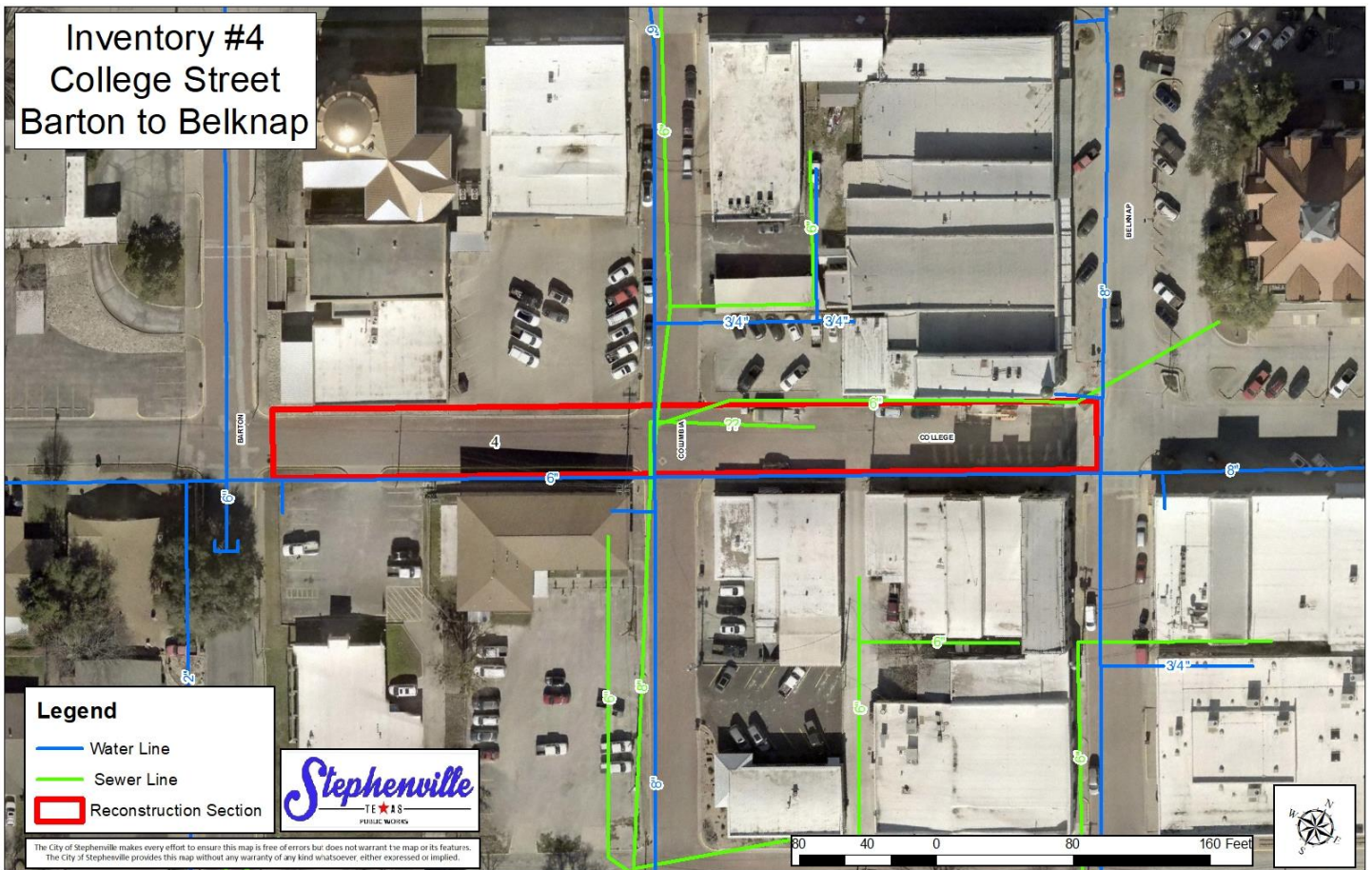
- 1. Recommending approval allows the design work to commence immediately.
- 2. Construction phase work requires written pre-approval.

DISADVANTAGES:

- 1. Funding has not been specifically identified for this project.

**ATTACHMENTS:**

[Brick Street Reconstruction Project – Professional Services Agreement – 2022\\_10-28](#)





**MASTER CONTRACT FOR PROFESSIONAL SERVICES**

**CONTRACT DATE:** \_\_\_\_\_, 20\_\_\_\_

**CLIENT:** City of Stephenville

**PROJECT NAME:** College Street Reconstruction

**PROJECT LOCATION:** Stephenville, Texas

**PROJECT NUMBER:** 22491

This **CONTRACT** is made and entered into on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the City of Stephenville, whose address is 298 W. Washington, Stephenville, Texas 76401 hereinafter called **CLIENT**, and Jacob & Martin, LLC., whose address is 3465 Curry Lane, Abilene, Texas 79606, hereinafter called **JM**. The **CLIENT** engages **JM** to perform professional services for the Project described above.

**SECTION I - SERVICES**

- A. **JM** shall provide professional services as described in **ATTACHMENT “A”**.
- B. **JM** has assigned Tristan King, P.E. as the Project Manager for this **CONTRACT** described above.
- C. **JM** will serve as **CLIENT**’s professional engineering representative in those phases of the Project to which this **CONTRACT** applies and will give consultation and advice to **CLIENT** during the performance of **JM**’s services.

**SECTION II - COMPENSATION**

A. The method of payment by **CLIENT** to **JM** for services provided under this **CONTRACT** shall be:

<u>X</u> _____ Lump Sum - Preliminary Engineering Services	Total Amount: \$3,000
<u>X</u> _____ Lump Sum - Basic Engineering Services - Design and Construction	Total Amount: \$68,000
<u>X</u> _____ Time and Expense - Special Engineering Services - Surveying, Testing, Misc. Engineering Expenses	Not to Exceed: \$25,000

The terms, amount and frequency of monthly and/or periodic billing shall be set forth in **ATTACHMENT “A”**. Hourly rates shall be as described in **ATTACHMENT “B”**. The **JM Hourly Rate Schedule** in effect at the time the work is performed shall be used and when a new **JM Hourly Rate Schedule** is published, a copy of the new schedule will be furnished to the client and shall supersede the previous **JM Hourly Rate Schedule** as **ATTACHMENT “B”**. For multiple project services or phases, a breakdown of individual costs and associated scope will be provided in **ATTACHMENT “A”**.

The **ATTACHMENT “B”** Schedule of Rates will be adjusted annually on January 1<sup>st</sup> to reflect equitable changes in the compensation payable to Engineer, reimbursable expenses, and IRS directed mileage rates.

B. For and in consideration of the Basic Services to be rendered by **JM**, the **CLIENT** shall pay, and **JM** shall receive compensation hereinafter set forth for the project. All remittances by the **CLIENT** of such compensation shall either be mailed or delivered to **JM**’s office in Abilene, Taylor County, Texas.

- 1. Payment for the services under the Project listed in the **ATTACHMENT “A”** “Scope of Work” of this Agreement and as set forth herein shall be paid as billed and in accordance with the compensation and financial requirements as set forth in **ATTACHMENT “A”**.

C. Additional Services listed in **ATTACHMENT “A”** shall be paid by the Hour and Expense per **ATTACHMENT “B”**.

### SECTION III - CLIENT'S RESPONSIBILITIES

- A. The **CLIENT** shall designate a Project Manager during the term of this **CONTRACT**. The **CLIENT**'s project manager has the authority to administer this **CONTRACT** and shall monitor compliance with all terms and conditions stated herein. All requests for information from or a decision by the **CLIENT** on any aspect of the work shall be directed to the **CLIENT**'s project manager.
- B. The **CLIENT** shall review submittals by **JM** and provide prompt response to questions and rendering of decisions pertaining thereto to minimize delay in the progress of **JM**'s work. The **CLIENT** will keep **JM** advised concerning the progress of the **CLIENT**'s review of the work. Delays in response by the Project Manager greater than 5 days shall automatically extend by a like number of days any timelines or completion deadlines as set forth in **ATTACHMENT "A"**.
- C. The **CLIENT** shall provide full requirements for the Project.
- D. **CLIENT** shall assist **JM** by placing at **JM**'s disposal all available information pertinent to the Project, including previous reports and any other data relative to the Project's design and construction.
- E. **CLIENT** shall furnish **JM** property, boundary, right-of-way, topographic and utility surveys; core borings, probings and subsurface exploration; hydrographic surveys, laboratory tests and inspections of samples and materials in **CLIENT**'s possession or to which **CLIENT** has reasonable access, all of which **JM** may rely on in providing the services described on **ATTACHMENT "A"**.
- F. **CLIENT** will guarantee access and make all provisions for **JM** to enter onto public and private lands as required for **JM** to perform work under this **CONTRACT**.
- G. Unless included in **JM**'s services as described on **ATTACHMENT "A"**, **CLIENT** shall advertise for proposals from bidders, open the proposals at the appointed time and place, and pay for all incidental costs related hereto.
- H. **CLIENT** will provide any legal, accounting and insurance counseling services required for the Project. **CLIENT** shall provide such insurance or may be required on **ATTACHMENT "C"**, which insurance shall include **JM** as an additional insured and be written with companies authorized to do business in the State of Texas and reasonably approved by **JM**.
- I. **CLIENT** will designate in writing its Project Manager as a person to act as **CLIENT**'s representative with respect to the work to be performed under this **CONTRACT** who will have complete authority to transmit instructions, receive information and interpret and define **CLIENT**'s policies and decisions with respect to materials, equipment, elements and systems pertinent to the services provided by **JM** pursuant to this **CONTRACT**. The decision and directions given by the Project Manager shall be binding on **CLIENT** and **JM** shall have the right to rely on such decision and directions in performing work and services hereunder.
- J. **CLIENT** shall give prompt written notice to **JM** whenever **CLIENT** observes or otherwise becomes aware of any defect in the Project.
- K. Unless included in **JM**'s services as described in **ATTACHMENT "A"**, **CLIENT** shall obtain approval of all governmental authorities having jurisdiction over the Project and obtain approvals and consents from other individuals or bodies as may be necessary for completion of the Project. Delays in obtaining approval beyond those time frames specified in **ATTACHMENT "A"** or as would otherwise be reasonably anticipated shall automatically extend by a like period of time, any timeline or completion deadlines as set out in **ATTACHMENT "A"**.
- L. If the Project involves more than one general contract, or separate construction contracts for different building trades or separate equipment contracts, **CLIENT** will ensure that the general conditions of all contracts are substantially identical and consistent with the terms hereof in all material respects.
- M. When required, **CLIENT** shall provide title searches, legal descriptions, detailed ALTA surveys and environmental assessments to the extent necessary for **CLIENT** to proceed with the Project.

#### SECTION IV – JM’S RESPONSIBILITY

- A. **JM** shall diligently and competently render engineering services which shall be reasonably necessary or advisable for the expeditious, economical and sound design of that portion of the Project included in **ATTACHMENT “A”** hereto and for such other preparatory work as is necessary to place such portion of the Project in service, except where such duties are excluded from the terms of this **CONTRACT**.
- B. **JM** shall take out and maintain through the contract period minimum insurance as set forth on **ATTACHMENT “C”**.
- C. **JM** shall prepare in collaboration with **CLIENT**, a work in progress report schedule.
- D. **JM** shall prepare, pursuant to the attachments to this **CONTRACT**, complete and detailed plans and specifications, drawings, maps and other documents as required for the construction of the Project (all of the foregoing being herein sometimes collectively called the “Plans and Specifications”).
- E. All Plans and Specifications and other documents required to be prepared or submitted by **JM** under this **CONTRACT** shall conform to industry standards generally acceptable on the date of this **CONTRACT**.
- F. **JM** shall provide **CLIENT** a complete and detailed copy of Plans and Specifications, prepared for construction, for the scope of the Project included in **ATTACHMENT “A”** within 150 calendar days from the executed date of this **CONTRACT**. Project completion is based on the “Project Services Schedule” as listed in **ATTACHMENT “A”**. **JM** and **CLIENT** hereby agree to abide by the “Project Services Schedule” included in **ATTACHMENT “A”** with associated provisions for delays as described herein and in **ATTACHMENT “A”**.

#### SECTION V – TERMS AND CONDITIONS

- A. This **CONTRACT** shall be governed by the laws of the State of Texas.
- B. All reports, plans, specifications, computer files and other documents prepared by **JM** as instruments of service shall remain the property of **JM**. **JM** shall retain all common law, statutory and other reserved rights including copyrights.
- C. The obligations and duties to be performed by **JM** under this **CONTRACT** shall be performed by persons qualified to perform such duties efficiently. **JM** may, at its option, replace any engineer or other person employed by **JM** in connection with the Project. The term “engineer” as used in this **CONTRACT** shall mean a person properly trained and experienced to perform the services required under the terms of this **CONTRACT** and does not mean that the person performing those duties must be a licensed or a registered professional engineer.
- D. **JM** shall comply with all applicable statutes pertaining to engineering and warrants that, as may be required by law or applicable regulations, a professional engineer shall possess a license issued to him or her by the State of Texas, and that such license has not been revoked or suspended and is in full force and effect on the date of this **CONTRACT**.
- E. Prior to the time when any payment shall be made to **JM** pursuant to this **CONTRACT**, **JM**, if requested by the **CLIENT**, shall furnish to the **CLIENT**, as a condition precedent to such payment, a certificate to the effect that all salaries or wages earned by the employees of **JM** in connection with the Project have been fully paid by **JM** up to and including a date not more than thirty (30) days prior to the date of such invoice. Before the time when the final payment provided to be made pursuant to this **CONTRACT** shall be made to **JM** by **CLIENT**, **JM** shall also furnish to **CLIENT** as a condition precedent to such payment, a certificate that all of the employees of **JM** have been paid by it for services rendered by them in connection with the Project and that all other obligations which might become a lien upon the Project have been paid.
- F. **CLIENT** shall have the right, upon reasonable notice, to inspect and audit all payrolls, records and accounts of **JM** relevant to the work for the purposes of this **CONTRACT** and **JM** agrees to provide all reasonable facilities necessary for such inspection and audit.
- G. Compensation payable to **JM** under any of the attachments to this **CONTRACT** shall be in addition to taxes or levies (excluding federal, state and local income taxes), which may be assessed against **JM** by the state or political

subdivision directly on services performed or payments for services performed by **JM** pursuant to this **CONTRACT**. Such taxes or levies, which **JM** may be required to collect or pay, shall in turn, be added by **JM** to invoices submitted to **CLIENT** pursuant to this **CONTRACT**.

H. Interest at the rate of twelve percent (12%) per annum shall be paid by **CLIENT** to **JM** on any unpaid balance due **JM** commencing forty-five (45) days after the due date, provided that the delay in payment beyond the due date shall not have been caused by any condition within the control of **JM**. Such compensation shall be paid ten (10) days after the amount of the interest has been determined. All amounts received by **JM** shall be applied first to accrued unpaid interest and then to outstanding invoices for services and associated expenses.

I. The obligations of **JM** under this **CONTRACT** shall not be assigned without the approval in writing of **CLIENT**.

J. If, after execution of this **CONTRACT**, a service not listed on **ATTACHMENT "A"** is added to this **CONTRACT**, an amendment to this **CONTRACT** will be required, such amendment to be in writing signed by the parties hereto.

K. **JM** shall hold **CLIENT** and **CLIENT's** employees, agents, officers and directors harmless from any and all claims for injuries to persons or damage to property happening by reason of any gross negligence, material default or intentional misconduct on the part of **JM**, its agents, servants or employees during the performance of this **CONTRACT**. This indemnity shall include, but not be limited to, all expenses of litigation, court costs and reasonable attorney's fees.

L. If the performance of the **CONTRACT**, or of any obligation hereunder is prevented, restricted or interfered with by reason of fires, breakdown of plant, labor disputes, embargoes, government ordinances or requirements, civil or military authorities, acts of God or the public enemy, acts or omissions of carriers, or other causes beyond the reasonable control of the party whose performance is affected, then the party affected, upon giving prompt notice to the other party, shall be excused from such performance on a day-for-day basis to the extent of such prevention, restriction or interference (and the other party shall likewise be excused from performance of its obligations on the day-for-day basis to the extent such party's obligations relate to the performance so prevented, restricted or interfered with); provided that the party so affected shall use its best efforts to avoid or remove such causes.

M. Liquidated Damages – Failure to meet the timelines for completion of the work identified in the project scope will result in liquidated damages of \$50.00 per consecutive calendar day until the work identified in **ATTACHMENT "A"** "Scope of Work" is submitted. Liquidated damages are only applicable to items under the control of **JM** and will not be enforced due to circumstances out of the control of **JM**.

N. Except for claims or causes of action related to or arising from, the failure of **CLIENT** to pay the fees and compensation as provided hereunder, **CLIENT** and **JM** agree to submit to binding arbitration as a required resolution of any disputes arising under this **CONTRACT**. **JM** and **CLIENT** agree that, prior to submission to binding arbitration, any disputes arising under this **CONTRACT** shall first be submitted to non-binding mediation.

O. **CLIENT** and **JM** acknowledge and agree that each party has invested significant time and resources in the recruitment and training of its employees. Therefore, to the extent permitted by applicable law, both parties agree that during the term of this **CONTRACT**, and for one (1) year thereafter, neither party will directly or indirectly solicit or seek to employ the employees of the other party except by mutual agreement of **CLIENT** and **JM**.

P. On occasion, **JM** engages the specialized services of individual consultants or other companies to participate in a project. When considered necessary, these firms or other consultants will be used with **CLIENT's** approval. Such specialists will be wholly responsible for their work product. Alternatively, at **CLIENT's** request, **JM** will recommend contractor(s) or specialist(s) for **CLIENT** to enter into direct contract(s) with. In that event, invoices for these outside services will be mailed to **CLIENT** for direct payment to the contractor(s). **JM** review and approval of each invoice will be provided on request. Under either alternative, **JM** does not guarantee and is not responsible for the performance of the contractor(s) or the accuracy of their results.

Q. **CLIENT** will furnish right-of-entry on the site for **JM** to conduct the work. **JM** will take reasonable precautions to minimize damage to the land from use of equipment but has not included in the fee the cost for restoration of damage that may result from site operations.

R. Reasonable care will be exercised in locating subsurface structures in the vicinity of proposed subsurface explorations. This will include contact with the local agency coordinating subsurface utility information (i.e., "Call Before You Dig" service) and a review of plans provided by **CLIENT** for the site to be investigated. **JM** shall rely upon any information provided by **CLIENT** or **CLIENT's** agent or representative. If the locations of underground structures are not known accurately or cannot be confirmed, then there will be a degree of risk to **CLIENT** associated with conducting the work. In the absence of confirmed underground structure locations, **CLIENT** agrees to accept the risk of damage and possible costs associated with repair and restoration of damage resulting from the exploration work and further agrees that **JM** shall not be liable for any such damages and/or costs. In accepting our proposal for services, **CLIENT** acknowledges the inherent risks associated with any subsurface investigation. In performing professional services, **JM** will use that degree of care and skill ordinarily exercised under similar circumstances by members of the profession practicing in the same or similar localities. **JM** makes no express or implied warranty beyond our commitment to conform to this standard of professional practice.

## SECTION VI – TESTS AND INSPECTIONS

A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections to the Site to check the quality or quantity of the Work. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.

B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.

D. **CLIENT** elects to assume the responsibilities of the "Resident Project Representative" and shall be solely responsible for monitoring the quality of all work to be performed by various contractors and subcontractors providing services and materials for the Project. **CLIENT** further assumes sole responsibility to arrange for or conduct any necessary or required testing or inspections which may be advisable to ensure that the work performed, and materials provided by any contractors or subcontractors are properly and timely performed and are in accordance with the Project's plans, specifications and project documents.

## SECTION VII – RESPONSIBILITIES

Except as expressly provided elsewhere in this **CONTRACT**, **JM's** work shall not include determining, supervising or implementing the means, methods, techniques, sequences or procedures of construction. **JM** shall not be responsible for evaluating, reporting or affecting job conditions concerning health, safety or welfare unless the scope of work set out on **ATTACHMENT "A"** hereto includes construction site inspection services. **JM's** work or failure to perform same shall not in any way excuse any contractor, subcontractor or supplier from performance of its work in accordance with the **CONTRACT** documents.



## SECTION VIII – WARRANTY

A. **JM**'s services will be performed, its findings obtained, and its reports prepared in accordance with the scope of work as described in **ATTACHMENT "A"** hereto. In performing its professional services, **JM** will use that degree of care and skill ordinarily exercised under the same or similar circumstances for services of this type. **CLIENT** recognizes that conditions may vary from those observed at specific locations where borings, surveys or other site explorations are made, and that site conditions may change over time. This warranty is in lieu of all other warranties or representations, either express or implied. The warranty granted hereunder shall be limited to one (1) year from the date of completion of the Project and such warranty shall only extend to the services provided by **JM** and shall not cover the workmanship and materials used by any subcontractors or any equipment manufactured by any third party.

B. If **JM** or any of its employees, officers or agents be found to have been negligent in the performance of its work or to have made and breached any express or implied warranty, representation or contract, **CLIENT**, all parties claiming through **CLIENT** and all parties claiming to have in any way relied upon **JM**'s work must bring any actions arising from the same in the State of Texas in a court of competent jurisdiction. Venue for any action brought pursuant to this paragraph shall lie in Erath County, Texas.

C. The foregoing notwithstanding, **JM** shall not be liable for consequential and/or exemplary damages. No action or claim, whether in tort, contract or otherwise, may be brought against **JM**, arising from or related to this **CONTRACT** after the expiration date under the statute of limitations provided for such action under Texas law.

## SECTION IX - TERMINATION

Either party to this **CONTRACT** may terminate the **CONTRACT** by giving to the other party ten (10) days written notice. Upon delivery of this notice by the **CLIENT** to **JM**, and upon expiration of the ten (10) day period, **JM** shall discontinue all services in connection with the performance of this **CONTRACT** and shall proceed to promptly cancel all existing orders and contracts insofar as such orders or contracts are chargeable to this **CONTRACT**. As soon as practical after the receipt of a notice of termination, **JM** shall submit a statement showing in detail the services performed under this **CONTRACT** to the date of termination. **CLIENT** shall then pay **JM** to the date of termination. **CLIENT** shall then pay **JM** promptly that proportion of the prescribed charges which the services actually performed bear to the total services called for under this **CONTRACT**, less payments on account which have been previously made. Copies of all completed or partially completed designs, plans and specifications prepared under this **CONTRACT** shall be delivered to **CLIENT** when and if this **CONTRACT** is terminated.

## SECTION X - NOTICES

All notices required by this **CONTRACT** shall be sent by United States Postal Service, Federal Express or hand delivery to the addresses on Page 1 of this **CONTRACT**.

## SECTION XI – CONFLICT OF INTEREST

**JM** agrees to disclose any financial or economic interest in or with the Project Property, or any property affected by the Project, existing prior to the execution of this **CONTRACT**. Further, **JM** agrees to disclose any financial or economic interest in or with the Project Property, or any property affected by the Project, if **JM** gains such interest during the course of this **CONTRACT**. If **JM** gains financial or economic interest in the Project Property during the course of this **CONTRACT**, **CLIENT** may in its sole discretion, terminate this **CONTRACT**. **JM** shall not engage the services of any present or former employee of **CLIENT** who was involved as a decision-maker in the selection or approval processes, or who negotiated or approved billings or contract modifications for this **CONTRACT**. **JM** agrees that it will not perform services on this Project for the general contractor, any subcontractor or any supplier of or for this Project. **JM** will not negotiate or make any agreement with the contractor, any subcontractor or any supplier with regard to any of the work under this Project or any services, equipment or facilities to be used on this Project.



**SECTION XII – COVENANT AGAINST CONTINGENT FEES**

**JM** affirms that it has not employed or retained any company or person, other than a bona fide employee working for **JM**, to solicit or secure this **CONTRACT**, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or any other consideration contingent upon or resulting from the award or making of this **CONTRACT**. For a breach or violation of this section, **CLIENT** may terminate this **CONTRACT** without liability, or in its discretion may deduct from the **CONTRACT** a price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

**SECTION XIII – ADDITIONAL SERVICES**

Additional services which are outside the scope of **ATTACHMENT “A”** to this **CONTRACT** shall not be performed by **JM** without prior written authorization from **CLIENT**. Additional services, when authorized by and additional contract or an amendment to this **CONTRACT** shall be compensated for by a fee mutually agreed upon in writing between **CLIENT** and **JM**.

**SECTION XIV – SUCCESSORS AND ASSIGNS**

This **CONTRACT** shall not be assignable except pursuant to the written consent of **CLIENT** and **JM**. If assigned, this **CONTRACT** shall extend to and be binding upon the heirs, executors, administrators, successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this **CONTRACT** to be duly executed and agree that this **CONTRACT** will be effective on the date first shown, said date being the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**CITY OF STEPHENVILLE**

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

Doug Svien  
Printed Name

Mayor  
Title

**JM** warrants that the person who is signing this **CONTRACT** on behalf of **JM** is authorized to do so and to execute all other documents necessary to carry out the terms of this **CONTRACT**.

**JACOB AND MARTIN, LLC**

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

Kirt Harle, P.E.  
Printed Name

Vice President  
Title

**ATTACHMENT A  
TO MASTER CONTRACT FOR PROFESSIONAL SERVICES**

**SCOPE OF WORK**

**A. Description of Projects**

The project scope includes engineering services for design and construction administration of proposed street and sidewalk improvements for City of Stephenville as follows:

1. College Street:

- Street reconstruction with brick pavers from Barton to Columbia
- 6” water line replacement
- Fire hydrants
- Sidewalk replacement
- Curb and gutter
- ADA curb ramps
- Associated incidentals

2. College Street:

- Street reconstruction with brick pavers from Columbia to Belknap
- 8” water line replacement
- 6” sewer line replacement
- Manholes
- Fire hydrants
- Sidewalk replacement
- Curb and gutter
- ADA curb ramps
- Associated incidentals

**B. Preliminary Engineering Services**

The preliminary engineering (pre-design) phase includes materials engineering services to determine geotechnical data as necessary for pavement design and subgrade stabilization recommendations and requirements.

**C. Basic Engineering Services**

1. Design Phase

- a. The Engineer shall establish the scope of the project and advise the Owner of any investigations or any special surveys or testing which, in the opinion of the Engineer, may be required for proper execution of the project and arrange

with the Owner for the conduction of such investigations and tests.

- b. Perform required topographic and legal surveying for infrastructure improvements (under separate compensation).
- c. Prepare detailed specifications, contract drawings and plans for bidding and constructing infrastructure improvements.
- d. Assist City with permitting as required.
- e. Prepare a detailed cost estimate(s), which shall include summaries of bid items and quantities, prior to bidding.
- f. Furnish Bidding Documents to City for staff, administration, and legal review.
- g. Finalize Contract Documents incorporating City's comments.

## **2. Bidding and Award Phase**

- a. Assist City in the advertisement for bids.
- b. Conduct pre-bid meeting.
- c. Answer bidder's questions and issue addenda (if necessary).
- d. Assist the City in the opening and tabulation of bids for construction of the project and make recommendations to the City for award of Contract.
- e. Assist in the preparation of executed Contract Documents for the construction of the project.

## **3. Construction Phase\***

- a. Coordinate Pre-Construction Conference.
- b. Make periodic visits to the site to observe the progress and quality of the executed work and to determine in general if the work is proceeding in accordance with the Contract Documents.
- c. Consult and advise the City, issue all instructions to the Contractor requested by the City, and prepare routine field orders and/or change orders as required.
- d. Review samples, catalog data, schedules, shop drawings, laboratory, shop and mill tests of material and equipment, and other data which the Contractor is required to submit, only for conformance with the design concept of the project and compliance with the information given by the Contract Documents.
- e. Provide construction staking for infrastructure improvements (under separate compensation).
- f. Review and recommend Contractor's payment requests.
- g. Coordinate questions and information with the City's resident inspector.
- h. Conduct in company with the City a site visit following substantial completion notice and prepare punch list.
- i. Conduct in company with the City a final inspection of the project for conformance with the design concept of the project and compliance with the Contract Documents and approve in writing final payment to the Contractor.
- j. Review contract drawings with the assistance of Owner and Contractor to show the work as actually constructed. Furnish two (2) sets of Record Drawings and a digital copy of the Record Drawings to the City.

**D. Additional Engineering Services**

1. Miscellaneous time and expense reimbursable expenses (shipping, travel, lodging, etc.).
2. Provide topographic, legal surveying and construction staking for proposed improvements.
3. Provide materials testing services for compaction testing and concrete testing.

**E. Compensation Payment Schedule**

Compensation for Preliminary Engineering Services as described in the Scope of Services shall be at a lump sum price of \$3,000.00.

Compensation for Basic Engineering Services (Design) as described in the Scope of Services shall be at a lump sum price of \$54,400.00. 90% (\$48,960) of the lump sum fee shall be invoiced at the completion of the design milestones listed in Section F. The final 10% (\$5,440) of the lump sum fee shall be invoiced after completion of bid advertisement.

Compensation for Basic Engineering Services (Construction) as described in the Scope of Services shall be at a lump sum price of \$13,600.00. 80% (\$10,880) shall be invoiced on a monthly basis as the project progresses through construction. The final 20% (\$2,720) shall be invoiced after final completion and closeout of the project.\*

Compensation for Additional Engineering Services as described above shall be invoiced monthly following completion of the services and on a time and expense basis per the attached rate schedule. The estimated time & expense for the Additional Engineering Services are as follows:

- Topographic Surveying: \$8,500
- Legal Surveying: \$3,500
- Construction Surveying: \$5,000\*
- Materials Testing: \$7,500\*
- Reimbursable Expenses: \$500

Fees do not include any required outside review, inspection, or filing fees. Time and expense items including mileage, vehicle, lodging, meal and other incidentals will be charged at the standard rates attached.

\*The construction phase of this project shall only commence upon written authorization from the City of Stephenville. If the construction phase of this agreement is not authorized in FY2022-2023, the rates for the construction phase (construction engineering, surveying and materials testing) of the project may be re-negotiated and must be agreed upon by both parties.

**F. Project Services Schedule**

Topographic and Legal Surveying	15 Calendar Days
Pre-Design Owner/Engineer Review	5 Calendar Days
50% Construction Documents Owner Review	40 Calendar Days 10 Calendar Days
75% Construction Documents Owner Review	20 Calendar Days 10 Calendar Days
95% Construction Documents Owner Review	20 Calendar Days 10 Calendar Days
100% Construction Documents Owner Review and Final Approval	15 Calendar Days 5 Calendar Days
<u>Total Time to Completion</u>	<u>150 Calendar Days</u>

The **CLIENT** shall review submittals by **JM** and provide prompt response to questions and rendering of decisions pertaining thereto to minimize delay in the progress of **JM**'s work. The **CLIENT** will keep **JM** advised concerning the progress of the **CLIENT**'s review of the work. Delays in review by the **CLIENT** shall automatically extend by a like number of days any timelines or completion deadlines as set forth above.



**ATTACHMENT B**

INTEGRITY  
EXCELLENCE  
TRUST

**TO AGREEMENT FOR PROFESSIONAL SERVICES  
FEES FOR PROFESSIONAL SERVICES**

Principal	\$	220.00
Licensed Architect-1		175.00
Licensed Architect-2		140.00
Licensed Interior Designer		110.00
Architectural Associate		100.00
Registered Professional Engineer-1		185.00
Registered Professional Engineer-2		150.00
Engineer-in-Training (E.I.T.)		120.00
Engineering Technician-1		110.00
Engineering Technician-2		100.00
Engineering / Architectural Intern		60.00
Environmental Scientist		120.00
Environmental Technician		70.00
GIS Technician-1		110.00
GIS Technician-2		80.00
CAD Draftsman-1		100.00
CAD Draftsman-2		85.00
Senior Land Man		90.00
Registered Professional Land Surveyor		160.00
Surveyor-in-Training (S.I.T.)		110.00
Resident Project Representative-1		95.00
General Overtime (Weekends, Holidays or before 8 am or after 5 pm)		115.00
Resident Project Representative-2		80.00
General Overtime (Weekends, Holidays or before 8 am or after 5 pm)		100.00
Licensed Water/Wastewater Operator		90.00
Clerical-1		75.00
Clerical-2		60.00

**FIELD WORK**

1-Man Crew or Technician	\$	100.00
2-Man Crew		150.00
3-Man Crew		175.00
GPS Equipment		70.00
Robotic Total Station		55.00
Vehicle Charge (per day) plus IRS rate per mile		50.00

**A FACTOR OF 1.1 SHALL BE APPLIED TO THE FOLLOWING**

1. Actual cost of subsistence and lodging
2. Actual cost of postage and shipping fees
3. Actual cost of materials required for the project used in surveying, drafting and associated activities
4. Actual cost of special tests and services of special consultants, if required

Effective 1/1/2022



info@jacobmartin.com  
www.jacobmartin.com



3465 Curry Lane  
Abilene, TX 79606  
325.695.1070

1508 Santa Fe, Suite 203  
Weatherford, TX 76086  
817.594.9880

4920 S. Loop 289, Suite 104  
Lubbock, TX 79414  
806.368.6375



INTEGRITY  
EXCELLENCE  
TRUST

**CONSTRUCTION MATERIALS ENGINEERING AND TESTING FEES**

**SERVICE TIME**

Registered Professional Engineer	\$	185.00
Materials Technician Service Time		68.00
General Overtime (Weekends, Holidays or before 8 am or after 5 pm)		95.00
Pier Observation, Hot Mix, Reinforcing Steel		85.00
Overtime (Weekends, Holidays or before 8 am or after 5 pm)		100.00

**CONCRETE**

Concrete Cylinder Compressive Strength Tests	30.00
Client Made Cylinder	37.00
Entrained Air Content Test	35.00
Slump Tests, when cylinders are not made	25.00
Concrete Mix Design	850.00
Concrete Design Confirmation Cylinder	35.00

**SOILS**

Atterberg Limits (Liquid Limit, Plastic Limit & P.I.)	82.00
Field Compaction Test	32.00
Moisture-Density Curve (Proctor)	295.00
Washed Sieve Analysis (Soil)	72.00
Washed Sieve Analysis (Base Material)	77.00
Unit Weight	47.00
Absorption	47.00
Decantation	47.00
Moisture Content	47.00

**ASPHALT**

Rice Theoretical Specific Gravity	\$	90.00
Field Density, Hot Mix (Nuclear Method)		37.00

Local Vehicle Charge (within 20 miles of Abilene) - \$30.00 per trip to the project  
 Travel from and return to office at IRS rate per mile, plus service time at above rates  
 Travel Charges (outside 20 miles of Abilene) – Round trip mileage at IRS current rate, plus

**A FACTOR OF 1.1 SHALL BE APPLIED TO THE FOLLOWING**

1. Actual cost of subsistence and lodging
2. Actual cost of postage and shipping fees
3. Actual cost of materials required for the project used in surveying, drafting and associated activities
4. Actual cost of special tests and services of special consultants, if required

Effective 01/01/2022



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**ATTACHMENT C  
TO MASTER CONTRACT FOR PROFESSIONAL SERVICES**

**INSURANCE**

A. Types of Insurance. The types of insurance required in this **CONTRACT** are those indicated by initials below. If no initials appear on any of the Items 1 through 6, insurance described in Items 1 through 4 shall be required.

	<u>Type</u>	<u>Amount</u>
1.	Workers compensation (employer’s liability statutory)	\$500,000.00 (per occurrence)
2.	Commercial (public) liability including but not limited to: premises / operations Independent Contractors Product / Completed operations Contractual liability Insuring above indemnity Explosion collapse and underground (where such exposures exist)	\$500,000.00 combined single limit for bodily injury and property damage (per occurrence)
3.	Business automobile liability to include coverage for: Owned / leased autos Non-owned autos Hired or rental vehicles	\$500,000.00 combined single limit for bodily injury and property damage (per occurrence)
4.	Liability (per occurrence)	\$500,000.00 combined single limit
5.	See addendum to this Attachment for special coverages and/or revisions	
6.	No insurance required	

B. General Requirements. **JM** agrees to purchase and maintain the type and amounts of insurance required above throughout the term of the **CONTRACT**. **JM** is solely responsible for providing the required Certificates of Insurance. The Certificates of Insurance shall:

1. Name **CLIENT** as an additional insured with respect to the operations for which this **CONTRACT** is made except for professional liability and workers compensation.
2. Provide for thirty (30) day advanced written notice of cancellation or material change.
3. The required insurance must be issued by a company or companies of sound and adequate financial responsibility and authorized to do business in the State of Texas. All policies are subject to examination and approval by **CLIENT**.
4. The required insurance naming **CLIENT** as additional insured must be primary insurance and not contributing with any other insurance available to **CLIENT** under any third party liability policy.
5. **JM** must provide **CLIENT** with the required Certificates of Insurance or a certified copy of the required Certificates of Insurance on or before **CLIENT** executes the notice to proceed with any work under the **CONTRACT**. Thereafter, **JM** must furnish new Certificates of Insurance or certified copies of the same before the expiration date.

City of Stephenville Boards and Commissions					
	Name	Will Continue to Serve	Will NOT Continue to Serve	1st Choice	# Choice
<b>Airport Advisory Board</b>					
Place 1	Tracy Gifford	X			
Place 3	Shannon Truesdell	X			
Place 5	Colby Sims	X			
Place 7	Chris Williams	X			

<b>Board of Adjustment</b>					
Place 1	Darrell Brown	X			
Place 3	Dean Parr	X			
Place 5	Alan Nix	X			2nd
Alt. 2	Vacant				
Alt. 4	Vacant				
<b>Alt. 1</b>	<b>JJ Conway</b>				
<b>Alt. 3</b>	<b>Vacant</b>				

<b>Building Board</b>					
Place 1	Toby O'Neal	X			
Place 3	Danny Phillips	X			
Place 5	Brent Virgin	X			
	Tyler Wright				2nd
<b>Place 4</b>	<b>Vacant</b>				

<b>Electrical Board</b>					
Place 1	Rod Rutledge	X			
Place 3	Scott Thompson	X			
Place 5	David Bragg	X			
<b>Place 4</b>	<b>Vacant</b>				

<b>Erath County Appraisal District Review Board</b>					
	Tomlinson, David	X			
	Allen Barnes				3rd

City of Stephenville  
Boards and Commissions

	Name	Will Continue to Serve	Will NOT Continue to Serve	1st Choice	# Choice
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Library Advisory Board

Place 1	Jenny Shafer	X			
Place 3	Kate Barton	X			
Place 5	Katherine Quinnell	X			
Place 7	Vacant				
	<b>Julia Brockelman</b>			X	

Main Street

Place 1	Vacant				
Place 3	Dr. Aimee Shouse	X			
Place 5	Vacant				
Place 7	Vacant				
	<b>Debby Watson</b>				2nd
	<b>Joycelyn Perez</b>			X	
	<b>Julie Thomas</b>			x	
	<b>Rhea Marris</b>				2nd
	<b>Marion Cole</b>			x	

Mechanical Board

Place 1	Vacant				
Place 3	James Walker	X			
Place 5	Steven Deviney		X		
<b>Place 2</b>	<b>Vacant</b>				

Parks & Recreation Advisory Board

Place 1	Shannon Hunt	X			
Place 3	Contessa Harrison		X		
Place 5	Kindall Hurley	X			
Place 7	Dennis Jones				
	<b>Kristin Smith</b>			X	
	<b>Rhea Marris</b>				4th
	<b>James Tully</b>			X	

City of Stephenville Boards and Commissions					
	Name	Will Continue to Serve	Will NOT Continue to Serve	1st Choice	# Choice

Planning & Zoning Commission					
Place 1	Bruce Delater	X		X	
Place 3	Lisa LaTouche	X			
Place 5	Nick Robinson	X			
Place 7	Tom Hines	X			
Alt. 2	Vacant				
Alt. 1	Paul Ashby				
	Maddie Dewberry			X	
	Tyler Wright			X	
	Alan Nix			X	
	Allen Barnes				2nd

Plumbing Board					
Place 1	Steven Forbus	X			
Place 3	Ed Weber	X			
Place 5	Vacant				
Place 7	Vacant				

Senior Citizen Advisory Board					
Place 1	Sheryl Wells	x			
Place 3	Debbie Watson	X		X	
Place 5	Joanna Lay	x			
Place 7	Marlene Dupas	X		X	
	Rhea Marrs			X	

SEDA					
Place 1	Wendell Hollingsworth	X			
Place 3	Kelijon Nance	X			
Place 5	Marion Cole		X		
Place 7	Matt Underwood	X			

City of Stephenville Boards and Commissions					
	Name	Will Continue to Serve	Will NOT Continue to Serve	1st Choice	# Choice
	<b>Allen Barnes</b>			<b>X</b>	
	<b>Alan Nix</b>				<b>3rd</b>
	<b>Meta Collier</b>			<b>X</b>	

Tourism and Visitor Bureau					
Place 1	Chelsey Brown	X			
Place 3	Belle Dowell	X			
Place 5	Charles Howard		X		
Place 7	Sonia Olvera	X			
	<b>David Kirk</b>			<b>X</b>	
	<b>Terri Hardcastle</b>			<b>X</b>	
	<b>Rhea Marrs</b>				<b>3rd</b>
	<b>Debby Watson</b>				<b>3rd</b>

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## STAFF REPORT

**SUBJECT:** Hotel Occupancy Taxes (HOT) & Short-Term Rental (STR) Reporting & Collection Services

**DEPARTMENT:** Tourism

**STAFF CONTACT:** Michaela Bierman

### RECOMMENDATION:

Staff is requesting the Tourism Committee to forward the contracts with Avenu Insights for HOT & STR collection services to council with a positive recommendation.

### BACKGROUND:

On December 1, 2020, City Council passed ordinance 2020-O-39 with an effective date of January 1<sup>st</sup>, 2021 defining STR and including them in the definition of 'hotel' requiring STR to collect and submit Hotel Occupancy Taxes to the City. Early on, the City pursued contracts with AirBnB and VRBO to collect the taxes on behalf of the lodging establishments; however, they chose not to enter into contracts and only collect State Occupancy Taxes.

The City has identified 16 properties within our boundaries and has sent reporting packets to the 14 owners on file. As of the September reporting period, the City currently has 7 lodging establishments reporting. The discovery and education of STRs is labor-intensive. In this process, it has become clear that the STR owners are confused due to AirBnB and VRBO collecting the State Occupancy Taxes, but not the local portion. Apparently, many owners are led to believe that the local portion is already being collected.

Avenu Insights provides discovery, online reporting and payment, education, and auditing services for STR as well as standard HOT lodging establishments. Avenu Insights estimates roughly 31 STR properties in our boundaries, with an annual expected tax revenue of \$13,000. Avenu Insights scrubs over 80 websites and documents the existence of rental advertisements for STRs to assist in the collection of Occupancy Taxes.

### FISCAL IMPACT SUMMARY:

The cost for the initial set-up for Avenu Insights is a one-time \$5,000 for standard HOT & STR establishments. This includes the online reporting and payment portal. The annual cost for STR online portal, discovery and education is a minimum of \$15,000 (up to about 60 properties), and the annual cost for standard HOT establishment online portal is \$3,000 (\$250 for the current 12 standard establishments). The total annual cost for year 1 is \$23,000; year 2 & 3 of the contract, cost will be \$18,000 each.

The STR program does include an auditing requirement, which costs 45% of the taxes recovered. The standard HOT establishment program has an option for auditing services at \$2,000 per audit. However, we are not recommending an audit of HOT establishments this fiscal year.

The STR taxes submitted for September were \$730. Extrapolating this information to 20 properties, this would result in approximately \$32,000 in annual tax revenue which would result in an additional \$20,000 annual tax collected. This would cover the setup and STR program cost for year 1, leaving the \$3,000 for the standard properties to be paid from fund balance. Year 2 and 3 of the contract is fully covered.

### ALTERNATIVES

Not approve the contract and possibly fail to collect STR Occupancy Taxes, resulting in a potential loss of revenue.

## CONSULTANT SERVICES AGREEMENT

This Consultant Services Agreement (the “Agreement”) is made as of \_\_\_\_\_ (“Effective Date”) by and between \_\_\_\_\_ a municipal corporation of the State of NM (“TOWN”) and **Avenu Insights & Analytics, LLC**, a Delaware limited liability company, (“CONSULTANT”), collectively the Parties. In consideration of the mutual promises herein contained and other good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, the parties agree as follows:

### A. Services

1. CONSULTANT will provide TOWN with the Services described in EXHIBIT A which is attached hereto and incorporated by reference. CONSULTANT shall provide said services at the time, place, and in the manner specified in EXHIBIT A.
2. CONSULTANT shall furnish at its own expense all labor, materials, equipment and other items necessary to carry out the terms of this Agreement.

### B. Compensation

1. Upon execution of this Agreement, TOWN will pay CONSULTANT as outlined in EXHIBIT B, incorporated and included herein.

### C. General Provisions

1. Term of the Agreement: The initial term of this Agreement shall be for a period of three years (3) following the date of execution, and automatically renew for two (2) successive one (1)-year terms if neither party has cancelled (the “Term”). Either party shall have the right to terminate this Agreement in the event of a material breach by the other party. Any such termination may be made only by providing sixty (60) days prior written notice to the other party, specifically identifying the breach or breaches on which termination is based. Following receipt of such notice, the party in breach shall have thirty (30) days to cure such breach or breaches. In the event that such cure is not made, this Agreement shall terminate in accordance with the initial sixty (60) days’ notice. Provided, however, this Agreement is subject to termination upon not less than thirty (30) days written notice to CONSULTANT if TOWN has failed to receive funds for the continued procurement of the Products or Services after every reasonable effort has been made by TOWN to secure the necessary funding and if no substitute arrangement is made by TOWN to obtain the same or similar System or Services from another source. TOWN agrees to discontinue use of all hardware, software, and other CONSULTANT-owned materials no later than the effective date of termination and return the hardware, software, and other CONSULTANT-owned materials to CONSULTANT within thirty (30) calendar days after termination.
2. Effect of Termination: Notwithstanding non-renewal or termination of this Agreement, TOWN shall be obligated to pay CONSULTANT for services performed through the effective date of termination for which CONSULTANT has not been previously paid. In addition, because the services performed by CONSULTANT prior to termination or non-renewal of this Agreement may result in the TOWN’s receipt of revenue after termination which are subject to CONSULTANT’s fee, the TOWN shall remain obligated after termination or non-renewal to provide to CONSULTANT such information as is necessary for CONSULTANT to calculate compensation due as a result of the receipt of revenue by the TOWN. Termination of this Agreement for any reason will not affect any liabilities or obligations of either party

arising before termination or out of events causing termination and will not affect any damages or other remedies to which a party may be entitled under this Agreement, at law, or in equity, arising from any breach or default.

3. Independent Contractor: It is understood that CONSULTANT and its subcontractors, if any, in the performance of the work and services agreed to be performed, shall act as and be an independent contractor and shall not act as an agent or employee of the TOWN. TOWN understands that CONSULTANT may perform similar services for others during the term of this Agreement and agrees that CONSULTANT representation of other government sector clients is not a conflict of interest. CONSULTANT shall obtain no rights to retirement benefits or other benefits which accrue to TOWN's employees, and CONSULTANT hereby expressly waives any claim it may have to any such rights.
4. Subcontractors: CONSULTANT shall have the right to hire subcontractors to provide the services described herein. CONSULTANT, in rendering performance under this Agreement shall be deemed an independent contractor and nothing contained herein shall constitute this arrangement to be employment, a joint venture, or a partnership. CONSULTANT shall be solely responsible for and shall hold TOWN harmless from any and all claims for any employee related fees and costs including without limitation employee insurance, employment taxes, workman's compensation, withholding taxes or income taxes.
5. Notice: Any notice required to be given under this Agreement shall be in writing and either served personally, sent prepaid first-class mail, or by express mail courier (i.e. FedEx, UPS, etc.). Any such notice shall be addressed to the other party at the address set forth below. All notices, including notices of address changes, provided under this Agreement are deemed received on the third day after mailing if sent by regular mail, or the next day if sent overnight delivery.

**If to TOWN:**

City of

Attn: Phone: Email:

**If to CONSULTANT:**

**Avenu Insights & Analytics, LLC**

Attn: Contracts Department

5860 Trinity Parkway., Suite 120

Centreville, VA 20120

Email: [contracts@avenuinsights.com](mailto:contracts@avenuinsights.com)

6. Representative or designees: CONSULTANT Primary Representative/Project Manager shall be:

**Brenda Anderson**, Client Services Manager

PO Box 1896, Weatherford, TX 76086

Phone: 817-771-4066 Email: [Brenda.anderson@avenuinsights.com](mailto:Brenda.anderson@avenuinsights.com)

7. Indemnity: CONSULTANT shall indemnify, defend, and hold harmless the TOWN, its officers, agents, and employees, from and against any and all claims, liabilities, and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) to extent occurring or resulting from CONSULTANT's negligent or unlawful performance of its obligations under or breach of the terms of this Agreement, unless such claims, liabilities, or losses arise out of, or are caused at least in part by the sole negligence or willful misconduct of the TOWN. "CONSULTANT's performance" includes CONSULTANT's action or inaction and the action or inaction of CONSULTANT's officers, employees, agents and subcontractors.



8. Limitation of Liability: **IN NO EVENT SHALL CONSULTANT, ITS EMPLOYEES, CONTRACTORS, DIRECTORS, AFFILIATES AND/OR AGENTS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, SUCH AS, BUT NOT LIMITED TO, DELAY, LOST DATA, DISRUPTION, AND LOSS OF ANTICIPATED PROFITS OR REVENUE ARISING FROM OR RELATED TO THE SERVICES, WHETHER LIABILITY IS ASSERTED IN CONTRACT OR TORT, AND WHETHER OR NOT CONSULTANT HAS BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH LOSS OR DAMAGE. IN ADDITION, CONSULTANT'S TOTAL LIABILITY HEREUNDER, INCLUDING REASONABLE ATTORNEYS' FEES AND COSTS, SHALL IN NO EVENT EXCEED AN AMOUNT EQUAL TO THE FEES DESCRIBED IN EXHIBIT B. THE FOREGOING SETS FORTH THE TOWN'S EXCLUSIVE REMEDY FOR CLAIMS ARISING FROM OR OUT OF THIS AGREEMENT. THE PROVISIONS OF THIS SECTION ALLOCATE THE RISKS BETWEEN CONSULTANT AND THE TOWN AND CONSULTANT'S PRICING REFLECTS THE ALLOCATION OF RISK AND LIMITATION OF LIABILITY SPECIFIED HEREIN.**
9. Insurance: CONSULTANT shall keep in full force and effect insurance coverage during the term of this Agreement, including without limitation statutory workers' compensation insurance; employer's liability and commercial general liability insurance; comprehensive automobile liability insurance; professional liability and fidelity insurance. The insurance certificate shall name the TOWN, its agents, officers, servants and employees as additional insureds under the CGL and Automobile policies with respect to the operations and work performed by the named insured as required by written contract. The General Liability policy is Primary & Non-Contributory. Waiver of Subrogation applies under the General Liability and Workers' Compensation policies. The CGL insurance minimum coverage shall be at least \$1,000,000 per incident, claim or occurrence and \$2,000,000 aggregate. The Cybersecurity insurance minimum coverage shall be at least \$2,500,000 per incident, claim or occurrence. The Automobile Liability insurance minimum coverage shall be at least \$1,000,000 covering all owned, non-owned, and hired vehicles. The certificate shall provide that there will be no cancellation, termination, or non-renewal of the insurance coverage without a minimum 30-day written notice to the TOWN, except in the case of cancellation for non-payment of premium which shall be at least 10-days written notice.
10. Equal Opportunity to Draft: The parties have participated and had an equal opportunity to participate in the drafting of this Agreement. No ambiguity shall be construed against any party upon a claim that that party drafted the ambiguous language.
11. Assignment: This Agreement shall be binding upon and inure to the benefit of the parties, their successors, representatives and assigns. CONSULTANT shall not assign this Agreement, or delegate its duties or obligations under this Agreement, without the prior written consent of TOWN, which consent shall not be unreasonably withheld, delayed or conditioned. Notwithstanding the foregoing, CONSULTANT may assign this Agreement, in whole or in part, without the consent of TOWN to any corporation or entity into which or with which CONSULTANT has merged or consolidated; any parent, subsidiary, successor or affiliated corporation of CONSULTANT; or any corporation or entity which acquires all or substantially all of the assets of CONSULTANT. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties and their successors or assigns.
12. Ownership of Documents: Except for CONSULTANT's preexisting proprietary information and processes, any and all documents, including draft documents where completed documents are unavailable,

or materials prepared or caused to be prepared by CONSULTANT pursuant to this agreement shall be the property of the TOWN at the moment of their completed preparation.

13. Intellectual Property Rights: The entire right, title and interest in and to CONSULTANT's database and all copyrights, patents, trade secrets, trademarks, trade names, and all other intellectual property rights associated with any and all ideas, concepts, techniques, inventions, processes, or works of authorship including, but not limited to, all materials in written or other tangible form developed or created in the course of this Agreement (collectively, the "Work Product") shall vest exclusively in CONSULTANT or its subcontractors. The foregoing notwithstanding, in no event shall any TOWN-owned data provided to CONSULTANT be deemed included within the Work Product.
14. Public Release and Statements: Neither party or its representatives or agents shall disseminate any oral or written advertisement, endorsement or other marketing material relating to each other's activities under this Agreement without the prior written approval of the other party. Neither party shall make any public release or statement concerning the subject matter of this Agreement without the express written consent and approval of the other party. No party or its agent will use the name, mark or logo of the other party in any advertisement or printed solicitation without first having prior written approval of the other party. The parties shall take reasonable efforts to ensure that its subcontractors shall not disseminate any oral or written advertisement, endorsement or other marketing materials referencing or relating to the other party without that party's prior written approval. In addition, the parties agree that their contracts with all subcontractors will include appropriate provisions to ensure compliance with the restrictions of this Section.
15. Force Majeure: CONSULTANT shall not be in default of its obligations hereunder to the extent that its performance is delayed or prevented by causes beyond its control, including but not limited to acts of God, government, quarantines, pandemics, endemics, weather, fire, flood, earthquake, weather, climate change, elements of nature, war, terrorism, civil disturbance, labor disruptions, strikes, embargoes, power or telecommunications failures, inability to obtain supplies, breakdown of equipment or interruption in vendor services or communications, or cause beyond the reasonable control of CONSULTANT ("Force Majeure Event"). Upon the occurrence of a Force Majeure Event, the party that has experienced a delay or failure of performance caused by the Force Majeure Event will be excused from further performance or observance of the affected obligation(s) for as long as the extenuating circumstances prevail and that party continues to attempt to recommence performance or observance whenever and to whatever extent possible without delay. The party that experienced a delay or failure of performance caused by the Force Majeure Event will immediately notify the other party and describe in reasonable detail the circumstances causing the delay or failure of performance. The provisions of this Section shall survive termination of this Agreement.
16. Relationship of the Parties This Agreement shall not constitute, create, give effect to, or otherwise imply a joint venture, partnership, or business organization of any kind. CONSULTANT and TOWN are independent parties, and neither party shall act as an agent for or partner of the other for any purpose. Nothing in this Agreement shall grant to either party any right to make any commitments of any kind for or on behalf of the other party without the prior written consent of the other party. CONSULTANT shall not be restricted from providing products or performing services for others and shall not be bound to TOWN except as provided under this Agreement.
17. Severability If all or part of any term or condition of this Agreement, or the application of any term or condition of this Agreement, is determined by any court of competent jurisdiction to be invalid or

unenforceable to any extent, the remainder of the terms and conditions of this Agreement (other than those portions determined to be invalid or unenforceable) shall not be affected, and the remaining terms and conditions (or portions of terms or conditions) shall be valid and enforceable to the fullest extent permitted by law. If a judicial determination prevents the accomplishment of the purpose of this Agreement, the invalid term or condition (or portions of terms or conditions) shall be restated to conform to applicable law and to reflect as nearly as possible the original intent of the parties.

18. Waiver Or Forbearance Any delay or failure of either party to insist upon strict performance of any obligation under this Agreement or to exercise any right or remedy provided under this Agreement shall not be a waiver of that party's right to demand strict compliance, irrespective of the number or duration of any delay(s) or failure(s). No term or condition imposed on either party under this Agreement shall be waived and no breach by either party shall be excused unless that waiver or excuse of a breach has been put in writing and signed by both parties. Waiver in any instance of any right or remedy shall not constitute waiver of any other right or remedy under this Agreement. Consent to or forbearance of any breach or substandard performance of any obligation under this Agreement shall not constitute consent to modification or reduction of the other obligations or forbearance of any other breach.
19. Entire Agreement: This Agreement constitutes the entire agreement between the parties hereto and supersedes any prior understandings or written or oral agreements between the parties respecting the subject matter contained herein. Said Agreement shall not be amended, altered, or changed, except by a written amendment signed by both parties.
20. Headings The section headings used in this Agreement are merely for reference and have no independent legal meaning and impose no obligations or conditions on the parties.
21. Governing Law This Agreement shall be governed by, interpreted, construed, and enforced in accordance with the laws of the State of Virginia, without reference to the principles of conflict of laws.
22. Counterparts: This Agreement may be signed in separate counterparts including facsimile copies. Each counterpart (including facsimile copies) is deemed an original and all counterparts are deemed on and the same instrument and legally binding on the parties.
23. Invalidity: If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
24. Implementation: Implementation should begin as soon as possible from the signing of this Agreement (the "Effective Date") for the performance of services under the terms of this Agreement.

***[SIGNATURES ON FOLLOWING PAGE]***

IN WITNESS HEREOF, the parties have caused this Agreement to be executed on the date first written above.

**“TOWN”**  
**City of**  
a Municipal Corporation

**“CONSULTANT”**  
**Avenu Insights & Analytics, LLC**  
a Delaware limited liability company

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

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

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

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

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

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

Confidential/Subject to Change

## **EXHIBIT A – STATEMENT OF WORK**

### **SHORT-TERM RENTAL MONITORING AND IDENTIFICATION SERVICES, SHORT-TERM RENTAL AND HOTEL OCCUPANCY TAX ADMINISTRATION SERVICES, AND DISCOVERY/RECOVERY SERVICES**

This Statement of Work is incorporated in the Consultant Services Agreement (“Agreement”) by and between Avenu Insights and Analytics, LLC (“AVENU”) and the Town \_\_\_\_\_ (“TOWN”).

#### **A.1 SHORT-TERM RENTAL MONITORING AND IDENTIFICATION SERVICES**

##### *Scope of Work*

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AVENU’s Short Term Rental Monitoring and Identification Services are designed to assist TOWN in collecting its short-term rental/ lodging tax revenues by capturing payments, documenting correspondence, and invoicing for lodging tax errors thereby capturing the revenue for TOWN. Using its Short-Term Rental Compliance Software, Avenu will be responsible for providing the following modules and components as part of this agreement:

##### **Targeted Web Monitoring**

- Data collection and archiving from over eighty (80) different short-term rental websites including Airbnb, HomeAway, Flipkey, Booking, Vacasa, Evolve, Corporate Housing, Craigslist
- Data collection from at least two (2) unique local popular sites based on search engine ranking
- Data collection is run at least four (4) times per week; staggered over day, night, weekday, and weekend
- Collect and store calendar availability data for at least six (6) months each time listing data is collected
- De-duplication assistance with STR listings and photos up to ten (10) listings at a time on one screen
- Archive and estimate gross revenue via review or calendar bookings for a thirty-six (36) month retrospective view
- Identify STR calendar booked periods less than thirty-one (31) nights in a row
- Generate statistics on room type, occupancy rate, dynamic heat maps, nightly rates, and other metadata in a dashboard report
- Capture of time stamped STR listings data in HTML, PNG, JPG, or PDF, reviews in JSON format
- Capture of calendar data in database format, and exportable to CSV
- Detect names of the operator(s) in the reviews and count their occurrences
- Automated STR Licensee cross-checking via geo-locating and metadata match

## Web Portal

- 24/7 accessible web-portal with keyword-search by username, address, business name, listing ID, license number
- Log into a secured, password-protected web-based graphical user interface
- Compatible with desktop, tablet, and mobile version of internet browsers
- Schedule downloads and delivery by email of STR reports
- Navigate listings by keyword search and by interactive map with dynamic filtering
- Display of radius and distance to nearest STR (100-1000 feet radius) on Map
- Report statistics by neighborhood, HOA, or council ward
- Reporting on sixty-seven (67) different data points
- Reporting on calendar occupancy for a three (3) month period in table format including weekend bookings
- Generate Dynamic ad-hoc reports with up to twenty-six (26) data columns and up to twenty (20) different filters
- Dynamic Highlighting of keywords within reviews
- Generate seven (7) different reporting templates with six (6) different filters
- Enter notes and compliance activity on forty (40) dissimilar categories of compliance
- Customer Support and Language in English or Spanish
- Generate a mailout of non-compliant STR operators within the interface
- Programmable REST-based API communicating via JSON objects
- Comparison View to compare up to ten (10) STR listings with thumbnail photos at the same time
- Image Scene classification tags on photos (living room, kitchen, bathroom, swimming pool)
- Similar Images matching engine and Clustering STR listings by similar images engine around a street address up to five hundred (500) listings.

## Identification Services

- Validate STR listing data with at least two (2) different data points to public records; one for the operator, and one for the property
- Supporting evidence data points are provided up-front and ready for download for the customer without the customer requesting it
- Correctly Identify single-family-dwelling STR listings with full name and exact street address at least ninety-five percent (95%) of the time, and at least ninety-five percent (95%) of the single-family-dwelling STR inventory
- Identify multi-family-dwelling STR listings with full name, exact address including unit number at least seventy-five (75%) of the time and at least seventy-five (75%) of the multi-family-dwelling STR inventory
- 24/7 Hotline, fielding all tips, complaints, and violations from residents, in regard to disruptions at a short-term rental property. These violations are tracked and maintained in the STR database and become part of the compliance activity for a property. The AVENU staff will receive these

violation calls and be the first line of defense to quickly resolve the complaint and will escalate to other agencies when warranted.

### *Deliverables*

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- Provide client with a login access to the Short-Term Rental Compliance System that allows Client the ability to view and review Short-Term Rental activities for properties within Client's geographical location.
- Perform all on-going support of the System, including hardware and software, during the Term and Extended Term of this Agreement.
- Provide the initial online seminar style education and training on the System. Education and training may include on-site sessions of Client employees who will work with the System. The education and training will be adapted to the reasonable needs of the Client employees to ensure each employee is fully prepared to use the System. TOWN may request that AVENU provide on-site additional training. If AVENU and TOWN agree on the scope of the additional training services requested, then AVENU shall provide the additional training on a Time and Materials basis. Depending on the personnel assigned to perform the training, standard hourly rates range from \$75 per hour to \$200 per hour. These additional consulting services will be invoiced at least monthly based on actual time and expenses incurred.

### *Town Assistance*

---

Town shall assist Avenu by providing necessary information and assistance to include, but not be limited to, the following:

Prior to the start of the work to be performed, provide Avenu with

- the most recent registration to collect the tax and
- returns for the time period requested as needed to compile a historical database for the period of the statute of limitations.
- all existing Short-Term Rental Permit, License and Tax records to be converted in a file format agreed to by the AVENU and a time specified in the implementation plan.
- Provide a copy of all ordinances related to short term rental, hotel occupancy, lodging tax, permits and or business registration.
- Provide Town shape file (boundary file)
- If applicable, provide most recent sales tax and business license registry and payment history for the prior three (3) years.
- Inform AVENU of any circumstances concerning current existing payees.
- Inform AVENU of the development of new lodging properties no later than the Certificate of Occupancy being granted.
- Cooperate in the transition by reviewing proposed processing and materials, offering comments and suggestions and providing timely approvals.
- Undergo training in the use of online applications.
- Provide authorization for AVENU to act as an agent of the Client to accept Registrations, Applications, Tax Returns, payments and to pursue compliance/collection efforts.

- Provide notification of payment receipt from non-compliant entities identified within two (2) business days of receipt.

## A.2 TAX ADMINISTRATION SERVICES

### *Scope of Work*

The Tax Administration Services offer a turnkey approach to ensure appropriate collection, deposit, recording, delinquency follow up, and reporting of the local short-term rental/ lodging tax/hotel occupancy tax. These services include all correspondence, forms, and other such services to ensure appropriate and timely remittance of the tax

#### **Remittance Processing**

- Taxes Processed: AVENU will perform remittance processing for taxes as designated by the TOWN.
- Taxpayer Notification and Remittance: AVENU will send individualized tax forms to all known lodging providers (“Taxpayer(s)”). Taxpayers will remit payments as indicated in Attachment A, Distribution Confirmation, attached and incorporated herein by reference. Upon reasonable notice to TOWN, AVENU may change the address for payments. Online filing and remittance using standard AVENU formatting is provided for the Taxpayers convenience.
- Deposit Process: Deposits are made to the extent that funds have been received, via Automated Clearing House of the amounts and to the designated recipients as instructed by the TOWN for each type of tax collected
- Posting Process: Taxpayer accounts are posted with payment information captured in the AVENU revenue system. Additional information such as net sales, deductions, credit sales, measure of tax, name change, and address change is captured and added to the payment data and taxpayer master file (as determined necessary by AVENU). Late payments (postmarked by U.S. Postal Service after the due date) are invoiced at penalty amounts required by State code. Under-payments are invoiced for remaining tax due plus any required penalties.
- Taxpayer Support: Avenu will provide a toll-free support number and provide taxpayer assistance Monday-Friday 7:30a.m.-4:30p.m CST. Taxpayer support inquiries will be handled in the order in which received. During peak volume taxpayers will be provided with an option to leave their number and receive an automated return call without losing their place in line or they may choose to remain on hold for the next available agent.
- Changes to Attachment A: The TOWN shall notify AVENU in writing immediately of all changes in amounts to be deposited into the accounts of designated recipients. An amended Attachment A shall be prepared and executed by the Parties as soon as reasonably possible. In addition, AVENU shall provide documentation confirming each change under the preceding sentence with the first monthly report reflecting the applicable change. If the changes reflected in the monthly report do not properly reflect the intended changes of the TOWN, then the TOWN shall immediately notify AVENU and, thereafter, AVENU shall take the steps necessary to insure that designated recipients receive the amounts intended by the TOWN.

#### **Compliance Services**



- **Taxes Reviewed:** AVENU will perform compliance services for taxes designated by TOWN under Remittance Processing Services. AVENU will provide delinquency notification and follow-up. This includes correspondence, calls, and collection procedures and the related documentation. Delinquency policies and procedures will be applied consistently and within applicable tax laws. Unless otherwise directed by the TOWN, AVENU will make reasonable efforts to collect taxes designated by the TOWN hereunder. Where deemed reasonably appropriate accounts may be turned over to audit or third-party collection.
- **Conduct of Compliance Services:** To assure that all taxpayers are treated fairly and consistently, and all compliance services are performed in a similar manner, AVENU representatives who perform compliance services will use a similar compliance plan for each compliance service conducted. All funds due from compliance services will be remitted to TOWN in the same manner as provided for pursuant to the Remittance Processing section above.

### **Short-Term Rental Services**

- 24/7 Hotline and portal
- Short-Term Rental registration services
- Advanced filing portal
- Print and Mail services (Registration, Citation, Violation Notices, Licenses, Renewals, Postage)
- Permitting/Licensing
- Short-Term Rental delinquency outreach

### *Deliverables*

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- AVENU will make available to TOWN detailed online reporting, including detailed payment listing, daily/weekly/monthly reconciliation reports, etc.
- AVENU will provide the TOWN with monthly reports via the online government services portal including, but not limited to, payment listings showing all taxes received related to net receipts reported, a general ledger distribution that corresponds to the TOWN's account numbers and all fees paid to AVENU. These reports will be provided by the 10<sup>th</sup> business day of the month following the tax month.

### *Town Assistance*

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TOWN shall assist AVENU by providing necessary information and assistance to include, but not be limited to, the following:

- **Distribution Confirmation:** The TOWN will fill in the account information requested on Attachment A and attach the same to the fully executed Agreement. Should there be any changes to the account or percentages in Attachment A, the TOWN shall immediately notify AVENU in writing of all changes in amounts to be deposited into the accounts of designated recipients.
- **Changes to Attachment A:** The TOWN shall notify AVENU in writing immediately of all changes in amounts to be deposited into the accounts of designated recipients. An amended Attachment A shall be prepared and executed by the Parties as soon as reasonably possible. In addition, AVENU

shall provide documentation confirming each change under the preceding sentence with the first monthly report reflecting the applicable change. If the changes reflected in the monthly report do not properly reflect the intended changes of the TOWN, then the TOWN shall immediately notify AVENU and, thereafter, AVENU shall take the steps necessary to insure that designated recipients receive the amounts intended by the TOWN.

- **Tax Change Notification:** In the event of any change to the tax rates being administered the TOWN must provide notification ninety (90) days prior to the effective date of the tax change. Tax change include but are not limited to the following: rate increase, rate decreases, expiration of special tax districts, levy of new taxes, discontinuation of a current tax, modification of tax boundaries or creation of any special tax districts and/or events.
- TOWN agrees to examine reports immediately. If no error is reported by the TOWN to Avenu within thirty (30) days, the statement will be deemed accurate.
- *See also TOWN Assistance section for Short-Term Rental Monitoring and Identification Services.*

### **A.3 DISCOVERY/RECOVERY SERVICES**

#### *Scope of Work*

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Discovery/Recovery Services are designed to provide a full-service solution to the TOWN'S lodging tax and Short-Term Rental enforcement procedures. It does not replace current functions but provides a focused and fulltime solution to the identification of entities subject to taxation and/or registration by the TOWN, which are not properly registered, or otherwise not reporting lodging taxes to the TOWN. In performing the Discovery Services, AVENU shall:

- Establish a comprehensive inventory of the entities subject to taxation by the TOWN and the database elements needed to facilitate a comprehensive comparative analysis with the TOWN'S records of those entities that are properly registered.
- Compare AVENU'S database of business records with the TOWN'S records to identify potential non-reporting and non-registered entities subject to taxation.
- For unregistered or non-reporting entities identified and confirmed, assist the entities, as necessary, to complete the TOWN'S applicable registration forms.
- Invoice entities (including supporting documentation) on behalf of the TOWN for the amount of identified deficiencies, with payment to be remitted to AVENU.
- Exhaust all reasonable efforts to collaborate with the taxpayer in submitting registration forms correctly.
- Collect the amount of identified deficiencies, together with supporting documentation, and remit payment received to the TOWN as agreed upon in the workplan. (AVENU shall follow the TOWN'S business rules in collecting partial payments or the tax in full at the TOWN'S direction.).
- Provide call center open during normal business hours (7:30a.m.-4:30p.m CST.) to assist entities with questions concerning application of the TOWN'S taxes, and reporting and remittance requirements.
- Educate entities regarding the TOWN'S reporting requirements to prevent recurring deficiencies in future years.

#### *Deliverables*

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Throughout the course of the agreement, AVENU will:

- Provide reports addressing each taxpayer who have failed to register and/or report appropriate taxes due.
- Provide a detail payment listing showing all taxes and fees paid to Avenu.
- Monitor and analyze the tax registry files of TOWN quarterly/annually.
- Remit payment to the TOWN for funds received on behalf of the TOWN no less than once per month on or before the tenth (10<sup>th</sup>) day of the month following collection.

#### *Town Assistance*

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TOWN shall assist AVENU by providing necessary information and assistance to include, but not be limited to, the following:

- *See TOWN Assistance Section for Short-Term Rental Monitoring and Identification Services.*

Confidential/Subject to Change

**EXHIBIT B**

**PAYMENT AND RATES SCHEDULE**

**SHORT TERM RENTAL MONITORING AND IDENTIFICATION SERVICES,  
SHORT-TERM RENTAL AND HOTEL OCCUPANCY TAX ADMINISTRATION  
SERVICES, AND  
DISCOVERY/RECOVERY SERVICES**

This Payment and Rates Schedule is incorporated in the Consultant Services Agreement (“Agreement”) by and between Avenu Insights and Analytics, LLC (“AVENU”) and Town of \_\_\_\_\_ (“TOWN”).

**B.1 & B.2 SHORT-TERM RENTAL MONITORING AND IDENTIFICATION SERVICES AND SHORT-TERM RENTAL AND HOTEL OCCUPANCY TAX ADMINISTRATION SERVICES (Bundled Pricing)**

The Short-Term Rental Monitoring and Identification Services and the Short-Term Rental and Hotel Occupancy Tax Administration Services shall be provided for a one-time Short-Term Rental setup fee of \$5,000 and an annual fixed fee of (\$255) per property with an annual minimum fee of \$15,000. Fees are invoiced and due at the beginning of each contract year based on the total number of known and registered properties.

**B.3 DISCOVERY/RECOVERY SERVICES**

The Discovery/Recovery Services (exclusive of a reasonable processing fee and all ACH and Credit Card fees charged for collection, which shall be paid by the Taxpayer directly to AVENU) shall be provided for a contingency fee of forty-five percent (45%) of the additional delinquent revenue received by TOWN for the services. The 45% contingency fee shall apply to the current tax year and/or period, all eligible prior period revenues collected, and any applicable penalties, interest, and late charges. The contingency fee only applies to revenue actually received by TOWN. The term “current tax year/period” shall mean the most recent tax year or tax period for which local taxes are due and payable to TOWN, and in which AVENU has identified deficiencies.

**ADDITIONAL CONSULTING**

TOWN may request that AVENU provide additional consulting services at any time during the term of this Agreement. If AVENU and TOWN agree on the scope of the additional consulting services requested, then AVENU shall provide the additional consulting on a Time and Materials basis. Depending on the personnel assigned to perform the work, standard hourly rates range from \$75 per hour to \$200 per hour. These additional consulting services will be invoiced at least monthly based on actual time and expenses incurred.

The following are sample hourly rates based on the job classification:

- Principal: \$200 per hour
- Client Services: \$175 per hour
- Information Technology (IT) support: \$160 per hour
- Operational Support:
  - Director or Manager: \$175 per hour
  - Senior Analyst: \$125 per hour
  - Analyst: \$100 per hour
  - Administrative: \$75 per hour

These additional consulting services will be invoiced at least monthly based on actual time and expenses incurred.

#### **TRAVEL AND OUT-OF-POCKET**

TOWN shall reimburse AVENU for reasonable travel and other out-of-pocket expenses associated with the performance of the field audits including but not limited to lodging, parking, mileage, per diem, etc. (Mileage and per diem shall be according to IRS regulations). Such reimbursement shall be billed incrementally.

# WAYFINDING COST PROJECTION STEPHENVILLE, TX

Thank you for contacting National Sign Plazas (NSP) as the City of Stephenville explores the benefits of implementing a city-wide wayfinding program. NSP's design-build platform will economize resources and ensure that the system comes to life. Many factors affect the final cost, including design elements, materials, and project scope, to name a few. This initial projection is intended to give the stakeholders an idea of the cost of implementation.



*Large Vehicular Sign*



*Small Downtown Vehicular Sign*



*Gateway Sign*

Initial conversations with the city have indicated the project's objective would be to capitalize on the robust visitor traffic in the region to boost economic activity in the downtown area. In addition, engaging daily visitors with a branded city-wide wayfinding program that introduces them to all that the city has to enjoy will encourage users to engage in local attractions and activities. Based on the number of destinations provided and the size of the city, NSP would project the total cost to design, plan, fabricate and install the vehicular element would be between \$140,000 to \$165,000. The total number of vehicular signs locations would be approximately 35-40. Additional downtown pedestrian features such as directional signs and map kiosks would add an additional \$50,000.

CONTACT US:

**(214) 924-0943**

[NSP.BIZ](http://NSP.BIZ)

DALLAS DIVISION  
903 N. BOWSE  
RICHARDSON, TX 75080

# WAYFINDING PLANNING - SCOPE OF WORK

To establish a framework for the project, NSP will conduct a stakeholders meeting. The results of the meeting will guide NSP in preparing a Summary Report. The Summary Report will outline the project and will be the guiding influence of the Wayfinding Plan. The report will consist of a summary and challenge statements for each project element, including vehicular, pedestrian, transitional points, parks and recreation, and special districts. The Summary Report will also include a Wayfinding Model, Planning Requirements, and a Project Mission Statement. After review of the Summary Report by the stakeholders, NSP will begin work on the Wayfinding Manual. This manual will consist of all the parts that will be required to bring the plan to fruition. It will include the complete package of Sign Designs, Branding Standards, Sign Scheduling, Sign Detail Sheets, Mapping Strategies, Field Analysis, Individual Site Plans, and Phasing Schedule. A sample of this package is available upon request.

Pages will consist of the various signs designs that will be used in the Wayfinding System. These signs include, but are not limited to:

- **Large Vehicular**
- **Small Vehicular**
- **Tertiary Signs**
- **Pedestrian - Directional**
- **Pedestrian - Informative**



## BRANDING STANDARDS

- Arrow Forms
- Colors: Paint, Vinyl, Powder Coating
- Fabrication Instructions
- Fonts
- Installation Guidelines
- Logos
- Paint / Color Scheme
- Page outlining
- Sign Detail Sheets for Each Sign Design
- Sign Materials
- Text Included on Each Individual Sign, in Accordance Planning
- Wayfinding Model, MUTCD, & TXDOT standards

## PLANNING DYNAMIC

Location map with sign locations, in accordance with Wayfinding Model. Recommended existing sign removal (*eliminates redundancy, reduces sign blight*)

- Field Analysis Individual Site Plan
- Field Analysis of Sign Locations
- Site Plan
- Sign Elevation
- Sign Scheduling
- Offset from Travel Lane
- Sight Triangle
- Traffic Algorithm
- Setback from existing Road Sign
- Sign Layout
- Phasing Schedule

If the project is to be completed over a series of fiscal cycles, NSP will construct a phasing timetable to accommodate budgetary constraints, ongoing construction, or planned construction upon the advice and schedule of the city.

CONTACT US:

**(214) 924-0943**

**NSP.BIZ**

DALLAS DIVISION  
903 N. BOWSE  
RICHARDSON, TX 75081

## COST PROJECTION BREAKDOWN

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### Design & Planning Component

\$45,000

**DOT Compliant Vehicular Signs ( *Fabrication and Install* ) : \$100,000 - \$140,000**

35- 40 locations - \$2,500 - \$3,500 per location

( *Cost variance factors, Size, Design Elements, Foundation, Posts.* )

**Downtown Features: \$50,000 - \$65,000**

( *Cost variance factors, Size, Design Elements* )

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CONTACT US:

**(214) 924-0943**

**NSP.BIZ**

DALLAS DIVISION  
903 N. BOWS  
RICHARDSON, TX 75081

160





Signs Express Plus  
 P.O. Box 1292  
 Stephenville, TX 76401

Item 14.

# Estimate

Date	Estimate #
1/11/2022	1445

Name / Address
Stephenville Tourism and Visitors Bureau

Project

Description	Qty	Cost	Total
Optec INTELLIGENT-M2 Series single face 6'5"x9'5" viewable area 10mm LED Full Color Sign Includes ME Cloud software, webinar training & an Optec 5 year parts warranty	1	31,200.00	31,200.00T
Sign Pole	1	400.00	400.00T
Labor to install pole and sign	7.5	100.00	750.00
Does not include any electrical or the monument			
Sales Tax		0.00%	0.00
		<b>Total</b>	\$32,350.00

Customer Signature \_\_\_\_\_